

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 758 OF 2018
(Subject – Transfer)**

DISTRICT : HINGOLI

Dr. Prashant s/o Kishanrao Kharate,)
Age : 47 Years, Occu. : Service,)
(As Medical Officer, Group-A,)
Sub District Hospital, Vasmat),)
R/o C/o : Kharate Hospital,)
Bank Colony, Vasmat, Dist. Hingoli.)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,)**
Though its Principal Secretary,)
Public Health Department,)
10th Floor, B Wing, G.T. Hospital,)
Complex Building, Mumbai -01.)
- 2) **The Director of Health Services,))**
M.S., 1st Floor, Arogya Bhavan,)
St. George's Hospital Compound,)
Near C.S.T. Station, Mumbai -01.)
- 3) **The Deputy Director of Health)**
Services, Aurangabad,)
Mahavir Chowk, Near Baba)
Petrol Pump, Rlwy. Stn. Road,)
Aurangabad.)
- 4) **The Medical Superintendent,)**
Sub-District Hospital, Vasmat,)
Main Road , Khajipura,)
Vasmat-431512, Dist. Hingoli.)

.. RESPONDENTS

APPEARANCE : Shri A.S. Deshmukh, Advocate for the
Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for
Respondents.

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

DATE : 17.12.2018.

O R A L - O R D E R

1. Heard Shri A.S. Deshmukh, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. Learned Presenting Officer has filed short affidavit in reply on behalf of respondent No. 2. Same is taken on record and the copy thereof has been served on the other side.

3. The applicant has challenged the order dated 03.10.2018, by which he has been transferred to Purna, Dist. Parbhani from Vasmat, Dist. Hingoli by filing the present Original Application.

4. The applicant has acquired qualification of MBBS and DCH. He entered the services of the Government of Maharashtra in Health Department as Medical Officer on temporary basis on 01.09.1995. Accordingly, he was posted as Medical Officer, P.H.C. Kurunda, Tq. Vasmat, Dist. Hingoli. Thereafter, in the year 1998 he was recommended and selected by M.P.S.C. as Medical Officer

on regular basis. In the year 2000, he had joined Post-Graduation course of DCH (Diploma in Child Health) as an in service candidate and he completed the same in the year 2002. Thereafter, he was posted at Sub District Hospital, Vasmat, Dist. Hingoli and since then he is working there. He has completed his normal tenure of posting at Vasmat, but he was not transferred from Vasmat in the General Transfers of the year 2018.

5. It is his contention that in view 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"), the Hon'ble Minister concerned is the competent transferring authority and the Hon'ble Chief Minister is the next higher competent authority to make mid-term and mid-tenure transfers.

6. It is contention of the applicant that in the year 2018 he was holding additional charge of the post of Medical Superintendent, Vasmat Sub District Hospital, Vasmat. It is his contention that at that time some persons raised grievance regarding the alleged incident of desecration of the dead body of one Shri Sudhir Kharate, who died in an accident and whereafter his dead body was kept in the morgue. Some representations

were also made to the superior officers demanding action against the applicant and another. The applicant also made representation on 09.03.2018 to the respondent No. 3 explaining the fact. Therefore, no action has been taken and he has not been transferred out of Vasmat in the General Transfers of the year 2018 and thereafter, the applicant continued to serve there.

7. On 03.10.2018 the respondent No. 3 all of a sudden issued the order transferring him from Sub District Hospital Vasmat to Rural Hospital, Purna as per the direction given by the respondent No. 2 by letter dated 02.10.2018. It is his contention that the impugned order of the applicant is mid-term transfer. It is his contention that neither the respondent No. 3 nor the respondent No. 2 have authority to effect his transfer that too in the midst of the term. Only competent authority i.e. the Hon'ble Minister of Public Health is empowered to make such transfers with the prior approval of the next higher competent authority i.e. the Hon'ble Chief Minister. But neither the Minister nor the Chief Minister approved the proposal of the applicant and therefore, the impugned order is illegal. Therefore, he prayed to quash and set aside the impugned order by allowing the present Original Application.

8. The respondent No. 2 resisted the contention of the applicant by filing his affidavit in reply. It is his contention that several complaints had been received against the applicant regarding his negligent acts and requesting to transfer him out of district. The Deputy Director, Aurangabad has initiated enquiry against the applicant and one Dr. Satish Vakale for negligent acts. The enquiry was concluded and in the enquiry the applicant and Shri Vakale were found responsible for the act of negligence. The report in that regard has been submitted on 05.03.2018. The respondent No. 2 after receiving the report of Deputy Director, Aurangabad decided to initiate departmental enquiry against the applicant and another by order dated 02.10.2018 directed the respondent No. 3 to send proposal for initiation of Departmental Enquiry against the applicant. The proposal regarding the transfer of the applicant had been sent to the Government on 11.10.2018, but in order to control the situation he directed the Deputy Director, Aurangabad to make temporary transfer of the applicant out of district with immediate effect till getting approval from the Government to the proposal of the transfer made by him and therefore, the impugned order has been issued.

9. The respondent No. 2 has also filed short affidavit in pursuance to the direction given by this Tribunal on 07.12.2018

and reiterated the contentions raised in the affidavit in reply. He has further contended that on the basis of several complaints as well as, news published in the newspaper, he directed the Deputy Director, Public Health Services, Aurangabad to transfer the applicant out of district. He has further contended that the Deputy Director, Aurangabad had sent proposal regarding negligent act done by the applicant and another and proposed to initiate Departmental Enquiry against them to his office on 09.08.2018 and 12.12.2018. He has also contended that in order to maintain law and to control situation, he directed the Deputy Director, Aurangabad on 02.10.2018 to initiate departmental enquiry. He has submitted that the Deputy Director, Aurangabad, has issued temporary transfer order as per his directed. He has specifically admitted the fact that as per the provisions of the Transfer Act 2005. The office of the Deputy Director of Health Services, Aurangabad has no authority to transfer the applicant, but considering the fact and circumstances and to maintain law and order situation and to maintain harmony in the local residence, as well as, for the safety of the applicant, he has transferred the applicant temporarily.

10. Admittedly, the applicant is serving as a Medical Officer in Sub District Hospital, Vasmat Dist. Hingoli since the

year 2003. There is no dispute about the fact that he was due for transfer, but he has not been transferred at the time of General Transfers of the year 2018 and he has been retained at Vasmat only. There is no dispute about the fact that alleged incident of desecration of dead body of one Shri Sudhir Kharate took place when the dead body was kept in the morgue (mortuary) in Sub District Hospital, Vasmat. There is no dispute about the fact that resident of Vasmat raised grievance in that regard and they made their grievance against the applicant and one more Medical Officer viz. Dr. Satish Vakale. Admittedly, as per the directions of the respondent No. 3, an enquiry has been conducted against them in that regard and report has been submitted to the Deputy Director of Health Services, Aurangabad by Enquiry Officer. On the basis of said report, a departmental enquiry has been proposed. Admittedly, the impugned order has been issued by the respondent No. 3 as per the direction given by the respondent No. 2. Admittedly, the impugned transfer of the applicant is mid-term transfer. Admittedly, neither the respondent No. 2 nor the respondent No. 3 has authority to effect the transfer of the applicant, as they are not competent transferring authority as provided under section 6 of the Transfer Act 2005. Admittedly, the Hon'ble Minister concerned is the competent transferring

authority to make transfer of the Medical Officer as per the provisions of Section 6 of the Transfer Act 2005 and in case of mid-term transfer he has to effect the transfer of Medical Officer with prior approval of the next higher transferring authority i.e. the Hon'ble Chief Minister.

11. Learned Advocate for the applicant has submitted that the respondent No. 2 and respondent No. 3 have no authority to make transfer as provided under section 6 of the Transfer Act 2005, but they have passed the order without power and authority and therefore, impugned transfer order is illegal and not in accordance with the provisions of Transfer Act 2005. Therefore, he prayed to quash and set aside the impugned order by allowing the present Original Application.

12. Learned Chief Presenting Officer has submitted that there was public outcry against the applicant and several representations were filed with the respondents in that regard. He has submitted that alleged incident took place on 01.03.2018 in the Sub District Hospital, Vasmat. He has submitted that preliminary enquiry was conducted in the matter and after receiving the report, the respondent No. 2 proposed the departmental enquiry against the applicant. He has submitted

that as the public at Vasmat raised the grievance against the applicant and another about their negligence, the respondent No. 2 decided to make temporary transfer of the applicant to maintain law and order situation at Vasmat and for the safety of the applicant. The respondent No. 2 directed the respondent No. 3 by communication dated 02.10.2018 to effect the transfer of the applicant out of Hingoli District and accordingly respondent No. 3 issued the impugned order transferring the applicant from Vasmat, Dist. Hingoli to Purna, Dis. Parbhani. He has submitted that the said decision has been taken by the respondent No. 3 in the public interest and on account of administrative exigencies and therefore, he supported the impugned order. He has further argued that the distance between Vasmat and Purna is about 30 kms. only. He has submitted that there is no illegality in the impugned order and therefore, he prayed to reject the O.A.

13. On perusal of provisions of Section 6 of the Transfer Act 2005, it reveals that the said section provides the competent transferring authority for effecting the transfer of the applicant as per the said provisions of the Transfer Act. Admittedly, the Hon'ble Minister, concerned is the competent transferring authority to make transfer of the Medical Officer. In case of mid-

term and mid-tenure transfer, the competent transferring authority has to take prior approval of next higher competent transferring authority i.e. Hon'ble Chief Minister. Therefore, in the instant case, the Hon'ble Minister concerned is the competent authority to effect the transfer of the applicant and he is empowered to make mid-term transfer of the applicant with prior approval of the next higher competent authority i.e. the Hon'ble Chief Minister. The impugned transfer has not been issued by the competent authority i.e. the Hon'ble Minister. The respondent No. 2 is not competent transferring authority. He is not empowered to direct the respondent No. 3 to issue impugned transfer order. But the respondent No. 3 has issued the impugned order at the behest of the respondent No. 2, though the respondent No. 2 is not competent authority to issue such orders. The facts show that the impugned order has been issued by the respondent Nos. 2 and 3 without authority and therefore, the said orders are in violation of the provisions of Transfer Act 2005. The impugned order is illegal and therefore, it requires to be quashed and set aside by allowing the present Original Application.

14. No doubt the respondents have power to take necessary action against the applicant, if there was any

negligence on the part of the applicant while discharging his duties by following due procedure of law. No doubt, the competent authority is not precluded from effecting transfer of the applicant on administrative ground and considering the public outcry by following due provisions of the Transfer Act 2005. But the respondent Nos. 2 and 3 had issued the impugned order without following provisions of Transfer Act 2005 and without authority. Therefore, the impugned order requires to be quashed by allowing the O.A.

15. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The impugned order dated 03.10.2018 is hereby quashed and set aside. The respondents are directed to repost the applicant on the earlier place of his posting immediately. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 17.12.2018.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 758 of 2018 BPP 2018 Transfer