

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

**ORIGINAL APPLICATION NO. 75 OF 2023**

DIST. : BEED

Umesh s/o Manohar Dhakane,  
Age : 41 years, Occu. Service  
(as Chief Officer, Municipal Council,  
Beed), R/o : Flat No. 1, Orchid Residency,  
Datta Nagar, Beed.

**.. APPLICANT.**

**V E R S U S**

- 1) The State of Maharashtra  
Through its Principal Secretary,  
NaVi-2, Urban Development Dept.,  
M.S. Mantralaya, Madam Cama Road,  
Hutatma Rajguru Chowk,  
Mumbai – 32.
- 2) The Commissioner-cum-Director,  
Directorate of Municipal Administration,  
229R+VW7, Belapur Bhawan,  
Sector – 11, CBD, Belapur,  
Navi Mumbai.
- 3) The Divisional Commissioner-cum-  
Regional Director, Aurangabad Division,  
Delli Gate Campus,  
Aurangabad.
- 4) The Collector, Beed,  
Nagar Road, Beed.
- 5) Smt. Neeta Andhare,  
Dist. Administrative Officer,  
Collector Office, Beed.

**.. RESPONDENTS.**

-----  
APPEARANCE :- Shri Avinash S. Deshmukh, learned Advocate for the applicant.  
: Shri M.S. Mahajan, learned Chief Presenting Officer for the State authorities.  
: Shri S.S. Thombre, learned counsel for respondent no. 5.  
-----

**CORAM : Hon'ble Shri Justice P.R. Bora,  
Vice Chairman**

**DATE : 26<sup>th</sup> April, 2023**  
-----

### **ORAL - ORDER**

1. Heard Shri Avinash S. Deshmukh, learned counsel for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the State authorities and Shri S.S. Thombre, learned counsel for respondent no. 5.

2. The applicant has filed the present Original Application seeking quashment of the order dated 29.12.2022 whereby respondent no. 5 has been posted in his place without giving him any posting. It is, however, mentioned in the said order that posting order of the applicant will be separately issued. It is the matter of record that during pendency of the present O.A. the applicant got amended his application to bring on record subsequent events and also added one more prayer in the

prayer clauses. During pendency of the O.A. the applicant came to be posted/deputed to the post of Assistant Municipal Commissioner of Pimpri-Chinchwad Municipal Corporation for the period of 3 years. The applicant has raised challenge to the said order also.

3. It is the contention of the applicant that though the applicant had not completed his ordinary tenure on the post of Chief Officer of Beed Municipal Council he came to be shifted mid tenure and midterm. It is the grievance of the applicant that without assigning any reason the applicant has been shifted from his existing post and was also not given posting at the relevant time. The applicant has also alleged that the respondent no. 5, Smt. Neeta Andhare, who had been brought in his place, could not have been appointed on the said post as she is falling in the cadre of Chief Officer Group-B. The applicant has submitted that Beed is 'A' Class Municipal Council and officers, who fall in Group-A can only be appointed as Chief Officer of the said Municipal Council. It is the contention of the applicant that unless there are reasons as are provided under section 4(4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the

Transfer Act, 2005) no Officer can be transferred midterm or mid tenure. The applicant has also come out with a case that he has been transferred with the only object of accommodating respondent no. 5 in his place. In the circumstances, the applicant has prayed for quashment of the said order.

4. As I noted hereinabove during pendency of the present O.A. the applicant came to be appointed on deputation as the Assistant Commissioner of Pimpri-Chinchwad Municipal Corporation. The said order has also been challenged by the applicant. It is the contention of the applicant that he has not given his willingness for that post and without his willingness for that post he could not have been deputed on the said post. According to the applicant, the said order has been passed without following the due procedure and hence cannot be sustained. It is further contended that if the applicant accepts the said order, he may be subjected to litigation.

5. The respondent no. 1 has filed the affidavit in reply in the present matter. In the reply the State has come out with a case that as per the request made by the applicant he has been given posting on deputation as Assistant Commissioner of Pimpri-Chinchwad Municipal Corporation for 3 years. In the reply it is clarified that though the applicant had requested for his

transfer to the post of Deputy Municipal Commissioner in Pimpri-Chinchwad Municipal Corporation, having regard to the present pay scale of the applicant he has been deputed to the post of Assistant Municipal Commissioner, which is equivalent to the post of Chief Officer Group-A. According to respondent no. 1, when the request of the applicant has been considered nothing survives in the O.A. filed by the applicant. In the circumstances respondent no. 1 has prayed for dismissal of the O.A.

6. Respondent no. 5 has filed the affidavit in reply opposing the contentions raised and prayers made in the O.A. In her reply the respondent no. 5 has mentioned that after getting relieved from the post of Chief Officer, Beed Municipal Council the applicant was willing to join at Pimpri-Chinchwad Municipal Corporation as its Deputy Commissioner and had therefore requested Shri Dhas, the Member of Legislative Council to recommend him for such appointment. It is further contended that it is well within the power and authority of the Government to appoint an Officer falling in the category of Chief Officer Group-‘B’ on ‘A’ Class Municipal Corporation and there is no express bar. It is further contended that the impugned order has been effected by duly following the procedure prescribed

therefor. It is further contended that under the provisions of the Transfer Act, 2005 the Government is empowered to transfer its employee even before completing the ordinary tenure. The respondent no. 5 has, therefore, prayed for dismissal of the application.

7. Shri Avinash Deshmukh, learned counsel for the applicant assailed the impugned order on various grounds. The learned counsel submitted that in the reply filed on behalf of the State, the State has not answered any of the objections raised by the applicant in his O.A. The learned counsel submitted that even if it is accepted that in the order of transfer it may not be necessary to elaborately mention the reasons for transfer, it must be brought to the notice of the Tribunal that such reasons were existing and are recorded in the contemporary record. The learned counsel submitted that these reasons must have been disclosed in the affidavit in reply filed on behalf of the respondent State. The learned counsel submitted since the reply of the respondent State is silent on all those issues, the allegations made by the applicant must be held to have been admitted by the respondent State and hence proved. The learned counsel further submitted that neither in the order of transfer nor in the reply the State has provided any reason,

which may fall in the category of reasons provided under section 4(4) and 4(5) of the Transfer Act, 2005. The learned counsel submitted that nothing has been brought on record to show that procedure for such midterm transfer has been followed while shifting the applicant from the existing post and making appointment of respondent no. 5 on his post. The learned counsel further argued that in absence of any such reason provided by the respondent State in its reply the only inference, which emerges and same has to be drawn that the applicant has been shifted from his existing post without any reason and with the only object of accommodating respondent no. 5 in his place.

8. The learned counsel submitted that considering the wording of the impugned order it is writ large that the decision to bring respondent no. 5 was taken first and just to accommodate respondent no. 5 the applicant has been shifted from his existing post. The learned counsel argued that such transfers are always deprecated by the Courts. The learned counsel submitted that when the transfers are governed under the provisions of the Act specifically enacted for that, no transfer can be effected contrary to the provisions made in the said Act.

9. The learned counsel submitted that the applicant has sufficiently proved that his transfer is an arbitrary exercise of powers by the respondent State and hence deserves to be set aside. Insofar as the request letter given by the applicant to the learned Member of Legislative Council Shri Suresh Dhas, the learned counsel submitted that the said letter was given by the applicant in distress, since the respondent no. 5 was appointed in his post, he was relieved immediately and was kept in hanging position without giving any posting to him. In the circumstances, according to the learned counsel, there was no option for the applicant except to request for his further posting instead of remaining in hanging position or waiting for indefinite period. The learned counsel submitted that the request of the applicant was very specific that he shall be given posting as Deputy Municipal Commissioner and as such his appointment on the post of Assistant Municipal Commissioner cannot be said to have been made as per the wishes of the applicant and it cannot be held that the applicant has given consent for appointment on the said post. The learned counsel further submitted that as has come on record in the reply of respondent State, the applicant has not been given appointment on the post of Deputy Municipal Commissioner for the reason that the pay

scale of the applicant at present is lower than the pay scale of Deputy Municipal Commissioner and equivalent to the pay scale of Assistant Municipal Commissioner. The learned counsel submitted that while giving posting to respondent no. 5 the State has applied different norms and though respondent no. 5 is the Chief Officer falling in Group B has been appointed as Chief Officer of 'A' class Municipal Council. The discriminatory practice has been thus adopted by the State and it would amount to arbitrary exercise of powers by the State. The learned counsel submitted that the contentions, which are taken by respondent no. 5 in her reply are not supported by any evidence and the State has not taken any such plea in its reply. According to the learned counsel, the State only is the authority to consider the request for transfer of the particular employee. The learned counsel in the circumstances has prayed for allowing the application.

10. Shri M.S. Mahajan, learned Chief Presenting Officer restricted his argument only to the aspect that according to the willingness given by the applicant in writing he has been given posting at Pimpri-Chinchwad Municipal Corporation as Assistant Municipal Commissioner. In the circumstances according to the respondent State the applicant has lost right to

agitate against the impugned order whereby respondent no. 5 has been posted in his place. The learned C.P.O. today has tendered across the bar one communication dated 26.4.2023 received to him from Under Secretary of Urban Development Department, Maharashtra State and referring to the said communication the learned C.P.O. submitted that since the post of Deputy Municipal Commissioner is not vacant the request for his appointment on the said post made by the applicant has not been considered and the applicant has been appointed on the equivalent post having same pay scale, which the applicant is presently holding. The learned C.P.O. in the circumstances has prayed for dismissal of the application being infructuous and untenable.

11. Shri S.S. Thombre, learned counsel appearing for respondent no. 5 submitted that the moment the applicant submitted his willingness for the post of Deputy Municipal Commissioner in Pimpri Chinchwad Municipal Corporation, has lost right to raise any objection as about the appointment of respondent No. 5 vide impugned order. The learned counsel submitted that the impugned order was passed on 29.12.2022 and few days thereafter the applicant requested the learned Member of Legislative Council to recommend his name for the

appointment on the post of Deputy Municipal Commissioner of Pimpri-Chinchwad Municipal Corporation. Along with her reply respondent No. 5 has annexed the copy of said letter. Respondent No. 5 has also produced on record the copy of the letter written by MLC Shri Suresh Dhas recommending for appointment of applicant on the post of Deputy Municipal Commissioner of Pimpri-Chinchwad Municipal Corporation. Learned counsel submitted that letter written by Shri Dhas is of 10.1.2023 and 10 days thereafter the applicant filed the present O.A. seeking quashment of the impugned order. Learned counsel submitted that the conduct of the applicant is much material which is revealed from the documents which are brought on record by respondent No. 5. Learned counsel submitted that considering the letter written by the applicant to MLC Shri Dhas, no other inference can be drawn that the applicant was not intending to agitate against the impugned order and has accepted the said transfer order. According to learned counsel the applicant in the circumstances has lost the right to raise any objection in respect of the impugned order. Learned counsel submitted that it has to be considered that had the request of the applicant accepted by the respondents and had he been posted as Deputy Municipal Commissioner of Pimpri-Chinchwad Municipal Corporation, applicant may not

have any objection about the impugned order. Learned counsel submitted that, once the applicant expressed willingness for his further appointment after he was relieved from the existing post, he is estopped from raising any objection against the impugned order. The learned counsel further submitted that in view of the letter given by the applicant to the learned M.L.C. Shri Dhas, the applicant cannot take a plea that his appointment as Assistant Commissioner is made without his consent. Learned counsel submitted that applicant as of right cannot claim the post of Deputy Municipal Commissioner of Pimpri-Chinchwad Municipal Corporation, which is having higher pay scale than the post of Chief Officer, Group-A and there was little possibility of appointment of the applicant on the said post. In the circumstances, learned counsel has prayed for dismissal of the O.A.

12. It is not in dispute that respondent No. 5 came to be appointed on the post of applicant vide order dated 29.12.2022 and on the same day the applicant was relieved from the charge of the said post. The applicant has accepted that after being relieved from the post of Chief Officer of Beed Municipal Council, he made a written request to the learned Member of Legislative Council namely Shri Suresh Dhas seeking his

recommendation for his transfer/appointment on the post of Deputy Municipal Commissioner at Pimpri Chinchwad Municipal Corporation. It is also not in dispute that in pursuance of the request made by the applicant, learned Member of Legislative Council recommended the name of the applicant to the Hon'ble Chief Minister on 10<sup>th</sup> January, 2023 for considering his request for his appointment on the post of Deputy Commissioner in Pimpri Chinchwad Municipal Corporation. The applicant has admittedly filed the present application on 20<sup>th</sup> January, 2023.

13. In view of the submissions, which have been made on behalf of the respondents and more particularly by respondent No. 5 the question arises whether the applicant can raise any dispute as about the impugned order in view of his subsequent conduct. As has been argued on behalf of respondent No. 5 the applicant has accepted the transfer and was thereafter making efforts for his suitable posting. According to the learned counsel for respondent No. 5 the applicant lost right to raise any dispute about the impugned order when he has accepted the said order and hence started making efforts for his further posting at the suitable place. In reply to the arguments so made on behalf of respondent No. 5, it has been argued by Shri

Avinash Deshmukh, learned counsel appearing for the applicant that making of such application or making of such request by the applicant would not disentitle him from challenging the illegality in the impugned order. Learned counsel has argued that any employee placed in a situation alike the applicant, if makes any such effort for his suitable posting thereafter, cannot be held to have relinquished his right to challenge his midterm or mid-tenure transfer. It has also been argued by learned counsel that after unilateral relieving of the applicant from the existing post, making of such an application was the act of the applicant in distress. Learned counsel reiterated that making of such an application by the applicant will not cure the illegality in the impugned order and the applicant possesses right to point out such illegality by bringing an appropriate petition like the present O.A. before the competent forum.

14. I am, however, not convinced with the submission so made. The conduct of the applicant shows that he did accept the impugned order. It is significant to note that in the O.A. filed by the applicant, he did not disclose the fact that he has made a written request seeking recommendation of Shri Suresh Dhas, the Member of Maharashtra Legislative Council for his

appointment as Deputy Municipal Commissioner of Pimpri-Chinchwad Municipal Corporation. It is quite evident that had the efforts of the applicant of seeking his posting on the post of Deputy Municipal Commissioner of the Pimpri Chinchwad Municipal Corporation succeeded, he would not have challenged the impugned order. By submitting such application or by making such request through the learned Member of Legislative Council, the applicant has shown his willingness for his appointment to the post as claimed by him in the said letter. It is discernable that only because the request was not considered within the period he was expecting, that, he approached this Tribunal by raising objections as about the impugned order. All such objections would have been worth considering at the instance of the applicant, had he immediately approached this Tribunal at the earliest possible time. Waiting of the applicant for the period of more than three weeks in giving challenge to the said order and the conduct which has been subsequently revealed of the applicant of making request, in the meanwhile seeking posting at the Pimpri Chinchawad Municipal Corporation on the post of Municipal Commissioner clearly show that the applicant had accepted the order of transfer.

15. Though the applicant has raised serious objection as about the affidavit in reply submitted on behalf of the respondents mentioning that in the affidavit in reply, the respondents have not supported or justified the impugned order. It is quite discernable that in premise of the request made by the applicant which was under consideration and which ultimately came to be considered by the respondents, the respondent State has restricted it's reply to the aforesaid extent. In fact the respondent State must have submitted it's exhaustive affidavit in reply dealing with all the allegations raised against the impugned order.

16. Irrespective of the facts as aforesaid, the moot question is in view of the facts which have come on record, challenge to the order dated 29.12.2022 whether can be entertained at the instance of the applicant? Having regard to the subsequent conduct of the applicant, revealed through the affidavit in reply submitted by Respondent no. 5 and the documents produced on record along with the said affidavit in reply, it has to be answered in negative.

17. Applicant has admitted that he wrote a letter to the learned M.L.C. Shri Suresh Dhas. Copy of the said letter is

produced on record by respondent no. 5. The said letter reads as under:-

“प्रति,

मा.आ. सुरेशआण्णा धस साहेब  
विधान परीषद सदस्य

विषय :- बदलीसाठी शिफारस करणेबाबत.

अर्जदार :- उमेश मनोहर ढाकणे, मुख्याधिकारी नगर परिषद.

महोदय,

उपरोक्त विषयी असे की, मी उमेश मनोहर ढाकणे, मुख्याधिकारी नगर परिषद बीड या पदावरून मला शासनाने दिनांक २९/१२/२०२२ पासून कार्यमुक्त केलेले आहे. तसेच सध्या मी नियुक्तीच्या प्रतिकेत आहे. त्यामुळे माझी बदली उपायुक्त, पिंपरी चिंचवड महानगर पालिका या पदावर करणेस शासनास शिफारस करण्यात यावी ही नम्र विनंती.

आपला विश्वासू

सही/-

(उमेश ढाकणे)

मुख्याधिकारी

नगर परिषद वर्ग-१”

18. It has come on record that pursuant to the aforesaid letter Shri Dhas wrote a letter to the Hon'ble Chief Minister, recommending for posting of the applicant to the post of Deputy Municipal Commissioner, P.C.M.C. Copy of the said letter is also produced on record by respondent no. 5. I deem it appropriate to reproduce the same as it is in vernacular, which reads thus:-

“प्रति,

मा.ना.श्री, एकनाथजी शिंदे साहेब,  
मुख्यमंत्री, महाराष्ट्र राज्य,  
मंत्रालय, मुंबई-३२.

विषय :- श्री. उमेश मनोहर ढाकणे (मुख्याधिकारी) यांना पिंपरी चिंचवड महानगरपालिका येथे उपायुक्त पदावर नियुक्ती मिळणे बाबत.

महोदय,

उपरोक्त विषयी विनंती की, श्री उमेश मनोहर ढाकणे (मुख्याधिकारी) हे सध्या नियुक्तीच्या प्रतिक्षेत असून त्यांच्या कौटुंबिक अडचणीमुळे त्यांना पिंपरी चिंचवड महानगरपालिका येथे नियुक्ती मिळण्याबाबत विनंती केली आहे.

तरी मा. महोदयांनी त्यांच्या विनंतीचा सहानुभूतीपूर्वक विचार करून श्री. उमेश मनोहर ढाकणे यांना पिंपरी चिंचवड महानगरपालिका येथे उपायुक्त पदावर नियुक्ती देण्याबाबत संबंधितांना आदेशित करावे ही विनंती.

स्नेहांकित,

सहि/--  
(सुरेश धस)”

19. It is significant to note that in the letter written by the applicant to Shri Suresh Dhas, subject of the said letter is stated as ‘बदलीसाठी शिफारस करणे बाबत.’ (to recommend the name of the applicant for transfer). The contents of the said letter explicitly reveal that after having been relieved from the charge of the post of ‘Chief Officer’ the applicant was endeavoring for his transfer on the post of Deputy Municipal Commissioner of P.C.M.C., meaning thereby that he has accepted his transfer from the post of Chief Officer, Beed Municipal Council. From the contents and the tenor of the aforesaid letter it can be reasonably inferred that the applicant was not ‘aggrieved’ with the said order. Contention of the applicant that though the request was made by him for his transfer, it was not acted upon by him is difficult to be accepted. If such was the case the applicant must have disclosed the said fact but he suppressed it. In the circumstances, the applicant would not have waited for three

weeks for taking exception to the said order. It appears to me that the moment the applicant requested for his transfer at P.C.M.C. by his said conduct he impliedly accepted the transfer of respondent no. 5 in his place. The challenge given to the said order by him after period of about three weeks therefore cannot be sustained and deserves to be rejected.

20. By amending the Original Application the applicant has also raised the challenge against the order dated 23.2.2023, whereby the applicant has been appointed on deputation on the post of Assistant Commissioner of Pimpri-Chinchwad Municipal Corporation for the period of 3 years. It is the contention of the applicant that his appointment on the post of Assistant Commissioner at P.C.M.C. has been made without seeking and obtaining his consent. It is further alleged by the applicant that while issuing the order dated 23.2.2023 respondent no. 1 has not taken into account and observed the provisions governing the transfers of the Government servants to foreign service incorporated in the M.C.S. (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), 1981. The contentions so raised are also difficult to be accepted. It has to be noted that even while making amendment in the O.A. the applicant did not disclose that he himself has requested for

his transfer/appointment on the post of Deputy Commissioner at P.C.M.C. After the said fact has been brought on record by respondent no. 5 now the applicant has taken a plea that his consent was for appointment to the post of Deputy Municipal Commissioner and not the Assistant Municipal Commissioner.

21. Through the letter dated 26.4.2023 received to the office of Chief Presenting Officer from the Urban Development Department of the State, which the learned C.P.O. has produced on record, it is revealed that the request of the applicant for his appointment on the post of Deputy Commissioner at P.C.M.C. could not be considered as the post of Deputy Commissioner is not presently vacant at the said Municipal Corporation and in the circumstances he has been given appointment on the post of Assistant Commissioner, which is having the pay scale equivalent to the post of Chief Officer Group-A. It appears to me that for challenging the order dated 23.2.2023 there is a separate cause of action and as such it may not be possible to consider the said request in the present O.A. It would be open for the applicant to raise a challenge to the said order by filing a separate substantive O.A. or may approach the State authorities with a representation in that regard, if he so desires.

22. For the reasons state as above, the following order is passed :-

**ORDER**

The Original Application is dismissed without any order as to costs.

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 26.4.2023**