

**ORIGINAL APPLICATION NO. 1161/2022**  
**(Smt. Varsha M. Ghugari Vs. State of Maharashtra & Ors.)**

**CORAM : Hon'ble Shri Justice P.R. Bora,**  
**Vice Chairman**

**DATE : 29.12.2022**

**ORAL ORDER :**

Heard Shri D.M. Hange, learned counsel for the applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the respondent authorities.

2. Smt. Suchita Dhongde, learned counsel has filed her VP on behalf of respondent no. 4. It is taken on record.

3. It is the grievance of the applicant that only with an object to accommodate respondent no. 4 she has been transferred before completing her tenure on the existing post and has been appointed on deputation on the post of Executive Engineer, Municipal Corporation, Dhule. The learned counsel brought to my notice that the applicant was transferred to Dhule on her existing post on 7.8.2020. She has not completed her normal tenure on the said post. The learned counsel further submitted that the respondent no. 4 was transferred vide order dated 1.8.2019 on the post of Executive Engineer, Municipal Corporation, Dhule on deputation on promotion, however, he did not join. Thereafter on his request the respondent 4 was posted at Sangamner on

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the post of Executive Engineer, Public Works Division, Sangamner vide order dated 7.9.2019. Thereafter on 12.10.2022 the respondent no. 4 was posted as Executive Engineer, Municipal Corporation, Dhule and within few months thereafter vide the impugned order he has been posted as Executive Engineer, P.W. Division, Dhule i.e. on the post which the applicant is presently holding and the applicant has been sent on deputation as Executive Engineer, Dhule Municipal Corporation, Dhule. The learned counsel taking me through the provisions of Sections 4(4) and 4(5) 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) submitted that apparently there appears no compliance of the aforesaid provisions and it seems that only with an object to accommodate the respondent no. 4 the applicant has been transferred. The learned counsel in the circumstances prayed for staying the impugned order of transfer. The learned counsel submitted that the applicant has not yet handed over the charge of her post.

4. The learned Presenting Officer opposed the submissions made on behalf of the applicant. The learned PO submitted that the impugned order would demonstrate that the applicant has been transferred on

administrative grounds. It is further contended that the order of transfer may not contain all details as to the administrative exigency and as such the reasons can only be elaborated in the affidavit in reply which may be filed by the respondents. The learned PO submitted that in the circumstances opportunity may be given to the respondent authorities to submit their affidavit in reply and till then even prima-facie opinion cannot be recorded whether the allegation of the applicant is sustainable or otherwise. The learned PO therefore prayed for rejecting the request for interim relief.

5. The learned counsel appearing for respondent no. 4 submitted that the respondent no. 4 has already taken over the charge of the post of Executive Engineer, P.W. Division, Dhule and as such the request for staying the effect and operation of the order of transfer has become infructuous. The learned counsel further submitted that the allegations as are made in the application are vague and opportunity needs to be given to respondent no. 4 to meet those allegations. It was the further contention of the learned counsel that unless the affidavit in reply by respondent no. 4 comes on record, it may be unjust and improper to grant any interim relief as prayed by the applicant. The learned counsel therefore prayed for rejecting the request for interim relief.

6. The learned counsel for respondent no. 4 has tendered across the bar the communication dated 28.12.2022 whereby he has requested the Chief Engineer, P.W.D., Nashik to permit him to take over the charge of the post of Executive Engineer, P.W. Division, Dhule unilaterally. The said correspondence is taken on record and copies thereof are given to the learned counsel for the applicant and the learned PO.

7. I have duly considered the submissions advanced on behalf of the applicant, respondent authorities and the respondent no. 4. I have gone through the documents filed on record. Perusal of the impugned order demonstrates that the applicant has been transferred by invoking the provisions under sections 4(4) and 4(5) of the Transfer Act, 2005. Sections 4(4) and 4(5) read thus :-

***“4. Tenure of transfer. -***

(1) -----

(2) -----

(3)-----

(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 or 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.”*

8. It is true that in the order of transfer it may not be necessary to elaborately state the reasons for transfer. It further appears that the applicant has been transferred after approval of the competent authority. Nevertheless, the documents, which are thereon record apparently demonstrate that the allegation of the applicant that for accommodating respondent no. 4 she has been transferred from her existing post on deputation carries a substance. The documents on record show that vide order dated 1.8.2019 respondent No. 4 was given ad hoc promotion on the post of Executive Engineer and was

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deputed on the post of Executive Engineer, Municipal Corporation, Dhule. Respondent No. 4 did not join the said post. Thereafter on his request his earlier transfer order was modified and he was posted as Executive Engineer, P.W. Division, Sangamner. Thereafter, vide order dated 12.10.2022 respondent No. 4 was transferred to Dhule on the post of Executive Engineer, Municipal Corporation, Dhule. Few days thereafter vide the impugned order respondent No. 4 has been transferred to the post of Executive Engineer, P.W. Division, Dhule. From the aforesaid documents it can be discerned that in the year 2019 also respondent No. 4 had shown reluctance to resume the charge of the post of Executive Engineer, Municipal Corporation, Dhule though vide order dated 7.9.2019 he was transferred to the said post. At the relevant time, though respondent No. 4 did not resume at Municipal Corporation Dhule on his request he was transferred to Sangamner. Thereafter respondent No. 4 was again transferred on deputation to the post of Executive Engineer, Dhule Municipal Corporation, Dhule and within 2 ½ months he has been again transferred from the said post. Though it has been contended by learned Presenting Officer and the impugned order also contain the averments that the transfers of the applicant, as well as, respondent No. 4 are made in public interest and for administrative

reasons, there appears prima facie substance in the allegation made on behalf of applicant that she has been midterm transferred only with an object to accommodate respondent No. 4 on the said post. The applicant has thus, made out a prima facie case to consider her request for temporarily staying the effect and operation of the impugned order. The respondent no. 4 was transferred on deputation to the post of Executive Engineer, Municipal Corporation, Dhule vide order dated 12.10.2022. The previous order show that the transfer made vide order dated 1.8.2019 was modified on request of respondent no. 4 though he has refused to join to the post on which he was transferred vide the said order. It is also not in dispute that the applicant has not completed her normal tenure on the present post. The learned PO has expressed inability to make any further submission for want of instructions in that regard and has only relying on the text of the impugned order, which demonstrates that the transfer has been made on administrative grounds and in public interest.

9. It is the contention of the applicant that she has not yet handed over her charge. It is the contention of respondent no. 4 that he has taken over the charge of the said post and he has submitted certain documents

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on record in support of his said contention. The documents filed on record by respondent no. 4, however, do not contain any such document evidencing that the Chief Engineer, P.W.D., Nashik has permitted respondent no. 4 to take charge of the subject post unilaterally. The documents contain only a request letter by respondent no. 4 to the Chief Engineer. The learned Presenting Officer has not come out with any such statement that respondent no. 4 has taken over the charge of the subject post or that he has been permitted to unilaterally take the charge of the subject post. For the reasons stated above, I do find that the applicant has made out a prima-facie case. In the circumstances, I deem it appropriate to pass the following order :-

**ORDER**

1. Issue notice to respondents, returnable on 10.1.2023, **till then the implementation of the order of transfer dated 28.12.2022 shall stand temporarily stayed.**
2. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.
3. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper



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book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

4. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

5. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

**6. Learned Presenting Officer shall convey this order to the respondents.**

7. S.O. to 10.1.2023.

8. Steno copy and Hamdast is allowed to both parties.

**VICE CHAIRMAN**

ARJ ORAL ORDERS 29.12.2022

**ORIGINAL APPLICATION NO. 105 OF 2021  
(Smita Khandu Suryavanshi and Others Vs. State of  
Maharashtra & Ors.)**

**CORAM : Hon'ble Shri Justice P.R. Bora,  
Vice Chairman  
(VACATION COURT)**

**DATE : 29.12.2022**

**ORAL ORDER :**

Heard Shri C.V. Dharurkar, learned counsel appearing for the applicants and Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer appearing for the respondent authorities.

2. Learned counsel appearing for the applicants has tendered across the bar communication dated 27.12.2022 and the same is taken on record.

3. After having heard the learned counsel appearing for the applicants and learned Presenting Officer appearing for the respondents and after gone through the documents placed on record today by the learned counsel appearing for the applicants, it appears to me that the present matter can be heard in the regular course. However, I deem it appropriate to prepone the date of hearing from 18.1.2023 to 3.1.2023.

4. S.O. to 3.1.2023.

**VICE CHAIRMAN**

**M.A.NO. 582/2022 IN O.A.ST.NO. 3148/2022  
(Dr. Salim Gulab Shaikh & Ors. Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Shri Justice P.R. Bora,  
Vice Chairman  
(VACATION COURT)**

**DATE : 29.12.2022**

**ORAL ORDER :**

Heard Shri C.V. Dharurkar, learned counsel holding for Shri Ajay S. Deshpande, learned counsel appearing for the applicants and Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer appearing for the respondent authorities.

2. This is an application preferred by the applicants seeking leave to sue jointly.

3. For the reasons stated in the application, and since the cause and the prayers are identical and since the applicants have prayed for same relief, to avoid the multiplicity, leave to sue jointly granted, subject to payment of court fee stamps, if not paid.

4. Accompanying O.A. be registered and numbered, after removal of office objections, if any. The present M.A. stands disposed of accordingly without any order as to costs.

**VICE CHAIRMAN**

**ORIGINAL APPLICATION ST.NO. 3148 OF 2022  
(Dr. Salim Gulab Shaikh & Ors. Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Shri Justice P.R. Bora,  
Vice Chairman  
(VACATION COURT)**

**DATE : 29.12.2022**

**ORAL ORDER :**

Heard Shri C.V. Dharurkar, learned counsel holding for Shri Ajay S. Deshpande, learned counsel appearing for the applicants and Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer appearing for the respondent authorities.

2. Issue notice to respondents, returnable on 23.1.2023.

3. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.

4. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

6. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

7. S.O. to 23.1.2023.

8. Steno copy and Hamdast is allowed to both parties.

**VICE CHAIRMAN**

**ORIGINAL APPLICATION NO. 1160 OF 2022**  
**(Navnath S/o. Ashok Patwadkar Vs. State of Maha. & Ors.)**

**CORAM : Hon'ble Shri Justice P.R. Bora,**  
**Vice Chairman**  
**(VACATION COURT)**

**DATE : 29.12.2022**

**ORAL ORDER :**

Heard Shri Mohit R. Deshmukh, learned counsel appearing for the applicant and Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer appearing for the respondent authorities.

2. Though the learned counsel for the applicant has insisted for interim relief, thereby staying the effect and operation for the impugned order the said request is opposed by the learned Presenting Officer. Learned P.O. submits that the reasons for transfer of the applicant are sufficiently recorded in the order of transfer itself. In the circumstances, instead of granting interim relief the respondents be given an opportunity to file the affidavit in reply and the matter be heard finally. Learned Presenting Officer submits that within two weeks the affidavit in reply will be filed.

3. Learned counsel for the applicant submitted that the impugned order is per se vindictive and deserves to be stayed.

4. After having considered the submissions made on behalf of both the parties, it does not appear to me that the sufficiency of the reasons as are stated in the order of transfer can be considered at this stage. In the circumstances, the following order is passed.

**ORDER**

(i) Issue notice to respondents, returnable on 11.1.2023.

(ii) Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.

(iii) Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

(iv) This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

(v) The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

**(vi) The respondents shall file affidavit in reply on or before the next date as undertaken by them.**

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(vii) S.O. to 11.1.2023.

(viii) Steno copy and Hamdast is allowed to both parties.

**VICE CHAIRMAN**

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