

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 216 OF 2019
(Subject – Transfer)**

DISTRICT : LATUR

Shri Bharat Prabhakar Rathod,)
Age : 45 years, Occu. : Government)
Service as Chief Officer, Udgir Nagar)
Parishad, Tq. Udgir, District Latur.)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Secretary,)
Urban Development Department,)
Mantralaya, Main Building, 4th)
Floor, Madam Kama Road, Fort,)
Mumbai.)
- 2) **Smt. Vidya Gaikwad,**)
Age : Major, Occu. Service as)
Deputy Commissioner, Parbhani)
Municipal Corporation, Parbhani,)
District : Parbhani.)

.. RESPONDENTS

APPEARANCE : Shri A.S. Deshmukh, Advocate holding for Shri
V.B. Wagh, Advocate for the Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for
the Respondent No. 1.

: Shri D.T. Devane, Advocate for respondent
No. 2.

CORAM : **B.P. PATIL, VICE CHAIRMAN.**

RESERVED ON : **03.07.2019.**

PRONOUNCED ON : **09.07.2019.**

ORDER

1. The applicant has challenged the impugned order dated 05.03.2019, by which he has been transferred from the post of Chief Officer, Udgir Nagar Parishad, District Latur to the post of Deputy Commissioner, Parbhani Municipal Corporation, Parbhani and posted the respondent No. 2 at his place by filing the present Original Application.

2. The applicant was initially appointed as Chief Officer, Tumsar Nagar Palika, Dist. Bhandara after his selection and recommendation by the M.P.S.C. by the order dated 15.01.2002. Accordingly, the applicant has joined the said posting. He worked at various placed. His service record is unblemished. The applicant worked as District Administrative Officer, Aurangabad during the period from 15.09.2015 to 11.04.2018. By the order dated 11.04.2018, he has been transferred and posted as Chief Officer, Udgir Nagar Parishad, Dist. Latur. Accordingly, he joined the said post at Udgir on 12.04.2018 and since then he was working there. He has not completed his normal tenure of posting at Udgir and he was not due for transfer. But the respondents have issued impugned order of transfer on 05.03.2019 and transferred him from the post of Chief Officer, Udgir Nagar Parishad, District Latur to the post of

Deputy Commissioner, Parbhani Municipal Corporation, Parbhani on administrative ground and posted the respondent No. 2 on his place by issuing another order on the same day. It is his contention that his transfer is against the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "the Transfer Act 2005") and there was no administrative exigency. It is his contention that the impugned transfer order is mid-term and mid-tenure transfer and is in violation of the provisions of Section 4(4) and 4(5) of the Transfer Act 2005 and therefore, it is illegal. It is his contention that as per the directions of the State Election Commission, the post on which the applicant is working is notified for ensuing Lok Sabha Elections and the applicant was appointed as Zonal/Sector Officer as per the list prepared by the Assistant Election Returning Officer, Latur and he was sent for training in respect of the election duties. In spite of that, he has been transferred and the said impugned transfer is in violation of the directions issued by the Election Commission of India. It is his contention that the impugned transfer order has been issued against the provisions of Transfer Act 2005 and therefore, it is illegal. Therefore, he has challenged the impugned order by filing the present Original Application.

3. The respondent No. 1 has filed his affidavit in reply and resisted the contentions of the applicant. It is his contention that that the transfer of the applicant has been effected in view of the provisions of Section 4(4) and 4(5) of the Transfer Act 2005. He has no dispute regarding the fact that the impugned order has been issued and the applicant's transfer is mid-term and mid-tenure transfer. It is his contention that serious complaints against the applicant had been received when he was working as Chief Officer, Udgir Nagar Parishad, District Latur. In view of the serious allegations and misuse of powers by the applicant as mentioned in the complaints, the competent authority submitted a proposal for transfer of the applicant from Udgir with a view to avoid further misuse of power by the applicant and to bring normalcy in the working of Udgir Municipal Council. The said proposal was considered in the meeting of the Civil Services Board which was held on 27.02.2019. After considering the serious complaints and allegations about misuse of power by the applicant, the Civil Services Board recommended the transfer of the applicant from the post of Chief Officer, Udgir Nagar Parishad, District Latur to the post of Deputy Commissioner, Parbhani Municipal Corporation, Parbhani. The competent authority accepted the recommendation and decided to transfer the applicant and thereafter, the impugned transfer order has

been issued. It is his contention that when the competent authority is satisfied that the transfer is essential due to exceptional circumstances/special reasons after recording the same in writing and with prior approval of next higher authority may transfer a Government servant before completion of his tenure. It is his contention that the impugned transfer has been made in accordance with the provisions of the Transfer Act 2005 and there is no violation of the provisions of Section 4 (4) and 4(5) of the Transfer Act 2005. It is his contention that the impugned order has been issued before announcement of Model Code of Conduct for the General Elections for Loksabha-2019 and thus, there is no violation of the guidelines of the Election Commission of India. It is his contention that there is no illegality in the impugned order and therefore he prayed to reject the present Original Application.

4. The respondent No. 2 has filed her affidavit in reply and resisted the contentions of the applicant. It is her contention that the impugned order has been issued by the competent authority after following the due provisions of law and after due compliance of the provisions of Section 4 (4) and 4(5) of the Transfer Act 2005. It is her contention that she was posted at Parbhani on 21.05.2017 and since then, she was working there

sincerely and honestly. It is her contention that she had not made any request for her transfer, but her transfer had been effected on administrative ground and she had been posted at Udgir on the post of Chief Officer, Municipal Council Udgir. It is her contention that she has been relieved from the post of Parbhani on 05.03.2019. She obeyed the transfer order and joined on the post of Chief Officer, Udgri Municipal Council Udgir on 06.03.2019 and since then she is discharging her duties on the post of Chief Officer, Municipal Council, Udgir. It is her contention that she had shifted her family to Udgir and inconvenience will be caused to her in case she will be transferred from Udgir and therefore, she has justified the transfer order.

5. I have heard Shri A.S. Deshmukh, learned Advocate holding for Shri V.B. Wagh, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent No. 1 and Shri D.T. Devane, learned Advocate for respondent No. 2. I have perused the documents placed on record by both the parties.

6. Admittedly, The applicant was selected and recommended by the M.P.S.C. for appointment on the post of Chief Officer and accordingly, he had been posted as Chief

Officer, Tumsar Nagar Palika Bhandara by the order dated 15.02.2002. Thereafter, he had worked at different places. He worked as District Administrative Officer, Aurangabad during the period from 15.09.2015 to 11.04.2018. Thereafter, he has been transferred to the post of Chief Officer, Udgir Nagar Parishad, Dist. Latur from the post of District Administration Officer, Aurangabad by the order dated 11.04.2018 and accordingly, he joined the said post on 12.04.2018. He worked as Chief Officer, Udgir Nagar Parishad, District Latur till the issuance of the impugned order of transfer dated 05.03.2019. Admittedly, he has completed hardly 11 months tenure on the post of Chief Officer, Udgir Nagar Parishad, District Latur. He was not due for transfer, but he has been transferred by the impugned order dated 05.03.2019 from the post of Chief Officer, Udgir Nagar Parishad, District Latur to the post of Deputy Commissioner, Parbhani Municipal Corporation, Parbhani. It is mid-term and mid-tenure transfer. Admittedly, the respondent No. 2 has been posted at his place by another order dated 05.03.2019.

7. Learned Advocate for the applicant has submitted that the applicant has hardly completed tenure of 11 months on the post of Chief Officer, Udgir Nagar Parishad, District Latur and he was not due for transfer, but the respondents have

transferred him by the impugned order. He has argued that the transfer of the applicant is mid-term and mid-tenure transfer and it has been issued without following the mandatory provisions of Section 4(4) and 4(5) of the Transfer Act 2005. He has submitted that the respondents had not considered the provisions of G.R. dated 11.02.2015, as well as, the undertaking given by the Chief Secretary of the Government of Maharashtra before the Hon'ble High Court of Bombay in **W.P. No. 8987 of 2018** in case of **Balasaheb Vitthalrao Tidke Vs. The State of Maharashtra and Anr.** He has submitted that the impugned transfer order of the applicant has been issued upon political influence and therefore, it is illegal. He has submitted that no proposal regarding the transfer of the applicant has been made by the respondent No. 1 and without proposal his transfer has been made and therefore, it is in contraventions of the provisions of Transfer Act 2005.

8. Learned Advocate for the applicant has further submitted that the respondent No. 2 has been transferred on the post of applicant, though her transfer was not proposed and recommended and therefore, same is also illegal. He has submitted that the statutory provisions of Transfer Act 2005 have not been followed by the respondents while issuing the

impugned orders and therefore, the impugned transfer orders are illegal. In support of his submissions, he has placed reliance on the judgment delivered by the High Court of Bombay Bench at Aurangabad in **W.P. No. 5835/2011** in case of **Purushottam Govindrao Bhagwat Vs. The State of Maharashtra and Ors.**, decided on 15.09.2011.

9. Learned Chief Presenting Officer has submitted that there were several complaints against the applicant when he was working on the post of Chief Officer, Udgir Nagar Parishad, District Latur. One Shri Sudhakar Bhalerao, MLC had also filed complaint with the concerned department regarding function of the applicant and therefore, proposal regarding transfer of the applicant has been placed before the Civil Services Board. The Civil Services Board after considering the serious allegations against the applicant and nature of complaints, recommended the transfer of the applicant and thereafter, recommendation of the Civil Services Board had been placed before the competent authority i.e. the Hon'ble Chief Minister and with the approval of the Hon'ble Chief Minister, who is also higher competent authority the impugned transfer has been made. He has submitted that the provisions of Section 4 (4) and 4(5) of the Transfer Act 2005 have been followed by the respondent No. 1

and there is no illegality in the impugned transfer order. He has submitted that since the applicant has been transferred from the post of Chief Officer, Udgir Nagar Parishad, District Latur, the respondent No. 2 has been posted on his place to fill up the vacancy and there is no illegality in the said order. Therefore, he justified the impugned order of transfer of the applicant and prayed to dismiss the present Original Application.

10. Learned Advocate for respondent No. 2 has also justified the impugned transfer orders and made similar submissions to that of the submissions made by the learned Chief Presenting Officer. He has submitted that the applicant has been transferred because of administrative exigency after following the mandatory provisions of Transfer Act 2005 and therefore, the Tribunal cannot interfere with the transfer orders and it cannot substitute its opinion for that of the competent authority of the State. He has submitted that the Tribunal can only have to examine whether there are reasons making out a special case and would interfere only if the order is issued mala-fide. In support of his submissions, he has placed reliance on the judgment in case of **State of Maharashtra Vs. Ashok Ramchandra Kore and Ors.** reported in **2009 (4) Mh.L.J. 163**

and in case of **Mohd. Masood Ahmad Vs. State of U.P. & Ors.** reported in **2007 (6) Supreme 309.**

11. I have gone through the above referred decisions relied on by the learned Advocate for respondent No. 2. I have no dispute regarding the settled legal principles laid down in the decisions relied on by the relearned No. 2. I do agree with the settled legal principle that the transfer is an exigency of service and is an administrative decision and interference by the Courts with transfer orders should only be in very rare cases. The Court cannot substitute its opinion for that of the competent authorities of the State. It will only have to examine whether there are reasons making out a special case and would interfere only if the order is issued mala-fide. By keeping in mind all above settled legal principles, I have to consider the facts in the instant case.

12. Admittedly, the applicant has not completed his normal tenure of posting on the post of Chief Officer, Udgir Nagar Parishad, District Latur. He has hardly completed tenure of 11 months on the said post and his transfer is mid-term and mid-tenure transfer. No doubt, the competent authority is empowered to make transfer of the Government employee before completion of the tenure and in the midst of the term subject to

fulfillment of requirements as provided under Section 4(4)(ii) and 4(5) of the Transfer Act 2005. In the present case, the respondent No. 1 has produced entire record regarding the impugned transfer order of the applicant. Not only this, but it has filed a short affidavit of one Shri Mahesh Guruling Hanshetti, who is working on the post of Section Officer in the office of Urban Development Department, Mantralaya, Mumbai, stating that the record produced before this Tribunal is only record available with the office of the respondent No. 1. Not only this, but the learned Chief Presenting Officer has submitted at bar that except documents produced on record, is no other record is available with the respondent No. 1.

13. On perusal of the copy of the record produced by the respondent No. 1, it reveals that said record does not find proposal/office note prepared by the department regarding transfers of the applicant and other employees. This fact has been admitted by the learned Chief Presenting Officer at bar. On perusal of the record, it reveals that the concerned department i.e. the Urban Development Department put an office note dated 26.02.2019 requisitioning the meeting of the Civil Services Board for the transfers of the Chief Officers of Group-A and Group-B on the recommendation and request of the people's representative.

On the basis of requisition made by the respondent No. 1, meeting was scheduled on 27.02.2019 and accordingly, meeting was held on 27.02.2019. Minutes of the meeting dated 27.02.2019 shows that the Civil Services Board on its own considered the transfers of the Chief Officers including the applicant and recommended the transfer of the applicant on the basis of a complaint filed by Shri Sudhakar Bhalerao, MLC. The said complaint is regarding functioning of the applicant. On the basis of recommendation of the Civil Services Board, the respondent No. 1 i.e. the Urban Development Department prepared the proposal and submitted the same before the competent authority i.e. the Hon'ble Chief Minister and also proposed the transfer of the respondent No. 2. The Hon'ble Chief Minister approved the same and thereafter, the impugned transfer order has been issued. The said file contents the letter issued by Shri Sudhakar Bhalerao, MLC dated 27.02.2019, which shows that the work of the applicant on the post of Chief Officer, Udgir Nagar Parishad, District Latur was not satisfactory and therefore, inconvenience causes to the public and therefore, he requested to transfer the applicant from the said post. The said letter was placed before the Civil Service Board on the very day i.e. on 27.02.2019 and on the basis of said letter; the transfer of the applicant has been made by the Civil Services

Board. From this, it is crystal clear that on 26.02.2019, when the respondent No. 1 requisitioned the meeting of the Civil Services Board no complaint against the applicant was received. No proposal/office note has been prepared by the concerned department i.e. the Urban Development Department proposing the transfers of the applicant and other officers for placing it before the Civil Services Board in the meeting held on 27.02.2019. No agenda of meeting has been prepared. A strange mode or practice has been applied / adopted by the Urban Development Department for transfers of the applicant and other Chief Officers. Without any proposal, the Civil Services Board considered the transfers of the applicant and others and complaints received against them and recommended the transfers of the applicant and others.

14. It is material to note here that the proposal regarding transfer of the respondent No. 2 has also not been placed before the Civil Services Board and the Civil Services Board had not made any recommendation regarding transfer of the respondent No. 2 at the place of the applicant. Without recommendation of transfer of the respondent No. 2, the respondent No. 1 i.e. Urban Development Department proposed the transfer of the respondent No. 2 at the place of the applicant and placed the

proposal before the competent authority and got it approved. All these facts show that the entire process of transfer conducted by the respondent No. 1 is against the provisions of law and procedure.

15. Normally, the concerned department used to prepare the office note/proposal for the transfer of the Government servants and thereafter, after fixing the agenda of the meeting, same used to be placed before the Civil Services Board. But no such practice or procedure has been followed by the respondent No. 1 while effecting the transfers of the applicant and others. It is duty of the Civil Services Board to consider the proposal placed before it regarding transfers of the Government servant and thereafter, make its recommendation. But in the instant case, the civil Services Board without any proposal of the concerned department i.e. the Urban Development Department (respondent No. 1) recommended the transfers of the applicant and others. In these circumstances, in my opinion, the impugned transfer order of the applicant is in violation of the provisions of the Transfer Act 2005, as well as, the prevailing procedure adopted by the respondents.

16. It is also material to note here that the respondent No. 1 specifically contended that there were several complaint of

serious nature against the applicant and therefore, his transfer has been made. The respondent No. 1 had given several opportunities to produce copies of the complaints received by it against the applicant, but the respondent No. 1 has not produced it. Learned Chief Presenting Officer has admitted that the respondent No. 1 has received only one complaint of Shri Sudhakar Bhalerao, MLC regarding unsatisfactory work of the applicant. The said complaint has been considered by the Civil Services Board for recommendation of transfer of the applicant. They enquired in to the complaint made against the applicant and respondent No. 1 made the transfer of the applicant on the basis of recommendation/complaint received from the representative of people. This shows that the impugned transfer order is issued due to political influence. This order is issued in violation of the undertaking given by the Chief Secretary of the Government of Maharashtra before the Hon'ble High Court of Bombay in **W.P. No. 8987 of 2018** in case of **Balasaheb Vitthalrao Tidke Vs. The State of Maharashtra and Anr.** In the said case, the Hon'ble High Court has relied on the undertaking given by the then Secretary of the Government of Maharashtra and passed the following order:-

"4. Hence, we pass the following order :

- (i) The writ petition is disposed of as withdrawn;*
- (ii) The statements made in paras-1 and 2 of Affidavit of Mr. Dinesh Kumar Jain, Chief Secretary of the State Government dated 12th December, 2018 are accepted as statements made on behalf of the State Government and the undertakings given by the State Government;*
- iii) We hope and trust that the statements made in the Affidavit of Mr. Dinesh Kumar Jain are made known to all concerned authorities exercising powers under the said Act of 2005 to avoid any attempt of political influence in the process of transfer;*
- (iv) Though the Petition is disposed of, the protection granted to Shri. Shripat Shinde under Clause-11 of the order dated 2nd November, 2018 stands;*
- (v) There shall be no order as to costs.”*

17. The undertaking given by the Chief Secretary of the Government of Maharashtra was binding on the respondent No.1. But the respondent No. 1 has not stick up with it and passed the impugned order of transfer of the applicant under the political influence without following the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. No exceptional circumstances or special reasons have been made out by the respondent No. 1 while making transfer of the applicant from Udgir. Not only this, but the special case has also not been made

out by the respondents for transfer of the applicant. No satisfactory and sufficient reasons have been recorded in writing while making transfer of the applicant. The transfer of the applicant has been made in violation of the mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. Not only this, but the provisions of the Transfer Act 2005 have not been strictly followed by the respondent No. 1 while making the transfer of respondent No. 2 also. The record shows that the impugned transfer of the applicant has been issued under political influence on the basis of vague allegations made against the applicant and therefore, the said order of transfer cannot be justified. The impugned order of transfer has been issued by the respondent No. 1 arbitrarily, mala-fide with malice and in contraventions of the provisions of the Transfer Act 2005 and therefore, it requires to be quashed and set aside by allowing the present Original Application.

18. In view of the discussions in the foregoing paragraphs, the O.A. is allowed. The impugned transfer orders dated 05.03.2019 transferring the applicant from the post of Chief Officer, Udgir Nagar Parishad, District Latur to the post of Deputy Commissioner, Parbhani Municipal Corporation, Parbhani and posting the respondent No. 2 at his place are

hereby quashed and set aside. The respondent No. 1 is directed to repost the applicant on the post of Chief Officer, Udgir Nagar Parishad, District Latur immediately. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 09.07.2019.

(B.P. PATIL)
VICE CHAIRMAN

KPB S.B. O.A. No. 216 of 2019 BPP 2019 Transfer