

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 396 OF 2023

(Subject – Transfer)

DISTRICT : AURANGABAD

Mrs. Madhavi Shashikumar Harne (Kale),)
Age : 52 years, Occu. : Govt. Service as Asst.)
Professor , Mechanical Engineering Department,))
R/o : Home : A-8 Abhikrishna Visioncity,))
Kanchanwadi, Aurangabad-431136.) **APPLICANT**

V E R S U S

1. **State of Maharashtra,**)
Through the Secretary,)
Higher and Technical Department,)
Mantralaya, Mumbai- 32.)
2. **The Director,**)
Director of Higher & Technical Education,))
3, Mahapalika Marg, Post Box No. 1967,))
Opp. Metro Cinema, Mumbai-400 001.)
3. **The Asst. Director,**)
Technical Education Regional Office,)
Pribazar, Osmanpura, Aurangabad-431005.)
4. **The Principal,**)
Government Engineering College,)
Station Road, Osmanpura,)
Aurangabad-431005.)
5. **Abhijit Shaligram Kaushal,**)
Age : Major, Occu: Service,)
R/o; Govt. Engineering and Research)
College, Avasari, Dist. Pune.)
At present serving at Govt. Engineering)
College Aurangabad.) ... **RESPONDENTS**

APPEARANCE : Shri S.S. Shinde, Counsel for Applicant.

: Shri V.R. Bhumkar, Presenting Officer for
respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

RESERVED ON : 29.01.2024

DATE : 22.02.2024

ORDER

1. Heard Shri S.S. Shinde, learned counsel appearing for the applicant and Shri V.R. Bhumkar, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application is filed seeking quashment of order 30.05.2023, issued by respondent No. 1 thereby transferring the applicant without her request.

3. Brief facts giving rise to the Original Application are as follows :-

(i) The applicant is appointed through MPSC as Lecturer in Government Engineering College, Aurangabad by order dated 30.10.2003 and services of the applicant have been confirmed by order dated 16.08.2006 (Annexure A-1). The applicant has been twice promoted considering her performance and experience. The promotion order is marked as Annexure A-2.

(ii) It further case of the applicant that in the month of September, 2010, the applicant came to be transferred from Government Engineering College, Aurangabad to Government Engineering College, Jalgaon and again transferred to Government Engineering College, Aurangabad in July 2011. At present, she is working with the respondent No. 4 college as Assistant Professor. There are four Assistant Professors in queue for transfer, but instead of transferring them, respondent No. 1 has issued order of transfer of the applicant from respondent No. 4 college to Jalgaon District under the request transfer category. The applicant has not submitted any request application. The said transfer order is marked as Annexure A-3. Immediately on 31.05.2023, the applicant has submitted an application with the respondents requested therein to cancel her transfer on the ground that she has not made any request for transfer.

(iii) The applicant further contends that the respondent No. 5 and one Sayali Kulkarni have made joint application for mutual transfer and they are transferred against the place of each other. The in-charge Principal, respondent No. 4 has relieved the applicant abruptly in her absence and

got join the respondent No. 5. The applicant joined the transferred place at Jalgaon. Hence, the present Original Application.

4. Learned counsel for the applicant submits that the Station seniority of the applicant is at Sr. No. 5 and therefore, instead of transferring four senior Asst. Professors, the respondent No. 1 has issued the impugned order dated 30.05.2023, thereby transferring the applicant from Aurangabad to Jalgaon district. The applicant never submitted any request for her transfer from Aurangabad to Jalgaon District. Moreover, the husband of the applicant is working in private company at Aurangabad and the applicant has to take care of her mother and mother-in-law, as both are residing with her. They are suffering from old age diseases and mother of the applicant suffered paralysis and at present she is undergoing the treatment for the same. The applicant has lost her father and brother and there is nobody to look after her old helpless mother. Learned counsel submits that the action of respondent No. 1 transferring the applicant without her request is arbitrary. Further the applicant was relieved forcibly in her absence. Learned counsel submits that there is deliberate and mala-fide intention on part of the respondents. The employee at Sr. No. 6 has been transferred on request,

however, after knowing that she has not requested for transfer, she was not relieved. Learned counsel submits that the present Original Application deserves to be allowed and the order dated 30.05.2023 issued by respondent No. 1 is required to be quashed and set aside to the extent of the applicant.

5. Learned Presenting Officer based upon the affidavit in reply filed on behalf of respondent Nos. 1 to 4, submits that the applicant is serving in Aurangabad since July 2011 as specifically admitted by the applicant in the present Original Application. The applicant has completed her normal tenure at Aurangabad and serving in Aurangabad for more than 12 years. Learned Presenting Officer submits that in terms of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short “the Transfer Act 2005”), the applicant is liable to be transferred anywhere in the State of Maharashtra.

6. Learned Presenting Officer submits that by Corrigendum dated 27.09.2023, the Government has made it clear that the applicant came to be transferred not on her request, but on administrative grounds. Learned Presenting Officer submits that so far as station seniority aspect is

concerned, the same has been duly considered in the Civil Services Board meeting held on 25.05.2023. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

7. On careful consideration of pleadings, annexures and the submissions made on behalf of the parties by their learned counsel, I am of the opinion that the present Original Application is liable to be dismissed.

8. It cannot be ignored that the applicant has completed more than 11 years of service at Aurangabad and she was due for transfer. It is well settled that *'A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. The transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see State of U.P. v. Gobardhan Lal;*

(2004) 11 SCC 402].” (Rajendra Singh and others Vs. State of UP and others, (2009) 15 SCC 178).

9. Though in the impugned order dated 30.05.2023 it is mentioned that the applicant came to be transferred on her request, however Corrigendum dated 27.09.2023 is placed on record by learned Presenting Officer, wherein the Government has made it clear that the same shall be read as ‘on administrative grounds’. So far as the station seniority aspect is concerned, learned counsel for the applicant has pointed out that the applicant is at Sr. No. 4 in the station seniority list. On perusal of the minutes of the meeting of the Civil Service Board, it appears that the transfer of the applicant has been approved by the higher competent authority. Other three Assist. Professor, who are station senior to the applicant are considered not to be transferred on various grounds except Sayali Kulkarni, who came to be transferred mutually. 02 station senior Asst. Professors viz. Professor Shailesh Damodarrao Ambekar and Dr. Umesh Vishnu Hambire, were considered not to be transferred in terms of the recommendation of the department head and also on the other grounds including the administrative grounds.

10. Considering the entire aspect of the case and particularly the service period of the applicant with the

respondent No. 4 college at Aurangabad, I am not inclined to consider the present Original Application. Hence, the following order :-

ORDER

- (i) Original Application No. 396/2023 is hereby dismissed.
- (ii) In the circumstances, there shall be no order as to costs.
- (iii) O.A. stands disposed of accordingly.

PLACE : Aurangabad.

DATE : 22.02.2024

(Justice V.K. Jadhav)
Member (J)