

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 358 of 2015

Dr. Ramling Bhimrao Kasbe,
Aged about 58 years,
Occ. Service,
District Health Officer,
Zilla Parishad, Buldana, Tq. & dist. Buldana.

Applicant.

Versus

- 1) State of Maharashtra,
Public Health Department,
Government of Maharashtra,
through its Principal Secretary,
Mantralaya, Mumbai.
- 2) Director of Health,
Health Department, Government of Maharashtra,
G.T. Hospital Complex,
10th floor, Mumbai.
- 3) Deputy Director,
Health Services, Akola Circle,
Akola, Tq. & Dist. Akola.
- 4) Chief Executive Officer,
Zilla Parishad, Buldana,
Tq. & Dist. Buldana.
- 5) Dr. Shivaji Soma Pawar,
Aged about major, Occ. Service,
District Health Officer, Zilla Parishad,
Buldhana, Tq. & Dist. Buldhana-443 001.

Respondents

Shri D.T. Patil, Advocate for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos. 1 to 3.

Shri S.M. Ukey, A.K. Sukhdeve, Advs. for R-4.

Shri N.B. Kalwaghe, S.N. Gaikwad, Advs. for R-5.

Coram:- Hon'ble Shri S.S.Hingne, Member (J).

Dated: - 06/05/2016.

ORDER -

The applicant has filed the O.A. challenging the order dated 29-6-2015 (A-5,P-23) by which he is transferred from Buldhana to Washim.

2. Heard D.T. Patil, Id. counsel for the applicant, Shri A.M. Ghogre, Id. P.O. for R-1 to 3, none for R-4 and Shri N.B. Kalwaghe, Id. counsel for R-5.

3. The facts no longer disputes are that the applicant was to retire on 31-5-2015 on attaining the age of 58 years. However, the Govt. vide order dated 31-5-2015 (A-3,P-21) instead retiring the applicant on 31-5-2015, extended the a period retirement of applicant upto 60 years. Thereafter, the applicant continued on the same post at Buldhana.

4. The applicant was working as DHO, Buldhana on transfer from Aurangabad vide order dated 2-8-2012 (A-1,P-19). He was due for transfer. The applicant is transferred from Buldhana to Washim vide order dated 29-6-2015 (A-5,P-23). R/5 is transferred

from Jalgaon to Buldhana in place of applicant vide order dated 29th June, 2015 (A-R-2, P-43).

5. The applicant has challenged the impugned transfer order contending that it is a mid-term being issued on 29-6-2015. As per Section 4 (4) of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short 'Transfer Act'), the transfers are to be issued before in the month of April or May. As per proviso the transfer can be issued at any time in the year in two contingencies as laid down section 4 (4) (i) and 4 (4) (ii) of the Transfers Act. As per Section 4 (4) (ii) of the Transfer Act, there can be mid-term transfer in exceptional circumstances and for special reasons to be recorded in writing and with the prior approval of the next higher authority.

6. The respondent has produced the file of the approval. It reveals from the same that note sheet was prepared on 30-5-2015 for transfers of the DHO in the general transfers of 2015. There is no reference of name of the applicant therein. This shows there is neither proposal nor approval for transfer of applicant. The reason appears that the applicant was due to retire on 31-5-2015 and there was no question to transfer him and therefore his name is not reflected in the transfers of 2015. Any how fact remains that there is no compliance of the provisions of section 4 (4) (ii) of the Transfers Act.

7. The learned counsel for R-5 vehemently urged that the respondent is transferred from Jalgaon to Buldhana vide order dated 29th June, 2015 and that order is not challenged and therefore the applicant ought to have challenged it. In support of submission he placed the reliance on Manohar Lal Vs. UGrasen & Ors. [2010 (11) SCC,557] and contended that the reliefs which is not claimed cannot be granted. The Court is not considering the validity and legality of the transfer of R/5. The Court has to decide only the legality and validity of the transfer of the applicant. The reliance is also placed on a case of State of Rajasthan & Ano. Vs. D.D. Sood & Ano. [(2002) 9 SCC 458]. Wherein it is held that the matter which is raised can only be decided by the Court. As stated earlier, the question of legality and validity of the transfer of non applicant is not touched and as such the observations in the cases do not help the respondents.

8. It is argued that the transfer of respondent no.5 is on request and therefore it is issued to accommodate him only because R/5 has opted for transfer. The R/5 being due to transfer, it cannot be said that it is issued to favour him. On the contrary it reveals from the file (A-R-1,P-41) that R/5 opted three places for transfer and he being due it was natural for him to ask for places.

9.. The learned counsel for the respondents urged that the applicant was due for transfer and therefore only because his

service period is extended, ~~The~~ applicant has no reason to challenge the transfer. Even though the applicant was due for transfer but when he is continued on that post after the alleged date of superannuation, he cannot be deprived of the benefits and the legal provisions cannot be ignored. His transfer was though after completion of the tenure but being a mid-term the compliance of provisions of section 4 (4) (ii) of the Transfer Act is necessary.

10. Any how fact remains that the applicant's transfer is a mid-term without compliance of provisions of Section 4 (4) (ii) of the Transfer Act and as such the order cannot be legal and valid.

11. Consequently, the O.A. is allowed. The transfer of the applicant vide order dated 29-6-2015 (A-5,P-23) is quashed. No order as to costs.

sd/-

(S.S.Hingne),
Member (J).

dnk.