

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.413/2018

DISTRICT: - AURANGABAD

Shri Rupesh s/o. Ramesh Madkar,
Age : 32 years, Occu. : Service as an Assistant
Professor, Shital Nagar, Shahanoormiya
Dargah, Dist. Aurangabad. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Technical & Higher Education Department,
Government of Maharashtra,
Mantralaya, Mumbai-32.
- 2) The Director of Higher Education,
3rd B. J. Road, Central Building,
Government of Maharashtra,
Dist. Pune-411001.
- 3) The Principal,
The Govt. College of Arts and Science,
Dist. Aurangabad.
- 4) Shri Ravindra Patil,
Age : Major, Occ: Service at
Professor at Rajaram College,
Kolhapur. ...RESPONDENTS

APPEARANCE :Dr. R.J.Godbole Advocate for Applicant.
:Shri M.S.Mahajan Chief Presenting Officer
for respondent nos.1 to 3.
:Shri A.C.Deshpande Advocate for
respondent no.4.

CORAM : B. P. Patil, Member (J)

DATE : 23rd August, 2018

J U D G M E N T
[Delivered on 23rd day of August 2018]

1. The applicant has challenged the order dated 12th June, 2018 issued by the respondent no.1 transferring him from Aurangabad to Kolhapur, by filing the present O.A.

2. The applicant is M.A. in History. He has passed SET and NET examinations and as such qualified to be appointed as an Assistant Professor. Accordingly, he was appointed as Assistant Professor by order dated 05-11-2015 in the Government College of Arts and Science at Aurangabad. Accordingly, he joined his posting at Aurangabad on 30-11-2015. He has not completed his tenure of 3 years as provided u/s.3 of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 ("Transfer Act" for short) at Aurangabad.

3. The applicant was not due for transfer but the respondent no.1 has issued the impugned order dated 12-06-2018 and transferred him from the Government Arts and Science College, Aurangabad to the Rajaram College,

Kolhapur. It is his contention that it is a mid-term and mid-tenure transfer and it is in violation of the provisions of the Transfer Act, 2005. It is his contention that the respondent no.4 has been transferred from the Rajaram College, Kolhapur to the Government Arts and Science College, Aurangabad by the impugned order. It is his contention that the respondent no.4 has been transferred to Aurangabad on request. To accommodate the respondent no.4, his transfer has been effected before completion of his normal tenure. It is his further contention that because of the mid-term transfer, his family will suffer and also irreparable loss will be caused to him. It is his further contention that his parents are old-aged and they are suffering from diseases. Because of his mid-term transfer, inconvenience will be caused to his family. Therefore, he has prayed to allow the O.A. by quashing the impugned order dated 12-06-2018.

4. Respondent nos.1 and 2 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant has been appointed as an Assistant Professor in the Government Arts and Science College, Aurangabad in the year 2015. It is their contention that the respondent no.4 is a handicapped

person. He made request with the respondent no.1 to transfer him from Kolhapur to Aurangabad. Considering his request he has been transferred to Aurangabad. Because of the transfer of the respondent no.4 there was vacancy at the Rajaram College, Kolhapur. To fill up the said vacancy, respondents effected transfer of the applicant in the interest of the students taking education in the Rajaram College, Kolhapur. It is their contention that after transfer of the respondent no.4 to Aurangabad, no Assistant Professor in History was available at Kolhapur. Therefore, the applicant has been transferred by the impugned order to protect the larger interest of the students studying in the Rajaram College, Kolhapur. It is their contention that the transfer of the applicant has been made in view of the provisions of Section S.4(5) of the Transfer Act, and there is no violation of any of the provisions of the transfer Act. Therefore, they have prayed to reject the O.A.

5. The respondent no.4 has filed his affidavit in reply and resisted the contentions of the applicant. It is his contention that he falls under the category of permanent disabled person. He was working as an Assistant Professor in the Rajaram College, Kolhapur since 01-04-2017. His

hometown is Jalgaon. His parents are old-aged and are suffering from Diabetes. They are residing at Jalgaon. Aurangabad is closer to Jalgaon, and therefore, it is convenient for him to take care of his old-aged parents residing at Jalgaon by serving at Aurangabad. Therefore, he has made request to the respondent authorities to transfer him from Kolhapur to Aurangabad by making representations dated 16-11-2017 and 24-01-2018. It is his contention that as per the Government policy, disabled or handicapped persons have to be given preference while considering their transfers. In view of the said policy, his request has been considered by the respondents and accordingly, he has been transferred from Kolhapur to Aurangabad by the impugned order dated 12-06-2018.

6. It is his contention that 2 posts of Assistant Professor in History are available at the Government Arts and Science College, Aurangabad. The applicant and one Smt. Bhavna Vivek Patole were serving as Assistant Professor in History in the Government College of Arts and Science, Aurangabad. The applicant was transferred to Kolhapur by the impugned order and Smt. Bhavna Patole has been transferred to Mumbai. In view of the impugned order, he has been relieved and he has joined his new posting at

Aurangabad. It is his contention that, at present, one post of Assistant Professor in History is vacant in the Government Arts and Science College, Aurangabad. It is his contention that even if the present application is allowed, the applicant can be accommodated on the vacant post at Aurangabad. It is his contention that the applicant has challenged his transfer to Kolhapur and not his transfer (respondent no.4). Therefore, he has prayed to dismiss the O.A.

7. Applicant has filed affidavit in rejoinder and contended that the Government issued a G.R. dated 28-04-2015 regulating the Revenue Division Allotment to the posts of Gazetted and Non-Gazetted Officers in Group-A and Group-B category. It is his contention that as per Rule 8(1) of the said Rules, a candidate freshly appointed in one Revenue Division shall be required to complete service of minimum 6 years in the allotted Revenue Division. It is his contention that he is appointed in Aurangabad Revenue Division on his selection by the Maharashtra Public Service Commission (MPSC), and therefore, he is required to be kept in Aurangabad Division for at least 6 years but the impugned order has been issued in contravention of the said Rules. Therefore,

the impugned order is liable to be quashed and set aside by allowing the O.A.

8. I have heard Dr. R.J.Godbole Advocate for Applicant, Shri M.S.Mahajan Chief Presenting Officer for respondent nos.1 to 3 and Shri A.C.Deshpande Advocate for respondent no.4. Perused documents produced on record by the parties.

9. Admittedly, the applicant is M.A. in History and he has cleared SET and NET Examinations. He was selected by the MPSC in the post of Assistant Professor and accordingly he was appointed as Assistant Professor in the Government College of Arts and Science, Aurangabad by order dated 05-11-2015. Accordingly, on 30-11-2015, he joined post of Assistant Professor in History in the Government College of Arts and Science, Aurangabad. He has not completed his normal tenure of 3 years as provided u/s.3 of the Transfer Act, 2005. He has hardly completed 2 years and 6 months at Aurangabad. Admittedly, by the impugned order, he has been transferred to the Rajaram College, Kolhapur. Admittedly, respondent no.4 has been transferred in the Government College of Arts and Science, Aurangabad by the impugned order. There is no dispute

about the fact that there are 2 posts of Assistant Professor in the Government College of Arts and Science, Aurangabad while there is 1 post of Assistant Professor in History in the Rajaram College, Kolhapur. Admittedly, the applicant as well as one Smt. Bhavna Patole were serving as Assistant Professor in History in Government College of Arts and Science, Aurangabad prior to the implementation of the impugned order and both have been transferred by the said order. Admittedly, respondent no.4 has been appointed as Assistant Professor in the Rajaram College, Kolhapur w.e.f. 01-04-2017. Admittedly, the respondent no.4 is a physically handicapped person. Admittedly, he made representations dated 16-11-2017 and 24-01-2018 with the respondents and requested to transfer him at Aurangabad. Admittedly, considering the request of the respondent no.4 he has been transferred to Aurangabad and because of the vacancy created due to his transfer, the applicant has been transferred to the Rajaram College, Kolhapur.

10. Learned Advocate for the applicant has submitted that the applicant has hardly completed 2 years and 6 months in his earlier post as an Assistant Professor in History in the Government College of Arts and Science, Aurangabad. He was not due for transfer. He had not

made any request for transfer. But he has been abruptly transferred by the respondent no.1 by the impugned order and that too in violation of the provisions of the Transfer Act. He has submitted that the transfer of the applicant has been made to accommodate the respondent no.4. He has submitted that the impugned order has caused inconvenience to the applicant and his family members.

11. Learned Advocate for applicant has further submitted that the impugned order is in contravention of the provisions of the Maharashtra Government Group-A and Group-B (Gazetted and Non-Gazetted) Officers appointed on Nomination or Promotion Revenue Division Allotment Rules, 2015. He has submitted that the applicant has been transferred out of the Aurangabad Revenue Division by the impugned order and he was not kept in the Revenue Division allotted to him for 6 years as provided in Rule 8(1) of the said Rules. He has submitted that the impugned order is arbitrary and illegal. Therefore, he has prayed to quash the impugned order by allowing the O.A. and to repost him at his earlier posting.

12. Learned P.O. has submitted that the respondent no.4 is a physically handicapped person. He was serving in the

Rajaram College, Kolhapur since the year 2017. He made request to the respondent no.1 to transfer him at Aurangabad on the ground of his physical disability. Respondent no.1 has considered the ground of his disability and on his request transferred him in the Government College of Arts and Science, Aurangabad by the impugned order. Because of the transfer of the respondent no.4, the post of Assistant Professor in History in the Rajaram College, Kolhapur became vacant. Therefore, in order to take care of the interests of the students studying in the Rajaram College, Kolhapur, the transfer of the applicant has been effected, and accordingly, the impugned order has been passed. He has submitted that the impugned order has been issued on administrative ground and it is as per the provisions of S.4(5) of the Transfer Act. He has submitted that the Civil Services Board has considered the said aspect and proposed the transfer of the applicant to Kolhapur though he was not due for transfer. Said proposal was approved by the Minister concerned and the Hon'ble the Chief Minister, who is the highest competent transferring authority. He has submitted that there is no illegality in the impugned order. Therefore, he has supported the said impugned order.

13. He has further submitted that the provisions of the Maharashtra Government Group-A and Group-B (Gazetted and Non-Gazetted) Officers appointed on Nomination or Promotion Revenue Division Allotment Rules, 2015 are not attracted in this case as the same have to be considered while allotment of the Revenue Division at the time of appointment. He has submitted that no allotment of Revenue Division has been made to the applicant and therefore the said Rules are not attracted in the present case. He has further submitted that in the State of Maharashtra there is only one Government College in each Revenue Division, and therefore, the said Rules cannot be followed so far as the transfer of the applicant, as the same are contrary to the provisions of Transfer Act, 2005. He has submitted that transfer of the applicant has been made in accordance with the provisions of S.4(5) of the Transfer Act, and there is no illegality in the same. Therefore, he has prayed to reject the O.A.

14. Respondent no.4 has submitted that the applicant is a physically handicapped person. He is a native of Jalgaon District. His old-aged parents are suffering from diabetes and are residing in Jalgaon. Therefore, he had made

representations with the respondents on 16-11-2017 and 24-01-2018 and requested to transfer him at Aurangabad. He has submitted that in view of the policy decision taken by the Government, case of the respondent no.4 has been considered and he has been transferred to Aurangabad as he is a physically handicapped/disabled person. He has submitted that the applicant has no grievance regarding the transfer of the respondent no.4 to Aurangabad and the applicant has not challenged the transfer of the respondent no.4. He has submitted that one more post of Assistant Professor in History is vacant in the Government College of Arts and Science, Aurangabad, and therefore, he has no objection if the applicant is accommodated in that post. Therefore, he has prayed to pass appropriate order.

15. On perusal of the record, it reveals that, the respondent no.4 had made requests with the respondents to transfer him at Aurangabad on the ground of his disability and on the ground of ill-health of his old-aged parents who reside at Jalgaon. Respondent no.1 considered his request and decided to transfer him from Kolhapur to Aurangabad. Accordingly, proposal was placed before the Civil Services Board. The Civil Services Board considered his request and decided to transfer him to

Aurangabad. Because of the transfer of the respondent no.4, post of Assistant Professor in History in the Rajaram College, Kolhapur became vacant. To fill up the said post, proposal regarding transfer of the applicant from Aurangabad to Kolhapur has been recommended by the Civil Services Board though the applicant was not due for transfer. Said proposal has been approved by the Hon'ble Minister concerned and also by Hon'ble the Chief Minister. Said documents show that the applicant was not due for transfer. There was no administrative exigency for transfer of the applicant. The impugned transfer was made only to accommodate the respondent no.4. No just and proper reasons have been recorded while proposing transfer of the applicant and while approving the same. Not only this but no special case has been made out for making transfer of the applicant from Aurangabad to Kolhapur before completion of his tenure and that too in the mid of the term. No special reasons are recorded in writing while making transfer of the applicant from Aurangabad to Kolhapur, though it is necessary for making transfer of the applicant in view of the provisions of S.4(5) of the Transfer Act, 2005.

16. It seems from the record produced by the respondents that the impugned transfer of the applicant has been made to facilitate and favour the respondent no.4. The impugned transfer is in violation of the provisions of the Transfer Act, 2005. It is arbitrary and therefore, the same is not sustainable in the eyes of law. Therefore, the impugned order is not maintainable and the same requires to be quashed by allowing the O.A.

17. In view of the abovesaid discussion, O.A. stands allowed. Impugned order dated 12-06-2018 transferring the applicant from the Government College of Arts and Science, Aurangabad to the Rajaram College, Kolhapur is hereby quashed and set aside.

18. Respondents are directed to repost the applicant at his earlier place in the post of Assistant Professor in History in the Government College of Arts and Science at Aurangabad immediately by issuing appropriate order. There shall be no order as to costs.

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad
Date : 23-08-2018.