
(2010) 01 BOM CK 0084
In the Bombay High Court
Case No : Writ Petition No. 4959 of 2009

Vyankatrao Savle

APPELLANT

Vs

The Zilla Parishad, Nanded

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 2 ALLMR 48 : (2010) 2 BomCR 648 : (2010) 3 MhLj 103 :
(2010) 4 SLR 253

Hon'ble Judges : S.S. Shinde, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : R.R. Mantri, for the Appellant; V.S. Panpatte, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Heard. Learned Counsel appearing for the respective parties.

2. Rule, returnable forthwith. With the consent of the parties, taken up for final hearing.

3. It is the case of the petitioner that, he came to be appointed on 03-03-1992 as primary teacher with respondent No. 1. The wife of the Petitioner is employed as primary teacher with Anuja Bhosle, Primary School, at Degloor. In the month of June 2008, respondent No. 1, contrary to Rules, posted petitioner 150 Kms. away from residence at Degloor. As per the Zilla Parishad Class 3 and 4 Employees Inter District Transfer Rules framed under Schedule to Govt. Resolution dated 27th May, 2009 (for short, the Transfer Rules), the couple should be posted at one and the same place as far as possible. If not, the distance between the places of their posting should not be more than 30 Kms. Aggrieved by the transfer, the petitioner filed Writ Petition No. 29 of 2009 before this Court. This Court directed the respondents to consider the representation of the petitioner within stipulated time. Since the representation was not decided within stipulated time, Contempt proceedings were filed by the petitioner against

the respondents. In the mean time, the Divisional Commissioner, Aurangabad Division, Aurangabad directed that the case of the petitioner be considered in general transfer of 2009.

4. By order dated 15th June, 2006 the petitioner came to be transferred from Dorli to Bolili Panchayat Samiti head quarter. He was relived from Dorli on 23-06-2009 and on same day he reported at Panchayat Samiti, Biloli. Since the transfer of the petitioner was on his request, he was not given transfer allowance and Dearness allowance or joining time. It is contended that while effecting transfer the petitioner should have been transferred at the place of his choice and Rule regarding posting the couple at one place or the places within 30 Kms. Distance. In case of request transfer, the transferee is not entitled to get transfer allowance and Dearness allowance or joining time etc.

5. It is the case of the petitioner that, on 23-06-2009 he was relived on same day and he reported at Biloli head quarters of Panchayat Samiti on 24-06-2009. He gave written request to post him at Mutnyal, Tq. Biloli he has to be posted as per his request. The post of primary teacher at Mutnyal was vacant as Mr. Rajkondwar teacher was transferred and also relived. The post at Kesrali was not then vacant. However, inspite of this with malafide intention and extraneous considerations the respondent - Block Development Officer did not transfer the petitioner at Mutnyal. It is further case of the petitioner that, he was compelled to sit idle at Panchayat Samiti, Biloli. This action of respondent - Block Development Officer is arbitrary, capricious and result of malafides. It is further case of the petitioner that, the respondent caused harassment of the petitioner due to filing of petition and contempt proceedings against the respondent No. 1.

6. It is further case of the petitioner that, on 03-07-2009, the respondent No. 3 Mr. Rajurwar reported Panchayat Samiti, Biloli on transfer. The respondent No. 2 readily obliged him by posting at Mutnyal, the place where the petitioner was seeking his posting in view of request transfer. The petitioner came to be posted at Kesrali by order dated 06-07-2009 and he is deemed to have joined on 23-06-2009, and the respondent No. 3 reported to have been posted at Mutnyal.

7. The petitioner, therefore, moved the respondents 1 and 2 making grievance about his posting but was of no avail. The petitioner further states that, he was kept idle for long time against the order passed by Chief Executive Officer. The post facto posting given itself shows the malafides. The petitioner thus was denied posting of his choice. He is posted at long distance. The education of his children is put to jeopardy. The sum and substance of the contentions of the petitioner is that, though his request for transfer is acceded, he is not given posting of his choice. Therefore, petitioner prays to quash and set aside the order of posting of petitioner at Kesrali, Tq. Biloli and direct the respondents to post him at Mutnyal, Tq. Biloli.

8. The respondent No. 1 herein has filed detailed affidavit in reply. In para No. 1 of the said reply it is stated that, the answering respondent No. 1 had no powers

to effect transfer and give posting to petitioner as per his choice. The answering respondent No. 1 forwarded proposal on 28-01-2009 to the Divisional Commissioner, Aurangabad Division, Aurangabad, seeking necessary approval. The Divisional Commissioner, Aurangabad Division, Aurangabad by letter dated 06-03-2009 directed answering respondent to consider said representations of the petitioner at the time of effecting general transfers of the year 2009. Accordingly, the request of the petitioner for transfer was considered and by order dated 15-06-2009 transfer was effected on request basis from Zilla Parishad Primary School, Dorli, Tq. Hadgaon to Panchayat Samiti, Biloli and petitioner came to be relieved from the school at Dorli, Tq. Hadgaon on 23-06-2009. In para No. 3 of the affidavit in reply it is stated that, the wife of the respondent No. 3 namely Sau. Batkulwar Godavari Dnyanoba is in service at Zilla Parishad Primary School Hipperga under C.P.S., Kesrali, Tq. Biloli and since respondent No. 3 is in Zilla Parishad service, at the time of counseling held on 11-06-2009 at Zilla Parishad, Nanded the approval has been granted for giving posting to respondent No. 3 at Zilla Parishad Primary School, Mutnyal under C.P.S., Kesrali, Tq. Biloli in place of Sau. Rajkondwar, Assistant Teacher. According to the answering respondent, said action has been taken as per the Rules framed by the Government. The preferential serial number for giving posting to respondent No. 3 comes at serial number "(IX)". It is further stated that, the wife of petitioner Smt. Vijayashri Vithalrao Ekale is serving in Anuja Bhosale Primary School at Degloor which is run by private institution. There is no mention of place Mutnyal in the transfer order of the petitioner. However, the petitioner also requested the answering respondent No. 2 for giving him posting at Zilla Parishad Primary School, Mutnyal under C.P.S., Kesrali, Tq. Biloli and as such, the preferential serial number of petitioner for giving posting comes at serial number "(XI)". It is further stated that, by considering longer stay of respondent No. 3 at his previous posting placed as compared to that of the petitioner, the answering respondent No. 2 by order dated 06-07-2009 gave posting to the petitioner at Central Primary School, Kesrali, Tq. Biloli. In para No. 4 of the affidavit in reply it is stated that, the wife of the petitioner is serving in Anuja Bhosle Kesrali, Degloor and distances between Degloor and Kesrali, Tq. Biloli is only 20 Kms, less than 30 Kms as provided under the Rules for transfer orders so far as couple convenience is concerned. As regards the allegations of extraneous consideration and malafides, the affidavit in reply in para No. 5 states that, the transfer of the petitioner and respondent No. 3 is as per Rules and as per administrative exigencies. In para No. 6 of the affidavit in reply it is submitted that, the transfer is an incidence of service and it is the right and privilege of the employer as to when, where, at what point of time and at what particular station its employees shall be transferred and posted, depending on the administrative exigencies or otherwise and the employee cannot insist for his / her transfer or posting at particular station.

9. The learned Counsel for the petitioner submitted that since the transfer of the petitioner was request transfer, it should have been as per his choice and

petitioner should have been posted at Mutnyal. He also invited our attention to the pleadings in the petition and submitted that, the respondent No. 2 for extraneous consideration with malafide intention has not posted the petitioner at Mutnyal. According to the learned Counsel, as a result of earlier round of litigation, the petitioner came to be transferred at Biloli Panchayat Samiti. However, respondent No. 2 kept petitioner idle. It is further argued that, even the petitioner was not given any allowances or sufficient time when he was transferred from Dorli to Panchayat Samiti, Biloli head quarter. Therefore, learned Counsel would submit that, the respondent No. 2, for the extraneous consideration and with malafide intention, did not give reasonable time to join at Biloli Panchayat Samiti and also not acceded to the request as per his choice at Mutnyal. According to the learned Counsel, since the Writ Petition was filed by the petitioner against the respondent and further contempt proceedings were initiated, having grudge in mind the respondent No. 2 has transferred him from Dorli, Tq. Biloli to Kesrali, Tq. Biloli, posting the petitioner at a long distance, which has jeopardized education of petitioner's children.

10. The learned Counsel appearing for the respondent Nos. 1 & 2 invited our attention to the affidavit in reply and submitted that, the request of the petitioner as well as respondent No. 3 has been considered on merits and as per Rules and accordingly, they are posted at Kesrali and Mutnyal. According to the learned Counsel, the distance between the places where wife of the petitioner is working and the place of transfer of the petitioner is only 20 Kms, which is within 30 Kms as per prescribed norms. It is submitted that the transfer of the petitioner is as per Rules and administrative exigencies and convenience and no any malafide intention can be attributed to the respondents. Though the respondent No. 3 is served non appeared for him.

11. We have heard learned Counsel for the respective parties at length. It would be relevant to refer to the relevant Government Resolution and Rules in respect of transfer policy of the Government of Maharashtra in respect of Class-III & IV employees working under the Zilla Parishad. The Government Resolution dated 27-05-2009 which is issued by Government of Maharashtra, Rural Development and Water Conservation Department, states that for the year 2009-2010, the class-III & IV employees under Zilla Parishad, can be transferred within the district and on request, as per the Rules. The said Government Resolution is to the effect that, the transfers for the year 2009-2010 should not be effected as a routine matter, however, only on request it should be done within district by following relevant Rules. In case there is any complaint in respect of transfer, the Divisional Commissioner would inquire into the matter and will take appropriate action.

12. As per Government Resolution dated 29-03-2001 issued by the Rural Development and Water Conservation Department, in case husband and wife are staying together, as far as possible transfer should be at that place, however, if it is not possible due to administrative convenience to transfer them at the same

place, the precaution should be taken to see that distance between two places and their residence should be within 30 Kms.

13. The relevant Rules for transfer of Class-III and Class IV employees under Zilla Parishad, it is mentioned that, if there is a request by the employee for the transfer, they should give names of 3 to 4 places, and they should be transferred taking into consideration the places which the employee has suggested and also as per administrative convenience, and then decision should be taken. The Rule 10 of the said Rules further states that, teachers, Gramsevaks, the employees working in health centers etc., are in large number, in that case the request transfer to the extent of 5% of the total employees should be entertained. Out of 5%, 2.5% transfers should be within the area of operation of Panchayat Samiti and remaining 2.5% from the area of operation of one Panchayat Samiti to another Panchayat Samiti. In case the posts are less, the request transfer should be to the extent of 10%. Clause No. 12 of the Annexure-1 to the said Government Resolution further mentions that no allowance would be payable in case of transfers on request or mutual basis. Clause No. 13 thereof mentions that authority to see that, the transferred employee takes charge of the post immediately and in case, the employee is not joining the transferred place / post, the appropriate disciplinary action be initiated against the said employee. Under Chapter III of the said Rules, the procedure is laid down for transfer of the employee as per his request. The Block Development Officer should fix the date to accept the applications for transfer, and after receipt of application for transfer on requests, those employees who are eligible for transfer, a report should be called from the concerned Department / Officer. As per Sub Rule (Three) of Rule (4), the employees, who have applied for transfer by filing application and those who are eligible, their list should be prepared as per seniority and in same class in which employees working. While considering seniority, the services rendered by the concerned employee till 1st October of last year in which application of transfer is filed should be taken into consideration. The Sub Rule (Four) of Rule (4) empowers the Block Development Officer to prepare seniority list as per their stay in a particular place. The Block Development Officer shall select such candidates to the extent of 2.5% from each class of the employees, and accordingly the Block Development Officer shall prepare proposal as per Sub Rule (Five) of Rule (4), and then issue the transfer orders.

14. Therefore, what follows from the Government Resolution dated 27-05-2009 and the relevant rules for transfer of class-III & Class- IV employees under Zilla Parishad is that even for considering the application for request transfer, the Block Development Officer has to follow instructions issued by the Government from time to time.

15. In the instant case, the affidavit in reply filed on behalf of respondent Nos. 1 & 2 in para No. 3 stated thus:

I say that it is true that the respondent No. 3 Shri Rajurwar reported at Panchayat Samiti, Biloli on 03-07-2009 on transfer. However, it may be noted

that wife of respondent No. 3, namely Sau. Batkulwar Godavari Dnyanoba is in service at Z.P. Primary School, Hipperga under C.P.S., Kesrali, Tq. Biloli and since respondent No. 3 are in zilla parishad service, at the time of counseling held on 11-06-2009 at Zilla Parishad, Nanded, the approval has been granted for giving posting to respondent No. 3 at Z.P. Primary School Mutnyal under C.P.S.; Kesrali, Tq. Biloli in place of Sau. Rajkondwar, Assistant Teacher and therefore as per the Rules framed by the Government annexed at Exhibit "D", the preferential serial number for giving posting to respondent No. 3 comes at Sr. No. (IX). I further say that the wife of petitioner Smt. Vijayshri Vithal Ekale is serving in Anuja Bhosale Primary School at Degloor which is run by private institution. There is no mention of place Mutnyal in the transfer order of the petitioner. However, the petitioner also requested to the answering respondent No. 2 for giving him posting at Z.P. Primary School, Mutnyal under C.P.S, Kesrali, Tq. Biloli and as such, the preferential serial number of petitioner for giving posting comes at Sr. No. (XI). I say that place Mutnyal and Kesrali are very nearer to each other. The Central Primary School, Kesrali comes under Panchayat Samiti, Biloli and under the said Central Primary School, Z.P. Primary School, Mutnyal comes. I say that the respondent No. 3 as well as petitioner requesting for giving posting at one and the same place i.e. Z.P. Primary School, Mutnyal. I therefore say that in such a situation, by considering the longer stay of respondent No. 3 at his previous posting place as compared to that of the petitioner, the answering respondent No. 2 by order outward No. 510 dated 06-07-2009 gave posting to the petitioner at Central Primary School, Kesrali, Tq. Biloli and by order outward No. 511 dated 06-07-2009 gave posting to the respondent No. 3 at Z.P. Primary School, Mutnyal, under C.P.S. Kesrali, Tq. Biloli.

16. The perusal of para No. 3 of the affidavit in reply reproduced here-in-above would clearly show that, the respondent No. 2 has scrupulously followed the relevant Rules for transfer of Class-III & Class-IV employees under Zilla Parishad. The respondent No. 2 has considered the proposal of petitioner and respondent No. 3 and as stated in para No. 3 of the affidavit in reply, transferred the respondent No. 3 at Mutnyal and the present petitioner at Kesrali. Therefore, it clearly appears that, the respondent No. 2 Block Development Officer, has transferred the petitioner as well as respondent No. 3 after following the relevant Government Resolution and relevant Rules for transfer of Class-III and Class-IV employees under Zilla Parishad and issued transfer orders.

17. The main contention of the learned Counsel appearing for the petitioner is that, the petitioner is not transferred as per his choice is required to be rejected in the light of para No. 3 of the affidavit in reply filed on behalf of respondent Nos. 1 & 2. The respondent Nos. 1 & 2 have also stated in para No. 4 about the distance between Degloor and Kesrali, where the wife of the petitioner is working and the place at which the petitioner is working. In para No. 4 of the affidavit in reply reads thus:

4 I say that as per the transfer of the petitioner from Panchayat Samiti, Hadgaon

to Panchayat Samiti, Biloli by order dated 15-06-2009, by considering the couple convenience of the petitioner due care has been taken by answering respondent No. 2 while giving posting to the petitioner and accordingly, posting has been given to the petitioner at C.P.S., Kesrali, Tq. Biloli, for the reason that the wife of petitioner is serving in Ajuja Bhosale Primary School at Degloor and distance between Degloor and Kesrali, Tq. Biloli is only 20 Kms which is less than 30 Kms as provided under the Rules for transfer so far as couple convenience is concerned. A copy of report dated 05-08-2009 submitted by the Kenra Pramukh, C.P.S., Kesrali, Tq. Biloli in respect of said distance is annexed herewith and marked as Exhibit "1". I therefore say that there is no any injustice caused to the petitioner by giving him posting at C.P.S., Kesrali, Tq. Biloli. I further respectfully say that on one hand the petitioner has filed the present writ petition challenging the posting order dated 06-07-2009 issued by the answering respondent No. 2 and on the other hand, the petitioner has joined at the place of said posting i.e. at Central Primary School, Kesrali, Tq. Biloli on 04-08-2009. A copy of report as regards joining of the petitioner on 04-08-2009 prepared by the Head Master, C.P.S., Kesrali, Tq. Biloli is annexed herewith and marked as Exhibit "2". I therefore say that there is nothing remained in the challenge in this Writ Petition and therefore, the writ petition deserves to be dismissed on this ground alone.

18. Perusal of para No. 4 of the affidavit in reply reproduced here-in-above would clearly show that, the respondent Nos. 1 & 2 have properly followed the instructions laid down in relevant Government Resolution and relevant Rules of transfers, and then only petitioner is transferred to Kesrali. The order of transfer of petitioner from Biloli to Kesrali is well within the prescribed Rules. The respondent No. 2 has taken full care that, the petitioner should be transferred and posted at place which is below 30 Kms from Degloor.

19. The third contention of the learned Counsel appearing for the petitioner that when the petitioner was transferred from Dorli to Panchayat Samiti, Biloli, no transfer allowance was given to the petitioner or no time was given to join at Biloli Panchayat Samiti is required to be rejected, in view of Rules 12 & 13 of Transfer of Class-III & Class-IV employees working under Zilla Parishad.

20. The contention of the learned Counsel appearing for the petitioner that, the transfer of the petitioner was for extraneous consideration and with malafide intentions is not supported by specific pleadings in the petition. Only general and vague statements are made in the petition, which are not supported by material particulars. As already discussed in foregoing paragraphs, the action of the respondent No. 2 to transfer the petitioner from Dorli to Panchayat Samiti, Biloli and from Panchayat Samiti Biloli to Kesrali is on the request of the petitioner for transfer. The respondent No. 2 has strictly followed the instructions in the relevant Government Resolution and relevant transfer Rules and then only transferred the petitioner from Panchayat Samiti Biloli to Kesrali. Therefore, by any stretch of imagination it cannot be said that, the transfer of the petitioner by the respondent No. 2 from one place to another was for extraneous consideration

with malafide intentions. Once it is held that, the transfer is not with malafide intentions, this Court cannot interfere in transfer orders in Writ Jurisdiction under Article 226 of the Constitution of India. In this regard, it would be relevant to refer few judgments of the Hon''ble Supreme court in case of Union of India and Others Vs. S.L. Abbas, ". The Hon''ble Supreme Court held thus:

An order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it.

Yet in another judgment in case of State of U.P. and Others Vs. Siya Ram and Another, , the Hon''ble Supreme Court held in para No. 5 of the judgment:

No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or tribunals normally cannot interfere with such orders as a matter of decision for that of employees/management, as against such orders passed in the interest of administrative exigencies of the service concerned.

In case of Mohd. Masood Ahmad Vs. State of U.P. and Others, , the Hon''ble Supreme court observed:

Since the petitioner was on a transferable post, the High court has rightly dismissed his writ petition because transfer is an exigency of service and is an administrative decision. Interference by the courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions of the Supreme court, transfer is an exigency of service. It should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities who issued the orders were not competent to pass the orders.

Yet in another decision in case of Somesh Tiwari Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court held that:

An order of transfer is an administrative order. Transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fides on the part of the authority is proved. Mala fides are two kinds of - first malice in fact and second, malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane to passing of an order of transfer and based on an irrelevant ground i.e. on the

allegations made against the appellant in any anonymous complaint. It is one thing to say that employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. No vigilance enquiry is initiated against appellant. Transfer of order was passed on material which was non-existent. The order suffers not only from non-application of mind but also suffers from malice in law.

21. Therefore, viewed from any angle, in our opinion the impugned transfer order issued by the respondent No. 2 is well within the relevant Transfer Rules and the same cannot be said to be with malafide intentions or for extraneous considerations.

22. We do not find, any substance in the petition. The petition is devoid of any merits and it is, therefore, dismissed. Rule is discharged.