

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 750 OF 2017

DISTRICT: - AHMEDNAGAR.

Smt. Surekha W/o Uttam Gaikwad,
Age: 49 years, Occu: Service as
Headmaster, Govt. Ashram School,
Sakur, (Rajur Project), Tq. Sangamner,
District: - Ahmednagar.

.. APPLICANT.

V E R S U S

- 1) The State of Maharashtra,**
(Through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai.
- 2) The Commissioner, Tribal
Development, Maharashtra State,**
Nashik.
- 3) The Project Officer,**
Integrated Tribal Development
Project, Rajur, Tq. Akole
District Ahmednagar
- 4) The Project Officer,**
Integrated Tribal Development
Kalwan, Tq. Kalwan,
District Nashik.

.. RESPONDENTS

APPEARANCE : Shri A.M. Nagarkar – learned
Advocate for the applicant.
: Shri V.D. Salunke, learned Special
Counsel for the respondents.

CORAM : **HON'BLE JUSTICE M.T. JOSHI,**
VICE CHAIRMAN

DATE : **28TH SEPTEMBER, 2018.**

ORDER

1. By the present Original Application the applicant is seeking the following relief: -

B. The impugned order dated 20th September, 2017 issued by the respondent No. 2 and thereby the applicant came to be transferred from Government Ashram School Sakur, Tq. Sangamner, District Ahmednagar to the Government Secondary and Higher Secondary Ashram School, Mani, Tq. Surgana, District Nashik may kindly be quashed and set aside.”

2. The applicant claims as under :-

That she was posted at Government Ashram School, Sakur, Tq. Akole, District Ahmednagar vide order dated 10.10.2016. However, she came to be transferred vide impugned order dated 20.09.2017 to the Government Secondary and Higher Secondary Ashram School, Mani, Tq. Surgana, District Nashik as detailed in the prayer clause, merely on the basis of certain report in newspapers against her. The said transfer is against the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay In

Discharge of Official Duties Act, 2005 (for short 'the Transfer Act of 2005). The news item cannot be treated as evidence against the present applicant. There were no exceptional circumstances for transferring the present applicant as provided by the Section 4 of the Transfer Act of 2005 and, therefore, she sought quashing of the impugned order.

3. During the pendency of the present Original Application, she sought interim relief against her transfer. It was however, found that she was already relieved from the post and, therefore, no interim relief was granted.

4. As per the respondents, they received many complaints that the present applicant had committed grave misconduct while posted at the place. Therefore, the Senior Officer has visited the School for recording the statement of students and employees therein. There were also complaints of the Gram Panchayat. As sufficient material was found it was concluded that it would not be in the fitness of the administration to continue the present applicant at the same place. She was earlier suspended in

view of the pendency of the criminal trial against her for the offences under Sections 7, 13 (1) (d) with 13 (2) of the Prevention of Corruption Act. The said suspension was revoked. Therefore, now instead of taking such drastic steps causing again vacancy in the administration it was thought fit to keep her away from the said place. Therefore she was transferred. The Civil Services Board has accorded *ex post facto* sanction to the said transfer. Transfer was required in view of the urgency in the matter and, therefore, the same shall not be interfered with.

5. Heard both the sides. While applicant's claim that only on certain newspaper items she was transferred the bulk of the record available with the respondents would show a detailed preliminary enquiry was held. The Senior Officer had visited the School. The statement of the employees and 21 students were recorded. The statement of one Mr. R.Y. Deshmukh, Class-IV employee would allege that when he mistakenly signed on the muster roll against the name of another employee, the present applicant nagged by saying that he should eat human faeces. The statement of 21 girl resident students would

show that the present applicant used to beat them with kicks and asked them to carry of themaid servant's work at her house. The record would show that earlier on 9.10.2014 she was allegedly caught raid handed while accepting the bribe of Rs. 900/- from one class-IV employee working under her for paying salary to him. The criminal case is still pending.

6. Though we are not required to comment on the truthfulness of material on record, this would show that the present applicant was not transferred merely relying upon the news published in certain newspapers.

7. When serious allegations are made against the employee, contemplating the departmental enquiry the administration had two options, (i) either to suspend the employee so that he would not interfere in the regular enquiry held later on; and (ii) as far as possible to keep him away from the place where the witnesses or the record is available so that the employee would not be able to tamper with the same.

8. Learned Advocate for the applicant relies on the ratio laid down in the decision of this Tribunal at Principal Seat in O.A. No. 614/2017 [Shri Pramod Haribhau Sawakhande] dated 27.03.2018. The fact in the said case however was that the Government employee has made certain comments on the incident of helicopter accident of the Hon'ble Chief Minister on social media, which was the cause of his transfer. The facts in the present case are not similar to the facts of the aforesaid O.A. No. 614/2017 and hence, the ratio is not applicable.

9. If all these facts are taken into consideration the transfer of the present applicant with grant of *ex post facto* sanction to the same by the Civil Services Board cannot be called as mala fide. Hence, the following order:-

ORDER

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

PLACE : AURANGABAD

VICE CHAIRMAN

DATE : 28TH SEPTEMBER, 2018

O.A.NO.750-2017(SB)-HDD-2018-Transfer