

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 442 OF 2018
(Subject – Transfer)**

DISTRICT : LATUR

Shri Mohd. Samyoddin Shaikh,)
Age: 48 years, Occu. : Service,)
R/o : Bhagwan Galli, Nilanga,)
Tq. Nilanga, Dist. Latur.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai-32.)
- 2) **The District Collector,**)
Latur, Dist. Latur.)
- 3) **The Tahsildar,**)
Udgir, Tq. Udgir, Dist. Latur.)
- 4) **The Naib Tahsildar, (Supply)**)
Udgir, Tq. Udgir, Dist. Latur.)
- 5) **Shri S.T. Kumbhar Raje,**)
Head Clerk, Revenue Department,)
Sub Divisional Office, Nilanga,)
Tq. Nilanga, Dist. Latur.) .. **RESPONDENTS**

APPEARANCE : Shri U.P. Giri, Advocate for the Applicant.

: Shri M.P. Gude, Presenting Officer for the
Respondent Nos. 1 to 4.

: Shri Saiduram T. Raje, respondent No. 5 in
person.

CORAM : B.P. PATIL, MEMBER (J).

DATE : 21.02.2019.

ORDER

1. By filing the present Original Application, the applicant has challenged the order dated 31.05.2018 issued by the respondent No. 2 by which he has been transferred from the post of Awal Karkun/Head Clerk, Supply Department, Tahsil Office, Udgir to the post of Head Clerk (Revenue Department), Tahsil Office, Jalkot, Dist. Latur and prayed to quash and set aside the same.

2. The applicant has initially appointed as a Clerk on the establishment of respondent No. 2 on 10.07.1989 and since then, he had rendered service satisfactory without any complaint. On 09.10.2017, he has been promoted on the post of Awal Karkun (Head Clerk) by the respondent No. 2 and he has been posted in Tahsil Office, Supply Department, Udgir. Accordingly, he joined Tahsil Office, Udgir. After joining his promotional post, he requested the respondent Nos. 3 and 4 to allow him to join the post of Awal Karkun (Head Clerk), Tahsil Office, Supply Department, Udgir, but he was not allowed to take charge of the said post. The respondent Nos. 3 and 4 posted another Head Clerk on that post and they never allowed him to work on that post. On 31.05.2018, the respondent No. 2 has issued the impugned order and transferred the applicant from

the post of Awal Karkun/Head Clerk, Supply Department, Tahsil Office, Udgir to the post of Head Clerk (Revenue Department), Tahsil Office, Jalkot, Dist. Latur. It is his contention that he hardly worked for seven months in Tahsil Office, Udgir. He was not due for transfer, but the respondent No. 2 issued the impugned order illegally and transferred him. It is his contention that the respondent No. 5 has been posted at his place by the respondent No. 2 by the order dated 31.05.2018. It is his contention that the impugned order is in contraventions of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "the Transfer Act, 2005") and therefore, the same is illegal. Therefore, he prayed to quash and set aside the impugned order by allowing the present Original Application.

3. It is contention of the applicant that after issuance of the impugned order of transfer, he has made representation on 02.06.2018 with the respondent No. 2 and requested him to modify the impugned order dated 31.05.2018 and to repost him in Tahsil Office, Supply Department, Udgir on the post of Awal Karkun (EGS), but his request was not considered by the

respondents and his representation has not been decided by the respondent No. 2 till today.

4. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant has been initially appointed as Clerk and promoted on the post of Awal Karkun and he was posted in Tahsil Office, Udgir. They have not disputed the fact that the applicant has been transferred by the impugned order dated 31.05.2018 by the respondent No. 2 and he has been posted at Tahsil Office, Jalkot, Dist. Latur. It is their contention that the proposal regarding the transfer of the applicant from Udgir to Jalkot on administrative ground has been placed before the Civil Services Board in its meeting dated 25.05.2018. The Civil Services Board considered the proposal of the department and recommended to transfer the applicant on administrative ground and accordingly, the applicant has been transferred by the respondent No. 2 by the impugned order dated 31.05.2018.

5. It is contentions of the respondent Nos. 1 to 3 that the post of Awal Karkun in Employees Guarantee Scheme Department in Tahsil Office, Udgir has been filled up on 10.10.2018 and one Mr. Sayed Kausar Ali Azgar Ali was promoted and posted there. He joined the said post on

22.10.2018. As there is no vacancy in Tahsil Office, Udgir, no question of accommodating the applicant arises. It is their contention that the impugned order has been issued in view of the provisions of the Transfer Act, 2005 and there is no violation of any provisions of the Transfer Act, 2005. Therefore, they have supported the impugned order and prayed to dismiss the present Original Application.

6. The respondent No. 5 has filed his affidavit in reply and resisted the contentions of the applicant. He has submitted that he has filed an application for request transfer to the respondent No. 2 through the Sub Divisional Office, Nilanga. The S.D.O., Nilanga forwarded the said application to the Collector, Latur i.e. the respondent No. 2 on 19.04.2018 along with the necessary information. The Collector, Latur directed the respondent No. 5 to appear before the Additional Collector by the communication dated 23.05.2018. The respondent No. 5 and other employees appeared before the Additional Collector and thereafter, the respondent No. 2 passed the order dated 31.05.2018 and transferred him from S.D.O., Nilanga to Udgir on the vacant post of the applicant. He was relieved by the S.D.O., Nilanga on 04.07.2018 and thereafter, he was joined his new

post at Tahsil Office, Udgir on 05.07.2018. On these grounds, he has prayed to dismiss the present Original Application.

7. I have heard Shri U.P. Giri, learned Advocate for the applicant, Shri M.P. Gude, learned Presenting Officer for the respondent Nos. 1 to 4 and Shri Saiduram T. Raje, respondent No. 5 in person. I have perused the documents placed on record by all the parties.

8. Admittedly, the applicant had joined the service on the establishment of respondent No. 2 as Clerk on 10.07.1989. On 09.10.2017, he was promoted on the post of Awal Karkun and he was posted as Awal Karkun, Supply Department, Udgir on the vacant post of one Shri K.C. Patil, who retired on superannuation. Admittedly, the joined the promotional post on the basis of order dated 09.10.2017 and since then, he was serving there till issuance of the impugned order dated 31.05.2018. Admittedly, the applicant has hardly worked on the said post for a period of seven months and he has been transferred by the impugned order dated 31.05.2018 from Udgir to Jalkot. Admittedly the impugned transfer is mid-tenure transfer.

9. Learned Advocate for the applicant has submitted that the applicant was not due for transfer. He has not completed his normal tenure of posting at Udgir in view of the provisions of Section 3 of the Transfer Act 2005, but he has been abruptly transferred by the respondent No. 2 by the impugned order dated 31.05.2018 in violation of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. He has submitted that no reasons have been recorded for effecting the transfer of the applicant. He has submitted that no exceptional circumstances existed for his transfer. Not only this, but no special case has been made out by the respondent No. 2 while effecting the transfer of the applicant and therefore, his transfer is in gross violation of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005 and therefore, he has prayed to allow the present Original Application and to quash and set aside the impugned order dated 31.05.2018.

10. Learned Advocate for the applicant has further submitted that since the impugned order is not in accordance with the provisions of Section 4(5) of the Transfer Act 2005, it requires to be quashed and set aside. In support of his submissions he has place reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay, Bench at

Aurangabad in case of **Shriprakash Maruti Waghmare Vs. State of Maharashtra and Ors.** reported in **2010(1) ALL MR 176** decided on 16.10.2009, wherein reliance has been placed by the Hon'ble High court on the judgment in case of the **V.B. Gadekar Vs. Maharashtra Housing and Area Development Authority (MHADA) and another** reported in **2008 (1) ALL MR 45** when it is observed as follows:-

“7. Division Bench of this Court had an occasion to deal with what is exceptional circumstances and what are special circumstances as understood in the concept of service jurisprudence and is discussed in the judgment of **V.B.Gadekar versus Maharashtra Housing and Area Development Authority (MHADA) and another, reported in 2008(1) All M R 45.** The relevant observations in para no. 7 of the judgment read as follows :

“The expressions “exceptional circumstances” or “special circumstances” have to be readejusdem generis provided that transfer may be made any time in the year in question under the circumstances stated in those provisions. The expressions “exceptional circumstances” has been explained in Black’s Law Dictionary, Sixth Edition, as conditions which are out of the ordinary course of events, unusual or extraordinary circumstances. The Shorter Oxford English Dictionary on historical principles, Vol.1-A Markworthy explains the word “exceptional” of the nature of or forming an

exception, unusual. The discretion is vested in the authorities to make an exception of tenure of two and three years wherever special circumstances exist. Special circumstances should be understood in the concept of service jurisprudence and not in its literal sense. Conditions of service make transfer as a necessary incidence of service. The Rules give protection to an employee to stay at the place of posting for three years but this is subject to the exception that, where in the wisdom of the authority concerned, he should, for administrative and exceptional circumstances, even be transferred during that period. We do not see any fault in exercise of such power.”

11. Learned Presenting Officer has submitted that the applicant remained absent on duty without prior permission of the higher authority and he is flouting the orders of his superior office and therefore, notice has been issued to the applicant. Because of the conduct of the applicant, the work has been hampered and therefore, his proposal for transfer from Udgir has been placed before the Civil Services Board. The Civil Services Board considered the complaints and recommended the transfer of applicant from Udgir to Jalkot, as a special case. Accordingly, the reasons have been recorded by the Civil Services Board, while recommending the transfer of the applicant. On the basis of

recommendation of the Civil Services Board, the respondent No. 2, who is the competent authority decided to transfer the applicant before completion of his normal tenure of posing. He has submitted that there is sufficient compliance of the provisions of Section 4(5) of the Transfer Act 2005 and therefore, the impugned order is legal one. On these grounds, he supported the impugned order dated 31.05.2018.

12. On perusal of the record, it reveals that the applicant has been promoted as Awal Karkun, Supply Department, Udgir by the order dated 09.10.2017. He joined the post of Awal Karkun, Supply Department, Udgir accordingly. He has hardly completed seven months tenure on that post and before completion of his normal tenure, he was transfer by the impugned order dated 31.05.2018 by the respondent No. 2. The impugned order is mid-tenure transfer order.

13. The provision of Section 3 of the Transfer Act 2005 provides 'Tenure of Posting'. While provision of Section 4(1) of the Transfer Act 2005 provides that no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3. Sub Section 2 of Section 4 of the Transfer Act 2005 deals with the provisions regarding the preparation of the list every year in the month of January in

respect of the Government servants due for transfer, in the month of April and May in the year. Section 4(4) of the Transfer Act 2005 provides that transfers of the Government servants shall ordinarily be made only once in a year in the month of April or May. Proviso to Section 4(4) of the Transfer Act 2005 provides that, transfer may be made any time in the year in the circumstances mentioned in clause (i) and (ii) of it. While Sub Section 5 of Section 4 provides that the competent authority may in special case, after recording reasons in writing and with the prior approval of the immediately superior Transferring Authority mentioned in table of Section 6 of the Transfer Act 2005, transfer a Government servant before completion of his tenure of post.

14. The transfer of the applicant has been made before completion of his normal tenure of posting. The competent authority is empowered to make his transfer. In view of the provisions of Section 4(5) of the Transfer Act 2005, the competent authority should make out a special case and record reasons in writing. It is mandatory on the part of the competent authority to obtain prior approval of the immediately superior transferring authority for such transfer.

15. On perusal of the document produced on record by both the parties, it reveals that the proposal regarding the

transfer of the applicant on administrative ground has been placed before the Civil Services Board in its meeting dated 25.05.2018. On perusal of the chart prepared by the Civil Services Board, it shows that the Civil Services Board considered the complaints against the applicant and decided to transfer the applicant from Udgir. The documents produced by the respondents shows that a show cause notice has been issued to the applicant, as he remained absent from 13.04.2018 to 05.04.2018 without prior permission of the higher authorities. But there is nothing on record to show that any further action has been taken against the applicant. Not only this, but there is nothing on record to show that the applicant was flouting the orders of his superior authority. No special case for the transfer of the applicant has been made out by the respondent No. 2. Not only this, but no reasons in writing have been recorded by the respondent No. 2 while making the transfer of the applicant. It is also material to note that, while making mid-tenure transfer, the competent transferring authority has to obtain prior approval of the immediately superior Transferring Authority mentioned in Table of Section 6 of the Transfer Act 2005. But no such prior approval from the immediately superior Transferring Authority has been obtained by the respondent No. 2, who is the competent transferring authority as provided under section 4 (5) of the

Transfer Act 2005 for effecting the transfer of the applicant. Therefore, it amounts gross violation of the mandatory provisions of Section 4(5) of the Transfer Act 2005 by the respondent No. 2, while effecting the transfer of the applicant. The applicant's transfer is not in consonance with the provisions of Section 4(5) of the Transfer Act 2005 and therefore, it is not legal one.

16. I have gone through the above cited decision referred by the learned Advocate for the applicant. The principles laid down in the above cited decision in case of **V.B. Gadekar Vs. Maharashtra Housing and Area Development Authority (MHADA) and another** reported in **2008 (1) ALL MR 45**, as well as, in case of **Shriprakash Maruti Waghmare Vs. State of Maharashtra and Ors.** reported in **2010(1) ALL MR 176** are most appropriately applicable in the instant case. Therefore, in my view, the impugned order is in contravention of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005 and therefore, it requires to be quashed and set aside by allowing the present Original Application.

17. Considering the above said fact, it is crystal clear that the impugned order has been issued by the respondent No. 2 arbitrarily and maliciously without following the provisions of Section 4(5) of the Transfer Act 2005. The respondent No. 2 has

not followed the mandatory provisions as provided under Section 4(5) of the Transfer Act 2005 and therefore, it requires to be quashed and set aside by allowing the present Original Application. Resultantly, the Original Application deserves to be allowed.

18. In view of the discussions in the foregoing paragraphs, the Original Application stands allowed. The impugned order dated 31.05.2018 transferring the applicant from the post of Awal Karkun/Head Clerk, Supply Department, Tahsil Office, Udgir to the post of Head Clerk (Revenue Department), Tahsil Office, Jalkot Dist. Latur is hereby quashed and set aside. The respondent No. 2 is directed to repost the applicant at his earlier place of posting immediately. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 21.02.2019.

(B.P. PATIL)
MEMBER (J)