

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 36 OF 2019

DIST. : NANDED

Dr. Sulbha Bapusaheb Mulay,)
Age. 52 years, Occ. Professor,)
R/o 29, Parwana Nagar, Canal Road,)
Bank Colony, Taroda Naka, Nanded,)
Tq. & Dist. Nanded.)--

APPLICANT

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
Higher and Technical Education)
Department, Mantralaya,)
Mumbai - 32.)
2. The Director of Higher and)
Technical Education,)
Maharashtra State, Pune,)
Central Building, Pune -1.)
3. The Principal,)
Government College of Education)
Nanded, Tq. & Dist. Nanded.)
4. The Principal,)
Government College of Bhandara,))
Bhandara, Tq. & Dist. Bhandara.)
5. Shri Vitthal Ghonshetwad)
Age. Major, Occu. Service,)
R/o C/o Government College of)
Education, Nanded,)
Tq. & Dist. Nanded.)--

RESPONDENTS

APPEARANCE :- Shri P.B. Salunke, learned Advocate
holding for Shri V.G. Salgare, learned
Advocate for the applicant.

: Smt. Deepali S. Deshpande, learned
Presenting Officer for the respondent nos. 1
to 4.

: Smt. Supriya Bhilegaonkar-Bharaswadkar,
learned Advocate for respondent no. 5.

CORAM : **JUSTICE A.H. JOSHI, CHAIRMAN.**
RESERVED ON : **24.6.2019.**
PRONOUNCED ON : **26.6.2019.**

J U D G M E N T

1. Heard Shri P.B. Salunke, learned Advocate holding for Shri V.G. Salgare, learned Advocate for the applicant, Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent nos. 1 to 4 and Smt. Supriya Bhilegaonkar-Bharaswadkar, learned Advocate for respondent no. 5.

2. Perused the record.

3. By issuing the impugned order dated 3.1.2019 the applicant is transferred from Nanded to Bhandara.

4. Text of impugned order reads thus :-

“आदेश

महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियम आणि शासकीय कर्तव्य पार पडतांना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील कलम ४(५) मध्ये विहित केलेल्या तरतूदीस अनुसरून उच्च शिक्षण संचालनालयाच्या अधिपत्याखालील शासकीय अध्यापक महाविद्यालयातील सहाय्यक प्राध्यापकांच्या खालील विवरणपत्रात दर्शविल्याप्रमाणे परिणामस्वरूपतः (Resultant) बदली करण्यात येत आहे.

अ. क्र.	सहाय्यक प्राध्यापकाचे नांव	विषय	सध्या कार्यरत असलेल महाविद्यालय/संस्था	बदलीचे ठिकाण	शेरा

१	श्रीम. निलिमा मोरे	विज्ञान	Perspective	शासकीय अध्यापक महाविद्यालय, अकोला	शासकीय अध्यापक महाविद्यालय, पनवेल	विनंती
२	श्री विठ्ठल घोनशेटवाड	गणित	Pedagogy	शासकीय अध्यापक महाविद्यालय, यवतमाळ	शासकीय अध्यापक महाविद्यालय, नांदेड	विनंती
३	श्रीम. सुलभा मुळे	गणित	Pedagogy	शासकीय अध्यापक महाविद्यालय, नांदेड	शासकीय अध्यापक महाविद्यालय, भंडारा	विनंती
४	श्रीम. हेमलता तुरणकर	गणित	Pedagogy	शासकीय अध्यापक महाविद्यालय, भंडारा	शासकीय अध्यापक महाविद्यालय, यवतमाळ	विनंती
५	श्रीम.सुनिता तोताडे	इंग्रजी	Pedagogy	शासकीय अध्यापक महाविद्यालय, परभणी	शासकीय अध्यापक महाविद्यालय, औरंगाबाद	विनंती
६	श्रीम. रोहिणी तडस	विज्ञान	Perspective	शासकीय अध्यापक महाविद्यालय, बुलढाणा	शासकीय अध्यापक महाविद्यालय, अकोला	विनंती
७	श्रीम. नूतन चव्हाण	भूगोल	Pedagogy	शासकीय अध्यापक महाविद्यालय, अकोला	शासकीय अध्यापक महाविद्यालय, बुलढाणा	विनंती

२. बदली झालेल्या सहाय्यक प्राध्यापकांनी बदलीच्या ठिकाणी तात्काळ रुजू व्हावे. सदर सहाय्यक प्राध्यापकांचा रुजू अहवाल संचालक, उच्चशिक्षण, महाराष्ट्र राज्य, पुणे यांनी शासनास सादर करावा.”

(quoted from page no. 19 of paper book of O.A.)

5. Transfer is challenged by applicant on various grounds.

Crucial grounds are averred in para Nos. 7, 9, 10 & 11. Relevant

text thereof reads thus :-

“7. The applicant says and submits that, the applicant is serving on the post of Assistant Professor and performing her duties honestly and sincerely under the respondent No. 3 College. That, not a single adverse remarks was / is communicated to the applicant in respect of her performance of work and in her

*confidential report till the filing of this O.A. But to the shock and surprise of the applicant the applicant is issued impugned transfer order on 3.1.2019 by the respondent no. 1 in the middle of the academic year transferring her services from the respondent No. 3 College to the respondent No. 4 College. The said impugned transfer order in the middle of the academic year mentioning totally erroneous ground of request for which the applicant never requested is totally contrary to the provisions under above said Act of 2005 in respect of transfers of Government servants and the said impugned order is also totally contrary to the policy of the respondent No. 1 in respect of couple benefit and the said midterm transfer order is also most inconvenient to the applicant. Copy of impugned transfer order dated 3.1.2019 of the applicant from the respondent No. 3 College to the respondent No. 4 College issued by respondent No. 1 is annexed herewith and marked as **EXHIBIT - A-1.***

9. *The applicant says and submits that, the Hon'ble High Court of Bombay in the case of Shankerrao Narayanrao Jadhav Vs. State of Maharashtra, considered the provisions of Section 3, 4 and 6 of the above said Act and made certain observations in respect of above said section. That, as per the observations of the Hon'ble High Court the Scheme of Section 4 of the Transfer Act envisages different form of transfers*

- (a) General Transfers or Normal Transfers.*
- (b) Mid Term Transfer*
- (c) Transfers on Account of Promotions.*
- (d) Transfers on request.*
- (e) Transfers on Administrative Exigencies.*

The Hon'ble High Court further observed that, the transfers on promotion, on request or on administrative Exigencies would be midterm transfers. That, in respect of the applicant the respondent no. 1 issued the impugned transfer order dated 3.1.2019 mentioning the reason on request which can be classified as midterm transfer. The fact is that, the reason mentioned in the said impugned order of transfer of the applicant is totally erroneous as the applicant never requested for her transfer from respondent No. 3 Government College of

*Education, Nanded to respondent No. 4 Government College of Bhandara. Therefore, the said impugned order on the erroneous ground of request in the middle of the academic year is totally contrary to the provisions under the above said Section 4 of the Act. That, in the impugned order the applicant was shown transferred to the respondent No. 4 College on request and one Shri Vithal Ghonsethwad teaching the subject of Mathematics, Pedagogy is transferred from Government College of Education, Yavatmal in place of the applicant. The said transfer of Shri Ghonsethwad from Yavatmal to Nanded and the transfer of the applicant from respondent No. 3 College Nanded to respondent No. 4 College Bhandara is shown on request in remark column of the said impugned transfer order. The applicant never requested for her transfer from respondent No. 3 College to respondent no. 4 College but it appears that, it is a mischief played by someone in the administrative hierarchy of the respondent No. 1 to 3. That, it is crystal clear that the husband of the applicant is serving as Administrative Officer under United India Insurance Company Ltd., at Nanded which is public undertaking company, her son is studying in 12th class and his annual examination is to be commenced in this month, the daughter of the applicant is studying at Pune in such of the situation the applicant seeking transfer from the respondent No. 3 to respondent No. 4 having distance more than 500 km. is quite impossible and no prudent man can believe that, in such of the situation the applicant can request for her transfer from respondent no. 3 to 4 in the middle of the academic year. Therefore, the very impugned order of transfer in the middle of the academic year on the false basis of request of the applicant is totally contrary to the provisions under the above said Act, contrary to the policy of the respondent No. 1 and 2 in respect of couple benefit and the norms of transfers under the said Act. That the said midterm transfer of the applicant is most inconvenient to the applicant, unjust and arbitrary. Therefore, the said impugned order on erroneous ground needs to be quashed and set aside in the interest of justice. Copies of I.D. of the husband of the applicant Shri Doiphode Gajanan Laxmikant, Hall Ticket of Exam of the son Master Tejas Gajanan and College I.D. of the Doctor Miss. Netra d/o Gajanan are annexed herewith marked as **EXHIBIT A-2 Colly.***

10. The applicant says and submits that, in the said transfer order it is mentioned that, the said impugned transfer order is issued U/s 4(5) of the said Act. That, as per the provisions of Sec. 4(5) it is provided that, 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 posts. The applicant submits that, it is true that, the applicant is long stayed at respondent No. 3 College. That, while issuing transfer order u/s 4(5) reasons for such transfers are to be recorded in writing and such transfers are to be effected with prior approval of the immediately superior transferring authority. That, if the said impugned order of transfer is perused no reasons for the midterm transfer of the applicant are recorded which are covered under Section 4(5). Therefore, the said impugned order of midterm transfer of the applicant cannot be covered under Section 4(5) of the said Act. Therefore, the said impugned order dated 3.1.2019 transferring the applicant in the middle of the academic year is unsustainable in view of the provisions under Section 4(5). The said impugned order in the middle of the academic year is most inconvenient to the applicant and is not sustainable under Section 4(5) of the said Act. Therefore, the applicant is requesting this Hon'ble Tribunal to quash and set aside the said impugned order of transfer dated 3.1.2019 in the interest of justice of the modify it as requested by the applicant in her representation after the issue of the said impugned order.

11. The applicant says and submits that, the said impugned transfer of the applicant dated 3.1.2019 is also not justifiable under Rule 4(4) proviso 2 also. That, under Rule 4(4) proviso it is provided that, where the competent authority is satisfied that, the transfer is essential due to exceptional circumstances of special reasons after recording the same in writing and with prior approval of the next higher authority. It is pertinent to note that, the impugned transfer of the applicant cannot be said for special reason or under special circumstances as there is no need of Assistant Professor of the subject Maths as there are two Assistant Professor having the subject of

Maths and more over all the posts of Assistant Professor already filled in. Therefore, too effect the transfer of the applicant has no specific reason but it amounts only to the harassment of the applicant and her family in the middle of the academic year. Therefore, the applicant is requesting either to quash and set aside the impugned order or to modify as requested by the applicant.”

(quoted from page nos. 4, 5, 8, 9 & 10 to 12 of paper book of O.A.)

6. Government's reply to applicant's pleadings reads thus :-

“8. With reference to para no. 7, I say and submit that the request of the Respondent No. 5 was considered by the Government to post the Respondent No. 5 at Nanded. Hence it was necessary to adjust the applicant to some other Government College of Education so that the Respondent No. 5 can get opportunity to get himself treated in hospital at Hyderabad. Therefore, the applicant was posted at Government College of Education, Bhandara, since that post has become vacant on account of transfer of the incumbent who was working at Bhandara. I say and submit that it would not be out of place to mention here that the applicant is working at Government College of Education, Nanded since 2001 and her stay at Nanded was more than 17 years.

10. With reference to para no. 9, I say and submit that it is true that the applicant has not requested to transfer her from the present post. It appears that the word 'request' written against her name in the transfer order is a typographical error. I express my regret in that respect. The applicant was teaching Mathematics (Pedagogy) and the Respondent No. 5 is also teaching Mathematics (Pedagogy). Therefore, they can be transferred in exchange of their posting without disturbing staffing pattern. It is submitted that Respondent No. 5 has requested for transfer in Government College at Nanded or Parbhani or Ambajogai vide an application dated 29.1.2018. Subsequently the Respondent No. 5 has restricted his request to Nanded and Parbhani after regular transfer period was over vide an application dated 11.6.2018. The Respondent No. 5 was pursuing the matter contending that he needs medical treatment at Hyderabad and these places are most convenient for him

to travel to Hyderabad. Therefore, the case of the applicant along with other was submitted to the Government for taking appropriate decision in regard to the request made by the applicant therein. The Government considered the request of Respondent No. 5 along with the request of other applicant and taken a conscious decision to transfer and posting Respondent No. 5 at Government College of Education, Nanded. At this place it is submitted and pointed out that the officials holding the posts of teacher at Ambajogai and Parbhani were not due for transfer since they were there on these posts from the year 2016 only. The applicant herein as stated above, was working at Government College of Education, Nanded for more than 17 years and therefore, it was necessary to accommodate her to some other place on administrative grounds so that Respondent No. 5 can be posted at Nanded. I further say and submit that considering medical health of the Respondent No. 5, the difficulties to be faces by the present applicant appear to be comparatively less. I further say and submit that the applicant and Respondent No. 5 are teaching the same education syllabus at their respective places and hence it can be easily accommodated at their respective places of transfer.

11. With reference to para no. 10, I say and submit that the contention of the applicant in this para is not accepted. The decision to transfer the Respondent No. 5 in place of the applicant was processed by the respondent in compliance to the requirement of law and after taking approval from the Government as per Section 4(5) of Maharashtra Government Servant Regulation of Transfer and Prevention in Discharge of Official Duties Act, 2005, the transfer order came be to issued. On this background I say and submit that the contention of the applicant that approval from higher authority is not taken does not hold good. I say and submit that if it is presumed, as contended by applicant herself that the transfer order impugned in its application is a midterm transfer order, then also compliance of Section 4(5) of the said Act has been made.

12. With reference to para no. 11, I say and submit that the facts and circumstances of the impugned transfer order as mentioned herein above justifies the transfer of

*Respondent no. 5 to Government College of Education,
Nanded on medical ground and no further qualification
needs to be attributed for the same.”*

(quoted from page nos. 42 to 44 of paper book of
O.A.)

7. Even the record is produced by the learned Presenting Officer.

8. Record reveals the following :-

(a) Applicant did not make any request for transfer. Therefore the narration / mention in the impugned order that the applicant is transferred on request is false.

(b) Record does not reveal even one word or one line reason revealing special reasons or exceptional circumstances necessitating the transfer of applicant.

9. The fact that applicant has been serving at Nanded for 17 years would be a good ground for periodic transfer, but not for midterm transfer, that when impugned order is passed on :-

- (a) On false assertion of request by applicant;
- (b) Without recording special reasons or exceptional circumstances for transferring applicant in mid of term;
- (c) Without recording satisfaction of higher authority for approving midterm transfer;
and
- (d) Admittedly for accommodating the Res. no. 5.

10. Hence the impugned order is patently violative of sec. 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 R.O.T. Act, 2005) and plethora of judgments of this Tribunal and those of Hon'ble High Court.

11. That due to non grant of stay, impugned order has been obeyed is of no effect for watering down the illegality. Hence the situation has to be reversed.

12. In the result the Original Application succeeds.

13. Hence the following order is passed :-

- (a) Impugned order is quashed as against applicant and the res. no. 5.
- (b) This order be complied within 15 days from today.
- (c) Learned Presenting Officer is directed to communicate this order to the concerned respondents.
- (d) Parties are directed to bear costs.

(A.H. JOSHI)
CHAIRMAN

Place : Aurangabad

Date : 26.6.2019.