

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

CIVIL APPIICATION No. 69/2018 AND

CIVIL APPIICATION No. 337/2017

AND

ORIGINAL APPLICATION NO.297/2017.

(S.B.)

Satish Laxmanrao Chakole,
Aged about 48 years,
Occ-Service,
R/o 35, Shrinagar Empress Mills Colony,
Narendra Nagar, Ring Road, Nagpur-15.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Skill Development
and Entrepreneurship,
Mantralaya, Mumbai-400 032.
2. The Director,
Vocational Education & Training,
3, Mahapalika Marg,
Mumbai-1.
3. The Joint Director,
Vocational Education & Training,
Regional Office, Civil Lines, Nagpur.
4. The Principal,
Industrial Training Institute,

Near Dikshabhumi, Nagpur-22.

5. The Principal,
Industrial Training Institute,
Kalmeshwar, Distt. Nagpur.

Respondents

Shri S.A. Kalbande, the Ld. Advocate for the applicant.
Shri A.M. Ghogre, the Ld. P.O. for the respondents.

Coram:- Shri J.D. Kulkarni, Vice-Chairman (J)

JUDGMENT

(Delivered on this 3rd day of April, 2018.)

Heard Shri S.A. Kalbande, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondents.

2. The applicant has claimed that the impugned order dated 19.5.2017 (Annexure A-1, P.34) be quashed and set aside. Vide the said order, the applicant, who is Craft Instructor, has been transferred from Industrial Training Institute, Nagpur to Industrial Training Institute, Kalmeshwar, District Nagpur on a vacant post. According to the applicant, he was earlier transferred from Wardha to Gadchiroli in Government Industrial Training Institute, on 15.6.2015. But due to personal difficulty and illness, he could not join at Gadchiroli. Thereafter vide order dated

21.11.2016, he has been transferred from Industrial Training Institute, Gadchiroli to Industrial Training Institute, Nagpur and had taken over the charge of the said post just on 22.11.2016. Since the date of joining at Nagpur, the applicant was not paid salary till the date of filing of this O.A. He has made several requests and representations for the payment of salary. But the same were ignored. However, on 19.5.2017, the impugned order has been passed whereby the applicant has been transferred to Industrial Training Institute, Kalmeshwar on administrative ground. According to the applicant, the impugned order of his transfer is malicious, illegal, unfair, vindictive and against the provisions of Sections 3 and 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the "Transfer Act of 2005") and, therefore, the said order is required to be quashed and set aside.

3. The respondent No.3, by filing reply affidavit, tried to justify the order. According to the respondents, at the time of Annual General Transfers of the year 2016, there were only three posts of Craft Instructions vacant at Industrial Training Institute,

Amgaon and Sakoli. The applicant was called for counseling on 12.5.2016, before passing of the general transfer orders dated 31.5.2016. On his request, he was transferred to Industrial Training Institute, Gadchiroli. However, the applicant did not join there, though he was relieved from Industrial Training Institute, Wardha on 31.8.2016. Since 31.8.2016, the applicant remained absent unauthorizedly. Thereafter he moved an application for his transfer from Industrial Training Institute, Gadchiroli to Industrial Training Institute, Nagpur on medical ground and it was considered and the order was issued on 21.8.2016, thereby transferring the applicant to Industrial Training Institute, Nagpur. The applicant accordingly joined at Industrial Training Institute, Nagpur on 22.11.2016. From 31.8.2016 to 21.12.2016, the applicant remained absent unauthorizedly and, therefore, his salary was not drawn for that period.

4. The respondent No.3 has stated in para Nos. 8, 9 and 10 as under:-

"8. It is pertinent to note here that as per G.Rs dated 3.7.2014 and 15.6.2015 issued by Higher and Technical Education Department, (M.S.),s Mumbai, the Centre of excellence Scheme has

been converted into Craftsman Training Scheme and also trade of Advance Modules of Auto Electricals and Electronics and Air Conditioning is converted into Mechanic Auto Electricals and Electronics. It is pertinent to note that, though the Craftsman Training Scheme is introduced, but the post of Training Officer for the advance module in COE scheme does not convert into Craft Instructor at I.T.I., Nagpur and not sanctioned by the competent authority.

9. It is pertinent to note here that, by communication dated 16.2.2016 issued by respondent No.2, the answering respondent came to know that, at the time of admission session 2015, the admission of students is given in R.A.C. Trade instead of M.A.E.E. by the Principal, I.T.I., Nagpur inadvertently and, therefore, the applicant was transferred to Nagpur on the post of Craft Instructor (R.A.C.) by order dated 21.11.2016. It is already mentioned here that, the advance module in COE is converted into the trade M.A.E.E. and further pertinent to note here that, the post of Training Officer in COE is not converted into Craft Instructor at I.T.I., Nagpur. For the sake of students, the respondent No.2 has given approval for the Trade R.A.C. for one year only for academic session of August

2016-2017 and it is communicated to the answering respondent vide communication dated 4.7.2016 which is enclosed herewith at Annexure R.2.

10. As the post of Training Officer in COE Scheme at I.T.I., Nagpur is not converted, it was not possible to release the salary of the applicant under the Head of Salary (sevarth) by the Treasury Office. Therefore, in order to release his salary, it was necessary to transfer him on sanctioned post. As the post at Kalmeshwar was vacant, therefore, the answering respondent has passed an impugned order on 19.5.2016 thereby transferred the applicant to Kalmeshwar which is very near to Nagpur, on the ground of administrative exigency after approval of the respondent No.1.”

5. According to the respondent No.3, the pay scale of Training Officer in COE Scheme is Rs. 9300-34800 plus grade pay of Rs. 4400/- whereas the pay scale of the applicant is Rs. 9300-34800 plus grade pay of Rs. 4300/- and, therefore, it was not possible to draw sanction for the salary of the applicant under COE Scheme at Industrial Training Institute, Nagpur. In the interest of the applicant himself and in order to release his salary,

the respondent No.3 has taken a proper decision only and sent the proposal to the respondent No.2 for necessary approval for his transfer to Industrial Training Institute, Kalmeshwar and after getting approval from respondent No.2, the impugned order has been issued. The respondent is ready and willing to release the salary of the applicant, provided he joins at Industrial Training Institute, Kalmeshwar. It is stated that because of the order issued by this Tribunal, the applicant is working at Industrial Training Institute, Nagpur, but his pay cannot be drawn at Nagpur for the reasons stated above.

6. Considering the administrative difficulties, as narrated in the reply affidavit of respondent No.3, this Tribunal was pleased to pass the detailed orders on 1.1.2018 and 9.1.2018 and thereafter on 12.3.2018. This Tribunal observed that there was a technical difficulty as seen from the reply affidavit that the applicant's salary cannot be drawn at Industrial Training Institute, Nagpur, though the applicant was allowed to work in view of ad-interim relief granted by this Tribunal on 6.6.2017. The post where the applicant is now working due to ad-interim relief granted by this Tribunal, is in excess and, therefore, the salary of the applicant

cannot be drawn from Nagpur I.T.I. The applicant, however, is not ready to join at I.T.I., Gadchiroli and stated that his case shall be considered on merits only.

7. I have perused the impugned order of transfer dated 19.5.2017. This order refers to earlier orders in this regard such as dated 16.11.2016, 30.11.2016 and 15.5.2017 and it seems that the order dated 16.11.2016 whereby the applicant was transferred to I.T.I., Nagpur was modified and the applicant has been posted at I.T.I., Kalmeshwar. It is specifically mentioned in the order as under:-

“अंशतः बदल करण्यात आलेल्या कर्मचाऱ्याला नवीन पदस्थापना केलेल्या ठिकाणी रुजू होण्याकरिता तात्काळ कार्यमुक्त करावे. वरील कर्मचाऱ्यांचे अंशतः बदल हे प्रशासकीय कारणास्तव करण्यात येत असल्याने त्यांना पदग्रहण अवधी व प्रवास भत्ता अनुज्ञेय राहिल.”

8. The aforesaid reason clearly shows that the earlier order of the applicant to post him at I.T.I., Nagpur was required to be modified due to administrative exigency and for that purpose, a proposal was sent to the higher authority and after getting sanction, the impugned order has been issued. The

respondent No.3 has already mentioned in the reply affidavit as to what was the administrative difficulty, whereby salary could not be drawn at Nagpur. It seems that, in order to see that the applicant gets proper salary and since there was no post available at Nagpur in the pay scale of the applicant, and considering the fact that if the applicant is allowed to serve at Nagpur, it may be an excess post than the sanctioned post, the respondents seem to have modified the order of transfer of the applicant at Nagpur and have passed the impugned order. In affidavit in reply filed on behalf of respondent No.3 dated 15.1.2017, P. 64 to 68 (both inclusive), the respondent No.3 has clearly stated that if the applicant joins at I.T.I., Kalmeshwar, salary of the applicant can be very much drawn from the establishment of I.T.I., Kalmeshwar. Letter is also annexed with the said affidavit dated 4.7.2016 as regards administrative difficulty for continuing the applicant at I.T.I., Nagpur. The minutes of the decision taken by the competent authority in this regard is at Annexure A-1 and A-2 and reason for change of posting of the applicant is given in the minutes of the meeting as under:-

”एड्वांस मौडूल्चे पद रुपांतरीत न झाल्यामुळे सेवार्थ मध्ये वेतन निघत नसल्याने”

9. Considering the aforesaid facts, I am, therefore, satisfied that the impugned order of the applicant whereby he has been transferred to I.T.I.,Kalmeshwar instead of I.T.I., Nagpur or in other words modification of the earlier order dated 16.11.2016 seems to be the administrative exigency. Though vague allegations are made that the order is malafide, the applicant could not place on record any evidence in this regard and, therefore, in such circumstances, the impugned seems to have been passed in the interest of administrative exigency and as such cannot be said to be illegal.

10. The applicant has also filed C.A. No. 69/2018 for taking appropriate action against the respondents for filing false affidavit. However, the points raised in the said affidavit are not relevant so far as the claim of the applicant for cancellation of impugned order of transfer is concerned.

11. The learned counsel for the applicant has placed reliance on the judgments reported in (1) **2013 (3) ALL MR 116 in case of Kishor Shridharrao Mhaske V/s Maharashtra OBC**

Finance and Development Corporation and others, (2) 2012 (1) Mh.L.J. 951, Ramakant Baburao Kendre V/s State of Maharashtra and (3) 2012 (3) Mh.L.J. 197, S.B. Bhagwat V/s State of Maharashtra and others.

12. I have perused all the judgments referred to by the learned counsel for the applicant. In my opinion, the present impugned order is the modification of earlier order passed on 16.11.2016 and has been issued in the interest of administration with the approval of the competent authority. Administrative difficulty made out by the respondent No.3 seems to be genuine and proper and, therefore, the same cannot be said to be illegal.

13. Alongwith the O.A., the learned counsel for the applicant has also filed an application for issuance of directions to the respondents to release the salary of the applicant. The respondents have also stated about the technical difficulty in not releasing the salary of the applicant. The applicant has not joined at I.T.I., Kalmeshwar firstly because of the *ad interim* relief and, thereafter in view of directions issued by this Tribunal by way of an interim order. The respondents are ready to release the salary of the applicant, provided the applicant joins at I.T.I., Kalmeshwar.

Since the impugned order of transfer is legal, there is no other go for the applicant, but to join at I.T.I., Kalmeshwar. The applicant is, therefore, directed to comply with the order of transfer and to join at I.T.I., Kalmeshwar forthwith. The respondent authority shall release the salary of the applicant from I.T.I., Kalmeshwar even for the period for which the applicant was working at I.T.I., Nagpur due to *ad interim stay* granted by the Tribunal, since the applicant has already worked at I.T.I., Nagpur. So far as the earlier period for which the applicant did not join at I.T.I., Kalmeshwar or remained unauthorizedly absent since 31.8.2016 to 21.12.2016, as stated in para 7 of the reply of respondent No.3 filed on 21.7.2017 is concerned, the respondents will be at liberty to take appropriate disciplinary action as may be deemed necessary.

14. In view of the discussion in foregoing paras, I proceed to pass the following order:-

ORDER

- (1) The O.A. No. 297/2017 stands dismissed with no order as to costs.
- (2) The C.A. No. 69/2018 also stands rejected.
- (3) C.A. No.337/2017 is partly allowed.

(4) The respondents are directed to release the salary of the applicant for the period for which the applicant was directed to work at I.T.I., Nagpur due to *ad interim* relief granted by this Tribunal, provided the applicant immediately joins at I.T.I., Kalmeshwar or in any case within seven days from the date of this order.

(5) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)
3.4.2018.