

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

**ORIGINAL APPLICATION NO. 136 OF 2019**

DIST. : OSMANABAD

Sudarshan s/o Sahebrao Pagar, )  
Age. 46 years, Occ. Service )  
(as Superintending Engineer, )  
Osmanabad Irrigation Circle, O'bad) )  
R/o Anand Nagar, Osmanabad, )  
Dist. Osmanabad. )--

**APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
Through its Principal Secretary, )  
Water Resources Department, )  
M.S., Mantralaya, Mumbai – 32. )
2. The Chief Engineer, )  
Irrigation Department, )  
Sinchan Bhavan, Aurangabad. )
3. Mr. Malikarjun E. Dharane, )  
Superintending Engineer-cum- )  
Deputy Secretary, )  
Water Resources Department, )  
M.S., Mantralaya, Mumbai – 32. )--

**RESPONDENTS**

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APPEARANCE :- Shri Avinash S. Deshmukh, learned  
Advocate for the applicant.

: Shri M.S. Mahajan, learned Chief  
Presenting Officer for the respondent no. 1.

: Shri Suresh D. Dhongde, learned Advocate  
for respondent no. 2.

: Shri Ajay S. Deshpande, learned Advocate  
for respondent no. 3.

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**CORAM** : **JUSTICE A.H. JOSHI, CHAIRMAN.**

**RESERVED ON** : **3.5.2019.**

**PRONOUNCED ON** : **6.5.2019.**

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## **J U D G M E N T**

1. Heard Shri Avinash S. Deshmukh, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent no. 1, Shri Suresh D. Dhongde, learned Advocate for respondent no. 2 and Shri Ajay S. Deshpande, learned Advocate for respondent no. 3.

2. By this Original Application the applicant has challenged the order dated 13.2.2019 issued by the res. no. 1 transferring the applicant from the post of Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai and transferring the res. no. 3 – Shri Mallikarjun E. Dharane – in his place.

3. The grounds on which impugned transfer order is challenged are averred in para no. 7 ground nos. (IV) to (VII) of the Original Application. Those averments read as follows :-

*“(IV) It needs consideration at the hands of this Hon’ble Court that the impugned order of transfer of the applicant is most illegal & unsustainable as having been issued by Resp. No. 1 in violation of the provisions of Ss 3(1), 4(4)(ii) and 4(5) of the Transfers Act of 2005.*

*(V) It also needs to be considered that there existed absolutely no exceptional circumstance or special reason nor there existed any special case as respectively contemplated under Ss 4(4)(ii) and 4(5) of the Transfer Act*

*for issuing the impugned order of applicant's mid-term and mid tenure transfer thereby rendering the impugned order to be illegal and untenable in law.*

*(VI) Bare reading of the impugned order dtd. 13.02.2019 shows that the Resp. No. 1 though has ostensibly resorted to the provisions of the S. 4(5) of the Transfers Act, however the very fact that the Resp. No. 1 has not complied with the provisions of S. 4(4)(ii) of the Transfers Act in spite of the fact that the impugned order is resulting in mid-term transfer of the applicant and Resp. No. 3 that the same is rendered illegal & untenable in law.*

*(VII) Even assuming for a moment that the provisions of S. 4(5) of the Transfers Act were duly complied with by Resp. No. 1 while issuing the impugned order dtd. 13.2.2019, still the very fact that Resp. No. 1 has not recorded any 'exceptional circumstances' or 'special reasons' in writing as contemplated u/s 4(4)(ii) of the Transfers Act that the said order is rendered illegal & unsustainable and hence liable to be quashed & set aside."*

*(quoted from page 8 & 9 of paper book of O.A.)*

4. Crucial averments quoted in foregoing para have to be replied by the res. no. 1 the State, though the affidavit in reply filed by Shri Abhijeet Shivaji Mhetre, Superintending Engineer, Jaikwadi Project Circle, Aurangabad sworn on behalf of res. nos. 1 & 2 as is evident from para 1 & 2 of the said affidavit in reply.

Ground nos. IV to VII contained in para 7 of the Original Application have been replied in para 11 onwards, in skeptic manner. The text of para 11 of affidavit in reply reads as follows :-

*"11. As regards to the contents of Para No. 7 (Grounds No. I to VII) of the Original Application, I say and submit*

*that as already submitted hereinabove, the Applicant and Respondent no. 3 are transferred vice versa by following necessary procedure required to be followed in accordance with Provisions under section 4(5) of the transfer Act in the interest of Administration as well as in the public interest. Hence, contentions of Applicant that the said Transfer order is against the basic principles of justice, equity and good conscience is denied.*

*I further say and submit that, contention of applicant that the transfer is in contravention of provisions under section 3(1) and 4(4)(ii) of the Transfer Act is altogether perverse in view of the submissions made hereinabove. Therefore, adverse contentions of Applicant in respect of provision u/s 4(5) of Transfer Act does not survive for consideration and hence denied by the present respondents. It is submitted that, the Applicant and Respondent No. 3 are transferred vice versa by following necessary procedure required to be followed in accordance with Provisions under section 4(5) of the Transfer Act in the interest of Administration as well as in the public interest.”*

(quoted from page 29 & 30 of paper book of O.A.)

5. Moot question which arises for decision is as to whether reasons have been recorded. All that is averred by the respondent nos. 1 & 2 is underlined text in para 11, which is quoted hereinabove. However the reply does not contain any single answer to meet the allegation that “special case and exceptional circumstances” leading to the Transfer.

6. Learned Advocate for the applicant has placed reliance on the following judgments :-

(i) Purushottam Govindrao Bhagwat Vs. State of Maharashtra & Ors. [2012 (3) Bom.C.R. 442]

(ii) Judgment dated 8.8.2017 of Hon'ble Supreme Court in the case of Vishwanath Babunath Nath Vs. State of Maharashtra & Ors. [Civil Appeal No. 10239/2017 arising out of SLP (C) No. 6901/2017].

7. Learned Chief Presenting Officer has placed reliance on the judgment dated 29.3.2019 delivered by Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **writ petition No. 1373/2019 [Mr. Bharat S/o Ramkishan Shingade Vs. the State of Maharashtra & Ors.]**.

8. Facts and circumstances in the case of **Mr. Bharat S/o Ramkishan Shingade** (supra) relied upon by the learned Chief Presenting Officer were totally different than the facts and circumstances in the present Original Application and therefore the judgment in the case of **Mr. Bharat S/o Ramkishan Shingade** has no application in the present Original Application.

9. The requirement of recording reasons being mandatory is settled principal of law and any contrary judgment / precedent is not shown.

10. In the result, the present Original Application succeeds on the ground that the State has failed to reply the grounds contained in para 7 (IV) to (VII) of the Original Application. It is not shown as to what are the special reasons and exceptional circumstances on record, before issuing the impugned transfer order.

11. In the result, the Original Application succeeds. The impugned transfer order dated 13.2.2019 issued by res. no. 1 is quashed & set aside.

12. In the circumstances, parties are directed to bear their own costs.

**(A.H. JOSHI)**  
**CHAIRMAN**

**Place : Aurangabad**  
**Date : 6.5.2019.**