

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD
ORIGINAL APPLICATION NO. 972 OF 2018
WITH
CAVEAT ST. NO. 3022/2018
(Subject – Transfer)**

DISTRICT : AHMEDNAGAR

Smt. Sangita Rohit Jagtap,)
Age : 36 years, Occu. : Executive Engineer,)
Upper Pravara Dam Division Sangamner,)
Tq. Sangamner, Dist. Ahmednagar.)
..

APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
Through the Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai.)
- 2) **The Desk Officer,**)
Water Resources Department,)
Mantralaya, Mumbai.)
- 3) **Shri Bharat Ramkishan Shingade,**)
Age : Major, Occu. Executive Engineer,)
Majalgaon Canal Division,)
Parbhani, Dist. Parbhani.)

.. RESPONDENTS

APPEARANCE : Shri Ajay Deshpande, Advocate holding for
Shri S.V. Mundhe, Advocate for the Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for
the Respondent Nos. 1 and 2.

: Shri A.S. Deshmukh, Advocate for respondent
No. 3 (Caveator).

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

DATE : 25.01.2019.

ORDER

1. The applicant has challenged the order dated 15.12.2018 issued by the respondent No. 2, by which he has been transferred from the post of Executive Engineer, Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar to the post of Executive Engineer, Minor Irrigation Division No. 2, Sangamner by filing the present Original Application and prayed to quash and set aside the same.

2. The applicant was promoted as Executive Engineer on 17.09.2016 and posted at Sangamner as Executive Engineer, Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar. She joined her new posting on 26.09.2016 and since then, she is working there. She is working there with full efforts and efficiency and because of her efforts, project got sufficient funds. There is no complaint against her regarding her work and her service record is unblemished. She has carried out all the allotted works of dam and canal efficiently and smoothly, but on 15.12.2018, the respondents had issued the impugned order and transferred the applicant from the post of Executive Engineer, Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar to the post of Executive Engineer, Minor Irrigation Division No. 2,

Sangamner. It is her contention that she is not due for transfer and the said transfer is mid-term and mid-tenure transfer. By the impugned order dated 15.12.2018, one Shri Rajesh Baburao Gowardhane has been transferred from Sangamner to Nashik on his request and therefore, his post became vacant. The respondent No. 3 is interested in working on the post of Executive Engineer, Upper Dam Division, Sangamner and therefore, for showing favour to him, the respondent No. 2 had transferred the applicant on the post of Rajesh Gowardhane and posted the respondent No. 3 at her place. It is her contention that the respondent No. 2 ought to have transferred the respondent No. 3 on the vacant post of Rajesh Gowardhane without disturbing her, but the respondent No. 2 transferred the applicant to show favour to the respondent No. 3 by issuing the impugned order dated 15.12.2018. It is her contention that the impugned order is in contraventions 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") and therefore, she approached this Tribunal and challenged the impugned order by filing the present Original Application and prayed to quash and set aside the impugned order of transfer dated 15.12.2018.

3. The respondent Nos. 1 and 2 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant has been transferred on the vacant post of Shri Gowardhane as Executive Engineer, Minor Irrigation Division No. 2, Sangamner, which is in the same campus by the impugned order and while issuing the impugned order, the procedure prescribed under Section 4(5) of the Transfer Act 2005 has been followed. It is their contention that as much as four Executive Engineers have been transferred by the impugned order dated 15.12.2018 and one Shri Kachkalwar has been transferred from Nanded to Parbhani on the vacant of post of respondent No. 3 after his transfer. It is their contention that because of the efforts of the applicant, as well as, others, the Nilwande Project became eligible for getting sufficient funds. The Chief Engineer, Water Resources Division, North Maharashtra Region, Nashik had requested the respondents to appoint a competent and experienced Executive Engineer to carry out prominent work i.e. Canal Works, Tunnel Works, Land Acquisition Works etc. within a stipulated time limit to utilize the financial assistance received from NABARD, as the said project is likely to be included in the Bali Raja Sanjivanai Scheme of the Central Government. On the basis of his request, the impugned

transfer of the applicant has been made. It is their contention that the impugned transfer order had been issued on the basis of recommendation of the Civil Services Board. It is their contention that the employer is the best judge to decide as to who shall be posted to carry out the particular work wherever and whenever needed in the interest of better administration.

4. It is the contention of respondent Nos. 1 and 2 that Shri Gowardhane and Shri Kachkalwar had requested to transfer them. According to their request, Shri Kachkalwar has been transferred and posted on the post fallen vacant due to the transfer of the respondent No. 3. The applicant has been transferred as per the request of Chief Engineer, Water Resources Division, North Maharashtra Region, Nashik and therefore, the respondent No. 3 has been transferred and posted at her place in the interest of administration. It is their contention that the applicant has been transferred and posted as Executive Engineer, Minor Irrigation Division No. 2 at Sangamner, Dist. Ahmednagar, which is situated in the same campus where the office of Executive Engineer, Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar is situated. It is their contention that no inconvenience will be caused to the

applicant because of the impugned order and therefore, they prayed to reject the present Original Application.

5. The Respondent No. 3 has resisted the contentions of the applicant by filing his affidavit in reply and contended that the applicant has no cause of action to file the present O.A. It is his contention that the applicant has been transferred from one Division to another Division at the same headquarter i.e. at Sangamner after completion of tenure of about two years and three months and therefore, no prejudice will be caused to the applicant by the impugned order. The applicant has no cause of action to file the O.A. It is his contention that this Tribunal has earlier in some of the matters upholding the transfers of the employees from one post to another at the same place as legal. It is his contention that the impugned order has been issued after due compliance of the provisions of Section 4(5) of the Transfer Act 2005.

6. It is further contention of the respondent No. 3 that he has been transferred from Parbhani in place of the applicant and one Shri Sudhakar Hanmantrao Kachkalwar has been transferred from Deglur, Dist. Nanded to Parbhani in his place at his request. Shri S.H. Kachkalwar has joined his new posting at

Parbhani on 15.12.2018 and he has been relieved. He reported the office of Executive Engineer, Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar on 17.12.2018 and requested the applicant to handover the charge of the said post, but she had not handed over the charge to him and therefore, he is kept in hanging position. It is his contention that it is a quite settled position in law that it is the prerogative of the competent authority as to who is to be posted where and when and nobody can claim that he should be posted at particular place or post. It is his contention that the impugned order is in accordance with the provisions of the Transfer Act 2005 and there is no illegality in it and therefore, he prayed to reject the present Original Application.

7. The applicant has filed the rejoinder affidavit and contended that her transfer is mid-term and mid-tenure transfer and therefore, the compliance of Section 4(4) and 4(5) of the Transfer Act 2005 is necessary, but the respondents have not followed the mandatory provisions of the said sections and issued the impugned order, which is in violation of the provisions of Transfer Act 2005. It is her contention that in her entire tenure of two years there was absolutely no indication regarding her incompetency and inexperience and therefore, the said

cannot be foundation nor motive for transferring her from the post and bringing respondent No. 3 on her place. It is her contention that the transfer without change of headquarters amounts transfer in view of the provisions of Transfer Act 2005 and therefore, the impugned transfer order is governed by the provisions of the said Act. She reiterated her contentions raised in the Original Application and prayed to quash and set aside the impugned order.

8. The respondents have filed sur-rejoinder to the rejoinder affidavit filed by the applicant and contended that the impugned transfer order is mid-tenure transfer order and therefore, it is effected in view of the provisions of Section 4(5) of the Transfer Act 2005. It is their contention that the provisions of Section 4(4) are not attracted in this case. It is their contention that the impugned transfer order is a transfer order and therefore, due care has been taken by the respondents while issuing the impugned order and the impugned order has been issued in accordance with the provisions of Transfer Act 2005. It is their contention that due care of the applicant has been taken by the respondent No. 2 while issuing the impugned order of transfer and therefore, she has been retained on the same place

i.e. at Sangamner, Dist. Ahmednagar. Therefore, they have prayed to reject the present Original Application.

9. I have heard Shri Ajay Deshpande, learned Advocate holding for Shri S.V. Mundhe, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent Nos. 1 and 2 and Shri A.S. Deshmukh, learned Advocate for the respondent No. 3 (Caveator). I have perused the documents placed on record by all the parties.

10. Admittedly, the applicant was appointed as Executive Engineer by the order dated 17.09.2016 and she was posted at Sangamner, Dist. Ahmednagar as Executive Engineer, Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar. She took charge of the said post on 26.09.2016 and since then, she is working there. Admittedly, she has hardly completed only 2 years and three months tenure at the time of issuance of the impugned order of transfer. She has not completed her normal tenure of posting at Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar. Admittedly, one Shri Rajesh Baburao Gowardhane was serving as Executive Engineer, Minor Irrigation Division No. 2, Sangamner, Dist. Ahmednagar and the respondent No. 3 Shri Bharat R. Shingade, was serving as

Executive Engineer, Majalgaon Canal Division, Parbhani and one Shri Sudhakar Hanmantrao Kachkalwar, was serving as Executive Engineer Deglur, Dist. Nanded before the impugned order of transfer. Admittedly, Shir Gowardhane and Shri Kachkalwar made request to the respondents for their transfers. Their requests have been considered by the respondents and they have been transferred. Admittedly, by the impugned order dated 15.12.2018 due to vacancy created because of Shri Gowardhan, the applicant has been transferred and posted at his place and the respondent No. 3 Shri Shingade has been posted on the place of the applicant. Admittedly, there is no complaint against the applicant about her work as Executive Engineer, Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar.

12. Learned Advocate for the applicant has submitted that the applicant has not completed her normal tenure of posting as Executive Engineer, Upper Pravara Dam Division at Sangamner, Dist. Ahmednagar and she was not due for transfer. But the respondent No. 2 has issued the impugned order only to accommodate the respondent No. 3. He has submitted that the some of the people representative recommended for transfer of the respondent No. 3 as Executive Engineer, Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar and therefore, the

respondent No. 2 transferred the applicant to accommodate the respondent No. 3.

13. He has submitted that the impugned transfer of the applicant is mid-term and mid-tenure transfer. In order to make mid-term and mid-tenure transfers, the competent authority has to follow the provisions of the Section 4(4) and 4(5) of the Transfer Act 2005 strictly, but there was no compliance of the mandatory provisions of Section 4 (4) and 4(5) of the Transfer Act 2005 by the respondents and therefore, the impugned transfer order is illegal. He has submitted that there is no complaint against the applicant and her superior had not expressed dissatisfaction about her work. Therefore, the impugned transfer order issued by the respondent No. 2 is without reason. He has submitted that record shows that the impugned transfer of the respondent No. 3 has been made on the place of the applicant on the request/recommendation of people's representative and on the basis of letter of Chief Engineer, Water Resources Division, North Maharashtra Region, Nashik dated 13.11.2018, in which he requested to appoint the experienced Executive Engineer at Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar. He has submitted that in the letter dated 13.11.2018 sent by the Chief Engineer, Water Resources Division, North Maharashtra

Region, Nashik there was no whisper about inefficiency of the applicant. He has submitted that the applicant's case has been placed before the Civil Services Board and one of the Members of the Civil Services Board had not recommended the transfer of respondent No. 3 and one Shri Kachkalwar in order to curb the practice of effecting mid-term transfers on the administrative ground. He has submitted that the recommendation of the Civil Services Board had not been approved by the competent authority i.e. the Hon'ble Chief Minister concerned by recording reasons and only put his signature on the proposal of the department. He has submitted that this does not amount approval by the competent authority for the mid-term and mid-tenure transfer. He has argued that the mandatory provisions of Section 4(4) and 4(5) of the Transfer Act 2005 provides that the competent transferring authority may transfer the employees before completion of their normal tenure in the midst of the term in exceptional circumstances and in special case and that too after recording the reasons in writing. He has submitted that no reasons have been recorded by the competent transferring authority while making the transfer of the applicant, though one of the Member of the Civil Services Board had not recommended the transfer of respondent No. 3. He has submitted that there

was non-compliance of the provisions of Section 4 (4) and 4(5) of the Transfer Act 2005 and therefore, the impugned order is illegal.

14. Learned Advocate for the applicant has further submitted that the respondents have come with a case that they made transfer of the applicant in view of the provisions of Section 4(5) of the Transfer Act 2005 and they have come with a case that the impugned transfer order is not under the provisions of Section 4(4) of the Transfer Act 2005 also. He has submitted that in order to make transfer before completion of normal tenure, the competent authority has to make out special case for transfer and to record reasons in writing as provided under Section 4(5) of the Transfer Act 2005. But no such special case has been made out by the respondents for the transfer of the applicant. Not only this, but reasons have not been recorded by the respondents while effecting the transfer of the applicant and therefore, the impugned order is illegal. He has submitted that the impugned order is mid-term and mid-tenure transfer and for making mid-term and mid-tenure transfers, the respondents ought to have complied with the provisions of Section 4(5) of the Transfer Act 2005, but they have not resorted to the provisions of the said Section 4(5) of the Transfer Act while issuing the

impugned order and therefore, the impugned order is illegal. He has submitted that Mr. Dinesh Kumar Jain, Chief Secretary of the Government of Maharashtra has filed an affidavit before the Hon'ble High Court of Judicature at Bombay in **W.P. No. 8987/2018** in case of **Balasaheb Vitthalrao Tidke and The State of Maharashtra and Anr.** decided on 12.12.2018 and undertook that the process of transfer will not be influenced by any recommendations made by any political leaders, members of political parties and any Hon'ble Minister who are not part of the process of the transfers. He has further stated in his affidavit that all the authorities who are competent to effect the transfers will be advised to strictly follow the provisions of the Transfer Act 2005, while issuing the transfer order. Therefore, the W.P. was disposed of by the Hon'ble High Court relying on the statement made by the Chief Secretary, the Government of Maharashtra.

15. Learned Advocate for the applicant has submitted that it is prerogative of the employer as to who should be transferred and where. He has submitted that unless the order of transfer is vitiated by mala-fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, the authority must keep in mind the guidelines issued by the Government. He has submitted that, if

a person makes any representation with respect to his transfer, the competent authority must consider the same having regard to the exigencies of administration. If the transfer order is mala-fide and in violation of statutory provisions, then the Tribunal can interfere with it. In support of his submissions, he has placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **Union India and Ors. Vs. S.L. Abbas** reported in **1993 AIR 2444**. Learned Advocate for the applicant has submitted that the impugned transfer of the applicant has been made in gross violation of the provisions of Transfer Act 2005 and therefore, he prayed to quash and set aside the impugned order by allowing the present Original Application.

16. Learned Chief Presenting Officer has submitted that the transfer of the applicant has been made on the basis of request made by the Chief Engineer, Nashik. By the letter dated 13.11.2018, the Chief Engineer, Water Resources Division, North Maharashtra Region, Nashik requested the respondents to appoint an experienced Executive Engineer at Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar to speed up the work, as the huge funds have been sanctioned for it. He has submitted that one Shri Gowardhane and Shri Kachkalwar had also made request for their transfers and therefore, the proposal

regarding the transfer of Gowardhane and Shri Kachkalwar along with the proposal of transfer of the applicant had been placed before the Civil Services Board and the Civil Services Board in its meeting dated 29.11.2018 decided to make transfer of the applicant. Thereafter, the proposal was placed before the competent transferring authority i.e. the Hon'ble Minister concerned, who is also the higher competent transferring authority in view of the notification dated 25.04.2016. The competent transferring authority approved the proposal and put his signature on it and thereafter, the impugned transfer order has been issued. He has submitted that the said facts show that the competent transferring authority decided to transfer the applicant as a special case and in the interest of administration and decided to transfer the respondent No. 3 from Parbhani and posted him on the place of the applicant. He has submitted that the respondents have taken care of the interest of the applicant that no prejudice will be caused to her, as they have not changed her headquarter and posted her at another division at Sangamner only. He has submitted that the special reasons for the transfer of the applicant have not been mentioned in the recommendation of the Civil Services Board, as well as, the proposal of the department which had been approved by the

competent transferring authority i.e. the Hon'ble Minister concerned and therefore, there is sufficient compliance of the provisions of Section 4(5) of the Transfer Act 2005 while effecting the transfer of the applicant.

17. Learned Chief Presenting Officer has further submitted that as the transfer of the applicant has been made before completion of her normal tenure in view of the provisions of Section 4(5) of the Transfer Act 2005, there is no need to comply with the provisions of Section 4(4) of the Transfer Act 2005. Therefore, the impugned order is legal one. He has submitted that huge funds have been allotted to the Nilwande project and therefore, the work has to be executed within stipulated time and for the purpose of speedy execution of work, it was necessary to post an experienced Executive Engineer at Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar and therefore, the respondents decided to post the respondent No. 3 on the place of the applicant and for the said reason, the transfer of the applicant has been made before completion of her normal tenure. He has submitted that the impugned transfer order was issued in the interest of public and administration; therefore, the same is legal. He has submitted that because of the said reason

the applicant's transfer has been made as a special case and therefore, he justified the impugned order.

18. Learned Advocate for the respondent No. 3 has submitted that the applicant has been transferred from one division to another division at the same place and therefore, it does not amount 'transfer'. However, even if it is considered that it is a 'transfer' in view of the provisions of Transfer Act 2005, it will not cause prejudice and inconvenience to the applicant and therefore, it cannot be termed as arbitrary and with malice. He has submitted that on the basis of report made by the Chief Engineer, Water Resources Division, North Maharashtra Region, Nashik, the department had proposed to transfer the applicant to execute work speedily and therefore, the impugned transfer order is legal one. He has submitted that there was sufficient compliance of the provisions of Transfer Act 2005 and therefore, the impugned transfer order cannot be termed as transfer in violation of the provisions of Transfer Act 2005.

19. Learned Advocate for the Advocate for respondent No. 3 has attracted may attention towards the decision of the Hon'ble High Court of Judicature at Bombay in **W.P. No. 3301/2010** in case of **Shri Ramesh Pandurang Shivdas Vs. The State of**

Maharashtra nad Ors. decided on 11.10.2010, wherein it is observed as follows:-

“8. However, before we part with the petition, we deem it appropriate to record some observations in respect of the Transfer Act which, in our opinion, has posed more problems than solving them before the State Government. The term “transfer” must have its limited meaning. The dictionary meaning of “transfer” shows that it is a posting from one place to another or a change from one station to another and it cannot be limited to a posting in the same department or in the same office or under the same Police Commissionerate Branch. The term “posting” would indicate place of duty. In the instant case when the petitioner and respondent no.5 came to be transferred from Alibag and Ahmednagar respectively under the Police Commissionerate, Thane, the Commissioner of Police was competent enough to give them postings and these postings cannot be termed as transfers. The term “transfer” in general parlance would indicate change of station/headquarter/city or town.”

20. Learned Advocate for the respondent No. 3 has also placed reliance on the judgment delivered by the Hon’ble High Court of Judicature at Bombay in **W.P. No. 7554/2013 with W.P. No. 7563/2013 with W.P. No. 7560/2013** in case of **Pradip Balkrushna Lonandkar and Ors. Vs. The State of**

Maharashtra and Ors. decided on 22.11.2013, wherein it is observed as follows :-

“22. To our mind, therefore, the label attached or nomenclature cannot be decisive or conclusive. The Transfer Act, 2005 defines the term “transfer” in the manner referred to above essentially because an innocuous exercise in a given case and being termed as shifting an officer from one office to another, change in assignment or job to be performed, would well amount to a transfer and may require interference if same has been done arbitrarily, malafide and frequently. It is to meet such eventuality that the Transfer Act, 2005 defines the term “transfer” in a peculiar way. It is not as if every shifting or posting order would necessarily amount to transfer. For it to amount as such, it would have to be demonstrated that it would amount to transfer because that is not an exercise as innocuous as termed, but falling within the parameters of the enactment. Therefore, we have already clarified that the definition of the term must be seen in the backdrop of a contextual interpretation and provisions of the Transfer Act, 2005. The interpretation which subserves the object and purpose of the enactment and carries it further and avoids any absurdity or ambiguity must be placed on the enactment. Therefore, we do not find the judgment rendered in the case of Ramdas Pandurang Shivdas (supra) would mean that the Division Bench held that the meaning of the term “transfer” read with the definition of the term “post” is so wide that even change from one

table to another would amount to transfer. That it may amount to transfer or somebody terms it as such is not what is decisive. It was merely an expression of opinion by the Division Bench and so as to invite attention of all concerned to the possible abuse or misuse of the protection given by the Transfer Act, 2005. Then, it is left to the Legislature to remedy the situation if so advised. The judgment of the Division Bench in the case of Shivdas (supra) read in its entirety does not indicate that the orders of the present nature and impugned in the present case would necessarily amount to transfer. That is not the ratio of these judgments. Once this conclusion is reached then the reliance on the judgments cannot assist the Petitioners.”

21. Learned Advocate for the respondent No. 3 has also attracted my attention towards the judgment of this Tribunal in **O.A. NO. 928/2016** in case of **Smt. Lata Narayan Koli @ Lata Ravikant Patil Vs. The Divisional Commissioner and Ors.** decided on 23.11.2016, wherein reliance has been placed by the Tribunal on the judgment in case of **Pradip Balkrushna Lonandkar and Ors. Vs. The State of Maharashtra and Ors.** He has also attracted my attention towards the judgment of this Tribunal in case of **Ramesh Sayanna Mundlod Vs. The State of Maharashtra and Ors.** decided on 20.12.2016.

22. Learned Advocate for the respondent No. 3 has further placed reliance on the judgment delivered by the Hon'ble Supreme Court in case of **Ramakant Baburao Kendre Vs. State of Maharashtra and Anr.** reported in **Bom. C.R. 735**, where in it is observed as follows:-

15. In the said case i.e. Writ Petition No. 5835/2011, decided by us on 15th September, 2011, the learned counsel for Respondent No. 3 therein, had raised a contention that the Proviso governs the main provision. The said contention was rejected. After considering the principle of harmonious construction which is also popularly known as 'Heydon's Rule of Interpretation', this Court observed thus :

12] There is another angle. It is to be seen that prior to enactment of the said Act, there was no enactment for regulation of transfers of Government servants and the said Act has been enacted with a purpose to (14) wp8177-11 regulate the transfers of the Government servants. The Constitution Bench of the Apex Court in the case of Bengal Immunity Co. V/s State of Bihar (AIR 1955 SC 661) has applied the Heydon's rule of interpretation and observed thus:

It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case ((1584 3 Co.Rep. 7a, p.7b) was decided that for the sure and true interpretation of all Statutes in

iggeneral (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st - What was the common law before the making of the Act.

2nd - What was the mischief and defect for which the common law did not provide.

3rd - What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th - The true reason of the remedy;

and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the (15) wp8177-11 Act, pro bono publico.

It can thus be seen that while interpreting the aforesaid provision of the said Act, this Court would also have to apply Heydon's rule or the mischief rule. It will have to be seen as to what was the position before making the enactment of the Act. What was the mischief and defect for which the law did not provide earlier and what remedy the legislature has found to cure the disease and the true reason of the remedy. After applying this, the Courts will have to make such

interpretation, which shall suppress the mischief and advance the remedy. This legal principle has been consistently followed by the Apex Court and various High Courts while interpreting the statutes. It can be seen that prior to the aforesaid enactment coming into force, there was no enactment to regulate the transfers of the Government servants and the Government servants were transferred at the sweet will of the authorities concerned. In order to do away with the arbitrary powers of the authorities, an enactment to regulate such transfers was found necessary. With that purpose, to suppress the mischief of an unguided, un-channalized power to transfer (16) wp8177-11 the Government servants, the said Act was enacted. The remedy provided was to regulate the transfers in accordance with the said enactment.

13. It can clearly be seen that the said enactment, particularly Sub-section (1) of Section 4 specifically protects a Government servant from being transferred prior to completion of his ordinary tenure. Sub-section (4) of Section 4 requires such transfers to be done once in a year i.e. in the month of April or May. The proviso thereto, though permits the transfers to be made any time in the year for the eventualities mentioned therein, however, we are of the considered view that the proviso to Sub-section (4) cannot be read in such a manner, which makes the provision of Sub-section (1) of Section 4 redundant or nugatory. Clause (i) of the proviso to Sub-section (4), which permits transfer to be made at any time in a year

on the ground of eventualities mentioned therein, will have to be read in a manner that the transfer on the grounds mentioned in clause (i) of proviso to Sub-section (4) would be permissible at any time of the year and not necessarily in April or May when a Government servant has completed his tenure (17) wp8177-11 of posting. If it is not read in that manner, the very purpose of the protection, which is granted in Sub-section (1) of Section 4 would become redundant and nugatory. A person, who has not completed even three months in a particular posting, could be transferred to some post, which has become vacant on account of transfer of another Government servant, who was working on the post. As such, the clause (i) of proviso to Sub-section (4) will have to be read in harmony with Sub-section (1) of Section 4 of the said Act. It will have to be interpreted that a Government servant will not be ordinarily transferred prior to completion of his tenure, and the transfers will have to be made only in the month of April or May. However, if transfer is necessitated on account of any of eventualities stated in clause (i) to proviso of Sub-section (4), it can be made at any time of the year and not necessarily in April or May, however, only on completion of tenure of the Government servant. No doubt, that clause (ii) of proviso to Sub-section (4) would permit transfer to be made at any time of the year and not necessarily in April or May, where the competent authority is satisfied that the transfer is essential due to (18) wp8177-11 exceptional circumstances or special reasons. However, when this is being done, the reasons

and the circumstances will have to be recorded in writing and the same cannot be done without prior approval of the next higher authority. Undisputedly, Sub-section (5) of Section 4 carves out an exception to the general protection granted in Sub-section (1) of Section 4. No doubt, by taking recourse to Sub-section (5), a Government servant can be transferred even prior to completion of his tenure and even at any time of the year and not necessarily in the month of April or May, in special cases. However, while doing so, the competent authority will be required to record the reasons in writing and would also be required to obtain prior approval of the immediately superior Transferring Authority as mentioned in the table of Section 6. As already discussed, the provision of Sub-section (5) of Section 4 carves out an exception to the protection granted in favour of an employee in Sub-section (1) of the said section. It is to be noted that for that reason, the legislature has made an inbuilt safeguard in Sub-section (5) by requiring the reasons to be recorded for making transfer as a special case and obtaining approval of the (19) wp8177-11 immediately superior Transferring Authority. It is, thus, clear that the legislative intent is clear that ordinarily an employee should not be transferred prior to completion of his tenure. However, this would be permissible in special cases when the competent authority records the reasons for the same and obtains prior approval of the immediately superior Transferring Authority. "

23. Learned Advocate for the respondent No. 3 has also placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **Mohd. Masood Ahmed Vs. State of U.P. and Ors.** reported in **DGLS (SC) 1050**, wherein it is observed as follows:-

“7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in Rajendra Rao vs. Union of India (1993) 1 SCC 148; (AIR 1939 SC 1236), National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan (2001) 8 SCC 574; (AIR 2001 SC 3309), State Bank of India vs. Anjan Sanyal (2001) 5 SCC 508; (AIR 2001 SC 1748). Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh vs. State of U.P. (1997) 3 ESC 1668; (1998) All LJ 70 and Onkarnath Tiwari vs. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866; (1998 All LJ 245), has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.”

24. Learned Advocate for respondent No. 3 has submitted that in case of similarly situated person, this Tribunal has held that the transfer made in the same city does not amount transfer. In support of his submissions, he has placed reliance on the judgment delivered by this Tribunal in case of **Nitin Murlidhar Upasani Vs. The State of Maharashtra and Anr.** in **O.A. No. 425/2014** decided on 11.02.2015. He has submitted that the said decision has been upheld by the Hon'ble High Court in **W.P. No. 1778/2015** decided on 02.09.2015. He has submitted that the Hon'ble High Court has also held that internal transfer cannot be termed as a transfer so as to raise a challenge before the Tribunal and these observations made in **W.P. No. 8898/2010** in case of **Shri Rajendra Shankar Kalal Vs. The State of Maharashtra and Ors.** decided on 30.11.2010.

25. Learned Advocate for respondent No. 3 has submitted that considering the said decisions, the impugned order cannot be said to be illegal, as there was no arbitrariness on the part of the respondents in transferring the applicant and no inconvenience will be caused to the applicant, as she has been placed at the same place i.e. at Sangamner, Dist. Ahmednagar. He has submitted that on the basis of transfer order, one Shri Kachkalwar has joined the post at Parbhani, where the

respondent No. 3 was posted and therefore, the respondent No. 3 has been relieved from that post. He has submitted that because of interim relief granted by this Tribunal, the respondent No. 3 could not join his new posting i.e. on the place of the applicant and therefore, he is in hanging position. He has submitted that inconvenience will be caused to the respondents, in case the order of transfer is not implemented and therefore, he prayed to dismiss the present Original Application.

26. On perusal of the record, it is crystal clear that the concerned department has proposed to transfer the four Executive Engineers including the applicant, on the basis of the applications of Shri Gowardhane and Shri Kachkalwar, with respect to their transfers and on the basis of recommendation received from the peoples' representative regarding the transfer of respondent No. 3 i.e. Shri B.R. Shingade. The said proposal was placed before the Civil Services Board. The department has proposed to transfer the applicant, though she was not due for transfer on the ground that the Chief Engineer, Water Resources Division, North Maharashtra Region, Nashik requested to appoint efficient and experienced Executive Engineer in her place. After considering the said proposal, two Members of the Civil Services Board recommended the transfer of the applicant and others on

administrative ground, while one of the Members of the Civil Services Board recommended not to transfer the applicant and other employees before completion of their normal tenure as they were not due for transfer in view of the provisions of the Transfer Act 2005. On the basis of recommendation of the Civil Services Board, the proposal was placed before the competent transferring authority i.e. the Hon'ble Minister concerned and the Hon'ble Minister concerned without recording any special reasons put his signature on it. On the basis of it, the respondents have issued the impugned order. The record produced by the respondents show that some representative of peoples and the Hon'ble Minister recommended the transfer of the respondent No. 3 from Majalgaon Canal Division, Parbhani Dist. Parbhani on the ground, though he is due for transfer. Some of the peoples' representative recommended the transfer of the respondent No. 3 at Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar and some of them recommended his transfer at Sangli. Admittedly, the applicant, as well as, the respondent No. 3 were not due for transfer and they have not completed their normal tenure at their earlier posting. There is no complaint against the applicant and about her work and efficiency. Her superior authority has never raised doubt about her efficiency. Not only

this, but her superior officer had never recommended her transfer. The Chief Engineer, Water Resources Division, North Maharashtra Region, Nashik had requested to post the experienced and senior Executive Engineer at Nilwande Project (Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar) by the letter dated 13.11.2018 and on the basis of said letter, the competent authority decided to transfer the applicant by resorting the provisions of Section 4(5) of the Transfer Act 2005. The entire documents on record show that one Shri Rajesh Baburao Gowardhane, who was working as Executive Engineer at Minor Irrigation Division No. 2, Sangamner, Dist. Ahmednagar, had requested to transfer him from that post and the respondents have considered his request and transferred him and in his place transferred the applicant, without any just cause in order to accommodate the respondent No. 3. Had it been a fact that the respondents were intending to transfer the respondent No. 3 at Sangamner, then they could have accommodated the respondent No. 3 on the place of Shri Gowardhane at Sangamner. But instead of it, the respondents transferred the applicant on the place of Shri Gowardhane, with a view to accommodate the respondent No. 3 Shri B.R. Shingade on the place of the applicant. There is no just reason for transfer

of the applicant except the letter of the Chief Engineer, Water Resources Division, North Maharashtra Region, Nashik dated 13.11.2018.

27. The impugned transfer of the applicant is in the midst of the term and tenure. It is a mid-term and mid-tenure transfer. In view of the provisions of Section 4(4) of the Transfer Act 2005 the Government is empowered to make transfer of the Government servant at any time due to exceptional circumstances or special reasons and that too after recording reasons in writing and with the approval of the next higher competent transferring authority. In the instant case, the respondents had not resorted the provisions of Section 4(4)(ii) of the Transfer Act 2005. They have not made any exceptional circumstances and special reasons for mid-term transfer of the applicant. Instead of it, they have resorted the provisions of Section 4(5) of the Transfer Act 2005 and effected the transfer of the applicant before completion of her normal tenure as a special case. But no special case has been made out by the respondents for the transfer of the applicant and no reasons in writing have been recorded by the competent transferring authority, while making the mid-tenure transfer of the applicant. The documents on record show that the entire exercise has been made by the

respondents with a view to accommodate the respondent No. 3 on the place of the applicant. Not only this, but they have not recorded any special reason and the exceptional circumstances for the transfer of the respondent No. 3 also. The respondent No. 3 was not due for transfer. Therefore, they ought to have complied with the mandatory provisions of Section 4(4) and 4(5) of the Transfer Act 2005 while effecting the transfer of the respondent No. 3. But they have not complied with the same. Therefore, in my view, the impugned order is in violation of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005, as there was no compliance of the mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. Therefore, the impugned order is not sustainable in the eye of law.

28. I have gone through the decisions referred by both the parties. I have no dispute regarding the settled legal principles laid down therein. It is a settled principle that shifting an officer from one place to another, change in assignment or job to be performed, would well amount to a transfer and may require interference if same has been done arbitrarily, malafide and frequently. Keeping in view, the settled legal principles laid down in the decisions referred by both the parties, I have to determine whether the impugned order has been issued by the respondents

arbitrarily, malafidey and frequently. The record shows that there was no special reasons and exceptional circumstances for the transfer of the applicant from her present post, but her transfer has been made with a view to accommodate the respondent No. 3 only. This shows that the respondents decided to transfer the applicant to favour the respondent No. 3 and therefore, this amounts arbitrarily exercise of the powers by the respondents. The impugned order has been issued in violation of the provisions of the Section 4(4) and 4(5) of the Transfer Act 2005. There is nothing on record to justify the impugned order. There is no just ground to hold that the transfer of the applicant has been made as a special case and in exceptional circumstances. It has made in violation of the provisions of Transfer Act 2005. Therefore, it is colorable exercise of power by the respondents. It has been made with mala-fide intention. Therefore, it requires to be quashed and set aside.

29. It is material to note here that the Chief Secretary of the Government of Maharashtra had filed affidavit before the Hon'ble High Court of Judicature at Bombay in **W.P. No. 8987/2018** in case of **Balasaheb Vitthalrao Tidke and The State of Maharashtra and Anr.** decided on 12.12.2018 and undertook to inform the respondents to follow the provisions of

the Transfer Act 2005 strictly while effecting the transfers. In spite of that, the concerned competent transferring authority has not followed the provisions of the Transfer Act 2005 strictly and passed the impugned order. Therefore, in my view, the impugned order is not sustainable, as it has been issued in violation of the statutory provisions as provided under Section 4(4)(ii) and 4(5) of the Transfer Act 2005. In these circumstances, in my view, the principles laid down in the above cited decisions by the respondent No. 3 are not much useful to the respondent No. 3. Therefore, I do not find force in the submissions advanced by the learned Advocate for respondent No. 3 in that regard.

30. As regards submissions of the learned Advocate for the respondent No. 3 that no in convenience will be caused to the applicant due to the impugned order of transfer, as she has been posted at the same place i.e. at Sangamner, I find no substance, as the said order has been issued by the respondents in violation of the provisions of the Transfer Act, 2005 to favour the respondent No. 3. No doubt, it is prerogative of the employer where, when and at what point of time the public servant shall be transferred from his present posting. But has to justify the transfer and order should not be arbitrary and mala-fide. In the instant case, there is no justifiable reason for transfer of the

applicant from one post to another at the same place. The impugned order has been issued arbitrarily, mala-fidely and in contraventions of the provisions of the Transfer Act, 2005 and therefore, it requires to be quashed and set aside by allowed the present Original Application.

31. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The impugned order dated 15.12.2018 transferring the applicant from the post of Executive Engineer, Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar to the post of Executive Engineer, Minor Irrigation Division No. 2, Sangamner is hereby quashed and set aside. The respondents are directed to repost the applicant at his earlier post i.e. at Upper Pravara Dam Division, Sangamner, Dist. Ahmednagar immediately. There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 25.01.2019.

KPB S.B. O.A. No. 972 of 2018 BPP 2019 Transfer

Sd/-
(B.P. PATIL)
MEMBER (J)