

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1068 OF 2022

DISTRICT:-JALGAON

Vidya Umeshrao Gaikwad,
Age : 38 years, Occ: Service,
(as Commissioner, Jalgaon
Municipal Corporation),
R/o: 'Satpuda', Ayukta Niwas,
Shivaji Nagar, Jalgaon.

.. APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
M.S., Mantralaya,
Mumbai-32.
- 2) The Commissioner-cum-Director,
Directorate of Municipal Administration,
229R-VW7, Belapur Bhavan,
Sector 11, CBD Belapur,
Navi Mumbai-400 614.
- 3) Mr. Devidas Pawar,
Chief Officer, Group-A
(Selection Grade),
R/o: Jijai Colony,
Shardanagar, Nanded.

.. RESPONDENTS

APPEARANCE : Shri Avinash S. Deshmukh, learned
counsel for the applicant.

: Shri I.S. Thorat, learned Presenting
Officer for the respondent authorities

: Shri S.S. Thombre, learned counsel for
respondent No. 3.

CORAM : **JUSTICE SHRI P.R.BORA, VICE HAIRMAN**

DATE : **31.01.2023.**

ORDER

Heard Shri Avinash S. Deshmukh, learned counsel for the applicant, Shri I.S. Thorat, learned Presenting Officer for the respondent authorities and Shri S.S. Thombre, learned counsel for respondent No. 3.

2. The applicant has challenged the order dated 29th November, 2022 issued by respondent No. 1, whereby respondent No. 3 has been appointed in her place. According to the applicant, posting of respondent No. 3 in her place has resulted in her mid-tenure and midterm transfer out of the post of Commissioner Jalgaon Municipal Corporation that too without issuing any further posting order to her.

3. The applicant entered services of the Government of Maharashtra in its Urban Development Department w.e.f 12.7.2010 as a directly recruited Chief Officer, Group-A on her

due selection and recommendation by the Maharashtra Public Service Commission. On 1st of February, 2021 the applicant was promoted from the cadre of Chief Officers, Group-A to the cadre of Chief Officers, Group-A (Selection Grade) by respondent No. 1. At the relevant time, the applicant was working as Chief Officer of the Amalner Municipal Council in Jalgaon District. After her promotion to the Selection Grade, the applicant was given posting as Additional Commissioner of Jalgaon Municipal Corporation. While the applicant was discharging duties as Additional Commissioner Municipal Corporation, Jalgaon she was appointed to the post of Commissioner, Jalgaon Municipal Corporation by respondent No. 1 vide order dated 4.5.2022. On 29.11.2022 respondent No. 3 has been appointed in her place and no further order in regard to her posting has been issued.

4. It is the contention of the applicant that she was not due for transfer out of the post of Commissioner, Jalgaon Municipal Corporation, since she has hardly completed the period of 7 months on the said post. The applicant has alleged that with the only object to accommodate respondent No. 3 that she has been ousted from her existing post. It is the further contention of the applicant that the appointment/posting of respondent No. 3 in her place amounts to her mid-tenure and

midterm transfer from the said post, which is in violation of the provisions contained in Section 4 (4) and 4 (5) of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short “the Transfer Act of 2005”).

5. It is the further contention of the applicant that it was obligatory on the part of respondent No. 1 to place her case of transfer before the Competent Civil Services Board before issuing the order dated 29.11.2022. It is the further contention of the applicant that even in view of Section 36 of Maharashtra Municipal Corporations Act, it was not permissible for respondent No. 1 to disturb the applicant in such a manner as has been done under the impugned order dated 29.11.2022. According to the applicant, the impugned order dated 29.11.2022 resulting in her transfer is illegal, arbitrary, highhanded and result of total non-application of mind by respondent No. 1. It is further contended that the impugned order has been issued by respondent No. 1 in utter violation of statutory and mandatory provisions contained in the Transfer Act of 2005. In the circumstances, applicant has preferred the present Original Application.

6. As contended in the O.A. the applicant was holding the existing post and had not handed over the charge of the said post to respondent No. 3 till filing of the present O.A. before this Tribunal on 30.11.2022. On the date of filing itself the learned counsel for the applicant pressed for interim relief expressing the apprehension that applicant was liable to be relieved though she was not due for transfer.

7. After having heard learned counsel appearing for the applicant and the learned Presenting Officer and after having gone through the documents filed on record, this Tribunal stayed the order dated 29.11.2022 temporarily till 9th of December, 2022.

8. In response to the notice served upon them the respondents caused appearance in the matter and submitted their respective affidavits in reply. Respondent No. 1 filed the affidavit in reply on 9th December, 2022. Respondent No. 2 has not filed any separate affidavit in reply. Respondent No. 3 filed M.A. No. 543/2022 on 6th December, 2022 which was taken up for consideration on 9th December, 2022. Vide the said M.A. respondent No. 3 prayed for vacation of the interim relief. After having heard the submissions of the learned counsel for the

applicant in M.A. (respondent No. 3 in O.A.) and the learned counsel appearing for the original applicant, as well as, learned Presenting Officer appearing for the State authorities, the Tribunal modified the interim order thereby permitting respondent No. 3 to work as a Commissioner of Jalgaon Municipal Corporation with a rider that he shall not take any policy decision and shall not incur expenses except towards statutory liabilities and normal day to day expenses.

9. Respondent No. 3 thereafter filed the affidavit in reply to the O.A. on 20.12.2022. In the affidavit in reply respondent No. 3 has opposed the contentions raised in the O.A. and has justified the impugned order. It is contended by respondent No. 3 that the applicant has not disclosed true and correct facts in her O.A. and, as such, the O.A. filed by her deserves to be dismissed on the said ground alone. It is further contended that respondent No. 3 has been appointed under Section 36 of the Maharashtra Municipal Corporations Act and the State Government has every right to make such appointment. It is further contended that there are sound and concrete reasons for the State Government for appointment of respondent No. 3 on the said post as the applicant has failed in discharging her duties cast upon her. It is further contended that Stared

question was asked in the State Legislative Assembly in regard to maladministration in respect of distribution of drinking water and contaminated water by Jalgaon Municipal Corporation during the tenure of the applicant, by MLA Shri Suresh Bhole; pursuant to which the information was sought from the Corporation and eventually the Government by exercising the powers under Section 36 of the Maharashtra Municipal Corporations Act, appointed respondent No. 3 in place of the applicant. It is further contended that the impugned order is in fact not an order of transfer so as to attract the provisions under the Transfer Act of 2005. Respondent No. 3 on the aforesaid ground has prayed for dismissal of the O.A.

10. In its affidavit in reply, respondent No. 1 has contended that vide order dated 30.8.2022 respondent No. 3 was posted from the post of Commissioner, Parbhani Municipal Corporation on the post of Additional Commissioner, Amravati Municipal Corporation, but respondent No. 3 did not join the said post. It is further contended that thereafter vide recommendation of the Civil Services Board, respondent No. 3 has been appointed to the post of Commissioner Jalgaon Municipal Corporation by partially modifying respondent No.3's order dated 30.8.2022 by keeping the applicant's appointment pending. It is further

contended that respondent No. 3 has been appointed due to administrative reason. It is further averred that as per the provisions of Section 36 of the Maharashtra Municipal Corporations Act, 1949, the State Government has power to appoint Municipal Commissioner in the Corporation. It is further averred that the appointment made of respondent No. 3 vide the impugned order is proper and is not arbitrary and illegal. On the aforesaid grounds respondent No. 1 State has prayed for dismissal of the Original Application.

11. Shri Avinash Deshmukh, learned counsel appearing for the applicant submitted that since the impugned order has resulted in mid tenure and midterm transfer of the applicant, the applicant has every right to assail the said order. The learned counsel submitted that the objection as has been raised on behalf of respondent no. 3 that the provisions of Transfer Act, 2005 would not be applicable in the present matter is fallacious. The learned counsel submitted that though the impugned order is titled as 'the order of appointment' by all means it is an order of appointment of respondent no. 3 by way of transfer and has a result of transfer of the present applicant from her existing post.

12. The learned counsel referred to the definitions of 'Government servant', 'post' and transfer'. The learned counsel submitted that it may not be disputed that the applicant, as well as, respondent no. 3 both are Government servants and, as such, their transfers are governed by the provisions of the Transfer Act, 2005. The learned counsel submitted that as provided under section 3 of the Transfer Act, 2005 for all Group A, B & C State Government servants the normal tenure in the post shall be 3 years. He further submitted that as provided U/s 4(1) of the Transfer Act, 2005 no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3. The learned counsel also invited my attention to sections 4(4) & 4(5) of the Transfer Act, 2005. The learned counsel also referred to the provisions U/s 36(2) of the Maharashtra Municipal Corporation Act, 1949 to submit that if the aforesaid provision is purposively interpreted, it also means that the Commissioner shall hold the office ordinarily for 3 years.

13. The learned counsel submitted that the Government servant certainly can be transferred before completing his normal tenure on the post provided the competent authority is satisfied that the transfer of such Government servant is

essential due to exceptional circumstances or special reasons after recording the same in writing and with the prior approval of the next higher authority. The learned counsel submitted that as provided under sub-section 5 of section 4 of the Transfer Act, 2005 the competent authority, notwithstanding anything contained in section 3 or section 4, though can effect the transfer, even in that circumstance the reasons are to be recorded in writing by the said authority and the approval of immediate superior authority also requires to be taken. The learned counsel further submitted that from the affidavit in reply filed on behalf of respondent no. 1 it has become absolutely clear that there is no other reason for shifting the applicant from her existing post except to accommodate respondent no. 3 in her place. The learned counsel submitted that from the documents placed on record by the State i.e. minutes of the meeting of the Civil Services Board and the proposal submitted in that regard and approved by the authorities concerned also do not reveal any reason for shifting the applicant from her existing post and/or bringing respondent no. 3 on her post at the midst of the term.

14. The learned counsel further submitted that though respondent no. 3 in his affidavit in reply has alleged that there

were certain complaints/allegations against the applicant in regard to her work and a question in that regard was raised by the Member of Maharashtra Legislative Assembly namely Shri Suresh Bhole, the State has not even whispered about same in its affidavit in reply. The learned counsel further submitted that mere asking of question in the State Assembly making some allegations against the applicant may not be taken to be the allegations proved against the applicant. Moreover, according to the learned counsel, the respondent no. 3 has not placed on record any further particulars as to what reply was given to the question so raised. The learned counsel submitted that the documents placed on record by respondent no. 3 include the details of Star Questions raised by the Member of Legislative Assembly Shri Suresh Bhole in the monsoon session of 2022 of the Maharashtra Legislative Assembly. The learned counsel submitted that there is no authentic information in that regard whether such questions were accepted and were put on the floor of Assembly and if Yes, what was the stand of the Government in that regard. The learned counsel submitted that in absence of all these particulars it is difficult to accept that the question so put by the MLA is the reason for shifting the applicant from her existing post.

15. The learned counsel submitted that the State has not come out with any specific case for appointment of respondent no. 3 on the subject post and ousting of the applicant from the said post. The learned counsel submitted that unless any such case is made out, the applicant could not have been shifted from the existing place by appointing respondent no. 3 on her place. The learned counsel reiterated that from the contents of the affidavit in reply submitted on behalf of respondent State and the documents which have come on record the only reason which has come forth for issuance of the impugned order is to anyhow accommodate respondent no. 3 on the said post. The learned counsel submitted that respondent no. 3 was appointed as the Additional Commissioner of Municipal Corporation, Amravati and was transferred to the said post from the post of Commissioner, Parbhani Municipal Corporation. The learned counsel submitted that though said order was issued on 30.8.2022 the applicant opted not to join the said post and thereafter has been rewarded by appointment on the post of Municipal Commissioner of Jalgaon Municipal Corporation. The learned counsel submitted that the applicant is senior to respondent no. 3 in their cadre. The learned counsel submitted that instead of taking any action against respondent no. 3 for

not joining on the post of Additional Commissioner, Municipal Corporation, Amravati, the respondent no. 3 has been rewarded by giving him appointment on the post held by the applicant. The learned counsel submitted that appointment so made is in utter violation of the statutory provisions more particularly the provisions of the Transfer Act, 2005 and, as such, deserves to be set aside and quashed. The learned counsel, in the circumstances, prayed for allowing the O.A. in terms of the prayers made therein.

16. In his argument Shri Bhumkar, learned Presenting Officer reiterated the contentions raised in the affidavit in reply filed on behalf of respondent no. 1. The learned Presenting Officer submitted that the impugned order has been passed strictly by following the rules and regulations and also the prescribed procedure. The learned Presenting Officer submitted that to make appointment on the post of Commissioner of the Municipal Corporation, is the prerogative of the State Government as provided under section 36 of the Maharashtra Municipal Corporations Act. The learned Presenting Officer submitted that on the administrative ground respondent no. 3 has been appointed in place of the applicant and as mentioned in the impugned order itself the applicant will be given posting

soon. The learned Presenting Officer further submitted that respondent no. 1 has thus not committed any error in issuing the impugned order. He therefore, prayed for dismissal of the Original Application.

17. Shri S.S. Thombre, learned counsel appearing for respondent no. 3 argued that under section 36 of the Maharashtra Municipal Corporations Act the eligible officer can be appointed by the State Government and, as such, the order cannot be termed and treated as a order of transfer. The learned counsel further submitted that even for the applicant, as mentioned in the impugned order itself, a separate order of 'appointment' will be issued and, as such, the contention of the applicant that the impugned order has resulted in her transfer from the existing post is untenable. The learned counsel further submitted that since the matter pertains to appointment of respondent no. 3 in place of the applicant and as the applicant is also to get the order of appointment and not the order of transfer, the provisions of the Transfer Act, 2005 cannot be pressed into service by the applicant. The learned counsel submitted that even while giving appointment to the applicant on the post of Commissioner of Jalgaon Municipal Corporation, there was no tenure fixed.

18. The learned counsel further submitted that a Government servant holds his office during pleasure of His Excellency Hon'ble the Governor of the State. The learned counsel pointed out that the impugned order is passed in the name of Hon'ble Governor of the State. The learned counsel further argued that even otherwise there are valid reasons for shifting the applicant from her existing post as she has failed in discharging her duties. The learned counsel pointed out that Hon'ble MLA Shri Suresh Bhole has raised starred question in the Maharashtra State Legislative Assembly in the monsoon session of 2022 about the default committed in water distribution by Jalgaon Municipal Corporation, which was indicating inefficiency and/or dereliction in duty on part of the applicant, the applicant being administrative head of the Municipal Corporation.

19. The learned counsel further submitted that respondent no. 3 has been appointed vide the impugned order by following the prescribed procedure. The learned counsel submitted the Civil Services Board has recommended the appointment of respondent no. 3 on the subject post and the said proposal has been approved by the highest competent authority i.e. the Hon'ble Chief Minister of the State on the administrative ground. The learned counsel submitted that the applicant has

not attributed any mala-fides on the part of the competent authority in making the appointment of respondent no. 3 on her place. In the circumstances, according to the learned counsel, no case is made out by the applicant for causing any interference in the impugned order.

20. The learned counsel also argued that the applicant has suppressed some material facts from the Tribunal while filing the present Original Application and has stated some false facts. The learned counsel submitted that in fact the Original application of the applicant deserves to be dismissed on the sole ground. The learned counsel for all above reasons prayed for dismissal of the Original application.

21. I have duly considered the submissions advanced on behalf of the applicant, State authorities and respondent no. 3. I have also perused the documents filed on record by the parties and have gone through the relevant statues and the relevant provisions therein in context with the present matter.

22. The learned counsel for respondent no. 3 has raised the preliminary objection about the applicability of the provisions under the Transfer Act, 2005 in the present matter. As noted hereinabove it has been argued on behalf of respondent no. 3

that the order impugned is an order of 'appointment' of respondent no. 3 and the consequent order, which will be issued in respect of the applicant will also be an order of her 'appointment' and not her order of transfer. In the circumstances, it is the vehement submission by the learned counsel that the provisions under the Transfer Act, 2005 would not apply in the present matter.

23. The argument so advanced by learned counsel for respondent no. 3 has been resisted by the learned counsel appearing for the applicant with equal vehemence. The learned counsel argued that the argument advanced on behalf of respondent no. 3 is fallacious. The learned counsel further submitted that the impugned order though appears to be an order of appointment of respondent no. 3 at Jalgaon made by respondent no. 1 in exercise of powers U/s 36 of the Maharashtra Municipal Corporations Act, still as the said appointment given to respondent no. 3 results in change of his posting from Parbhani/Amravati to another post at Jalgaon, it squarely falls within definition of term transfer as defined u/s 2(i) of the Transfer Act, 2005. The learned counsel submitted that the impugned order is not an initial order of appointment in the Government service of respondent no. 3. As such,

according to the learned counsel, though the impugned order may be titled as the order of appointment, it is clearly a order of change in the posting of respondent No. 3 from one post to another as contemplated u/s 2(i) of the Transfer Act, 2005.

24. It has also been argued by the learned counsel that the Transfer Act, 2005 is a special Act introduced by the Government specifically for the purpose of regulating transfers of the Government servants. The learned counsel further submitted that respondent no. 3 being a Government official, his services are governed by the provisions of the Transfer Act, 2005. The learned counsel submitted that the applicant also being a Government servant, her posting from one post to another may be by way of appointment is liable to be governed by the provisions under the Transfer Act, 2005. The learned counsel further submitted that since the impugned order results in ouster of the applicant from the post of Commissioner of Jalgaon Municipal Corporation with the consequential further action of respondent no. 1 of giving her a fresh posting at some other place, squarely amounts to her midterm and mid tenure transfer from the post of Commissioner of Jalgaon Municipal Corporation.

25. 'Government Servant' is defined in sub-rule (b) of rule 2 of Maharashtra Civil Services (Conduct) Rules, 1979, which reads thus :-

"2. Definitions

In these rules, unless the context otherwise requires:-

(a) -- -- -- --

(b) *"Government servant" means any person appointed to any civil service or post in connection with the affairs of the State of Maharashtra and includes a Government servant whose services are placed at the disposal of a company; corporation, organization, local authority or any other Government, notwithstanding that his salary is drawn from sources other than from the Consolidated Fund of the State;"*

In view of the definition as aforesaid of the "Government servant", there shall not be any difficulty in holding that the applicant, as well as, respondent no. 3 both are the Government servants.

26. In the Transfer Act, 2005 in rule 2(f) there of Government servant is defined thus :-

"2. In this Act, unless the context otherwise requires,—

(f) *"Government servant" means a Government servant or employee as defined in rule 2 (b) of the Maharashtra Civil Services (Conduct) Rules, 1979, and shall include the All India Service Officers and employees (other than the judicial officers) under the administrative control of the Judiciary 1 [but does not include the employees in the Police Force constituted under section 3 of the Maharashtra Police Act and the Indian Police Service Officers of the Maharashtra Cadre so far as the application of the provisions of Chapter II are concerned] "*

Section 2(g) of the Transfer Act, 2005 provides the definition of 'post', which reads thus :-

"2. In this Act, unless the context otherwise requires,—

(g) "post" means the job or seat of duty to which a Government servant is assigned or posted ; (h) "secretariat services" means the State services belonging to the Mantralaya Departments ;"

Section 2(i) of the Transfer Act, 2005 gives definition of 'Transfer' as under

"2. In this Act, unless the context otherwise requires,—

(i) "Transfer" means posting of a Government servant from one post, office or Department to another post, office or Department ;"

27. Section 36 of the Maharashtra Municipal Corporations Act reads thus :-

"36. (1) Where a magistrate, not being magistrate of the third class, is satisfied, on the application of the Medical Officer of Health that the inmate of a public hospital who is suffering from a dangerous disease would not, on leaving the hospital, be provided with lodging or accommodation in which proper precautions could be taken to prevent the spread of the disease by him, the magistrate may order him to be detained in the hospital at the cost of the Corporation.

(2) An order made under sub-section (1) may direct detention for a period specified in the order, but the magistrate may extend a period so specified as often as it appears to him to be necessary so to do.

(3) Any person who leaves a hospital contrary to an order under sub-rule (1) may, in addition to any penalty which may be imposed for such contravention, be ordered by the Court to be taken back to the hospital.

(4) An order under this rule may be directed, in the case of an order for a person's detention, to the officer in charge of the hospital and, in the case of an order made under sub-rule (3), to the Medical officer of Health and the officer in charge of the hospital or institution, and the Medical Officer of Health may do or authorise, all acts necessary for giving effect to the order”

28. As provided in sub-section (1) of section 36 of the Maharashtra Municipal Corporations Act, the appointment of the Municipal Commissioner is to be made by the State Government from time to time. Broadly there are 4 sources of appointment; by way of recruitment or by promotion or by transfer or by deputation. The source of recruitment can broadly be categorized into internal and external sources. The internal source would cover the cases of appointment by promotion, appointment by transfer and appointment by absorption. In other words, the internal source would comprise of those who are already in service in the organization to which the recruitment is to be made.

29. Having considered the provisions under the Maharashtra Municipal Corporation Act it is evident that appointment on the post of Commissioner is to be made by the State Government and the person who is appointed as Commissioner is necessarily the State Government servant. As is revealing from the pleadings in the OA the applicant entered into the

Government services as a 'directly recruited Chief Officer Group-A'. The next promotion for the officer recruited as Chief Officer Group-A is to the cadre of 'Chief Officers Group-A Selection Grade'. The officers in the cadre of 'Chief Officers Group A Selection Grade' are eligible to be given appointment on the post of the Commissioner of the Municipal Corporation. It is not in dispute that the applicant, as well as, respondent no. 3 both are in the cadre of Chief Officers Group-A Selection Grade. The facts on record reveal that the applicant, as well as, respondent no. 3 both, after acquiring the promotion to the Selection Grade Chief Officer Group-A were appointed on the post of Commissioner. The applicant was appointed as the Commissioner of Jalgaon Municipal Corporation, whereas respondent no. 3 was appointed as the Commissioner of Parbhani Municipal Corporation. The record further reveals that while working as the Commissioner of Municipal Corporation, Parbhani the respondent no.3 was appointed as the Additional Commissioner at Municipal Corporation, Amravati. The record further reveals that respondent no. 3 did not resume the charge of the post of Additional Commissioner, Amravati Municipal Corporation and thereafter has been

appointed vide the impugned order as the Commissioner of Jalgaon Municipal Corporation.

30. As noted earlier there are 4 sources of appointment. The question for consideration is, which is the source of appointment of respondent no. 3 on the post of Commissioner, Municipal Corporation, Jalgaon? admittedly there is no direct recruitment. Another source is by way of promotion. The appointment of respondent no. 3 on the post of Commissioner of Jalgaon Municipal Corporation is certainly not by way of promotion for the reason that he was already working as Commissioner of Parbhani Municipal Corporation. The appointment of respondent no. 3 is admittedly not by way of deputation. In the circumstances, there remains no doubt that the appointment of respondent no. 3 on the post of Commissioner of Municipal Corporation, Jalgaon has been made by way of his transfer from the post of Commissioner of Municipal Corporation, Parbhani to Municipal Corporation, Jalgaon or it can be said to be the transfer from the post of Additional commissioner, Amravati Municipal Corporation to the post of Commissioner of Municipal Corporation, Jalgaon. Thus it is obvious that though the terminology is used as 'appointment' it is by way of transfer from one place to another

on the similar post. The word 'post' as defined u/s 2(g) of the Transfer Act, 2005 means the job or seat of duty to which Government servant is assigned or posted. 'Transfer' means posting of a Government servant from one post, office or Department to another post, office or Department. Respondent no. 3 has been transferred from the post of Commissioner, Parbhani Municipal Corporation to the post of Commissioner of Jalgaon Municipal Corporation. As such, it has to be held that the provisions of the Transfers Act, 2005 would be certainly applicable in the present matter.

31. Once the officer is promoted to a higher cadre and is appointed on any of such higher promotional post in the said cadre, his subsequent appointments on the same post or any other post equivalent to that in the said cadre, are in fact his orders of transfer from one place or post to another place or post. Respondent no. 3 having promoted to the cadre of 'Chief Officer Group-A (Selection Grade)' and appointed as the Commissioner of Parbhani Municipal Corporation, his subsequent appointments may be as the Additional Commissioner, Amravati Municipal Corporation or the appointment on the post of Commissioner, Jalgaon Municipal Corporation are by all means his orders of transfer from the

post of Commissioner, Parbhani Municipal Corporation. Similarly, the order of appointment pertaining to the applicant, contemplated in the impugned order would also be an order of transfer as she has already entered into the cadre of chief Officer Group A Selection Grade'. In the circumstances, there shall not be any hitch in holding that the appointment made of respondent no. 3 is in real sense the order of transfer and, as such, the provisions under the Transfer Act, 2005 would certainly apply. For the same reasons the appointment of the applicant to any other equivalent post shall also be governed by the provisions under the Transfer Act, 2005.

32. As provided under section 3 of the Transfer Act, 2005 the normal tenure of the Government servants or employees in a post is 3 years. As per section 4(1) of the Transfer Act, 2005, no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3. Section 4(4) says that transfers of Government servants shall ordinarily be made only once in a year in the month of April or May. No doubt, proviso to said section 4(4) permit the transfer to be made any time in the year in the circumstances mentioned in sub-clause (i) and sub-clause (ii) thereof. Sub-section 5 of section 4 permits the competent authority to transfer the

Government servant notwithstanding anything contained in section 3 or in section 4 in special cases after recording reasons in writing with prior approval of the transferring authority mentioned in the Table of section 6 before completion of the tenure of the Government servant.

33. In light of the provisions as aforesaid the transfer of respondent no. 3 to the post of Municipal Commissioner of Jalgaon Municipal Corporation has to be scrutinized. Respondent no. 1 has placed on record the minutes of the meeting held on 21.11.2022 wherein the proposal to appoint respondent no. 3 on the post of Commissioner, Municipal Corporation, Jalgaon was for consideration. Copy of the proposal, which was placed for approval of the competent authority is also filed on record. The minutes of meeting of the Civil Services Board held on 21.11.2022 are as under :-

“दि. २१.११.२०२२ रोजीच्या नागरी सेवा मंडळ बैठकीचे इतिवृत्त:-

अ. क.	अधिका-यांचे नाव	शिफारस	नागरी सेवा मंडळाची शिफारस
१.	श्री. देविदास पवार, अतिरिक्त आयुक्त, अमरावती महानगरपालिका (दिनांक ३०.८.२०२२ च्या आदेशान्वये कार्यरत)	श्री. प्रतापराव पाटील, चिखलिकर, मा. संसद सदस्य. * अतिरिक्त आयुक्त, नवी मुंबई महानगर पालिका. * सहाय्यक आयुक्त, बृहमुंबई महानगर पालिका. मा. उपमुख्यमंत्री - अतिरिक्त आयुक्त, नवी मुंबई करीता प्रस्ताव सादर करावा.	* श्री देविदास पवार, मुख्याधिकारी गट-अ (निवडश्रेणी) यांना दिनांक ३०.०८.२०२२ च्या आदेशान्वये आयुक्त, परभणी महानगर पालिका या पदावरून अतिरिक्त आयुक्त, अमरावती महानगर पालिका या पदावर पदस्थापना करण्यात आली होती. * तथापि, श्री. पवार अदयाप

	----- श्री. सुरेश भोळे (राजुमामा), मा.वि.स.स. * आयुक्त, जळगाव महानगर पालिका मा. मुख्यमंत्री - प्रस्ताव सादर करावा. ----- श्री. किसन कथोरे, मा.वि.स.स. * अतिरिक्त आयुक्त, वसई विरार महानगर पालिका.	पदस्थापना दिलेल्या पदावर रुजू झालेले नाहीत. * आता , श्रीमती विद्या गायकवाड, आयुक्त, जळगांव महानगरपालिका यांना नियुक्तीच्या प्रतिक्षेत ठेवून, श्री. देविदास पवार, मुख्याधिकारी, गट-अ (निवडश्रेणी) यांच्या दि. ३०.०८.२०२२ च्या आदेशामध्ये अंशतः बदल करून, श्री. पवार यांची आयुक्त, जळगांव महानगरपालिका या पदावर नियुक्तीची शिफारस आहे.
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आयुक्त तथा संचालक
न.प.प्र.सं, मुंबई
तथा सदस्य, नागरी सेवा मंडळ

प्रधान सचिव (नवि-२)
तथा
अध्यक्ष, नागरी सेवा मंडळ

अपर मुख्य सचिव (नवि-१)
तथा
सदस्य, नागरी सेवा मंडळ”

The proposal which was submitted before the competent authority is as under :-

“नस्ती क्र.एमसीओ-२०२२/प्र.क्र. /नवि-१४ नगर विकास विभाग/नवि-१४

सादर

२. श्री. देविदास पवार, मुख्याधिकारी गट-अ (निवडश्रेणी) यांच्या बदली/पदस्थापने बाबतचा प्रस्ताव नागरी सेवा मंडळासमोर सादर करण्यात आला होता.

३. नागरी सेवा मंडळाने पृ. ३ /टि.वि. नुसार केलेल्या शिफारशीचा प्रस्ताव सादर करण्यात येत आहे.

४. नागरी सेवा मंडळाने केलेल्या शिफारशीचा पृ. ३ /टि.वि. वरील प्रस्ताव सक्षम प्राधिकरणाकडे सादर करण्यात येत आहे.

सही/-
(अ.का.लक्कस)
अवर सचिव

उ.स.(श्रीमती कुलकर्णी-छायावाले)

प्र.स.(नवि-२)

मा. मुख्यमंत्री

34. The minutes recorded of the meeting of Civil Services Board reveal that Shri Prataprao Patil Chikhalikar, Hon'ble

Member of Parliament has recommended name of respondent no. 3 for appointment on the post of Additional Commissioner, Navi Mumbai Municipal Corporation or on the post of Assistant Commissioner, Greater Mumbai Municipal Corporation. The Hon'ble Deputy Chief Minister has directed to prepare a proposal for appointment of respondent no. 3 on the post of Additional commissioner, Navi Mumbai Municipal Corporation. The minutes further reveal that Shri Suresh Bhole, Hon'ble Member of Maharashtra Legislative Assembly has recommended respondent no. 3 for to be appointed on the post of Commissioner, Jalgaon Municipal Corporation. The Hon'ble Chief Minister has accordingly directed to prepare and submit the proposal for appointment of respondent no. 3 on the said post. One more recommendation was there from Shri Kishan Kathore, Hon'ble Member of Legislative Assembly and he had recommended that respondent no. 3 be appointed as Additional Commissioner of Vasai Virar Municipal Corporation. Based on aforesaid recommendations, it seems that the Civil Services Board recommended name of respondent no. 3 for his appointment on the post of Commissioner of Jalgaon Municipal Corporation by partially modifying the earlier order dated 30.8.2022 whereby respondent no. 3 was posted as the as the

Additional Commissioner, Amravati Municipal Corporation from the post of Commissioner, Parbhani Municipal Commissioner.

35. It is undisputed that vide order dated 30.8.2022, respondent No. 1 had appointed respondent No. 3 on the vacant post of Additional Commissioner, Amravati Municipal Corporation. At that time respondent No. 3 was working as Commissioner of Municipal Corporation, Parbhani. In the said order it was mentioned that the said appointment of respondent No. 3 was made for administrative reasons. It is not in dispute that respondent No. 3 did not resume the charge of the post of Additional Commissioner, Amravati Municipal Corporation. Respondent No. 3 has been thereafter posted as the Commissioner for Municipal Corporation, Jalgaon by partially modifying the order dated 30.8.2022. Respondent No. 3 has not disclosed any reason for not joining the post of Additional Municipal Commissioner, Amravati Municipal Corporation. When the order dated 30.8.2022 was in existence, which was made on the vacant post, what necessitated respondent No. 1 to cause partial modification in the said order, is not disclosed in the affidavit in reply filed on behalf of the said respondent. In the affidavit in reply respondent No. 1 has averred that, *“thereafter vide recommendation of the Civil Services Board,*

respondent No. 3 has been appointed to the post of Commissioner, Jalgaon Municipal Corporation by partial modification of respondent No. 3's order dated 30.8.2022 by keeping the applicant's appointment pending." According to respondent No. 1, the impugned order has been thus, issued on recommendation of the Civil Services Board. The minutes of the meeting of Civil Services Board, however do not contain any reason for recommending such appointment. In the minutes only the factual aspects are recorded but no reason is assigned. It was incumbent on the part of the Civil Services Board, as well as, respondent No. 1 to give reasons for causing modification in the earlier order of posting given to respondent No. 3 and the special reasons for his appointment on the post of Commissioner, Jalgaon Municipal Corporation. Non-joining of respondent No. 3 on the post of Additional Commissioner, Amravati Municipal Corporation, certainly cannot be a reason for causing modification in the order dated 30.8.2022.

36. There is reason to believe that the order dated 30.8.2022 has been modified on recommendation of Shri Suresh Bhole, the Hon'ble Member of Maharashtra Legislative Assembly. The said recommendation seems to have been accepted by the Hon'ble Chief Minister of the State. There is nothing on record

to show why Shri Suresh Bhole, recommended the name of respondent No. 3. It is not the case of Shri Bhole or respondent No. 1 that respondent No. 3 possesses some extra qualification or merit or expertise, so that his services are required for Jalgaon Municipal Corporation.

37. It cannot be lost sight of that it was not only the issue of making appointment of respondent No. 3 on the post of Commissioner, Jalgaon Municipal Corporation, but equally important and significant aspect was – why to shift the applicant from the said post in her mid-tenure and midterm. The power and authority of the administrative heads to cause midterm transfer of any of their employees on administrative grounds, is undisputed. It may also be added that the transfer is an incidence of service and the Courts/ Tribunals should not ordinarily interfere in such orders. The question however, is whether power vested in the administrative authorities is unfettered? The answer is of course “NO”. As has been held by the Hon’ble “Division Bench of the Bombay High Court in the case of **Sanjeev Bhagwanrao Kokil Vs. the State of Maharashtra & Ors., 2013 (7) Bombay Cases Reporter page 148**, *“the quintessence for exercising that power is the*

satisfaction of the Competent Authority that the transfer is necessitated due to exceptional circumstances or special reasons which it has to record in writing and before giving effect thereto. Similarly, Sub-section 5 of Section 4 also envisages recording reasons in writing for effecting such transfer". As has been observed by the Hon'ble Bombay High Court in the case of **Kishor Shridharrao Mhaske v/s Maharashtra OBC Finance & Development Corporation & Others, 2013 (3) MLJ page-463**, *"the exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of the Act, as far as possible, in public interest".* It is further observed that *"the exceptional reasons for the special mid-term or premature transfer ought to be recorded in writing and this mandatory requirement cannot be ignored or by-passed".* It is further observed that *"a mere expression such as "on administrative ground" cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements".*

38. It has also been argued on behalf of respondent No. 3 that for Section 36 of the Maharashtra Municipal Corporations Act, under which the appointment of the Commissioner is made, does not provide any fixed tenure of such appointment. The

argument so advanced is wholly unacceptable. Section 36 of the Maharashtra Municipal Corporations Act cannot be interpreted to mean that the officer appointed under the said provision as the Municipal Commissioner can be ousted from the said post at any time without assigning or recording any reason therefor. As noted hereinabove, the person appointed on the post of Municipal Commissioner being a Government servant shall have the normal tenure of 3 years in the said post. I reiterate that the competent authority can direct the transfer of such officer before he completes the normal tenure on the said post provided there are such convincing reasons for effecting such midterm or mid-tenure transfer. The decision taken by the competent authority to effect such transfer needs to be actuated with consideration based on law. It is obligatory on the part of the State authorities to act fairly, transparently and reasonably. More importantly principles of natural justice cannot be lost sight of. The impugned order does not withstand the aforesaid test.

39. In the affidavit in reply filed on behalf of respondent No. 3 he has raised a contention that the applicant has failed in discharging her duties cast upon her and that is the reason that she has been ousted from the said post. Only one instance has

been given by respondent No. 3 that a Starred question about maladministration in respect of distribution of drinking water and contaminated water during the tenure of applicant, was asked by the MLA Shri Suresh Bhole in the State Legislative Assembly. Respondent No. 3 has filed on record the details of Starred questions asked by MLA Shri Suresh Bhole in the Manson Session-2022. The relevant question numbered as 49328 reads thus: -

प्रश्न क्रमांक	विषय आणि इतर तपशिल	प्रश्न प्रारूप
४९३२८	<p>जळगाव (जि. जळगाव) शहरात होत असलेल्या दूषित पाणीपुरवठा बाबत.</p> <p>मंत्री: पाणीपुरवठा व स्वच्छता मंत्री</p> <p>विभाग: पाणीपुरवठा व स्वच्छता</p>	<p>१) जळगांव (जि. जळगाव) शहरातील अनेक भागामध्ये दूषित पाणीपुरवठा होत असल्याच्या तक्रारी वारंवार महापालिकेत येत आहेत व याबाबत तोडगा काढण्यास महापालिका प्रशासन पूर्णपणे अपयश ठरत आहे ही बाब माहे ३ जून २०२२ रोजी निदर्शनास आली हे खरे आहे काय,</p> <p>२) असल्यास शहरातील सुमारे एक लाख नागरिकांना पुरेल इतके पाणी दररोज गळती व लॉसेसमुळे वाया जात आहे. मनपाकडून दरवर्षी ४० लाख रुपयांचा खर्च शहरातील पाईपलाईनच्या गळत्यांवर होत आहे. यावर कायमचा तोडगा काढण्यासाठीही मनपाकडून कोणत्याही उपाययोजना होत नाही. गळत्यामुळे हजारो लिटर पाणी तर वाया जातच आहे. मात्र, या गळत्यांमुळे मोठ्या प्रमाणात शहरात दूषित पाणीपुरवठा होत आहे यामुळे हजारो नागरिकांचे आरोग्य धोक्यात आले आहे. हे ही खरे आहे काय,</p> <p>३) असल्यास प्रशासनाकडे व पदाधिका-यांकडे देखील नागरिकांकडून दुषित पाणी पुरवठ्याबाबत तक्रारी केल्या जात असतानाही, महापालिकेकडून या तक्रारीवर दुर्लक्ष होत आहे, हे ही खरे आहे काय,</p> <p>४) असल्यास उक्त प्रकरणी शासनाने कोणती चौकशी केली. व चौकशीच्या अनुषंगाने महापालिकेला कोणत्या सूचना व कार्यवाही केली वा करण्यात येत आहे,</p> <p>५) नसल्यास विलंबाची कारणे काय आहेत ?</p>

Apart from the fact that there is no further authentic information whether aforesaid question was in fact tabled on the floor of Assembly, and if Yes, what further action was directed in the said matter, it is significant to note that respondent No. 1 in his reply has not even whispered about the said aspect. In the minutes of meeting of Civil Services Board also, there is no such reference.

40. The facts and circumstances which have come on record lead to an inference that the applicant has been shifted from the existing post to accommodate respondent No. 3 in her place on recommendations of Shri Suresh Bhole, Hon'ble Member of Maharashtra Legislative Assembly. The impugned order is thus influenced by Hon'ble Member of Maharashtra Legislative Assembly Shri Suresh Bhole. Hon'ble Bombay High Court has time and again deprecated such practice and has ruled that while effecting transfers of Government servants the provisions of the Transfer Act of 2005 shall be strictly followed.

41. For the reasons stated above, I have reached to the conclusion that in absence of mention of any reason much less special and exceptional reasons for appointment of respondent No. 3 on the post of Commissioner, Municipal Corporation,

Jalgaon and for shifting the applicant from the said post, the impugned order cannot be sustained and deserves to be quashed. In the result, the following order is passed: -

ORDER

- (i) Order dated 29.11.2022 passed by respondent No. 1 impugned in the present O.A., is quashed and set aside.
- (ii) The interim arrangement permitted by this Tribunal vide order passed on 9.12.2022 in M.A. No. 543/2022 filed by respondent No. 3 in O.A., thereby permitting respondent No. 3 to work as Commissioner of Municipal Corporation, Jalgaon, will cease to exist henceforth.
- (iii) The Original Application stands allowed in the aforesaid terms without any order as to costs.

VICE CHAIRMAN

At this juncture Shri A.V. Thombre, learned counsel holding for Shri S.S. Thombre, learned counsel for respondent no. 3 in O.A./applicant in M.A. No. 543/2022 has prayed for continuation of interim order passed on 9.12.2022 in M.A. No. 543/2022 for next one week so as to enable respondent No. 3 to approach the Hon'ble High Court. The request so made is

opposed by Shri Avinash S. Deshmukh, learned counsel for the applicant in O.A.

2. Interim order is in operation for more than one and a half month. It's continuation is prayed for next one week on the ground that respondent No. 3 intends to challenge the order passed by this Tribunal today. I am, therefore, inclined to accept the request. Hence, the following order: -

ORDER

Interim order dated 9.12.2022 passed in M.A. No. 543/2022 shall remain in force for next one week.

VICE CHAIRMAN

PLACE : Aurangabad.
DATE : 31.01.2023.