

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

O.A.NOS. 267, 280 & 281 ALL OF 2018

**01. ORIGINAL APPLICATION NO. 267 OF 2018**

**DISTRICT: - AHMEDNAGAR.**

**Dr. Shrikant Chandrakant Pathak,**

Age : 50 years, Occu : Service as  
Medical Officer, Civil Hospital,  
Ahmednagar, Dist. Ahmednagar.

**.. APPLICANT.**

**V E R S U S**

**1. The State of Maharashtra**

Through its Principal Secretary,  
Public Health Department,  
M.S. Mantralaya, Mumbai-32.

**2. District Transfer Committee Cum  
District Collector, Ahmednagar.**

**3. District Civil Surgeon,  
Civil Hospital, Ahmednagar,  
Dist. Ahmednagar.**

**.. RESPONDENTS.**

**W I T H**

**02. ORIGINAL APPLICATION NO. 280 OF 2018**

**DISTRICT: - DHULE.**

**Dr. Urvashi D/o Ganpat Valvi,**

Age: 30 years, Occu: Service as  
Medical Officer in Primary Health  
Centre, Vikharan,  
Tq. Sindkheda, District Dhule  
R/o. C/o. Primary Health Centre,  
Vikharan, Taluka Shindkheda,  
Dist. Dhule.

**.. APPLICANT.**

**V E R S U S**

**1. The State of Maharashtra**

Through the Principal Secretary,  
Public Health Department,  
Mantralaya, Mumbai.

**2. The Collector, Dhule and the  
Chairman of the Committee for  
Within-District Transfer of  
Medical Officer, Group A, Dhule,**  
District Dhule.

**3. The District Health Officer**  
Zilla Parishad, Dhule and  
Member Secretary of the Committee  
for Within-District Transfer of  
Medical Officer Group "A" Dhule  
District Dhule.

**.. RESPONDENTS.**

**W I T H**

**03. ORIGINAL APPLICATION NO. 281 OF 2018**

**DISTRICT: - DHULE.**

**Dr. Ashutosh S/o. Subhash Salunke,**  
Age: 35 years, Occu: Service as  
Medical Officer in Primary Health  
Centre, Kalambhir, Tq. Sakri,  
District Dhule R/o. C/o. Primary Health  
Centre, Kalambhir, Taluka Sakri,  
District Dhule.

**.. APPLICANT.**

**V E R S U S**

**1. The State of Maharashtra**  
Through the Principal Secretary,  
Public Health Department,  
Mantralaya, Mumbai.

**2. The Collector, Dhule and the  
Chairman of the Committee for  
Within-District Transfer of  
Medical Officer, Group A Dhule,**  
District Dhule.

**3. The District Health Officer**  
Zilla Parishad, Dhule and

Member Secretary of the Committee  
for Within-District Transfer of  
Medical Officer Group "A" Dhule  
District Dhule.

**.. RESPONDENTS.**

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**APPEARANCE** : Shri V.B. Wagh, learned Advocate for the  
applicant in O.A. no. 267/2018.  
: Shri Shamsunder B. Patil, learned  
Advocate for the applicants in O.A. nos.  
280 & 281 both of 2018.  
: Shri V.R. Bhumkar, learned Presenting  
Officer for the respondents in all these  
cases.  
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**CORAM** : **JUSTICE M.T. JOSHI, VICE CHAIRMAN**  
**AND**  
: **ATUL RAJ CHADHA, MEMBER (A)**  
**DATE** : **15.3.2019**  
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**C O M M A N - O R D E R**

**[Per :Justice M.T. Joshi, V.C.]**

1. Shri V.B. Wagh, learned Advocate for the applicant in  
O.A. no. 267/2018, Shri Shamsunder B. Patil, learned Advocate  
for the applicants in O.A. nos. 280 & 281 both of 2018 and Shri  
V.R. Bhumkar, learned Presenting Officer for the respondents in  
all these three cases.

2. The common questions of law and facts have arisen in the present three cases and those are therefore decided by the present common judgment.

3. The applicants in all these three cases are serving as Medical Officers in Ahmednagar & Dhule districts respectively. They were transferred within the District from one place to another vide the impugned transfer orders by the Committee constituted under Government Resolution dated 30.11.2016 (Annex. A.3 page 27 in O.A. no. 280/2018). The common contentions of the applicants are that in view of the specific provisions of sec. 6 & 7 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005), the constitution of different Committee than the prescribed authority empowering to transfer the applicants is void and illegal and, therefore, the transfer orders of these applicants are also illegal and liable to be quashed and set aside.

4. The submissions of the State and Head of the Committee i.e. the Collector in all these three cases in common affidavit in reply are that the District Level Committee is constituted under the Chairmanship of the Collector vide the impugned G.R. by delegating the powers conferred upon the State Government under

the provisions of very sec. 6 of the Transfer Act and, therefore, the same cannot faulted with.

5. Alternatively, the learned P.O. submitted that for the sake of argument even if it is assumed that the Committee was not competent, still the *De facto doctrine* would be applicable and, therefore, impugned transfer orders cannot be termed as void.

6. Upon hearing both the sides, in our view, there is no merit in the present O.As. Those are, therefore, liable to be dismissed for the following reasons :-

### **REASONS**

7. Sec. 6 & 7 of the Transfer Act, 2005 runs as under :-

#### **“6. Transferring Authority.**

*The Government servants specified in column (1) of the table hereunder may be transferred by the Transferring Authority specified against such Government servants in column (2) of the table.*

**Table**

	<i>Group of Government servants</i>	<i>Competent Transferring Authority</i>
	<i>(1)</i>	<i>(2)</i>
<i>(a)</i>	<i>Officers of All India Services, All Officers of state Services in Group “A” having pay-scale of Rs. 10,650-15,850 and above.</i>	<i>Chief Minister</i>
<i>(b)</i>	<i>All Officers of state Services in Group “A” having pay-</i>	<i>Minister-in-charge in consultation with</i>

	<i>scales less than. Rs. 10,650-15,850 [and all Gazetted Officers] in Group "B"</i>	<i>Secretaries of the concerned Departments.</i>
<i>(c)</i>	<i>All [non-Gazetted employees in Group "B" and "C"]</i>	<i>Head of Department</i>
<i>(d)</i>	<i>All employees in Group "D"</i>	<i>Regional Heads of Department</i>

*Provided that, in respect of officers in entry (b) in the table working at the Divisional or District level, the Divisional Head shall be competent to transfer such officers within the Division; and the District Head shall be competent to transfer such officers within the District :*

*Provided further that, the Competent Transferring Authority specified in the table may, by general or special order, delegate its powers under this section to any of its subordinate authority.* (Emphasis supplied )

#### **7. Publication of list of competent authority.**

*Every Administrative Department of Mantralaya shall for the purposes of this Act prepare and publish a list of the Heads of Departments and Regional Heads of Departments within their jurisdiction and notify the authorities competent to make transfers within their jurisdiction for the purposes of this Act."*

8. Second proviso of the sec. 6 would show that the competent transferring authority specified in the table may delegate its powers to any of its subordinate authority.

9. In the circumstances, issue would be as to whether the Committee formed under G.R. can be termed as subordinate authority as per the provisions of sec. 6 of the Transfer Act, 2005.

10. The impugned G.R. would show that it is issued by the Public Health Department of the State of Maharashtra on 30.11.2016. Introductory para of the said G.R. would show that at that time the transfer used to be effected of the Medical Officers at the Government level. In the circumstances, the Chief Executive Officers of the Zilla Parishads were not competent to transfer the Medical Officers taking into consideration the local requirements. This has resulted into lot of correspondence. In the circumstances, the State of Maharashtra has found that the power to transfer of the Medical Officers at least within the District can be delegated to the Committee at District level so that the services of the Medical Officers can be availed effectively.

11. In the circumstances, vide the said G.R. the powers were delegated to the Committee at the District level as follows :-

- 1) District Collector -- Chairman
- 2) C.E.O., Zilla Parishad, -- Members  
Dist. Social Welfare Officer,  
Dist. Civil Surgeon and  
Assistant Commissioner of  
Tribal Development Department
- 3) District Health Officer -- Member Secretary

12. Learned Advocates for the applicants submitted that the delegation of authority vide the said G.R. as mentioned above cannot be termed as 'delegation of its powers to any of the

subordinate authority' as provided by second proviso to sec. 6 of the Transfer Act, 2005.

13. On the other hand, the learned P.O. submitted that the Chairman as well as Members and Member Secretary of the Committee are very well subordinate authorities of the State Government in general and, therefore, merely because the Officers are from different departments at District level, those would not be stranger to the State Government and, therefore, constitution of Committee is, in fact, delegation of powers to the subordinate authorities.

14. Upon hearing both the sides, in our view, all the Officers, i.e. Chairman, Members and Member Secretary of the Committee formulated as per G.R. are the subordinate authorities of the State within the meaning of sec. 6 of the Transfer Act, 2005. Merely because they are from different Departments, it would not mean that they are not subordinate to the State Government. The introductory para of the G.R. would show that for limited purpose of transfer within District, the said Committee is constituted, which can take into consideration the local needs.

15. The District Health Officer is Member Secretary of this Committee as he would have all the information and knowledge



regarding the transfers and the District Collector is the Chairman of the Committee. Various inputs regarding transfer and posting within the District can be given by the other Members of the Committee and if all these facts are taken into consideration, the constitution of the Committee cannot be faulted with. Therefore, challenge of the present applicants to the constitution of the committee fails.

16. Alternatively, even if it is assumed that the constitution of the Committee is *ultra vires* to the provisions of the Transfer Act, 2005, still the impugned transfer orders would be saved by the *doctrine of de facto*. The principle is that, the act carried by the Public servant in the public interest and under bona-fide assumption of powers though defective, would be saved.

17. To buttress his submissions on the above principle, the learned P.O. has relied on the ratio laid down by Hon'ble Supreme Court in the case of **Gokaraju Rangaraju Vs. the State of A.P. [AIR 1981 SC 1473]**. In the said case of Gokaraju Rangaraju the legality of the judgment of the Sessions Judge was challenged *inter alia* on the ground that appointment of the said Judge was later on declared as invalid as his appointment was found in violation of Article 233 of the Constitution of India. In

para 4, Hon'ble Supreme Court while underlining the principle of *doctrine de facto* observed as under :-

*“4. We are unable to agree with the submissions of the learned counsel for the appellants. The doctrine is now well established that “the acts of the Officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure” (Pulin Behari v. King Emperor, (1912) 15 Cal LJ 517 at p. 574). As one of us had occasion to point out earlier “the doctrine is founded on good sense, sound policy and practical experience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who hold office de facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. Hence the de facto doctrine” (vide Immedisetti Ramkrishnaiah Sons v. State of Andhra Pradesh, AIR 1976 Andh Pra 193).”*

18. Learned P.O. also relied on the ratio laid down by Hon'ble Supreme Court in the case of **Pushpadevi M. Jatia Vs. M.L. Wadhavan, Addl. Secretary, Government of India and Ors. [AIR 1987 SC 1748]**. In that case it was contended that as the statements under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act were to be recorded as per the provisions the said Act by a Gazetted Officer within the meaning of the Act, any statements recorded by other Officers would not be admissible. Considering these submissions the

Hon'ble Supreme Court in para 21 of the said judgment observed as under :-

*“21. We are unable to accept the submission of the learned counsel for another reason. Where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as validity of its acts are concerned. It is enough that he is clothed with the insignia of the office, and exercises its powers and functions. The official acts of such persons are recognized as valid under the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. In Gokaraju Rangaraju’s case, (AIR 1981 SC 1473) (supra), Chinnappa Reddy, J. explained that this doctrine was engrafted as a matter of policy and necessity to protect the interest of the public. He quoted the following passage from the judgment of Sir. Ashutosh Mukherjee, J. in Pullin Behari v. King Emperor, (1912) 15 Cal LJ 517 at p.574).*

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19. As against this, the learned Advocates for the applicants submitted that the provisions of statute cannot be superseded by any Circular or G.R. To buttress this submissions, the learned Advocates for the applicants relied on the judgment in the case of **SHRI SHARDA BHAVAN EDUCATION SOCIETY VS. STATE OF MAHARASHTRA and another [2011 (6) Mh.L.J. 259]** of the Division Bench of Hon'ble High Court of Judicature at Bombay (of which present Vice Chairman was a Member as then Judge of Hon'ble High Court).

20. It is however to be noted that this Tribunal has already come to the conclusion as supra that the impugned G.R. is in consonance with second proviso to sec. 6 of the Transfer Act, 2005. Therefore, there is no issue as to whether the provision of the Act would prevail or the G.R. Therefore the ratio of **Shree Sharda Bhavan** (cited supra) would not be applicable. Alternatively while considering the *doctrine of de facto* even if it is held that the G.R. is contrary to the provisions of sec. 6 of the Transfer Act, 2005, still decision rendered by the Committee would be protected by doctrine of *de facto* and cannot be termed as invalid.

21. In the circumstances, we pass the following order :

**ORDER**

All the three cases i.e. O.A.Nos. 267, 280 & 281 all of 2018 are hereby dismissed without any order as to costs.

**(ATUL RAJ CHADHA)**  
**MEMBER (A)**

**(M.T. JOSHI)**  
**VICE CHAIRMAN**

**Place : Aurangabad**  
**Date : 15.3.2019**