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

**DATE :13.01.2023**  
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**O R A L O R D E R**

Heard Ms. Preeti R. Wankhade, learned counsel for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the State authorities and Smt. Suchita Amit Dhongde, learned counsel for respondent No. 4.

2. Aggrieved by the order dated 28.12.2022, whereby the applicant has been transferred from the post of Executive Engineer, P.W.D. Dhule to the post of Executive Engineer, Dhule Municipal Corporation, Dhule, the applicant has preferred this Original Application. Applicant has challenged the impugned order on various grounds. First ground raised by the applicant is that it is a midterm transfer and the prescribed norms for effecting midterm transfer are not followed and complied with. Second ground is that the applicant has been transferred midterm at the instance of respondent No. 4 and only with an object to accommodate the said respondent in her place. Third ground is that before ordering her transfer on the post of Executive Engineer, Dhule Municipal Corporation, the respondents have not taken willingness of the applicant and

relevant provisions pertaining to Deputation are not complied with. Fourth ground, which the applicant has raised is that though she is stated to have been transferred on the basis of some complaints from the employees working in the Public Works Department, Dhule, more particularly working under her control, such complaints, according to her, are false and baseless. It is the further contention of the applicant that without giving any opportunity of hearing to the applicant, presuming the said complaints to be true she has been transferred. According to the applicant, such transfer amounts to a punitive transfer. The applicant has also raised certain other objections in order to show as to how the respondents were bent upon to remove her from her existing post and to bring respondent no. 4 on the said post.

3. The allegations which are raised by the applicant in her OA are resisted by the respondents. The respondent nos. 1 to 3 have filed joint affidavit in reply whereas the respondent no. 4 has independently filed his affidavit in reply. The respondents, in their respective affidavits in reply, have denied the allegations made by the applicant. Insofar as the State Authorities are concerned, it is their contention that all the prescribed norms have been followed and complied with before effecting transfer

of the applicant. It is the contention on behalf of the State authorities that there were complaints against the applicant from almost entire staff working under her and the demand was made by the said employees either to compulsory retire the applicant or to transfer her at some other place. It is the further contention of the State Authorities that taking cognizance of complaints and the representations so received, the State Authorities have taken a conscious decision with the concurrence of Civil Services Board to transfer the applicant from her existing post to the post of Executive Engineer on the establishment of Dhule Municipal Corporation, Dhule. The State Authorities have also contended that the proposal of transferring the applicant has been duly approved by the concerned Minister i.e. the Hon'ble Minister for Public Works Department and ultimately by the Hon'ble Chief Minister of the State. According to the State Authorities, there is no irregularity much less the illegality in ordering the transfer of the applicant.

4. Respondent no. 4 in his affidavit in reply has denied the allegations against him that the impugned order has been passed at his instance and in order to favour him. Respondent no. 4 has provided explanation as about his immediate previous

posting and why did not join in pursuance of some of the postings which were made. Respondent no. 4 has also contended in his affidavit the reasons behind transfer of the applicant. He has also attempted to inform through his affidavit about the events which had occurred in the previous posting of the applicant, as well as, while working on the present post. In sum and substance it is the contention of this respondent that the applicant has not been transferred at his instance but for the defaults on the part of the applicant. The respondents have prayed for dismissal of the original application.

5. Learned counsel appearing for the applicant in her arguments tried to bring to the notice of this Tribunal how the efforts have been made in manipulating the documents pertaining to her transfer. Learned counsel brought to the notice of this Tribunal that the impugned order was issued in the evening of 28<sup>th</sup> December, 2022 and more particularly at about 4.42 p.m. In context with the impugned order the learned counsel invited the attention of the Tribunal to some other documents as about the joining of respondent No. 4 on her post and joining report submitted by the said respondent, as well as, request made by him to the Chief Engineer, P.W.D.

permitting him to take charge of the transferred post unilaterally.

6. The applicant has tendered the rejoinder affidavit to the affidavits in reply submitted on behalf of the respondents. In the rejoinder certain facts are stated by the applicant in this regard. According to the applicant, she and learned Superintending Engineer were on site visit on 28.12.2022 and returned to the office in late evening. In the circumstances, question has been raised on behalf of the applicant as to when the Superintending Engineer made the correspondence or communication with Chief Engineer as about the request of respondent No. 4 to permit him to take charge of the post unilaterally. Some more aspects are also pointed out by the learned counsel. I may not refer to each and every such detail. It is the objection raised by the applicant that an attempt was made by the respondents to show that the applicant was relieved and respondent No. 4 joined on her post before passing the interim order in the matter.

7. Insofar as the contentions raised in the affidavit in reply filed on behalf of the State authorities, learned counsel argued that the documents which are filed on record by these respondents in support of their contentions are sufficient to

show that how the said complaint was cooked against the applicant. It has been contended that the names of the employees were already written under the so-called complaint and some of such employees have not signed said complaint, meaning thereby that their names were included below the said complaint to increase the number of complainants. It is also brought to my notice that subsequently the complaint which appears to have been forwarded by these employees to some State Authorities number of signatories has been substantially reduced. It is also the contention of the learned counsel for the applicant that the applicant has received the information from some of the employees that they were forced to put their signatures below the said complaint. Learned counsel further argued that even if it is accepted that there were some complaints against the applicant without giving opportunity of hearing to the applicant no action could have been taken against the applicant based on the said complaint. Learned counsel from the documents on record pointed out that the explanation of the applicant was later on sought and the decision was already taken. Learned counsel also sought to contend that the documents on record clearly demonstrate that the decision was already taken to transfer the applicant and

accordingly the documents were prepared. Learned counsel has relied upon the following judgments:

**(i) Somesh Tiwari Vs. Union of India & Ors., 2009 AIR (SC) 1399;**

**(ii) P. Karunakaran Vs. The Union of India and Ors., (2014) 4 ServLR 62; and**

**(iii) State of Punjab and Others Vs. Inder Singh and Others, AIR 1998 SC 7;**

8. Relying on the aforesaid judgments it has been argued by the learned counsel that the impugned order is unsustainable and deserves to be set aside. Learned counsel invited my attention specifically to the observations made in paragraphs 19 and 20 of the judgment in the case of Somesh Tiwari Vs. Union of India (cited supra). The observations and findings recorded in paragraphs 15 and 16 of the judgment in the case of P. Karunakaran Vs. The Union of India and Ors. (cited supra) are also emphasized by the learned counsel. The judgment in the case of State of Punjab and Others Vs. Inder Singh and Others (cited supra) has been relied upon by the learned counsel to buttress her argument that without consent of the applicant she could not have been deputed to the services of Municipal Corporation. Learned counsel has raised the objection as about her transfer from her parent department on the establishment of Dhule Municipal Corporation stating that none of the norms for transferring the applicant on deputation are followed.



9. Shri M.S. Mahajan, learned Chief Presenting Officer in his arguments reiterated the contentions raised in the affidavit in reply filed on behalf of the State authorities. Insofar as the objection as has been raised about the transfer of the applicant on deputation certain GRs are placed on record by the learned C.P.O. Learned C.P.O. brought to the notice of the Tribunal that previously the applicant had consented for her appointment on the post of Executive Engineer on the establishment of Dhule Municipal Corporation. Learned C.P.O. also argued that as per G.R. dated 17.12.2016 read with G.R. dated 16.2.2018, the organization on whose establishment certain posts are created but persons to work on the said posts are taken on deputation, formalities are not required to be followed and such deputation is permissible. The entire thrust of the learned C.P.O. was on the point that the respondents were constrained to take the decision to transfer the applicant from her existing post having regard to the serious complaints against her and further having regard to the facts that almost entire staff working under the applicant had made a complaint against the behaviour of the applicant and certain other aspects. Learned C.P.O. further submitted that taking into account that if no immediate steps are taken the entire work of

P.W.D., Dhule would become standstill, the decision was taken to shift the applicant from the said post and such decision has been taken consciously by all concerned i.e. Civil Services Board and recommendation of the Civil Services Board and other officers has been accepted by the highest authority of the State i.e. Hon'ble Chief Minister. Learned C.P.O. denied the objection that transfer of the applicant is mala fide. Learned C.P.O. submitted that in no circumstance the impugned order can be termed as a punitive transfer. Learned C.P.O. submitted that the decision as has been taken was the administrative exigency as occurred and has been taken by following the procedure prescribed therefor. Learned C.P.O. invited my attention to the copies of the written complaints placed on record to show that from immediate next officers to the applicant up to the Peons in the office have put their signature below the said complaint. Learned C.P.O. submitted that unrest in the office of the P.W.D. Dhule has reflected in news items published in several newspapers. Learned C.P.O. submitted that he is making such submissions to buttress his contention that there is substance in the contentions raised by the respondents that there were serious complaints against the applicant. Learned C.P.O. on the aforesaid grounds has prayed for dismissal of the O.A.

10. Learned counsel appearing for respondent No. 4, while adopting the arguments advanced on behalf of the State made few further submissions. In her arguments she refuted the allegation raised against respondent No. 4 that he is instrumental in transfer of the applicant. Learned counsel referring to certain documents submitted that there were just reasons for respondent No. 4 in not joining the post at Dhule Municipal Corporation previously. Learned counsel also denied the allegations as about creating or procuring some false document in order to show joining on 28<sup>th</sup> December or even thereafter with the permission of Chief Engineer, P.W.D. Learned counsel has placed on record the Government Resolution dated 3.12.2020 to buttress her contention that there was no necessity of any fresh consent from the department in view of the said G.R. Respondent No. 4 has also prayed for dismissal of the O.A.

11. I have duly considered the submissions advanced on behalf of the learned counsel appearing for the parties and learned C.P.O. appearing for the State authorities. I have gone through the documents filed on record. As has been noted by me hereinabove the main ground which has been raised by the applicant to support her contention is that her transfer has

been made at the instance of respondent No. 4 and equally pressed ground is that the norms for effecting midterm transfer are not followed. It has also been contended by her that the reasons for which the transfer is shown to have been made are not real reasons and on such grounds no transfer could have been effected without giving opportunity to the applicant. As against the contentions, which are raised by the applicant the State authorities have come out with the case that they were constrained to take decision to transfer the applicant having regard to the situation which had arisen in the office of P.W.D. Dhule and there are no mala fides in making such transfer.

12. I deem it appropriate to first consider one more ground which has been raised, 'whether the transfer of the applicant on deputation could have been ordered without taking consent of the applicant or consent of the departments concerned'. I may not indulge in making any elaborate discussion on this issue having regard to the provisions made under GRs dated 17.12.2016, 16.2.2018 and 3.12.2020, which are brought to my notice during the course of the arguments. Considering the said provisions the objection as about obtaining of consent of the applicant appears irrelevant. It also cannot be lost sight of that previously the applicant had consented for her

appointment on the post of Executive Engineer of Dhule Municipal Corporation. Further there seems no dispute that the post of Executive Engineer on the establishment of Dhule Municipal Corporation is always filled in by taking the officers on deputation from the State Government Departments. Vide G.R. dated 3.12.2020 the post of Executive Engineer of Dhule Municipal Corporation is declared to be a deputation post. In the aforesaid circumstances no much weightage can be attached to the objection as has been raised on behalf of the applicant.

13. The main question which falls for my consideration is, “whether there is any substance in the allegations made by the applicant that her transfer vide impugned order is mala fide transfer”. In order to buttress her contention, learned counsel has relied upon certain judgments which I have referred hereinabove. I have gone through all these judgments. There cannot be a dispute about the ratio laid down in these judgments. However, it need not be stated that the ratio has to be applied in context with the facts of the concern case. It is, therefore, necessary to closely examine the facts involved in the present matter.

14. The documents on record reveal that the proposal for transfer of the applicant has been considered by the Civil Services Board and thereafter by concerned Minister of the department i.e. Hon'ble P.W.D. Minister and lastly by the highest administrative authority of the State i.e. Hon'ble Chief Minister. The documents produced on record further reveal that in the proposal of transfer, the specific reason is stated for transfer of the applicant and the same has been approved by all the concern authorities. In this regard it has been argued on behalf of the applicant that reason which has been cited is false and the authorities concerned should not have accepted the contentions in the complaint so received to be genuine and should not have unilaterally held the applicant guilty of the allegations made against her so as to effect her transfer.

15. I have gone through the complaints made against the applicant. The complaint made against the applicant is signed by the officers and employees of almost all the ranks e.g. the Sub-Divisional Officers, Sub-Divisional Engineers, Jr. Engineers, Senior and Jr. Clerks, Peon, Watchmen etc. It is true that against some of the names which are mentioned, the said persons have not put their signature. However, mere not putting signature by some of such persons will not negate the

fact that majority others who have put their signatures do have the grievance against the applicant. It was sought to be contended on behalf of the applicant that as because the applicant installed CCTV cameras everywhere, the entire staff is aggrieved for the reason that their illegal activities have been prevented by such arrangement made by the applicant. On going through the contents of the application-cum-complaint it does not appear that, that was the only complaint of the officers and the employees working under the applicant. From the documents filed on record there is reason to believe that majority of the staff working under the applicant is having other grievances against the applicant mainly the humiliating treatment being given to them by the applicant and the harassment caused to them. It appears that majority staff members are reluctant to perform the duties under her. It has also been brought to the notice of the Tribunal that move was taken by the employees to go on strike, if the applicant is continued on her existing post.

16. The documents on record reveal that the complaints against the applicant were forwarded to the higher authorities and the decision has been taken by the said authorities. From the contents of the proposal made and the decision taken which

is reflected in the affidavit in reply filed on behalf of the State authorities, it is discernable that the decision has been taken by the State authorities to meet and overcome the situation arisen in the office of the P.W.D. Dhule. Though it is alleged by the applicant that the decision to transfer her is actuated with malice, it does not appear to me that any such allegation would be attributable against the members of the Civil Services Board, as well as, on part of the Hon'ble P.W.D. Minister or against the Hon'ble Chief Minister. Undisputedly these are the authorities who have taken the decision to transfer the applicant. If it is the case of the applicant that the order of her transfer is actuated with malice, the said allegation has to be established against the authorities who have taken the decision to transfer her. No such case is made out by the applicant. On the contrary, it is quite apparent that the authorities concerned have taken a conscious decision to transfer the applicant realizing that if such an action is not taken the entire work in the office of P.W.D. Dhule would come to standstill. The decision so taken by these authorities is well within their power and authority. If in the opinion of these authorities, in the situation which existed in the P.W.D. office at Dhule, there was no other solution except to transfer the applicant from her existing post, such decision cannot be alleged to be mala fide. It



has to be kept in mind that the authorities who run the administration have to take such decisions on the administrative side and such decisions cannot be interfered with unless any such specific case is made out.

17. The next question arises whether the reason for which the administration thought it proper to transfer the applicant can be said to be unsustainable. The complaint made by the officers and other employees working under the control of the applicant in regard to the manner of working of the applicant and agitations started by the said officers and the employees and the demand made by the said employees for shifting the applicant from the said post, are the reasons for transfer of the applicant. It is the contention of the applicant that the complaints so forwarded are not genuine and some employees were forced to put their signature below the said complaint against their will.

18. As is revealing from the material placed on record by respondent Nos. 1 to 3 at the relevant time such a situation has arisen at the office of P.W.D. Dhule that almost all the officers and employees working under the control of the applicant had started agitation and have expressed their strong resentment to work under the applicant. As argued by the learned C.P.O. in

the aforesaid circumstances realizing that if the applicant is not shifted from the said office the entire work of the said office would be stopped, in the larger interest the administration thought it proper to transfer the applicant and avoid the apprehended undesired situation. Making of a complaint by almost all subordinate officers and employees against the head of the office was an exceptional circumstance. When not only few but almost all the officers from the rank of Sub-Divisional Officers and Sub-Divisional Engineers to Junior Engineers, Clerical staff and also Class-IV employees made a common grievance against the applicant, it is difficult to agree with the contention raised on behalf of the applicant that the complaint was false. In the aforesaid circumstances, as I noted hereinabove it was well within the power and authority of respondent No. 1 to shift the applicant from the said office. Such a decision taken in the larger interest has to be sustained. It does not amount to be a punitive transfer. Mere making an allegation that the complaints on the basis of which the impugned action is taken by the respondents are not genuine, the applicant has not brought on record any circumstance or any evidence on the basis of which even prima facie it could have been said that there is substance in the contentions so raised by her. Applicant has failed in establishing that her

transfer is actuated with malice or amounts to a punitive transfer.

19. The authorities relied upon by the learned counsel for the applicant, in my opinion, would not apply to the facts of the present case. In the case of Somesh Tiwari (cited supra) as the order impugned in the said matter was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint, the Hon'ble Supreme Court has held that the impugned order would attract the principle of malice in law. In the present matter the situation is quite different and, as such, the ratio laid down in the said judgment may not apply in the present matter. Similar is in respect of the judgment of Hon'ble Madras High Court in the case of P. Karunakaran (cited supra). In the said matter when the order of transfer was issued, the suspension order was in force and in the circumstances it was held that the transfer order, even though styled as administrative measure, in fact, came to be passed as a punitive measure. In the instant matter, as has been elaborately discussed hereinabove to overcome the exceptional circumstance that entire staff under the head of the institution has shown the reluctance to work

under her, then there had remained no other option except to shift the applicant. The circumstances in the instant case are thus, quite distinguishable with the facts which existed in the matter before the Hon'ble Madras High Court.

20. I reiterate that unless the order of transfer is shown to be outcome of mala fide exercise or said to be in violation of any provision prohibiting any such transfer the Courts / Tribunals cannot interfere with such orders as a matter of routine. In the given circumstances, according to the respondents, it was necessary to shift the applicant from her existing post. The decision taken by the respondents in the interest of administrative exigency cannot be substituted by this Tribunal by any other order.

21. From the material on record which I have discussed hereinabove the transfer of the applicant appears to be an administrative exigency to overcome the situation which existed at the P.W.D. office at Dhule. Insofar as procedural aspects are concerned, as I discussed hereinabove the Civil Services Board has recommended and the competent authorities of the State have approved the said proposal to transfer the applicant from her existing post. Initially a prima-facie opinion was formed by me that the applicant was possibly transferred to accommodate

respondent no. 4 in her place and some material on record though leads to that inference, after having considered the entire facts and circumstances there has remained no doubt that the applicant has been transferred for the reasons discussed hereinabove and not for accommodating respondent no. 4 in her place.

22. In the above circumstances, I do not see any reason to cause any interference in the impugned order. In the result, the O.A. fails and is accordingly dismissed however, without any order as to costs.

**VICE CHAIRMAN**

23. At this juncture, learned counsel for the applicant on instructions submitted that the applicant is intending to challenge the order passed by this Tribunal today before the Hon'ble High Court. Learned Counsel further submitted that the interim order is operating in favour of the applicant on strength of which the applicant is till today discharging the duties of her existing post. Learned counsel in the circumstances has prayed for continuation of the said interim relief at least for three weeks, so as to facilitate the applicant to seek necessary further orders from the Hon'ble High Court.

24. The request made on behalf of the applicant is strongly opposed by the learned C.P.O. He submitted that respondent No. 4 has already taken over the charge of the subject post. Learned C.P.O. further submitted that the continuation of the interim relief would create a chaotic situation. He, therefore, opposed for continuation of the interim order. Learned Counsel for respondent No. 4 has also opposed the submissions adopting the contentions raised by the learned C.P.O.

25. O.A. has been rejected by this Tribunal by observing that transfer of the applicant is an administrative decision taken by the authorities concerned in order to take care of the situation as is prevailing in the office of PWD Dhule. In the body of judgment this Tribunal has observed that in such situation such decisions are liable to be taken by the administration and the Tribunal has also further recorded that there appears no mala-fide in effecting such transfer by taking such decision. When the administration has taken decision with an object that the entire work of the PWD office Dhule shall not be stalled, it does not appear to me that there may be any justification in accepting the request of the applicant for continuation of the interim relief. Request is therefore rejected.

**VICE CHAIRMAN**