

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 664 OF 2019

DIST. : LATUR

Smt. Sultana Ekbal Naikwade,)
Age. 57 years, Occu. Service,)
R/o Room no. 151, Type-2, 278,)
Building No. 13, Govt. Colony,)
Barshi Road, Latur,)
Tq. & Dist. Latur.) -- APPLICANT

VERSUS

1. The State of Maharashtra,)
Through Secretary,)
Medical Education and)
Research Department,)
Mantralaya, Mumbai.)
2. Director,)
Medical Education and Research,)
Govt. Dental College & Hospital,)
4th floor, Saint George Hospital)
Compound, P. Dimolo Road,)
Fort, Mumbai, Mumbai – 01.)
3. Assistant Director (Vaidya),)
Medical Education and Research,)
Govt. Dental College & Hospital,)
4th floor, Saint George Hospital)
Compound, P. Dimolo Road,)
Fort, Mumbai, Mumbai – 01.)
4. Nursing Superintendent,)
Medical Education and Research,)
Mumbai, Saint George Hospital)
Compound, P. Dimolo Road, Fort,)
Mumbai, Mumbai – 01.)
5. Dean,)
Govt. Medical College and Hospital))
Latur.)
6. Dean,)

Swami Ramanand Tirth Rural)
 Govt. Medical College and Hospital)
 Ambajogai, Tq. Ambajogai,)
 Dist. Beed.)

7. Smt. Rajashri Janardhan Harangule,))
 Age. Major, Occu. Serving as a)
 Assistant Matron,)
 R/o Govt. Medical College and)
 Hospital, Latur, Tq. & Dist. Latur.) -- RESPONDENTS

 APPEARANCE :- Shri B.V. Thombre, learned Advocate for
 the applicant.
 : Shri D.R. Patil, learned Presenting Officer
 for the respondent nos. 1 to 6.
 : Shri A.D. Gadekar, learned Advocate for
 respondent no. 7.

CORAM : Hon'ble Shri B.P. Patil, Acting Chairman

RESERVED ON : 10th January, 2020

PRONOUNCED ON : 15th January, 2020

ORDER

1. The applicant has challenged the order dated 10.5.2018 passed by the respondent no. 2 to the extent of her transfer and posting from Latur to Ambajogai, Dist. Beed and the corrigendum dated 1.6.2018 issued by the respondent no. 3 thereby posting the respondent no. 7 at Latur on the post of Assistant Matron and prayed to declare that the applicant is entitled to claim transfer near her residence place i.e. at Latur and also prayed to direct the

respondent no. 2 to accommodate her at Latur on the post of Assistant Matron, by filing the present O.A.

2. The applicant is permanent resident of Latur. She is 57 years' old divorcee. She is physically handicapped with 43% permanent disability. As the applicant was eligible and qualified for the post of Staff Nurse, she was appointed on the post of Staff Nurse on 15.11.1983. Since she is handicapped and on the verge of retirement, in view of policy of the Government she ought to have been posted near her residence. It is her contention that the Government has issued the Circular dtd. 27.11.1997 giving guidelines for transfers of employees. It is her contention that she has been transferred from Ambajogai to Latur on her request by the order dtd. 11.1.2017. Accordingly, she joined at Latur on 6.4.2017. She has completed one year and one month at Latur. It is her contention that the Government issued the Circular dtd. 15.12.2004 for transfers of handicapped Government employees near their residence place.

3. It is contention of the applicant that the respondent no. 2 issued the order dtd. 10.5.2018 and promoted her on the post of Assistant Matron and posted her in the office of the respondent no. 6. It is her contention that in the said order it has been mentioned that she has been posted at Ambajogai on promotion,

but in fact she has been transferred from Latur to Ambajogai. The respondent no. 7 also has been promoted by the said order and she has been posted at Nanded. It is her contention that after her transfer from Latur she made representation to the respondent no. 2 on 11.5.2018 and requested to post her at Latur instead of Ambajogai. It is her contention that the post of Assistant Matron at Latur was going to be vacant as one Assistant Matron namely Smt. Subhadra Chintamani Dolas was going to retire on 31.5.2018. But the respondents had not considered her request and they had relived her from Latur on 16.5.2018.

4. It is contention of the applicant that the respondent no. 7 has served at Latur for 13 years. She has been promoted on the post of Assistant Matron and transferred and posted from Latur to Nanded by the order dtd. 10.5.2018. But she has been again posted at Latur by the corrigendum dtd. 1.6.2018 issued the respondent no. 3 illegally and without authority and without considering the representation of the applicant dtd. 11.5.2018. It is her contention that though she has been illegally transferred and posted at Ambajogai, immediately she joined on her new posting at Ambajogai. Respondents have not considered the provisions of the G.R. and the Circular issued by the Government

from time to time for extending her the benefit available for the handicapped persons.

5. It is her contention that as the respondents issued the impugned order dtd. 10.5.2018 illegally, she has filed complaint bearing U.L.P. no. 96/2018 before the Industrial Court, Latur and challenged the posting of respondent no. 7. She has filed the said complaint due to lack of legal knowledge, but thereafter she had withdrawn the same as it was not maintainable. Thereafter she filed the present O.A. It is her contention that the impugned order is illegal, in violation of the G.Rs. and Circulars issued by the Government from time to time and therefore she prayed to quash the impugned order to the extent of her transfer and posting from Latur to Ambajogai and the corrigendum dtd. 1.6.2018 issued by the respondent no. 3 thereby posting the respondent no. 7 at Latur.

6. Respondent nos. 1 to 5 have filed their affidavit in reply and resisted the contentions of the applicant. They have denied that the applicant has suffered permanent disability and therefore she is entitled to get the benefit of the G.Rs. and Circulars issued by the Government from time to time in that regard. It is their contention that no entry regarding disability of the applicant has been taken in her service book and therefore she is not entitled to

get the benefit thereof. Applicant was not appointed as a handicapped person. It is their contention that the certificate produced by the applicant shows that the said certificate cannot be used for court purposes. Applicant was promoted on the post of Assistant Matron and therefore she was posted at Ambajogai. The distance between Latur and Ambajogai is only 50 kms. There was no vacancy in the cadre of Assistant Matrons at Latur when the promotion order in respect of the applicant was issued. The applicant has been posted at Ambajogai on account of her promotion and it is not a transfer. It is their contention that there is no illegality in the impugned order. They have admitted the fact that the applicant has submitted representation on 11.5.2018 claiming posting at Latur on the post of Assistant Matron. It is their contention that the respondent no. 7 is senior to the applicant in the list of promotion. She has been promoted to the post of Assistant Matron and posted at Nanded. She has submitted representation stating her family problems and requested to post her at Latur on promotion. Her representation has been considered sympathetically and thereafter the respondents issued the Corrigendum dtd. 1.6.2018 to the promotion order dtd. 10.5.2018 and posted the respondent no.7 at Latur on the post of Assistant Matron. There is no illegality in the

impugned orders. Therefore they supported the impugned orders and prayed to dismiss the O.A.

7. Respondent no. 7 has filed her affidavit in reply and resisted the contentions of the applicant. It is her contention that as per the order dtd. 10.5.2018 the applicant has been promoted and posted as a assistant Matron at Ambajogai. The respondent no. 7 has also been promoted on the post of Assistant Matron and posted at Nanded. It is not a transfer order. It is her contention that the applicant has filed complaint bearing U.L.P. no. 96/2018 before the Industrial Court, Latur and challenged the posting of respondent no. 7. But as the Industrial Court has no jurisdiction to entertain the said complaint, the applicant has withdrawn the said complaint.

8. It is her contention that in the year 2008 the applicant filed complaint bearing U.L.P. no. 68/2008 before the Industrial Court, Latur and sought the benefits of promotion and other facilities on the basis of the handicapped certificate dtd. 6.9.2007. But the said complaint was dismissed by the Industrial Court on 23.8.2010 holding that the applicant was not eligible to get the benefits available to the physically handicapped persons. It is contention of respondent no. 7 that the applicant challenged the said order before the Hon'ble High Court of Judicature at Bombay,

Bench at Aurangabad by filing the writ petition no. 9949/2010. But the Hon'ble High Court dismissed the said writ petition by the order dtd. 8.2.2011, holding that the applicant is not eligible to get the benefit available to physically handicapped candidates. It is her contention that the Government Circulars dtd. 27.11.1997 and 7.2.1998 on which the applicant has placed reliance are not applicable to her. The transfers and postings of Government servants are governed by the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005). Applicant has been transferred from Latur to Ambajogai on account of promotion and therefore she cannot claim posting at the place of her choice.

9. It is her contention that on 10.5.2018 she was on leave. After knowing about her promotion order she made representation to the respondent no. 2 on 14.5.2018 pointing out her personal problems. It is her contention that she is a widow and she has to look after her old mother-in-law and mother. Therefore she requested the respondents to post her at Latur. Considering her problems the respondents issued the corrigendum dtd. 1.6.2018 and posted her at Latur on promotion. It is her contention that

there is no illegality in the said order and therefore she supported the impugned order dtd. 1.6.2018 and prayed to reject the O.A.

10. Applicant filed rejoinder to the affidavit in replies of respondent nos. 1 to 5 and 7 and reiterated her contentions raised in the O.A. It is her contention that she availed the benefit under Income Tax Act on the basis of disability certificate. The said certificate is issued by the competent authority and it is therefore legal and therefore she is entitled to get benefits available to the disabled employees.

11. I have heard the arguments advanced by Shri B.V. Thombre, learned Advocate for the applicant, Shri D.R. Patil, learned Presenting Officer for the respondent nos. 1 to 6 and Shri A.D. Gadekar, learned Advocate for respondent no. 7. I have also gone through the documents placed on record.

12. Admittedly the applicant was appointed as a Staff Nurse on the establishment of Government Medical College & Hospital, Latur on 15.11.1983. Admittedly she has been transferred to Ambajogai and by the order dtd. 11.1.2017 she has been transferred to Latur on her request. Accordingly she joined at Latur on 6.4.2017. She served at Latur for about one year and one month. There is no dispute about the fact that by the order

dtd. 10.5.2018 the applicant and other employees have been promoted in the cadre of Assistant Matrons. Applicant has been transferred and posted at Ambajogai on promotion by the said order, whereas the respondent no. 7 has also been promoted to the post of Assistant Matron and posted at Nanded. Admittedly the respondents issued the corrigendum to the impugned promotion order dtd. 10.5.2018 on 1.6.2018 and modified the posting of respondent no. 7 and posted her at Latur instead of Nanded on the promotional post. Admittedly the applicant is resident of Latur and she served at Latur since beginning except for few months at Ambajogai. Admittedly, the applicant filed complaint bearing U.L.P. no. 68/2008 before the Industrial Court, Latur and sought the benefits of promotion and other facilities on the basis of the handicapped certificate dtd. 6.9.2007. Her complaint came to be dismissed by the Industrial Court on 23.8.2010. The applicant challenged the said order before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing the writ petition no. 9949/2010. But the Hon'ble High Court dismissed the said writ petition by the order dtd. 8.2.2011 holding that the applicant was not eligible to get the benefits available to physically handicapped employees.

13. Learned Advocate for the applicant has submitted that the applicant is a physically disabled person and she suffered 43% permanent disability. In view of the provisions of the G.R. 15.12.2004 the applicant is entitled to get transfer near her place of residence. The Government took the said decision in the interest and benefit of handicapped / disabled employees. He has argued that while issuing the promotion order dtd. 10.5.2018 the respondents had not considered the G.Rs. and Circulars in that regard and posted the applicant at Ambajogai. Posting of the applicant at Ambajogai is inconvenient for her and therefore he prayed to quash the impugned order to the extent of her transfer and posting from Latur to Ambajogai.

14. It is contention of learned Advocate for the applicant that the respondent no. 7 has also been promoted and posted on the post of Assistant Matron by the impugned order dtd. 10.5.2018. The respondent no. 7 was posted at Nanded. He has submitted that the respondent no. 7 made a representation to the respondents and got the modified posting order from Nanded to Latur. He has submitted that the respondent no. 2 issued the corrigendum dtd. 1.6.2018 and posted the respondent no. 7 at Latur. He has submitted that the respondents have not considered the representation made by the applicant on 11.5.2018. It is

contention that they ought to have considered the case of the applicant sympathetically and posted her at Latur. But they arbitrarily issued the corrigendum dtd. 1.6.2018 posting the respondent no. 7 at Latur instead of the applicant and therefore he prayed to quash the impugned order.

15. Learned Presenting Officer has submitted that the applicant is not a physically disabled person. She suffered some disability but it does not fall under permanent disability. The disability certificate is not registered in the service book of the applicant for getting the benefit of the G.Rs. and Circulars issued by the Government from time and therefore she cannot claim benefit in that regard. Applicant produced certificate showing disability for getting benefit and concession in taxes i.e. Profess Tax and Income Tax. It is his contention that the handicapped certificate dtd. 6.9.2007 cannot be used for getting the concession as in the footnote of the said certificate it has been mentioned that it cannot be used for the court case purposes. The said certificate has not been issued under the provisions of the Disability Act and therefore it cannot be relied on. Applicant and the respondent no. 7 have been promoted to the post of Assistant Matron and considering the vacancies in the cadre of Assistant Matrons the postings have been given to them. Considering the disability of

the applicant she has been posted at Ambajogai, which is 50 kms away from Latur and it is convenient for her. Respondent no. 7 has been posted at Nanded on promotion by the impugned order, but she made representation and requested to post her at Latur on her personal problems. Respondents considered her personal problems and issued the corrigendum dtd. 1.6.2018 and modified the posting of the respondent no. 7 and posted her at Latur instead of Nanded. Applicant has not raised sufficient grounds for posting her at Latur. He has argued that no post in the cadre of Assistant Matrons at Latur was available at the time of promotion of the applicant and therefore she has not been posted at Latur. Respondents had issued the impugned order considering the administrative exigency and there is no illegality in it. Therefore, he justified the impugned order and prayed to reject the O.A.

16. On perusal of documents it reveals that in the year 2017 the applicant was serving at Ambajogai. She has been transferred from Ambajogai on request and accordingly she has been relieved from Ambajogai on 1.4.2017. She joined her post at Latur on 6.4.2017. By the order dtd. 10.5.2018 the applicant, the respondent no. 7 and others have been promoted on the post of Assistant Matron and the applicant has been posted at Ambajogai, while the respondent no. 7 has been posted at Nanded. Applicant

has been relieved accordingly from the post at Latur and thereafter she has been joined on the promotional post at Ambajogai. Respondent no. 7 made a representation and requested to give posting on the promotional post at Latur due to her personal problems. Respondents considered her personal problems and issued the corrigendum dtd. 1.6.2018 and modified the posting of the respondent no. 7 and posted her at Latur instead of Nanded. Applicant is claiming benefit available to the physically handicapped persons. She has produced the handicapped certificate dated 6.9.2007, wherein it has been mentioned that it cannot be used for court purposes. The said handicapped certificate has not been issued as per the provisions of the G.R.. Not only this, but in the year 2008 the applicant filed complaint bearing U.L.P. no. 68/2008 before the Industrial Court, Latur and sought the benefits of promotion and other facilities on the basis of the handicapped certificate dtd. 6.9.2007. But the Industrial Court dismissed the said complaint on 23.8.2010 holding that the applicant was not eligible to get the benefits available to the physically handicapped persons. The applicant challenged the said order before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing the writ petition no. 9949/2010. The Hon'ble High Court has also not relied on the said handicapped certificate and dismissed the said

writ petition by the order dtd. 8.2.2011 holding that the applicant is not eligible to get the benefits available to physically handicapped persons. Applicant is relying on the said certificate for claiming benefits of the G.Rs. and Circulars issued by the Government from time to time for the benefit and in the interest of physically handicapped employees. Applicant has relied on the said certificate for getting benefit under the Income Tax Act and for getting concession in payment of Professional Tax. No entry regarding disability has been recorded in the service book of the applicant. But the G.Rs. and Circulars issued by the Government from time to time for the benefits of the disabled persons. Respondents while making the posting of the applicant on promotion had considered the said fact and posted her near to Latur. The distance between Latur and Ambajogai is only 50 kms. Therefore, in my view it cannot be said that due to said posting inconvenience is caused to the applicant. On the contrary, the respondent no. 7 has been promoted and posted at Nanded, which is far away from Latur. Considering her family problems the respondents modified the said promotion order and posted the respondent no. 7 at Latur by issuing the corrigendum dated 1.6.2018. There is no illegality in the said order. Therefore, no interference in the impugned order is called for.

17. Impugned orders have been issued on account of promotion of the applicant and the respondent no. 7. Therefore the provisions of the Transfer Act, 2005 are not attracted. Considering the vacancies available at the particular places and on account of administrative exigencies the respondents posted the applicant at Ambajogai at the time of issuing the promotion order. No post of Assistant Matron was vacant at Latur at the time of issuance of impugned order and therefore the respondents had not posted the applicant at Latur. Therefore, there is no illegality in the impugned order. Hence, in my view, no interference is called for in the impugned orders. Therefore, in my view, no interference is called for in the impugned orders. There is no merit in the O.A. Consequently it deserves to be dismissed.

18. In view of the discussion in foregoing paragraphs, the present O.A. stands dismissed. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 15th January, 2020