

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 668 OF 2020

DISTRICT : KOLHAPUR

Dr Dhananjay P. Mane,)
Occ : Service,)
R/o: C.S No. 2776, Plot No. 6,)
Manas, E-Ward, Kolhapur 416 006.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Additional Chief)
Secretary, Higher Education)
Department, Mantralaya,)
Mumbai 400 032.)
2. The Director of Higher Education)
Maharashtra State,)
Central Building, Pune 411 001.)
3. The Regional Joint Director,)
Higher Education, Kolhapur)
Region, Kolhapur 416 006.)...**Respondents**

Shri Makarand Kale a/w Shri S.R Ghanavat, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri A.P Kurhekar (Member) (J)

DATE : 19.03.2021

J U D G M E N T

1. The applicant has challenged the order dated 29.10.2020, issued by Respondent no. 2, Director of Education, Pune, whereby applicant was deputed in the office of Respondent no. 2, Director of Higher Education, Maharashtra State, Pune invoking Section 19 of the Administrative Tribunals Act, 1985.

2. The facts giving rise to the Original Application are as under:-

The applicant is working as Administrative Officer and by order dated 2.12.2015, Government posted him in the Office of Joint Director, Higher Education, Kolhapur. Accordingly, he joined at Kolhapur. However, abruptly Respondent no. 2, Director of Higher Education, Pune, deputed him in his office temporarily by order dated 29.12.2020. Being aggrieved by the same, he made representation to Respondent no. 2 on 31.10.2020 contending that his deputation order is illegal and it amounts to transfer by way of punishment. He, has therefore, requested to cancel the deputation order. However, Respondent no. 2, rejected his representation by communication dated 10.11.2020. The applicant has therefore, challenged the impugned order dated 29.10.2020 by filing the present Original Application.

3. Shri Ghanavat, learned counsel for the applicant sought to assail the impugned order dated 29.10.2020 contending that it amounts to mid-term transfer under the guise of temporary deputation only to circumvent the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as Transfer Act 2005' for brevity). He has

further pointed out that there is no such compliance of Section 4(4)(ii) & 4(5) of the Transfer Act, 2005, which interalia provides for mid-term and mid-tenure transfer only in special cases after recording reasons in writing with the prior approval of the immediately preceding competent transferring authority as mentioned in Section 6 of the Transfer Act, 2005. He has further pointed out that in the affidavit in reply by the Respondents certain misconduct is attributed to the applicant which makes it quite clear that the impugned order dated 29.10.2020 is not innocuous simple order of temporary deputation, but it is malice in law, on this ground also unsustainable in law.

4. Per contra, Shri A.J Chougule, learned Presenting Officer for the Respondents sought to justify the impugned order contending that it was not transfer order which requires compliance of provisions of the Transfer Act, 2005. According to him, for clearance of pending files in Pune office, the applicant's services were temporarily deputed in the office of the Director, Higher Education, M.S, Pune and after completion of the pending work, he will be sent back to Kolhapur.

5. Undisputedly, the applicant's appointing authority as well competent transferring authority for his transfer is Respondent no. 1, i.e. State of Maharashtra. By order dated 2.12.2015, the applicant was transferred to Kolhapur from Nagpur. He is a Group-A officer. Admittedly, he is retiring at the end of July, 2021.

6. In view of the pleadings and submissions advanced at the Bar, question posed for consideration whether the impugned order dated 29.10.2020 can be termed temporary deputation or it is has trapping of transfer in the eye of law.

7. At the very outset, the impugned order dated 29.10.2020 reveals that no period of deputation is mentioned in the order. All that it is stated that the services of the applicant are temporarily deputed in the office of Director, Higher Education, Pune. Now, more than four months is over, but the order of deputation is still continuing. One can understand if there is temporary deputation for some short period for administrative convenience or exigency of work, but it is not so. Apart, applicant's appointing authority is State Government, and therefore, for any such deputation, the competent authority would be Respondent no. 1, i.e. Government. However, in the present case, Respondent no. 2, Director, Higher Education, M.S, Pune, usurped the authority of the Government by passing the impugned order dated 29.10.2020. In other words, Respondent no. 2 cannot be said to be the competent authority to issue order of deputation of the applicant.

8. If there was any such need for the services of the applicant at Pune, then Respondents ought to have availed the provisions of Transfer Act, 2005 to transfer the applicant after compliance of Section 4(4)(ii) of the Transfer Act, 2005. However, instead of taking legal recourse, Respondent no. 2, diverted the services of the applicant from Kolhapur to Pune under the guise of temporary deputation. If such course of action is allowed, it would circumvent the provisions of the Transfer Act, 2005. It is thus apparent that the impugned order dated 29.10.2020 is camouflage under the cloak of deputation. It is not at all sustainable in law. It has trapping of transfer in the eye of law. Therefore, such transfers ought to have been in consonance with Section 4(4)(ii) of the Transfer Act, vetted by the Civil Services Board.

9. Admittedly, there is no such compliance of Section 4(4)(ii) of the Transfer Act, 2005, which inter alia requires approval of the

next superior competent transferring authority. In the present case, Hon'ble Chief Minister would be the competent transferring authority for mid-term transfer of the applicant.

10. Apart, it is interesting to see the contents of the affidavit in reply of the Respondents. In para no.8 of the reply, the Respondents contend that the Department has received serious complaints against the applicant. It is further stated that because of the said complaints, show cause notice was issued to the complainant and proposal was also forwarded for his transfer attributing serious misconduct. It is on this background one needs to examine whether the nature and legality of the deputation order dated 29.10.2020.

11. It is thus obvious that the impugned order is not innocuous order for temporary deputation, but it is a transfer order issued by way of punishment. Needless to mention that transfer cannot be under the guise of punishment by prejudging the guilt without affording opportunity of hearing. Even where transfer is necessitated on account of serious misconduct, in that event also, it requires compliance of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005. Whereas, in the present case, without taking recourse of law the Respondent no. 2 usurped the authority of the Government and under guise of temporary deputation, transferred the applicant from Kolhapur to Pune. The intention is to be gathered not from the wording used in the impugned order, but it is to be tested on the background of facts, which led to the authority to pass such order.

12. True transfer is incidence of service and a Government servant cannot claim a particular post as a right for a particular period. It falls within the governance of executive. However, now

transfers are governed and regulated by the Transfer Act, 2005, and it is not left at the whims and caprices of the executive. There is complete mechanism in the Transfer Act, 2005, which inter alia provides for fixed tenure of a Government servant and further provides for general transfers after completion of tenure shall be made only in the month of April or May in a year. At the same time, Section 4(4)(ii) as well as 4(5) of the Transfer Act, 2005, provides mechanism for mid-term and mid-tenure transfer in special cases after recording reasons in writing with the approval of the next higher competent transferring authority. Apart, Section 5(1)(a) exempts a Government servant from transfer, who is due for retirement within a year. In the present case, the applicant is retiring in July, 2021.

13. Suffice to say, the Respondents were required to avail the provisions of the Transfer Act, 2005, if there was any such administrative exigency for mid-term transfer of the applicant. However, instead of taking recourse of law, Respondent no. 2 usurped the authority of the Government and transferred the applicant from Kolhapur to Pune under the guise of temporary deputation in view of allegations of misconduct which is malice in law.

14. The totality of above discussion leads me to conclude that the impugned order dated 29.10.2020 is totally unsustainable in law and liable to be quashed and set aside

ORDER

- (a) Original Application is allowed.
- (b) The impugned order dated 29.10.2020 is quashed and set aside.

- (c) Interim relief granted by this Tribunal by order dated 19.11.2020 is made absolute.
- (d) Applicant be reposted as Administrative Officer, Higher Education, Kolhapur, within two weeks from today.

Sd/-
(A.P Kurhekar)
Member (J)

Place : Mumbai
Date : 19.03.2021
Dictation taken by : A.K. Nair.