

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 1100 OF 2023
(Subject – Transfer)**

DISTRICT : AURANGABAD

Dr. Sanjay S/o. Mansing Rathod,)
Age : 58 years, Occu. : Service as Dean,)
Government Medical College & Hospital, Aurangabad,))
R/o : Sant Krupa Housing Society, Satara)
Parisar, Beed By-pass Road, Aurangabad.) **APPLICANT**

V E R S U S

1. **State of Maharashtra,**)
Through: The Secretary,)
Medical Education & Drugs Department,))
G.T. Hospital Compound, 9th Floor,)
Lokmanya Tilak Marg, Mumbai- 1.)
2. **The Commissioner,**)
Medical Education & Research,)
Saint Georges Compound, P.D'melo)
Road, Mumbai-1.)
3. **The Director of Medical Education & Research,)**
4th Floor, Government Dental College &)
Hospital Building, P.D'melo Road,)
Fort, Mumbai-1.)
4. **Dr. Shivaji Sukre,**)
Age Major, Occu. Service as)
Professor in Anatomy, Government)
Medical College, Parbhani. R/o Parbhani.)..**RESPONDENTS**

APPEARANCE : Shri S.D. Joshi, Counsel for Applicant.

: Shri Sanjeev B. Deshpande, Special Counsel
for respondent authorities.

: Shri Avinash Deshmukh along with Shri
Shamsunder B. Patil, counsel for respondent
No. 4.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

RESERVED ON : 20.02.2024

DATE : 19.03.2024

ORDER

1. Heard Shri S.D. Joshi, learned counsel appearing for the applicant, Shri Sanjeev B. Deshpande, learned Special Counsel for respondent authorities and Shri Avinash Deshmukh along with Shri Shamsunder B. Patil, learned counsel for respondent No. 4.

2. By filing the present Original Application, the applicant is challenging the order dated 20.12.2023 transferring thereby the applicant from the post of Dean, Government Medical College and Hospital, Chhatrapati Sambhajinagar to Government Medical College, Parbhani.

(A) Brief Facts

3. Brief facts giving rise to the Original Application are as follows :-

- (i) After acquiring the basic qualification of M.B.B.S. (1988) and M.S. (1997), the applicant came to be appointed as Assistant Lecturer through Divisional Selection Board in the year 1989 and was posted at Aurangabad in

Government Medical College. After having worked as such for a period of 07 years, in the year 1997 upon acquiring the post graduate qualification, the applicant came to be appointed as Lecturer in 1997 and was posted at Aurangabad only. In the year 2000, the applicant got selected through Maharashtra Public Service Commissioner (in short, MPSC) on the post of Lecturer and posted at Government Medical College, Nanded. The applicant has worked at Nanded for the period of about 02 years and thereafter, he came to be promoted as Associate Professor on ad-hoc basis and posted at Nanded. In the year 2016, the applicant was selected for the post of Associate Professor through MPSC and was posted at Bhausahab Hire Government Medical College, Dhule, where he worked till 2021. In the year 2021, he was appointed as Acting Dean by the order of the Government.

(ii) It is further case of the applicant that while working in the capacity of Professor, he came across an advertisement No. 62/2021 published by the MPSC on 17.09.2021, thereby inviting the applications for the post of Dean to be filled in throughout the State and from various categories. The Member of Parliament Syed Imtaiz Jaleel

has filed Public Interest Litigation bearing PIL No. 47/2021 before the Hon'ble High Court of Bombay, Bench at Aurangabad, thereby alleging various irregularities and inadequacy in medical facilities including that of appointment of regular staff. Incidentally, the Hon'ble High Court of Bombay, Bench at Aurangabad was pleased to pass an order on 18.08.2022, thereby calling upon the Government i.e. respondent No. 1 herein as to why the regular Dean is not being posted at Government Medical College and Hospital, Aurangabad. Copy of the said advertisement No. 62/2021, as well as, copy of the order dated 18.08.2021 passed by the Hon'ble High Court in PIL No. 47/2021 are enclosed and marked as Annexure A-2 collectively.

(iii) It is further case of the applicant that pursuant to the order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad, the State has taken initial steps of making appointment of regular Dean at Government Medical College and Hospital, Aurangabad. The Desk Officer of the respondent No. 1 under his communication dated 26.09.2022 made to the respondent No. 2 has apprised him that pursuant to the communication made by the AGP,

Aurangabad Bench of the Hon'ble High Court on 07.09.2022 based on the orders of the Hon'ble High Court on 06.09.2022 that 05 candidates out of 06 recommended are being considered for appointment and their cases were placed before the Civil Services Board in the meeting held on 26.08.2022. It has been proposed to fill up the post of Dean at Government Medical College and Hospital, Aurangabad on regular basis. The said communication dated 26.09.2022 is marked as Annexure A-3.

(iv) It is the further case of the applicant that in the advertisement published by the MPSC, 6 posts of Dean were proposed to be filled from various categories. The applicant has subjected his candidature from D.T. (A) category, whereas the respondent No. 4 herein has subjected him for selection from S.T. Category. In the said process of selection by interview, the applicant has secured 55 marks, whereas the respondent No. 4 has got 54 marks. The applicant was considered for appointment from Open General category. It was pursuant to publication of merit list, the respondent No. 1 by its order dated 10.11.2022 was pleased to appoint the applicant in the Maharashtra Medical Education & Research Services, Group-A on the

post of Dean and as per the recommendation of the Civil Services Board (1), he was recommended for posting at Government Medical College, Aurangabad (Annexure A-4 collectively).

(v) The applicant further states that, pursuant to his appointment order dated 10.11.2022, the applicant has immediately taken the charge of his post as Dean, Government Medical College & Hospital, Aurangabad and started discharging his duties.

(vi) It is further case of the applicant that by impugned order dated 20.12.2023, the respondent No.1 is pleased to transfer the applicant from the post of Dean, Government Medical College, Chhatrapati Sambhajinagar to Government Medical College, Parbhani by invoking the provisions of Section 4(4)(ii) and Section 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter called as "the Transfer Act 2005"). Similarly, by the order of same date, the respondent No. 4, who was given the additional charge of the post of Dean, Government Medical College, Parbhani on 9/5/2023 has

been directed to hold the additional charge of Government Medical College, Chhatrapati Sambhajanagar on administrative grounds and while doing so, the respondent No. 4 has also been directed to hold his substantive post of Professor at Government Medical College, Parbhani (Annexure A-5). Those orders came to be passed in succession. Hence, the present Original Application.

(B) Oral submissions of learned counsel for the applicant

4. Learned counsel for the applicant submits that on perusal of both the orders of transfer, it appears that they have been passed in haste. It has been specifically mentioned that the office of respondent No. 2 need not have to pass separate executive /moment orders for effecting the orders of transfer and that the applicant has been directed to be relieved ex-parte under the orders of the Government. The applicant is sought to be transferred by using the powers under Section 4(4)(ii) and 4(5) of the Transfer Act, 2005, whereas the respondent No. 4 is sought to be transferred in his place on administrative grounds. Learned counsel submits that the impugned order of transfer being mid-term and mid-tenure, is violative of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005. Admittedly, the

applicant has not completed his normal tenure of three years and sought to be transferred in the month of December. Though the provisions of 4(4)(2) and 4(5) of the Transfers Act, 2005 although permits the transfers to be effected before completion of tenure and otherwise than in the month of April and May, the Government must comply with those provisions in its letter and spirit. Learned counsel submits that the provisions of Section 4(4)(ii) requires the satisfaction of the competent authority as regards the prevailing of exceptional circumstances or special reasons, which it should record in writing and with the approval of next higher authority, whereas the mid-tenure transfer can be effected in special cases after recording the reasons in writing and with the prior approval of immediate superior authority to the transferring authority. Learned counsel submits that the respondent No. 1 has failed to comply with these provisions of the Transfer Act 2005 and passed the order of transfer in colourable exercise of powers.

5. Learned counsel for the applicant submits that though in the transfer order of the applicant it is mentioned that it has been issued in compliance of Section 4(4) (ii) and 4(5) of the Transfer Act, 2005, the case is otherwise. The said order does not refer anywhere that the approval of the next higher authority

i.e. the Hon'ble Chief Minister has been sought in the present case.

6. Learned counsel for the applicant submits that the applicant has been working on the post of Dean, Government Medical College and Hospital, Chhatrapati Sambhajnagar for the period of 13 months and there are no complaints in respect of his work and performance either from his superiors or from the public at large. There was no occasion for effecting the transfer of the applicant in such an abrupt manner. There are every reasons to believe that the respondent No. 4 has exerted the pressure in such a manner with the Government, which has compelled to issue his transfer order at Chhatrapati Sambhajnagar regardless of the fear that in doing so, they are committing the contempt of the order passed by the Hon'ble High Court in an ongoing Public Interest Litigation.

7. Learned counsel for the applicant submits that the competent authority is expected to record the prevalence of exceptional circumstances and also it must be satisfied that there exist special reasons, which warrants the transfer of the applicant. The exceptional circumstances and special reasons are required to be reduced into writing and are to be put forth before

the Hon'ble Chief Minister, who, after application of mind and upon satisfaction about the recommendation of the competent transferring authority, is then required to effect the transfer. In the instant case, neither exceptional circumstances nor any special reasons were prevailing to effect the transfer of the applicant in the most high-handed manner.

8. Learned counsel for the applicant submits that the respondent No. 4, who has subjected himself for selection through MPSC, was unsuccessful in the said process and could not get selected from the very same process, for which the applicant has subjected himself. Learned counsel submits that the order of transfer has been effected not only in an abrupt manner, but the same has been issued in defiance of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005.

9. Learned counsel for the applicant submits that effecting the posting in such a manner is nothing but a mockery of administration. The respondent No. 4 was seeking to displace the applicant from his substantive post as Dean and held the same post by way of additional charge, when the applicant has gathered about the intentions of respondent No. 4 to get himself posted at Chhatrapati Sambhajanagar, the applicant has

apprised that the Government by doing so, the Government is committing a contempt of orders passed by the Hon'ble High Court in the Public Interest Litigation. However, the Government has hardly given any regard to the same.

10. Learned counsel for the applicant submits that pursuant to the impugned order dated 20.12.2023, the respondent No. 4 was making haste in joining the post held by the applicant ex-parte. The Government has committed breach of Rule 31(1)(c) of the Maharashtra Civil Services (General Conditions of Service), Rules, 1981, which speaks that only in the exceptional circumstances, which should be recorded, the competent authority may permit the charge of the post to be made over in the absence of the relieved Government servant by letter or by telegram at or outside the headquarter.

11. Learned counsel for the applicant submits that all these circumstances if taken into consideration compels to draw only one inference that there has been a colourable exercise of powers in passing the impugned order and mala-fides are writ large on the face of record.

12. Learned counsel submits that the present Original Application deserves to be allowed and the impugned order may kindly be quashed and set aside and the respondents may be

directed to retain the applicant on the present post and station till completion of his normal tenure.

13. Learned counsel for the applicant has placed reliance on the following cases :-

(i) T.S.R. Subramanian and Ors. Vs. Union of India and Ors., (2013) 15 Supreme Court Cases 732.

(ii) O.A. No. 20 of 2022(SB) (Ashish Murlidhar Raut Vs. The State of Maharashtra and Anr.), dated 25.03.2022. (Nagpur Bench).

(iii) W.P. No. 2665/2011 (Pradeepkumar s/o Kothiram Deshbhratar Vs. State of Maharashtra and Ors.), dated 25.07.2011 (Nagpur Bench).

(iv) Somesh Tiwari Vs. Union of India and Ors. (Civil Appeal No. 7308/2008 (Arising out of SLP (Civil) No. 3516 of 2007)), decided on 16.12.2008.

(C) Oral submissions of Special Counsel on behalf of respondent Nos. 1 to 3

14. Learned Special Counsel on the basis of affidavit in reply on behalf of respondent Nos. 1 to 3 submits that in fact the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad has passed an order on 18.08.2022 in PIL No. 47/2021 as per annexure A-2. Learned Special counsel submits that the MPSC has already initiated process for selection of persons for the post of Dean and as per Annexure A-3, the Civil

Services Board has recommended five names as per the decision in the meeting held on 26.08.2022. The applicant was appointed as Dean, Government Medical College, Chhatrapati Sambhajanagar by order dated 10.11.2022 and the applicant took charge as Dean, Government Medical College, Chhatrapati Sambhajanagar and further as per Annexure A-5, the applicant was transferred to Government Medical College, Parbhani and additional charge was given to respondent No. 4 of the Government Medical College, Chhatrapati Sambhajanagar. The said transfer of the applicant was made on administrative grounds. Learned Special Counsel submits that it is specifically denied that the order dated 20.12.2023 is passed in most arbitrary and illegal manner and colourable exercise of powers and also denied that the text of the order indicates mala-fides on the face of it and that the order is passed in haste. Learned Special Counsel submits that the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005 were complied with. Further the special reasons were mentioned in the minutes passed by the Civil Services Board and approval of the next higher authority, as well as, the Hon'ble Chief Minister was obtained. There is absolutely no truth in the allegations against the respondents.

15. Learned Special counsel submits that the meeting of the Civil Services Board for recommending transfer of Dean (Group-A) was held on 08.11.2023. This meeting was attended by 03 Members and was presided over by the Principal Secretary, Medical Education and Drugs Department. In this meeting, the transfers of Dr. Milind Phulpatil, Dr. Sanjay Rathod (the applicant herein) and Dr. Arun More were considered. Thus the proposal to transfer those officers came to be approved by the Hon'ble Minister of Medical Education. However, later on, it was withdrawn from the Hon'ble Chief Minister offices, as it was realized that the adequate reasons were not mentioned therein. Therefore, meeting of the Civil Services Board was again conducted on 28.11.2023. In that meeting, the proposal for transfers of said Dr. Milind Phulpatil, Dr. Sanjay Rathod (the applicant herein) and Dr. Arun More were again considered and accordingly, recommendation to transfer them was made. Learned Special Counsel submits that the revised recommendations of the Civil Services Board meeting dated 28.11.2023 were approved by the Hon'ble Minister, Medical Education. It was essential to submit the revised proposal to the Hon'ble Chief Minister for approval, but by mistake, the recommendations of Civil Services Board meeting dated

08.11.2023 were again submitted to the Hon'ble Chief Minister. The department has thereafter realized that recommendations of the Civil Services Board meeting dated 08.11.2023 were sent instead of recommendations of CSB meeting dated 28.11.2023 to the Hon'ble Chief Minister for approval and accordingly revised the recommendations of Civil Services Board were also sent to the Hon'ble Chief Minister for approval. Learned Special Counsel submits that as the transfer proposal was approved by the highest competent authority i.e. the Hon'ble Chief Minister, the transfer order of the applicant was issued on 20.12.2023.

16. Learned Special Counsel submits that in the meeting held on 28.11.2023, there is mention of various complaints received about the alleged wrong doing committed by the applicant. The board forwarded the complaints for further action to the Directorate, Medical Education and Research, Mumbai. In the same minutes, the name of respondent No. 4 was suggested for giving additional charge of Dean at Government Medical College and Hospital, Chhatrapati Sambhajnagar on account of his administrative experience and in view of his excellent work done in tribal district of Nandurbar. There is no substance in the contention of the applicant that the reasons

were not mentioned while transferring the respondent No. 4 and the approval of the Hon'ble Chief Minister was not taken.

17. Learned Special counsel submits that the authorities received various complaints regarding alleged wrong doings by the applicant and in respect of these complaints, self-explained reports from the Government Medical College and Hospital, Chhatrapati Sambhajnagar was called. Further the enquiry committee was also appointed. The said committee has submitted report on 19.01.2024. On the basis of said report, the State Government has decided to form high level committee under the Chairmanship of Director, Medical Education and Research, Mumbai. Learned Special Counsel submits that serious allegations have been levelled against the applicant, which were prima-facie established during enquiry. It is not desirable to retain the applicant at a very sensitive post of Dean, Government Medical College and Hospital, Chhatrapati Sambhajnagar. Learned Special Counsel submits that there is no substance in the present Original Application and the same is liable to be dismissed.

18. Learned Special counsel appearing for the respondent authorities has placed reliance on the following citations :-

(i) State of Maharashtra and another Vs. Omprakash Ghanshyamdas Mudiraj and another, 2008 BCI 126 (Bombay High Court).

(ii) W.P. No. 2585/2019 (Dr. Soudamini S. Choudhari Vs. The State of Maharashtra and Ors.), decided on 16.12.2020.

(iii) Varsha Mahesh Ghughari Vs. State of Maharashtra and Ors., 2023 (4) All.M.R. 589, (Bombay High Court) (Aurangabad Bench), decided on 05.07.2023.

(iv) W.P. No. 9984/2019 and other connected W.Ps. (The State of Maharashtra and Anr. Vs. Anuradha Subhash Dhupal), decided on 01.09.2021.

(D) Oral submissions of learned counsel for respondent No. 4.

19. Learned counsel for respondent No. 4 submits that the service career of the applicant has not been unblemished inasmuch as have been various instances on the basis of which, the applicant's contention in this regard can be said to be a misstatement of the fact. Learned counsel submits that as apparent from the dates given by the applicant himself that the MPSC had already issued advertisement bearing No. 62/2021 on 17.09.2021 before passing of the order dated 18.08.2022 by the High Court of Bombay, Bench at Aurangabad in PIL No. 47/2021.

20. Learned counsel for respondent No. 4 submits that the contentions in the Original Application about social category of respondent No. 4 and marks got by him in the selection process undertaken by the MPSC for the post of Dean are most irrelevant and thus nothing but an attempt on part of the applicant to prejudice the Tribunal against the respondent No. 4. The said facts are totally and absolutely unconcerned with the subject matter involved in the present Original Application, which raises challenge to the transfer order of the applicant dated 20.12.2023 issued by the State Government.

21. Learned counsel for respondent No. 4 submits that while considering legality and validity of the transfer order of the applicant dated 20.12.2023, the same has to be tested on the touchstone of the relevant provisions of law and not otherwise. Learned counsel submits that the State Government was constrained to take the action of immediate transfer of the applicant out of important post of Dean, G.M.C., Chhatrapati Sambhajinagar in view of the various compelling circumstances including the style of functioning of the applicant, which caused great prejudice to the public at large in respect of health and wellbeing. Learned counsel submits that therefore, inference in

the order dated 20.12.2023 of the applicant's transfer from Chhatrapati Sambhajanagar to Parbhani may not be called for.

22. Learned counsel for respondent No. 4 has denied specifically that the respondent No. 4 was trying hard for his posting at G.M.C., Chhatrapati Sambhajanagar. It is nothing but imagination of the applicant in this regard.

23. Learned counsel for respondent No. 4 submits that the State Government has invoked the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005 in itself shows and established that there were exceptional circumstances and special reasons due to which the applicant was requested to be shunted out of the post of Dean, G.M.C., Chhatrapati Sambhajanagar as a special case. In the said order dated 20.12.2023, the State Government was constrained to take immediate action of transferring the applicant out of the post of Dean, G.M.C., Chhatrapati Sambhajanagar in spite of the fact that the applicant was posted there in a peculiar background including one of the order of the Hon'ble High Court, which shows and establishes that the State Government was apparently left with no alternative then to forthwith shunt him out of the said important post to prevent further deterioration in the

situation in the G.M.C., Chhatrapati Sambhajinagar. The State Government has not shown undue haste in issuing the transfer order of the applicant from Chhatrapati Sambhajinagar to Parbhni and therefore, no interference may be called for at the hands of this Tribunal.

24. Learned counsel for respondent No. 4 submits that the State Government had issued two orders on 20.12.2023 and there can be no denial of the fact that if and when the compelling circumstances demand immediate action at the hands of the topmost competent authority i.e. viz. the State Government, then by no stretch of imagination and inspection it could be termed as actuated with mala-fides. Learned counsel submits that if and when the situation was so alarming that the Government was forced to immediately shift the applicant out of the post of Dean, G.M.C., Chhatrapati Sambhajinagar, then no fault can be found on any count whatsoever. Learned counsel submits that there is no substance in the contention of the applicant that in issuing the order dated 20.12.2023, the Government has showed disregard to the order passed by the Hon'ble High Court. On the other hand, as per the applicant's own say that the State Government had abided the order of the Hon'ble High Court and compliance thereof, the applicant was posted as Dean, G.M.C.,

Chhatrapati Sambhajanagar. However, if later on after joining on the said post, the applicant's discharge of the duties was of such nature which compelled the State Government to shunt him out of the post. Thus by no stretch of imagination it could be said that the State Government did not show regard to the order of the Hon'ble High Court. Learned counsel submits that for all the reasons to believe, the order dated 20.12.2023 issued by the State Government in proper due compliance and the requirements of law and as such no inference at the hands of this Tribunal is required.

25. Learned counsel for respondent No. 4 submits that there is no substance in the contention raised by the applicant that the respondent No. 4 was not competent to replace him because he was holding the post of Dean in substantive capacity and /or that only a person who is substantively appointed on the post of Dean only can be replaced it. Learned counsel submits that the applicant himself having held the charge of the post of Dean, Shri Bhausahab Hire Government Medical College at Dhule as an additional charge during the period of 08 months from 08.03.2022 to 10.11.2022, when he was substantively holding the post of Professor that too upon his first appointment as such. Thus the applicant himself held the additional charge

of the post of Dean, while substantively working in the cadre of Professor. Learned counsel submits that considering the extraordinary service career of respondent No. 4 and the exemplary nature of discharge of duties by him, the State Government has been placed to assign the additional charge of the post of Dean to him on various places and various times. The respondent No. 4 was given the additional charge of the post of Dean of (newly established) Nandurbar Medical College from 12.12.2019 to 02.05.2020. Thereafter, he was given additional charge of the post of Dean, Swami Ramananda Teerth Rural Medical College at Ambejogai and at the Government Medical College, Parbhani during the periods from 26.07.2020 to 27.08.2020 i.e. during the difficult times of COVID-19 pandemic and 10.05.2023 to 19.12.2023 respectively. Thus the Government has considered the name of respondent No. 4 by keeping in mind his capabilities and extraordinary work done by him in the department. Learned counsel submits that with regard to the powers of the competent authority giving of additional charge of one or more independent posts to any person in addition to his own post, are governed by the statutory provisions of law contained in Rule 56 of the Maharashtra Civil Services (Pay) Rules, 1981, which by no stretch of imagination

can be overruled or superseded by any Government Circular or Resolution including one dated 05.09.2018, upon which reliance was sought to be placed by the applicant. Thus, the action of the State Government of assigning additional charge of the post of Dean, G.M.C., Chhatrapati Sambhajinagar to respondent No. 4 in view of the administrative exigencies arising due to the transfer of the applicant from Chhatrapati Sambhajinagar to Prabhani. Learned counsel submits that the present Original Application deserves to be dismissed as being devoid of merit and substance.

(E) Submission in reply by learned counsel for the applicant.

26. Learned counsel for the applicant on the basis of rejoinder affidavit to the affidavit in reply filed on behalf of respondent Nos. 1 to 3 and 4 submits that no point of time the applicant has been issued with any show cause notice or served with any charge sheet as regards the alleged delinquencies, if any. Learned counsel submits that the respondent Nos. 1 to 3 cannot be oblivious of the fact that the respondent No. 4 indeed was trying hard for his posting back to Chhatrapati Sambhajinagar. Learned counsel has further reiterated that the impugned order was passed in undue haste resulting in commission of illegalities and irregularities while passing the

impugned order. The record of the transfer will speak for itself. Learned counsel submits that the transfer order of the applicant has been passed in the most arbitrary and illegal manner and in colorable exercise of the powers. The order of transfer indicates the legal mala-fides.

27. Learned counsel for the applicant submits that in case of complaints against the Government employee, his immediate superior under whom he is working is supposed to report those complaints to the competent transferring authority after giving an opportunity of hearing to the delinquent concerned and it is only in the event, if the complaints are serious and grave in nature, the competent authority makes a reference to the Civil Services Board constituted in terms of the judgment of Hon'ble Supreme Court in the matter of **TSR Subramanian and Ors** (cites supra). Once the Civil Services Board approves the reasons for transfer, then the matter is referred for approval of the superior authority as mentioned in Table 6 of the Transfer Act, 2005. Learned counsel submits that there are reasons to believe that this procedure has not been followed while effecting the transfer of the applicant for the reason that the impugned order itself is passed in a state of confusing, as it refers the administrative reasons, as well as, in compliance with

provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005 when only either of the reason can prevail for transfer.

28. Learned counsel for the applicant submits that if the transfer is for administrative reason, then the order is rendered bad in law, as the same has not been passed after completion of tenure and in the month of April and May. Learned counsel submits that the GAD has issued one resolution dated 11.01.2015 based on the orders passed by the Principal Seat of this Tribunal at Mumbai in O.A. No. 687/2015 specifically dealing with the mid-term transfers and non-mentioning of special reasons or exceptional circumstances while effecting such transfers. By referring to various observations made by the Hon'ble High Court in W.P. No. 2665/2011, certain guidelines are issued by the GAD with regards to recording of special reasons and prevalence of exceptional circumstances. Para No. 8 of the this resolution deals with the procedure to be followed in respect of the transfer on complaints and states that in the event of receipt of complaints and employee should not be transferred, but in such cases factual position by calling for report whenever necessary and after considering the seriousness of the complaint, the decision as regards retention of the employee be taken. If in the event any substance in the complaint by retaining the

employee, departmental enquiry be initiated against him. However, if the competent authority comes to the conclusion as regards disability of retaining the employee a proposal for his transfer be forwarded to the next higher authority after recording the reasons. The higher authority will verify the reasons so recorded and after giving his opinion will either approved or reject the proposal for transfer. Copy of the G.R. dated 11.02.2015 is marked as Annexure M-1. Learned counsel submits that this resolution is not followed by the Government and therefore, the order of transfer is rendered bad in law.

29. Learned counsel for the applicant submits that one meeting was held on 08.11.2023 as per the affidavit in reply filed on behalf of respondent Nos. 1 to 3 proposing transfer of three offices. However, for want of mentioning the adequate reasons, the same was not taken to its logical end and therefore, the revised recommendation of CSB was approved by the Hon'ble Minister. Learned counsel submits that which means that at the time of earlier meeting dated 08.11.2023; there were no complaints against the applicant although the complaints were allegedly filed by one Rajesh Patil and by one Vaibhav Jadhav on 02.11.2023. Had the complaints be genuine, the respondents would have followed the procedure as contemplated under the

G.R. dated 11.02.2015. Learned counsel submits that revised proposal was approved by the Hon'ble Minister, but while sending the proposal to the Hon'ble Chief Minister, by mistake the recommendations of CSB held on 08.11.2023 were sent. Learned counsel submits that bear reading from the paragraph of affidavit in reply filed on behalf of respondent Nos. 1 to 3, reflects the manner in which the Government was favoring the respondent No. 4 at the cost of provisions of Transfer Act, 2005 and the Circular dated 11.02.2015 issued by the GAD.

30. Learned counsel for the applicant submits that it is alleged that in the meeting held on 28.11.2023 various complaints were received about wrong doing of the applicant. So far as the complaint dated 02.11.2023 is concerned, there is no mention of the same in the DPC held on 08.11.2023. Learned counsel submits that as per the affidavit in reply, the enquiry committee was appointed, which has submitted its report dated 19.01.2024 and a vague statement is made that on the basis of this report, the State Government has decided to form high level committee under the Chairmanship of the Director DMER Mumbai.

31. Learned counsel for the applicant further submitted that in response to the instigated complaint, the Government has

addressed communication dated 24.11.2023 to the Commissioner one Dr. Rajeev D. Nivatkar. The Commissioner under its letter dated 22.12.2023 sent at or about 17;00:091 has addressed one communication to the applicant. It is conspicuous to note here that on 22.12.2023, the applicant was relieved in haste on 20.12.2023 itself and the respondent No. 4 has taken ex-parte illegal charge. The said communication was never served on the applicant, but later on sensing the likelihood of misuse by respondent No. 4, the applicant secured the same. On 22.12.2023, when the said communication was not addressed to respondent No. 4 personally he has decided to make the capital of the same and use the said communication to his full advantage. The letter refers the complaints against the applicant and applicant's self-explanatory report. The respondent No. 4 thus constituted a committee of 06 persons, majority whom were Professors Associate, Professors and Accounts Officer. Learned counsel submits that in fact the undertaking of this exercise by respondent No. 4 was totally unwarranted. He has usurped the power unto himself for that to of the applicant and used the same to his advantage. It is thus clear from the reply that when the committee itself has submitted its report on 19.01.2024, how the transfer order came to be passed a month earlier on

20.12.2023. Thus the action runs in total contradiction to the G.R. dated 11.02.2015. From all these facts and circumstances, it thus come to surface that the impugned order has been passed in the most high handed manner and in blatant violation of the Transfer Act, 2005 and the Government Resolutions holding the field.

32. Learned counsel for the applicant submits that the respondents have not placed on record any report of enquiry conducted after giving an opportunity of hearing to the applicant and the order of transfer has been passed as a mode of punishment. The order violates the basic principles of natural justice. Learned counsel submits that it is difficult to understand as to how the office of Commissioner or for that matter the Government has accepted the report, if any submitted by respondent No. 4 in the capacity of the Dean, when the self-explanatory report was called for from the applicant in his capacity as a Dean. The letter of the Government and that of the commissioner was not aimed or directed to respondent No. 4 but the same was addressed to the applicant. Learned counsel submits that it is really painful to observe as to how the report submitted by respondent No. 4 was accepted and acted upon as regards his action of constituting high power committee. All these

events and circumstances goes to show and point its finger to draw only one conclusion that all the authorities including the Government are acting in a high handed manner and without application of mind. Learned counsel submits that in view of the same, the order of transfer dated 20.12.2023 transferring the applicant, as well as, transferring the respondent No. 4 in his place under the separate but order identically date may kindly be quashed and set aside with further direction to retain the applicant as Dean, GMC Chhatrapati Sambhajinagar.

33. Learned counsel for the applicant submits that the respondent No. 4 has not been transparent in stating true facts as regards misusing his position as Dean after assuming ex-party illegal charge on 20.12.2023 and acting upon the communication issued by the Commissioner. The action of respondent No. 4 is in utter violation of the conduct rules inasmuch as he has misutilized his position and taken the task of constituting the committee unto himself when the letter of Commissioner dated 22.12.2023 was not addressed to him. He has made the Commissioner to believe his actions and the commissioner with the closed eyes appear to have been forwarded the same to the Government. Learned counsel has reiterated the contentions raised earlier and accordingly

answered the affidavit in reply filed by respondent Nos. 1 to 3 and 4 respectively.

(F) Discussions and Conclusion

34. I have carefully perused the pleadings, Annexures and rejoinder affidavit and heard the rival submissions of the counsel appearing for the respective parties with utmost attention and circumspection.

35. Undisputedly, the transfer of the applicant, who is holding high rank post of Dean, Government Medical College and Hospital, Chhatrapati Sambhajnagar is mid-term and mid-tenure. Though there are submissions and counter submissions about the order passed by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in PIL No. 47/2021 as to whether the Government has initiated the process of selection of candidates for the post of Dean or whether the said process came to be undertaken only after the directions given by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid PIL No. 47/2021, however, it cannot be denied that the said PIL was pending since the year 2021 and the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad has time to time passed an orders giving specific directions to the Government as regards the steps being taken for

appointments of Associate Professors, teaching staff, as well as, non-teaching personnel also for procurement of the medicines and with regard to the various difficulties including medical stores / Pharmacy shops, which have mushroomed in front of the entrance gate of the Government Medical College and Hospital and also on the rear side adjoining. Thus the Government must have been anticipated the said directions and in addition to that initiated the process of selection for the post of appointment of Dean. In para No. 7 of the order dated 18.08.2022, the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in PIL No. 47/2021 has made the following observations :-

“7. The Petitioner has brought to our notice that an In-charge Dean is officiating in the Government Medical College and Hospital at Aurangabad for quite some time after the retirement of the earlier Dean. We call upon the State, especially the Secretary, Medical Education to respond as to why a regular Dean is not being posted at the Government Medical College and Hospital at Aurangabad. We would expect such appointment at the earliest.”

36. On perusal of the Annexure A-3 i.e. the communication made by the Desk Officer of the State of Maharashtra dated 26.09.2022 to the respondent No. 2 i.e. the Commissioner, Medical Education and Research, Mumbai by giving reference to the letter received from the AGP, Hon'ble High

Court of Bombay, Bench at Aurangabad dated 07.09.2022, it appears that there is reference of the meeting of the Civil Services Board dated 26.08.2022 and it has been proposed to fill up the post of Dean, Government Medical College and Hospital, Chhatrapati Sambhajnagar on regular basis. It thus cannot be overlooked that due to order passed by the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid PIL No. 47/2021, the process for appointment of regular Dean in place of in-charge Dean came to be expedited.

37. In the backdrop of these facts, the applicant came to be appointed as Dean, Government Medical College and Hospital, Chhatrapati Sambhajnagar by an appointment order dated 10.11.2022 (Annexure A-4). It further appears that the applicant has taken over the charge of the said post on the same day. This is how the order of the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid PIL No. 47/2021 appears to have been complied with. It is needless to say that as per the provisions of Section 3 of the Transfer Act, 2005, the normal tenure of Group-A officer is that of 03 years and in terms of Section 4(4) of the Transfer Act, 2005, the Government servants are to be transferred only once in a year i.e. in the month of April or May only. By the impugned order dated

20.12.2023 i.e. within a period of one year, one month and ten days, the applicant came to be transferred mid-term and mid-tenure by invoking the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005. By separate order dated 20.12.2023, the respondent No. 4 was given the additional charge of the post of Dean, Government Medical College and Hospital, Chhatrapati Sambhajinagar on administrative grounds.

38. In view of this, it would be necessary to reproduce herein below the Section 4 of the Transfer Act, 2005 :-

“ 4. Tenure of Transfer.

- (1) *No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.*
- (2) *The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.*
- (3) *Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalised by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:*

Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

- (4) *The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May : Provided that, transfer may be made any time in the year in the circumstances as specified below, namely :—*
 - (i) *to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential*

vacancy on account of transfer or on return from leave ;

(ii) where the competent authority is satisfied that the transfer 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.

(5) Notwithstanding anything contained in section 3 of this section, the competent authority may, in special cases, after recording reasons in writing and with the prior [approval of the immediately superior].Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

39. In view of above provisions, especially in terms of Section 4(4)(ii) of the Transfer Act, 2005, where the competent authority is satisfied that the transfer 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 transfer may be made at any time in the year. In terms of sub-section (5) of Section 4, in special case after recording reasons in writing and with the prior approval of the immediately superior transferring authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.

40. In terms of the aforesaid legal provisions, it would be just and necessary to look into the minutes of the meeting of the Civil Services Board recommending mid-term and mid-tenure

transfer of the applicant. There were two meetings held by the Civil Services Board for recommending the transfers. The first meeting was held on 08.11.2023 and the second meeting was conducted on 28.11.2023.

(A) Meeting of the Civil Services Board dated 08.11.2023 was attended by 03 Members, which was presided over by the Principal Secretary. In this meeting, transfer of one Dr. Milind Phulpatil, Government Medical College, Chandrapur, transfer of Dean of Government Medical College and Hospital, Chhatrapati Sambhajanagar (the applicant herein) and Dr. Arun More attached to the Bhausahab Hire Government Medical College and Hospital, Dhule on his personal ground were considered. It has been specifically recommended in the meeting of the Civil Services Board that the applicant shall be transferred from the post of Dean, Government Medical College and Hospital, Chhatrapati Sambhajanagar to Dean, Government Medical College, Parbhani on administrative grounds and charge of his post shall be kept with respondent No. 4 till further orders. It is pertinent to note here that the said minutes of the meeting bears the signatures of 03 Members. However, in the Xerox copy of the said minutes in addition to the signatures of 03 Members there also appears the signatures of the concerned Minister and the

Hon'ble Chief Minister. It is more pertinent to note here that though the meeting was scheduled and held on 08.11.2023, below the signatures of the aforesaid 03 Members the date as '11.10.2023' is mentioned. It is to be noted and mentioned here that there is no whisper in the said minutes about the fact that the applicant came to be transferred mid-term and mid-tenure due to the exceptional circumstances or special reasons leave apart reference to any complaint against the applicant. On the other hand, it appears from the said meeting that the applicant came to be transferred only on administrative grounds.

(B) So far as second meeting dated 28.11.2023 is concerned, it is simply stated that the proposal was submitted on 24.11.2023 for calling upon the meeting of the Civil Services Board on the basis of certain memorandum / request received from the elected representatives and accordingly, the concerned Principal Secretary has given date and time as '28.11.2023' at about 11.00 a.m. On perusal of the minutes of the meeting of the Civil Services Board dated 28.11.2023, there is a reference about receipt of the complaint against the applicant in respect of corruption for purchasing furniture, Machinery and computer and also mala-fides about securing the appointment of Professor. In the minutes of the meeting of CSB, the date of complaint is

given as '02.11.2023'. The said minutes bears the signature of 03 Members. However the approval of the Hon'ble Chief Minister appears to have been taken on the Xerox copy of the proposal submitted in terms of the said recommendation of the Civil Services Board and the original is not found in the record and proceedings.

It is pertinent to note here that in the meeting of the CSB dated 08.11.2023 there is no whisper about the complaint dated 02.11.2023 and the transfer of the applicant said to have been recommended on administrative grounds alone. Further as fairly stated in the affidavit in reply filed on behalf of respondent Nos. 1 to 3 that both the proposals dated 08.11.2023 so also 28.11.2023 came to be approved by the Hon'ble Chief Minister. It indicates utter non-application of mind.

41. It is necessary to refer the Government Circular dated 11.02.2015 issued by the General Administration Department of the State of Maharashtra. It has been specifically stated in para No. 2 of the said Circular that in terms of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005, if the transfer has been made usually, the department do not mention the exceptional circumstances or special reasons. The senior officers of the department when scrutinizing the proposal and even by

non-application of mind approves or recommends the said proposal, consequently, such transfer orders are usually challenged before this Tribunal. Thus in the said Circular it is further stated that considering the aforesaid situation, the Government has laid down the certain guidelines. Para No. 8, which is in vernacular, which is reproduced herein below :-

“८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी / कर्मचाऱ्याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/ कर्मचाऱ्याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी/ कर्मचाऱ्यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/ कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिकाऱ्याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/ कर्मचाऱ्याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/ कर्मचाऱ्याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिकाऱ्याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/ कर्मचाऱ्याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिकाऱ्याचे मत झाल्यास त्याबाबतची कारणामिमांसा नमूद करून बदली प्राधिकाऱ्या संबंधीत अधिकारी/ कर्मचाऱ्याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिकाऱ्याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिकाऱ्याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिकाऱ्याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिकाऱ्याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिकाऱ्याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिकाऱ्याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी/ कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी/ कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”

It is specifically stated in the above para No. 8 that merely on the basis of compliant, the officer or the Government servant should not be transferred. It is further stated that the scrutiny of said complaint is necessary to understand the gravity, seriousness and veracity of the allegation etc. and then take an appropriate decision in the matter.

42. On perusal of the record and proceedings, one letter is annexed with the said proceedings issued by the MLA from Graduate Constituency, Aurangabad recommending the appointment of respondent No. 4 as Dean, Government Medical College and Hospital, Chhatrapati Sambhajinagar. In fact, this letter has been addressed to the Medical Education Minister, Maharashtra State, Mumbai. The date of the said letter is 04.08.2023. There is one another letter on the letter pad of political party (ruling) issued by the Vice President (City), Chhatrapati Sambhajinagar dated 02.11.2023 making allegations against the applicant for corruption etc. In the minutes of the meeting of Civil Service Board dated 28.11.2023, there is a reference to this complaint and the same was considered as exceptional circumstances or special reasons so also a special case to recommend the mid-term and mid-tenure transfer of the applicant. However, it is apparent on the face of

the record that there was no compliance of the guidelines given in the Government Circular dated 11.02.2015. It appears that the letter has been sent by the respondent No. 2 i.e. the Commissioner, Medical Education and Research, Mumbai dated Nil/2023 (signed on 22.12.2023) by calling upon the self-explanatory report from the Dean, Government Medical College and Hospital, Chhatrapati Sambhajanagar with a rider that if the same is not received, one sided action will be taken. It is clear that the said letter has been issued to the applicant and none else.

43. It is necessary to repeat here again that till the said letter was received by the office of Dean, Government Medical College and Hospital, Chhatrapati Sambhajanagar, the respondent No. 4 has taken over the charge of the post of Dean, Government Medical College and Hospital, Chhatrapati Sambhajanagar. It is pertinent to note that on the basis of said letter, the respondent No. 4 has constituted the committee to enquire into the allegations, when the respondent No. 2 has not given the directions in this regard in the said letter. On the basis of so-called report submitted by the said constituted committee, which is not placed before the Tribunal, the Government has appointed high power committee. In the entire process, the

applicant was not given an opportunity to explain when the purport of the said letter Nil/2023 (signed on 22.12.2023) issued by respondent No. 2 was to calling upon the applicant to submit his self-explanatory report.

44. In view of the discussions as above, in my considered opinion, the entire process is surrounded by the clouds of suspicion, mala-fides apparent on the face of record and lack of transparency.

45. Even assuming that because of the said complaint dated 02.11.2023, the applicant came to be transferred by the impugned order, however, at the time of or before the meeting of Civil Services Board scheduled on 28.11.2023, no attempt was made to verify the truthfulness of allegations made in the complaint dated 02.11.2023.

46. In the instant case, it appears that the said Government Circular was not followed in its letter and spirit. Merely on the basis of complaint dated 02.11.2023 and without any further scrutiny, the applicant has been transferred hastily.

47. In terms of Section 6 of the Transfer Act, 2005, when the competent transferring authority is none else but the Hon'ble Chief Minister of the State, transparency, good governance, accountability, integrity and honesty in the entire transfer process is necessary. Unfortunately, the entire process has been surrounded by the suspicious circumstances.

48. In a case of **T.S.R. Subramanian and Ors. Vs. Union of India and Ors., (2013) 15 Supreme Court Cases 732**, relied upon by learned counsel for the applicant, in para Nos. 32 to 35, the Hon'ble Supreme Court has made the following observations :-

“32. We find it, however, difficult to give a positive direction to constitute an independent CSB at the Centre and State Level, without executive control, which Hota Committee has recommended to be statutory in nature, that too, comprising of persons from outside the Government. Petitioners placed considerable reliance on the judgment of this Court in Prakash Singh and Others v. Union of India (2006) 8 SCC 1 and urged that similar directions be given to insulate, to at least some extent, the civil servants from political/executive interference. Retired persons, howsoever eminent they may be, shall not guide the transfers and postings, disciplinary action, suspension, reinstatement, etc. of civil servants, unless supported by law enacted by the Parliament or the State Legislature.

33. CSB, consisting of high ranking in service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level, could be a better alternative (till the Parliament enacts a law), to guide and advise the State Government on all service matters, especially on transfers, postings and disciplinary action, etc., though their views also could be overruled, by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions. Parliament can also under Article 309 of the Constitution enact a

Civil Service Act, setting up a CSB, which can guide and advice the political executive transfer and postings, disciplinary action, etc. CSB consisting of experts in various fields like administration, management, science, technology, could bring in more professionalism, expertise and efficiency in governmental functioning.

34. *We, therefore, direct the Centre, State Governments and the Union Territories to constitute such Boards with high ranking serving officers, who are specialists in their respective fields, within a period of three months, if not already constituted, till the Parliament brings in a proper legislation in setting up CSB.*

35. *We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.”*

It appears that even the Hon'ble Supreme Court has noticed that the Government servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. It is also observed by the Hon'ble Supreme Court that the fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help

them to function as effective instruments of public policy. The Hon'ble Supreme Court has further observed that all the repeated shuffling/transfer of the officers is deleterious to good governance.

49. In a case of **Ashish Murlidhar Raut Vs. The State of Maharashtra and Anr. in O.A. No. 20 of 2022**, decided on 25.03.2022, relied upon by the learned counsel for the applicant, the Nagpur Bench of this Tribunal in para Nos. 16 has made the following observations :-

“16. The applicant is transferred only because the MLA and Minister made complaints against him. Both the complaints do not show any specific reason. Both the complaints were not enquired by the Superior Authority as per the G.R. dated 11/2/2015. In the cited Judgments, it is clear that the transfer cannot be a punishment. If it is a punishment, then there should be enquiry against the employee. The impugned transfer order is nothing but punishment, only because, MLA and Minister made complaints against him. Both the complaints are prior to the appreciation certificates issued by the Chief Engineer and Superintending Engineer to the applicant. Both the certificates show that the applicant is doing excellent work in the tribal area. Therefore, the impugned transfer is malafide transfer. Though the proposal was moved by respondent no.2 before the Civil Services Board, but the Civil Services Board has also not recorded any specific reason. Only reason is mentioned that there are complaints of MLA and Minister.”

50. In a case of **Pradeepkumar s/o Kothiram Deshbhratar Vs. State of Maharashtra and Ors. in W.P. No. 2665/2011**, relied upon by the applicant, the Division Bench of the Hon'ble High Court of Bombay, Nagpur Bench, Nagpur in para No. 21 of the

judgment dated 25.07.2011 has made the following observations:-

“21. Perusal of note, as approved by Hon’ble Minister at page 165, again does not show any specific application of mind in so far as the transfer inter se of the petitioner and respondent no.5 is concerned. The specific cases which can be said to be looked into by the Hon’ble Minister are already mentioned by us above. Whether this fact which we have noticed is looked into by Hon’ble Minister or not is not very clear. Section 4 (5) permit competent authority in special cases to transfer the petitioner after recording reasons in writing and that too with prior approval of Hon’ble Minister. Thus, Section 4(5) of the 2005 Act contemplates such premature transfers only in exceptional cases. The facts above show that request made by the President of Zilla Parishad and recommendation of Hon’ble Minister has been the only reason for treating the proposal as special case. This is not contemplated by Section 4(5) of 2005 Act and reasons to be recorded for permitting such transfers must be spelt out and must be found to be in the interest of administration. Those reasons cannot be only the wish or whim of any particular individual and such transfers cannot be ordered as special case to please the particular individual for mere asking. On the contrary, records show that respondent nos.2 and 3 have not recorded any special reasons at all. These respondents are not satisfied with relevance of reasons placed before Hon’ble Minister. Hence, they have developed a new story in an attempt to justify that transfer before this Court. We, therefore, do not find compliance of provisions of Section 4(5) r/w Sec. 6 of 2005 Act in the present matter.”

51. In a case of **Somesh Tiwari Vs. Union of India and Ors.**, relied upon by the learned counsel for the applicant, the Hon’ble Supreme Court in Civil Appeal No. 7308/2008 (Arising out of SLP (Civil) No. 3516 of 2007) in para No. 19 has made the following observations :-

“19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the

authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law.”

52. In a case of **State of Maharashtra and another Vs. Omprakash Ghanshyamdas Mudiraj and another, 2008 BCI 126**, relied upon by learned Special counsel for respondent authorities, the Division Bench of the Hon'ble High Court of Bombay in para Nos. 17 & 18 has made the following observations :-

“17. Whether the reasons propounded by the State Government for transferring the respondents are sufficient or otherwise could not have been gone into by the Tribunal. The Tribunal even assessed the sufficiency of reasons by referring to the case of one Mr. M.A. Mate, Superintending Engineer in Yawatmal Irrigation Circle having completed target 100% recovery. The said case was considered, as Mr. Mate, according to the Tribunal, was transferred prior to completion of his normal period. Such comparison in the facts of the case was not essential as each case will have to be considered on its own merits by the State. The employer would be the best judge to appreciate performance of its employees and their suitability mandates that in a particular place. At the same time, law mandates that the State shall comply with the At the same time, law necessary requirements as envisaged under the provisions of Section 4(4) for effecting transfers (order) prior to completion of normal tenure of posting. We find that in this case the State has considered individual cases of both the respondents and decided to transfer them. The Tribunal did not discuss the issue of mala fide. Therefore, we are of the opinion that the said issue need not be taken up by us for consideration in exercise of extra ordinary writ jurisdiction under Article 226 of the Constitution of India. We find in the facts of the case that the State had complied with the provisions of Section 4 of the Act of 2005. There are special reasons with the State for effecting transfer orders and the contention of accommodation of respondent No.2 in the facts of the case cannot be accepted.

18. We may caution the State that, cases of transfer of employees prior to normal period of three years on the complaints

of political parties should be looked into very cautiously and with close scrutiny. It is necessary to discourage counter proposals for and against the employees by political parties to be the sole basis for transferring an employee. Of course, each case will have to be tested in the background of its peculiar facts and circumstances.”

Though the Division Bench of the Hon'ble High Court has observed that the Tribunal has not discussed the issue of mala-fide, however in para No. 18 as reproduced hereinabove further giving caution to the state that the cases of transfer of employees prior to normal period of three years on the complaints of political parties should be looked into very cautiously and with close scrutiny.

53. In a case of **Dr. Soudamini S. Choudhari Vs. The State of Maharashtra and Ors.** in **W.P. No. 2585/2019**, relied upon by learned Special Counsel appearing for respondent authorities, the Hon'ble High Court of Bombay, in the judgment and order dated 16.12.2020 in para No. 22 has made the following observations :-

“22. Of course, we are not unmindful that a case could arise where a person in public employment often creates situations (without violating his service terms and conditions) which are not too comfortable or palatable for the employer and perceiving the employee's further presence undesirable at the particular place and to deter him from creating similar such situations in future, the employer under the veil of a seemingly innocuous order of transfer, which does not affect duty, responsibility, pay and promotional prospects and issued purportedly in administrative interest transfers the employee to get rid of him as a punitive measure. Indeed, a purpose of the nature referred to above could be achieved by the employer without passing a stigmatic

order. However, despite not having suffered any penal consequences, the employee could feel sng WP-2585.2019 aggrieved even by such order of transfer claiming that he has been punished for no fault on his part and may argue that the impugned order should be interdicted bearing in mind the law laid down in Somesh Tiwari (supra). Such cases, as and when they are brought before the Court, have to be dealt with in a manner known to law. Although the Courts are loath to interfere in matters relating to transfer issued in administrative exigencies, nothing prevents a Court, if it is prima facie satisfied with the case of the aggrieved employee, to lift the veil and ascertain whether any mala fide motive has triggered the transfer and/or the employee has been dealt with in any manner violative of his rights in the matter of public employment.”

54. In a case of **Varsha Mahesh Ghughari Vs. State of Maharashtra and Ors., 2023 (4) All.M.R. 589**, relied upon by learned Special Counsel appearing for respondent authorities, the Division Bench of the Hon’ble High Court of Bombay, Bench at Aurangabad in para No. 12 has made the following observations :-

“12. The contention of the petitioner that the transfer order is mala fide and effected with an intention to accommodate the respondent no. 4, has been dealt with in the order of the Tribunal. It is specifically observed that the transfer order was effected on recommendation of the Civil Services Board and such recommendations are approved by the highest State authorities i.e. the Minister of Public Works Department as well as the Hon’ble Chief Minister of the Maharashtra State. No mala fides are attributed against the authorities, who are empowered to effect the transfers. Merely because the respondent no. 4 had shown his interest to be posted at Public Works Department, Dhule and the recommendation was made by the local MLA, itself would not constitute mala fides against the respondent authorities. Therefore, the objection in this regard is liable to be rejected. The Tribunal has recorded a finding based on material that the transfer order has been given effect only to overcome the exceptional circumstances leading to maladministration at PWD office arising out of the reluctance shown by entire subordinate staff working under petitioner.”

55. In the instant case in view of the discussions in foregoing paragraphs, the impugned orders are liable to be quashed and set aside. In the given circumstance, however, it may not be appropriate to ignore in its entirety the serious allegations made against the applicant in the complaint dated 02.11.2023. It is also necessary, just and proper if the respondent authorities would consider the allegations made in the complaint dated 02.11.2023 independently without adhering to the report submitted by the committee constituted at the instance of respondent No. 4.

56. Thus, this Tribunal left with no other choice, but to give certain directions to the respondents to meet the ends of justice. Even though the transfer orders are liable to be quashed and set aside, however, considering the peculiar circumstances in the present case that the applicant, so also respondent No. 4 have occupied the key posts at the respective stations, it would be just and proper to maintain the status quo as it is, till the directions are complied with. Hence, the following order :-

ORDER

- (A) The Original Application No. 1100/2023 is hereby partly allowed.

(B) The impugned order dated 20.12.2023 bearing outward No. Trabsfer-2023/CN-267/2023/Medical Services-1, issued by respondent No. 1 thereby transferring the applicant from the post of Dean, Government Medical College and Hospital, Chhatrapati Sambhajnagar to Government Medical College, Parbhni and order dated 20.12.2023 in respect of giving additional charge to respondent No. 4 to the post of Dean G.M.C.H, Chhatrapati Sambhajnagar are hereby quashed and set aside with the following directions:-

- (i) The respondent authorities shall constitute the Civil Services Board especially for this purpose and transfer proposal of the applicant, so also consequential order giving charge to respondent No. 4 of the post held by the applicant shall be placed before the Civil Services Board.
- (ii) The Civil Services Board after having due regard to the observations made in the present judgment and order and also having due regard to the guidelines given in the Government Circular dated 11.02.2015, shall make the appropriate recommendations on its own merits within a period of 10 weeks from the date of this order.
- (iii) The competent transferring authority shall take the appropriate decision in terms of the provisions of

Section 4(4)(ii) and 4(5) of the Transfer Act, 2005 after recording the reasons in writing and with the prior approval of the next higher authority and/or with the prior approval of the immediate superior transferring authority as mentioned in Table of Section 6 of the Transfer Act, 2005 within a period of two weeks after the receipt of the recommendations from the Civil Services Board.

- (C) In the peculiar facts and circumstances of the instant case, the status-quo as on today meaning thereby the applicant shall continue to remain on the post of Dean, Government Medical College, Parbhani and respondent No. 4 shall remain in-charge of the post of Dean, Government Medical College and Hospital, Chhatrapati Sambhajinagar, be maintained till the expiry of the said period of 12 weeks (10+2) or the decision taken by the competent transferring authority in this regard, whichever is earlier.
- (D) In the event if no decision is taken within a period of 12 weeks, the respondents shall act as per clause (B) of this order and restore the position as earlier to impugned transfer orders forthwith.
- (E) In the circumstances, there shall be no order as to costs.

- (F) The Original Application accordingly disposed of.
- (G) Original record and proceedings be handed over to learned Special counsel for respondent authorities.

PLACE : Aurangabad.
DATE : 19.03.2024

(Justice V.K. Jadhav)
Member (J)

KPB S.B. O.A. No. 1100 of 2023 VKJ Transfer