

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.438/2018

Shri Sunil Devrao Hatkar,
Aged about 42 years,
Presently working as Jr. Lecturer (Biology),
Government Ashram School & Junior College,
Patoda (Kh.) Ta. Kinwat, District Nanded

..Applicant

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai 400032
- 2) Additional Commissioner,
Tribal Development Department,
Beside the office of Police Commissioner,
Camp, Amravati.
- 3) Project Officer,
Integrated Tribal Development,
Kinwat Project, District Nanded
- 4) Shri N.S. Khawale,
Age about 42 years,
Presently working as Junior Lecturer (Biology),
Government Ashram School & Junior College,
Kapara, Tah & District Yeotmal
- 5) Shrimati A.V. Sarkate,
Age about 42 years,
Presently working as Junior Lecturer (Biology),
Government Ashram School & Junior College,
Hivari, Tah & District Yeotmal

..Respondents

Shri S.A. Marathe - Advocate for the Applicant

Shri V.A. Kulkarni – Presenting Officer for Respondents No.1 to 3

Shri V.S. Giramkar – Advocate for Respondent No.4

Shri M.K. Bhosale – Advocate for Respondent No.5

Coram :- Hon'ble Shri A.D. Karanjkar, Member (J)

Dated :- 29th October 2018.

J U D G M E N T

Heard Shri S.A. Marathe, learned Advocate for the Applicant, Shri V.A. Kulkarni, learned Presenting Officer for Respondents No.1 to 3, Shri V.S. Giramkar, learned Advocate for Respondent No.4 and Shri M.K. Bhosale, learned Advocate for Respondent No.5.

2. In this application the applicant is claiming relief for issuing directions to the respondent no.2 to transfer him to Kapra, Hivari or Vasantpur. The applicant is also claiming relief that the order dated 31.5.2018 passed by respondent no.2 be set aside.

Brief facts:

3. In year 2012 the applicant was posted at Patoda, therefore, he was due for transfer in year 2018. The applicant gave three options for transferring him to Government Ashram School situated at Kapri, Hivari or

Vasantpur. It was specifically requested by applicant that for 17 years he worked at hard station, therefore, he should be posted in his own district.

4. The respondent no.2 published a list on 21.5.2018. In that list the names of the employees who were due for transfer in Amravati Division were shown. The applicant was Biology Teacher and 14 Biology Teachers were due for transfer. It was apprehension of the applicant that he would get posting in Yavatmal District.,therefore, the applicant shifted his family to Yeotmal, his issues were admitted in Potdar School, Yeotmal and his family was staying in rented house.

5. It is submitted that the respondent no.2 issued transfer order of seven employees on 29.5.2018 and by separate order dated 29.5.2018 the applicant, Shri Khawale and Shri Dupare were transferred. The applicant was transferred to village Hivari, Shri Khawale was transferred to Jamb and Shri Dupare was transferred to Kapra. It is contention of the applicant that Shri S.K. Dupare was not due for transfer, his name was not included in the list, which was published disclosing the names of teachers due for transfer. It is second contention of the applicant that though he was transferred to Hivari but post was not vacant as no one was transferred from Ashram School, Hivari. Respondent no.3 relieved the applicant. Immediately, thereafter the respondent no.2 passed the order on 31.5.2018 and cancelled the earlier order dated 29.5.2018 transferring the applicant to Hivari..

6. It is the grievance of the applicant though he was due for transfer and he worked in hard area for about 17 years he was not transferred, therefore, this application is filed for the relief.

7. The respondents no.2 and 3 have filed their reply which is at page 68 of the paper book. It is submission of the respondents that though the applicant was due for transfer his transfer order was cancelled only on administrative ground, there is no malice. It is submitted that the respondent no.2 being administrative head, therefore, it was his duty to take care of the students and the respondents were bound to post subject wise teacher to every school. It is submitted that as it was necessary to post subject wise teacher in each school, it was not possible to consider family difficulties of each teacher due for transfer. It is specifically submitted by the respondents that as the earlier order was defective, therefore, on administrative grounds it was cancelled. Respondents no.2 and 3 have given undertaking to accommodate applicant in next general transfer, if vacancy arises at the stations suitable to the applicant as per his options.

8. I have heard submissions of the applicant and the respondents no.2 and 3 at length. The learned counsel for the applicant submitted that in view of the undertaking of the respondents, suitable order be passed. In my view as the academic session commenced, major part of the course is already taught by the applicant from the month of June to October, therefore, if any mid-term direction is issued in this matter, grave prejudice will be caused to the students. Under these circumstances as undertaking

is given by the respondents the interest of the applicant can be protected after issuing certain directions.

9. It appears from the record page 50 the applicant is serving at Patoda hard station since 2012 and at the time of general transfer of 2018 the applicant had completed 5 years 11 months of service. Now the applicant has already completed 6 years service. In view of the mandate of proviso to Section 3(1) of the Transfer Regulation Act, the department is bound to transfer the employee who has completed 2 normal tenures. In this background to give effect to this statutory provision, it is duty of the respondents to transfer the applicant in the next general transfers. Considering the above circumstances, I pass the following order.

ORDER

The respondents no.1 and 2 are directed to transfer the applicant as per his options submitted at the time of general transfers of 2018 subject to availability of the post. OA stands disposed off. No order as to costs.

(A.D. Karanjkar)
Member (J)