

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON JUDGMENT IN O.A. NOS. 730 AND 733/2019

01. ORIGINAL APPLICATION NO. 730 OF 2019

DISTRICT : HINGOLI

Ejaz Salim Shaikh
Age: 31 years, Occu: Service as
Police Shipai at Old S.P. Office,
Hingoli, Tq. and Dist. Hingoli.

.. APPLICANT.

V E R S U S

1) The Superintendent of Police,
Hingoli.

.. RESPONDENT

A N D

02. ORIGINAL APPLICATION NO. 733 OF 2019

DISTRICT : HINGOLI

Sainath Bhumamma Anmod
Age: 30 years, Occu: Service
(as Police Sub Inspector,
at BDDS, Hingoli),
R/o. Hingoli.

.. APPLICANT.

V E R S U S

1) The State of Maharashtra,
Through its Secretary,
Home Department, M.S.,
Mantralaya, Mumbai – 32.

2) The Superintendent of Police,
Hingoli.

.. RESPONDENT

APPEARANCE :- Shri V.B. Wagh, learned Advocate for the
applicant in O.A. no. 730/2019.
: Shri V.A. Bagadiya, learned Advocate for
the applicant in O.A. no. 733/2019.
: Smt. Priya R. Bharaswadkar, learned
Presenting Officer for the respondents in
both the matters.

CORAM : **Hon'ble Shri B.P. Patil, Vice Chairman**
DATE : **14.9.2020**

O R A L - O R D E R

1. Both the Original Applications have been decided by the common order as most of the facts and the issues involved in both the O.As. are similar and identical.

2. The applicant in O.A. no. 730/2019 viz. Shri Ejaz Salim Shaikh was initially appointed as a Police Shipai by the order dated 17.10.2008 and posted at Head Quarter, Hingoli. He worked at various places. On 5.6.2018 the applicant has filed an application to the respondents and requested to post him in B.D.D.S. Branch, Hingoli. It is his contention that his request was considered by the respondents and accordingly he was posted from Police Head Quarter, Hingoli to B.D.D.S. Branch, Hingoli by the order dated 5.6.2018. Accordingly he was relieved from the Police Headquarter, Hingoli on 5.6.2018 and he immediately joined in B.D.D.S. Branch, Hingoli on the same day and since then he was working there. The applicant has completed the required training. It is his contention that after completion of the training the applicant was entitled for the special remuneration to the extent of 50% of Basic Pay and Grade pay. Accordingly the

applicant made a request to the respondents to grant him the said 50% remuneration by his application dated 2.7.2018. It is his contention that in view of the provisions of the G.R. dated 6.4.1998 the respondents has granted him 50% special pay by the order dated 18.7.2018. It is contention of the applicant that he has obtained the housing loan and he is paying the installments regularly.

3. It is contention of the applicant that the Home Department (special) vide its G.R. dated 23.5.1994 had formed the Detection and Disposal of Explosive Items Squad and sanctioned total 15 posts for Hingoli District. It is his contention that he has fulfilled the required criteria mentioned in the said G.R. and therefore he has been appointed in B.D.D.S., Hingoli. It is his contention that by the impugned order dated 8.8.2019 the respondents transferred him from B.D.D.S., Hingoli to Police Head Quarter, Hingoli. It is his contention that the impugned order has been issued by the respondents in violation of the provisions of the Maharashtra Police Act. The Police Establishment Board at District level as provided under section 22-J-1-(2) has not been constituted while issuing the impugned order and therefore it is illegal and against the provisions of Maharashtra Police Act.

Therefore, he prayed to quash the impugned order by allowing the present O.A.

4. The applicant in O.A. no. 733/2019 viz. Shri Sainath Bhumamma Anmod was appointed in October, 2012 from reserved category of S.T. as a Police Sub Inspector. Thereafter he was working at the Aundha Nagnath Police Station. He has been transferred to B.D.D.S., Hingoli on administrative ground by the order dated 26.6.2018. Accordingly he was relieved from Aundha Nagnath Police Station on 26.6.2018. Thereafter he joined on the said post at B.D.D.S., Hingoli and started discharging his duties. He had hardly completed the tenure of 14 months on the post at B.D.D.S., Hingoli. He was not due for transfer in view of the provisions of section 22-N of the Maharashtra Police Act. He has not completed his normal tenure of posting at B.D.D.S., Hingoli. But the respondent no. 2 issued the impugned order and transferred him from B.D.D.S., Hingoli, to Police Station, Hingoli Town. It is his contention that the impugned order is in violation of the provisions of the Maharashtra Police Act. The Police Establishment Board at District level as provided under the provisions of Maharashtra Police Act has not been constituted. Therefore he has challenged the impugned order by filing the present O.A.

5. The respondent no. 1 in O.A. no. 730/2019 and the respondent no. 2 in O.A. no. 733/2019 i.e. the Superintendent of Police, Hingoli has filed his affidavit in reply and resisted the contentions of the applicants. He has not disputed the fact that both the applicants have been appointed in B.D.D.S., Hingoli and they have been transferred by the impugned orders. He has not disputed the fact regarding formation of B.D.D.S. at Hingoli. It is his contention that as per the G.R. dated 15.7.2011 total sanctioned strength for B.D.D.S., Hingoli was 15 posts. It is his further contention that total 15 sanctioned posts consist of 2 posts of Police Sub Inspectors, 1 post of Police Head Constable, 5 Posts of Police Constables, 3 posts of Drivers and 4 posts of Dog handlers. It is his contention that 2 excess Police Constables were appointed than the sanctioned strength in B.D.D.S., Hingoli. Due to filling of 2 excess posts of Police Constables in B.D.D.S., Hingoli, the Government was required to pay excess special remuneration to the said Police Constables to the extent of 50% of basic and grade pay. Therefore the matter was placed before the Police Establishment Board at District level and it was decided to transfer Shri Ejaz Salim Shaikh the applicant in O.A. no.730/2019 from B.D.D.S., Hingoli to Police Head Quarter, Hingoli as he was surplus Police Constable in B.D.D.S., Hingoli.

Accordingly Shri Ejaz Salim Shaikh the applicant in O.A. no. 730/2019 was relieved on 20.8.2019. It is his contention that the transfer of Shri Ejaz Salim Shaikh the applicant in O.A. no.730/2019 from B.D.D.S., Hingoli to Police Head Quarter, Hingoli is in accordance with the provisions of the Maharashtra Police Act.

6. It is contention of the Superintendent of Police, Hingoli the respondent no. 2 in O.A. no. 733/2019 that B.D.D.S. is very important as well as sensitive branch amongst other branches of the Police Department. Therefore the employees working in this branch has a bounden duty to remain present at each and every time and to behave sincerely. It is also the duty of the employee working in B.D.D.S. to visit the religious places, fairs, railway stations, dams and protect them. It is the responsibility of the employees who are working in B.D.D.S. to take care as well as give security to the V.I.P. / V.V.I.P. persons who visit the District. He has not disputed the fact that Shri Sainath B. Anmod the applicant in O.A. no. 733/2019 had completed 14 months tenure in B.D.D.S., Hingoli and he has been transferred by the impugned order. It is his contention that several complaints have been received from the employees of the B.D.D.S., Hingoli against the applicant Shri Sainath B. Anmod such as one default report has

been filed by the applicant dated 27.7.2019, one complaint has been filed by H/C Balaji Jadhav dated 29.7.2019, A default report dated 3.8.2019 has been filed by the applicant against H/C Balaji Jadhav, one more default report dated 7.8.2019 has been filed by the applicant against N.P.C. Manik Dukre etc. On the basis of the said complaints he has issued a letter dated 4.9.2019 to the Home Deputy Superintendent of Police for making enquiry and submitting the report in that regard after due enquiry. Police Head Constable Shri Balaji Jadhav has also filed a complaint dated 29.7.2019 against the applicant alleging that the applicant is in-charge of B.D.D.S., Hingoli since July, 2018 and is working as per his own whims. He has further alleged that the applicant was issuing the orders through whatsapp instead of attending the office. He has further alleged in his complaint that the applicant used to pressurize him as well as the other employees in B.D.D.S. for filling default reports against one-another and was mentally torturing them. He has further alleged that the charge of taking care of the equipments of B.D.D.S. worth Rs. 2 crore has been kept with him. But the applicant was deputing him at other places. It is contention of the respondent no. 2 the Superintendent of Police, Hingoli that in order to enquire into the complaints the Police Establishment Board called the meeting on 8.8.2019 and in the said meeting it was decided to transfer Shri Sainath B. Anmod

the applicant in O.A. no. 733/2019 as in the enquiry it was found that the employees working in the office were playing cards in the office and the applicant was also involved therein. Therefore the impugned transfer order has been issued. The impugned order has been issued in view of the provisions of the Maharashtra Police Act and because of the irresponsible behavior of the applicant. Therefore he prayed to dismiss the O.A. no. 733/2019.

7. Shri Ejaz Salim Shaikh the applicant in O.A. no. 730/2019 has filed rejoinder and resisted the contentions of the respondents. The respondent no. 1 has also filed sur-rejoinder and repeated the contentions already raised in the affidavit in reply.

8. Shri Sainath B. Anmod the applicant in O.A. no. 733/2019 has filed rejoinder and resisted the contentions of the respondents. The respondent no. 2 has also filed sur-rejoinder and repeated the contentions already raised in the affidavit in reply.

9. I have heard the arguments advanced by Shri V.B. Wagh, learned Advocate for the applicant in O.A. no. 730/2019, Shri V. A. Bagadiya, learned Advocate for the applicant in O.A. no. 733/2019 and Smt. Priya R. Bharaswadkar, learned Presenting

Officer for the respondents in both the matters. I have also gone through the documents placed on record.

10. Admittedly both the applicants were appointed in B.D.D.S., Hingoli in the month of June, 2018 and since then they were working there. Admittedly both the applicants have not completed their normal tenure of posting in B.D.D.S., Hingoli, but they have been transferred from B.D.D.S., Hingoli to the Police Head Quarter, Hingoli by the impugned orders dated 8.8.2019 and the Police Establishment Board at District level decided to transfer both the applicants from B.D.D.S., Hingoli.

11. Learned Advocates for the applicants have argued that both the applicants have not completed their normal tenure of posting at B.D.D.S., Hingoli. They have only completed 14 months tenure in B.D.D.S. But they have been transferred by the impugned orders before completion of their normal tenure of posting. The Police Establishment Board at District level has not been duly constituted in view of the provisions of section 22-J-1(2). Therefore the impugned transfer order is illegal.

12. Shri Wagh, learned Advocate for the applicant in O.A. no. 730/2019 has submitted that total 15 posts have been sanctioned in B.D.D.S., Hingoli. However, no post of Naik has been

sanctioned in B.D.D.S., Hingoli and 5 posts of Police Constables have been sanctioned. He has submitted that on the date of the impugned transfer only 3 Constables including the applicant were serving at B.D.D.S., Hingoli. Therefore, it cannot be said that Shri Ejaz Salim Shaikh the applicant in O.A. no. 730/2019 was surplus employee than the sanctioned strength in B.D.D.S. Therefore the reason given by the Police Establishment Board at District level for making the transfer of the applicant Shri Ejaz Salim Shaikh is illegal.

13 Shri Bagadiya, learned Advocate for Shri Sainath B. Anmod the applicant in O.A. no. 733/2019 has submitted that the Police Establishment Board at District level has not been duly constituted in view of the provisions of section 22-J-1(2) and therefore the impugned transfer issued by the S.P., Hingoli is illegal. Therefore he prayed to quash and set aside the impugned order by allowing the O.A. 733/2019.

14. Learned P.O. has submitted that Shri Ejaz Salim Shaikh the applicant in O.A. no. 730/2919 has been transferred as excess Police personals have been appointed in B.D.D.S., Hingoly than the sanctioned strength. The Police Establishment Board at District level has considered the said aspect and decided to transfer the applicant Shri Ejaz Salim Shaikh. Therefore she has

supported the impugned transfer of the applicant in O.A. no. 730/2019.

15. Learned P.O. has further submitted that Shri Sainath B. Anmod the applicant in O.A. no. 733/2019 was not behaving properly and his behavior was not befitting to the Police officer and therefore he has been transferred from B.D.D.S., Hingoli. She has submitted that the Police Establishment Board at District level was duly constituted by the order of the Superintendent of Police, Hingoli. She has further submitted that the Police Establishment Board comprised of the Superintendent of Police, Hingoli as a Chairperson, the Additional Superintendent of Police, Hingoli as a Member and S.D.P.O., Hingoli City as a Member Secretary. She has submitted that as per the provisions of section 22-J-1(2) the Deputy S.P. of Police (Head Quarter) was one of the Member i.e. Member-Secretary. But on that day the then Deputy Superintendent of Police (Head Quarter) was not available and therefore his charge was kept with one P.I. Therefore in absence of the Deputy Superintendent of Police (Head Quarter), the S.D.P.O. (City) Hingoli was included as a Member of the Board. They have submitted that the Police Establishment Board was duly constituted in accordance with the provisions of section 22-

J-1(2) and therefore the impugned order is legal one. Therefore, the learned P.O. justified the impugned order.

16. On going through the record it reveals that both the applicants have not completed their normal tenure of posting in B.D.D.S., Hingoli. The impugned orders are midterm and mid tenure. Section 22-J-1(2) of the Maharashtra Police Act provides constitution of the Police Establishment Board at District level. Section 22-J-1(1) provides that the State Government shall, by notification in the official Gazette constitute for the purposes of this Act, a Board to be called the Police Establishment Board at District Level. Sub section (2) of section 22-J-1 provides regarding constitution of Police Establishment Board at District Level. It provides that the District Superintendent of Police shall be Chairperson, Senior-most Additional Superintendent of Police shall work as a Member and the Deputy Superintendent of Police (Head Quarter) shall work as a Member Secretary of the said Board. It also provides that if none of the aforesaid members is from the backward class, then the Dist. Superintendent of Police shall appoint an additional member of the rank of the Deputy Superintendent of Police belonging to such class. There is no dispute about the fact that the Government thereafter issued the Notification and constituted the Police Establishment Board at

District level as provided in section 22-J-1-(2) of the Maharashtra Police Act. There is no dispute about the fact that on 14.5.2019 the S.P., Hingoli constituted the Police Establishment Board at District level in view of the above said provisions comprising himself as a chairperson and Shri Yashwant Ashok Kale, Additional S.P., Hingoli as a Member and Shri Sudhakar Madanrao Reddy, S.D.P.O., Hingoli City as a Member Secretary. On perusal of the record it reveals that at the time of constitution of the said Board nobody was appointed on the post of Additional S.P., Hingoli and the post was vacant. Therefore the charge of the said post was kept with Shri Krishnadeo Somaji Patil, P.I., S.P. Office, Hingoli by the order dated 22.7.2019.

17. While effecting the impugned transfers, the above said Board constituted by the order dtd. 14.5.2019 had held the meeting and decided to transfer the applicants. It is material to note here that the Maharashtra Police Act itself provides the constitution of the Police Establishment Board at District level and Members of the said Board. On the basis of the provisions of section 22-J-1-(2) the Government also issued the notification in that regard. Therefore, the S.P., Hingoli has no authority to include another Member who is not holding the post of Deputy S.P., Headquarter

at the District place as a Member Secretary of the Police Establishment Board. Therefore, the order dated 14.5.2019 passed by the Superintendent of Police, Hingoli constituting the Police Establishment Board at District level and appointing one Shri Sudhakar Madan Reddy, S.D.P.O., Hingoli City as a Member Secretary is illegal and against the provisions of section 22-J-1(2) of the Maharashtra Police Act. In fact, the Officer, who was holding the charge of the post of Deputy S.P. shall work as Member Secretary of the Board. But he has illegally constituted the Board and appointed Shri Sudhakar Madam Reddy, S.D.P.O. (City) Hingoli as Member Secretary of the said Board. Therefore, constitution of the Police Establishment Board at District level made by the S.P., Hingoli by the order dtd. 14.5.2019 is illegal and against the provisions of section 22-J-1(2) of the Maharashtra Police Act. As the Police Establishment Board constituted by the S.P., Hingoli is illegal and therefore the said Board cannot take the decision regarding transfers of the police personnel. The decision taken by such a Board regarding transfers of the applicants in both the matters are illegal. The impugned transfer orders are in violation of the provisions of section 22-J-1(2) and 22-N of the Maharashtra Police Act and therefore same require to be quashed and set aside.

18. Before parting with the judgment, it is material to note here that the Police Establishment Board at District level duly constituted under section 22-J-1 of the Maharashtra Police Act is not precluded from making the transfers of the applicants in view of the provisions of the Maharashtra Police Act. It is material to note here that total sanctioned strength in B.D.D.S., Hingoli is 15 posts, which consist of 2 posts of Police Sub Inspectors, 1 post of Police Head Constable, 5 Posts of Police Constables, 3 posts of Drivers and 4 posts of Dog handlers. No post of Naik has been sanctioned for B.D.D.S., Hingoli. On perusal of the information submitted by the respondents to the applicant in O.A. no. 730/2019 it reveals that 3 persons have been appointed on the post of Naik in B.D.D.S., though the post of Police Naik has not been sanctioned for B.D.D.S., Hingoli. At the time of the impugned transfer of the applicant in O.A. no. 730/2019, 5 posts of Constables were sanctioned and only 3 posts of Constables including the applicant were filled in at B.D.D.S., Hingoli. Therefore, the contentions of the respondents that the applicant in O.A. no. 730/2019 was in excess is against the factual position and therefore the same cannot be accepted. On that ground also the impugned transfer of Shri Ejaz Salim Shaikh the applicant in O.A. no. 730/2019 is not sustainable.

19. In view of the discussion in foregoing paragraphs O.A. nos. 730 and 733 both of 2019 deserve to be allowed. Therefore, both O.As. are allowed. The impugned transfer orders dated 8.8.2019 passed by the Superintendent of Police, Hingoli transferring the applicants from B.D.D.S., Hingoli are hereby quashed. The respondent i.e. the Superintendent of Police, Hingoli is directed to repost Shri Ejaz Salim Shaikh the applicant in O.A. no. 730/2019 and Shri Sainath Bhumamma Anmod the applicant in O.A. no. 733/2019 in B.D.D.S., Hingoli on their respective posts immediately. There shall be no order as to costs.

(B.P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 14.9.2020