

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 540 OF 2020**

DISTRICT : SATARA

Smt Bai Sarjerao Mane)
Tashildar, Man, Dist-Satara.)
Residing at and post Dahiwadi,)
Tal-Man, Dist-Satara.)...**Applicant**

Versus

1. Government of Maharashtra)
Through Addl. Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)
2. Shri Chandrashekar Sanap)
Tahsildar, Revenue Collector)
Office, Dist-Sangli.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondent no. 1.

Shri P.P Deokar, learned advocate for Respondent no. 2.

CORAM : Justice Mridula R. Bhatkar (Chairperson)

DATE : 29.10.2020

J U D G M E N T

1. Heard Shri M.D Lonkar, learned advocate for the applicant, Smt K.S Gaikwad, learned P.O for the Respondent no. 1 and Shri P.P Deokar, learned advocate for Respondent no. 2.

2. The applicant, Tahsildar, working at Dahiwadi, Tal-Man, Dist-Satara challenges the order dated 1.10.2020 of her transfer from Dahiwadi, Tal-Man, Dist-Satara. Till today she is not given any posting and is left without any work. Respondent no. 2 is also a Tahsildar, who is transferred from Revenue Collector's officer, Sangli to Dahiwadi, Tal-Man, Dist-Satara, from where the applicant is transferred.

3. Both Respondents no. 1 and 2 have filed separate affidavit in reply.

4. Learned counsel for the applicant has submitted that the applicant was not due for transfer and she has been holding the post at Dahiwadi, Tal-Man, Dist-Satara since 21.8.2018 and therefore has completed only 2 years at Dahiwadi. There was no proposal of her transfer and there was no reason to transfer her. The Civil Services Board has neither recommended her transfer nor the transfer of Respondent no. 2. Yet Respondent no. 1 has issued order of her transfer. The learned counsel for the applicant submits that applicant is staying at Dahiwadi along with her son and her husband is posted at Mumbai.

5. Learned P.O relying on the affidavit of Shri Prakash S. Indalkar, Under Secretary, dated 28.10.2020 has submitted that the Respondent no. 1 has followed the procedure and after taking the approval of the Hon'ble the Chief Minister, Respondent no. 2 is

transferred to Dahiwadi, Tal-Mann, Dist-Satara. She relies on the ratio laid down in the case of ***Union of India & Ors Vs. S.L Abbas, 1993 AIR SC 2444*** and also the ratio laid down in the case of ***State of Punjab & Ors Vs. Joginder Singh Dhatt, AIR 1993 SC 2486***.

6. Learned counsel appearing for Respondent no. 2 submits that the Respondent no. 2 has taken charge immediately on 7.10.2020 and had shifted along with his family from Sangli to Dahiwadi, Tal-Man, Dist-Satara and started working. To cancel his transfer order will be unjust and prejudice will be caused to the Respondent no. 2 who has obeyed the orders of the competent authority.

7. The Government needs to transfer the Government servants for efficient, effective and smooth administration and Government servant cannot complain against the transfer if he is transferred as per law and the rules.

8. In the case of ***Union of India & Others Vs. S.L Abbas, AIR 1993 S.C 2444***, the Government servant has requested for transfer on the ground that he should not be separated from wife and the guidelines in respect of posting of husband and wife are to be followed. While deciding the said issue, the Supreme Court has held as under:-

“Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject.”

9. In the case of State of **Punjab & Ors Vs. Joginder Singh Dhatt, AIR 1993 S.C 2486**, it is observed therein that the Court should be slow in interfering with the order of transfer of public servant and it is the employer to decide when, where and at what point of time a public servant is transferred and ordinarily the Courts have no jurisdiction to interfere with the order of transfer.

10. I have gone through the minutes of the meeting of the Civil Services Board dated 5.8.2020 wherein the transfer orders of Tahsildar's in State of Maharashtra were considered and issued. Admittedly the applicant and Respondent no. 2 were not due for transfer and their names were not considered in the meeting of the Civil Services Board. Under such circumstances it is obligatory on the part of Respondent no. 1 to follow the rules laid down under the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as 'ROT Act 2005' for brevity). Mid-tenure transfers can take place only by following procedure under Section 4 (4)(ii) and 4(5) of ROT Act, 2005.

11. In the present case as submitted by learned P.O, the transfer order is issued on administrative grounds. It is made clear that the term administrative ground cannot be used for superficial convenience, but to improve the efficiency and for good governance therefore it is required to be supported by special reasons or exceptional circumstances to make a special case. Administrative ground undoubtedly can be a special reason, however, nature of such administrative ground is also required to be specified in the proposal which is submitted before the competent transferring authority or the competent transferring authority himself / herself should mention reason for transferring the Government servant on administrative ground.

12. In the present case, surprisingly, the applicant is only relieved from her post, but she is not given any posting till today. Ex facie, it shows that the Respondent no. 1 wanted to accommodate Respondent no. 2. This is not the object of ROT Act 2005. Though a transfer is an incidence of service and the Government is fully empowered to transfer the Government servants, this power is to be used judiciously and it is to be manifested in the procedure.

13. In view of the above following order is passed.

ORDER

- (a) The transfer order dated 1.10.202 is hereby quashed and set aside.
- (b) The applicant to take charge of her post of Tahsildar at Dahiwadi, Tal-Man, Dist-Satara.
- (c) Respondent no. 2 is directed to forthwith hand over charge of the post of Tahsildar to the applicant and go back to Sangli.
- (d) The Respondent no. 2 is entitled to permissible transfer allowance, which should be paid to him without delay.

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 29.10.2020
Dictation taken by : A.K. Nair.