

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.515/2016.

Dr. Bhalchandra Marotrao Falke,
Aged about 32 years,
Occ-Service,
R/o C/o Subhash Gohokar, Raghatate Layout,
Civil Lines, Chandrapur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Public Health,
G.T.Hospital Building, 10th floor,
B Wing, New Mantralaya,
Mumbai-440 001.
- 2) The Director of Public Health,
Arogya Bhavan, St. Georges Hospital Compound,
Mumbai.
- 3) The Deputy Director of Public Health,
Nagpur Circle, Nagpur.
- 4) The Civil Surgeon,
General Hospital, Chandrapur.

Respondents

Shri S.S. Dhengale, Ld. Counsel for the applicant.
Shri A.M. Khadatkar, learned P.O. for the respondents.

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

JUDGMENT

(Delivered on 7th day of April 2017.)

Heard Shri S.S. Dhengale, the learned counsel for the applicants and Shri A.M. Khadatkar, the learned P.O. for the respondents.

2. The applicant is a Paediatrician and has challenged the impugned order of transfer dated 11.7.2016 whereby he has been transferred from General Hospital, Chandrapur to Rural Hospital, Gadchandur, Distt. Chandrapur. It is stated that the said transfer order is mid-term and mid-tenure and has been issued against the provisions of Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as, 'Transfer Act').

3. According to the applicant, after completion of post graduate studies in Paediatrics, the applicant was posted at Sub District Hospital, Warora, Distt. Chandrapur vide order dated 14.9.2015. The said order was, however, modified vide order dated 18.1.2016, since there was no post available at Warora and, therefore, the applicant was transferred to General Hospital, Chandrapur. However, vide impugned order dated 11.7.2016, the applicant has

been re-transferred to Gadchandur. The reason for the transfer stated in the order is that, there was already a Child Specialist serving at General Hospital, Chandrapur and no post was vacant at Chandrapur and, therefore, the applicant has been posted to Gadchandur on administrative ground. It is also mentioned in the order that the order has been passed as per the provisions of Section 4 (4) and 4 (5) of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as, 'Transfer Act').

4. According to the applicant, the impugned order of his transfer dated 11.7.2016 to Gadchandur is against the provisions of Transfer Act. The applicant has not completed his tenure of three years. It is stated that one Dr. Rahul Bhongale is working as Medical Officer / Paediatrician since 20.7.2012 at General Hospital, Chandrapur and was due for transfer, since he has completed four years at the same place. But instead of transferring him at Primary Health Centre, Gadchandur, the applicant has been considered. It is further stated that Dr. Rahul Bhongale has done his Diploma in Child Health and has not done post graduate in Paediatrics and, therefore, the applicant is more meritorious having a degree of M.D. in Paediatrics and his services are needed at district place. The impugned order is,

therefore, without application of mind. The applicant has prayed that the impugned order be quashed and set aside.

5. Respondent Nos. 1 to 3 have filed their affidavit in reply and denied any malafides in the order. It is submitted that the applicant had already worked at General Hospital, Chandrapur for more than three years. It is stated that he was transferred to Chandrapur and thereafter from Chandrapur to Rural Hospital, Gadchandur on administrative ground. No Paediatrician was available at Rural Hospital, Gadchandur, whereas no post was vacant at Chandrapur and, therefore, for the administrative convenience, the applicant has been transferred to Gadchandur by obtaining necessary sanction from the competent authority i.e. the Hon^{ble} Chief Minister.

6. From the first order of transfer, whereby the applicant has been transferred dated 14.9.2015, it seems that after completion of post graduation degree in Paediatrics, the applicant was posted at Sub-District Hospital, Warora, Distt. Chandrapur. But since there was no post available at Warora, the said order was modified on 18.1.2016 and the applicant was transferred from Warora to Chandrapur. The office, however, noticed that one Paediatrician was already working at Chandrapur and, therefore, there was no post available at Chandrapur for the applicant and, therefore, the impugned order of transfer has

been passed whereby the applicant has been transferred to Gadchandur.

7. The respondents have stated that the applicant has already completed more than three years in Chandrapur District and on account of administrative exigency as stated, applicant's proposal for transfer to Gadchandur was submitted to the Hon'ble Chief Minister and the Hon'ble Chief Minister has approved the said proposal and, therefore, the impugned order has been passed. The applicant has submitted in the O.A. that the Paediatrician at General Hospital, Chandapur is holding a diploma whereas the applicant is post graduate in Paediatrics and, therefore, he should have been preferred over Dr. Rahul Bhongale. It is stated that Dr. Rahul Bhongale has already completed more than three years at Chandrapur and, therefore, he should have been considered for transfer. It is material to note that the applicant has not joined Dr. Rahul Bhongale as party respondent to the O.A. nor claimed any relief against Dr. Rahul Bhongale and, therefore, in such circumstances, his allegations against Dr. Rahul Bhongale cannot be considered.

8. The respondents have placed on record the minutes of meeting wherefrom it seems that the administrative exigency as regards non availability of the post of Paediatrician was placed before

the competent authority and the Hon'ble Chief Minister and ultimately on the recommendation of the competent authority and the Hon'ble Chief Minister, it was decided to transfer the applicant to Gadchandur. I do not find any reason to go into the merits of the meeting of minutes and also into the merits as to whether the applicant being post graduate should have been considered against Dr. Rahul Bhongale or not.

9. Even accepting for the sake of argument, it is clear that the applicant's transfer has been effected without completion of his tenure of post. Section 4 (4) and 4 (5) of the Transfer Act, 2005 which is incorporated below clearly gives full power to the competent authority to transfer any officer at any time in case of administrative exigency. The said provision reads as under:-

“4. Tenure of Transfer.

(4) Transfer of a Government servant so essential be made only once in a year in the month of April or May :

Provided that the transfer may be made in time in the year in the circumstance specified below viz. --

i) to newly created post or to post become vacant due to retirement, promotion, resignation, reversion,

reinstatement, consequential vacancy on account of transfer or on return from leave.

ii) where competent authority satisfies that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with prior approval of the next higher authority;

(5) Notwithstanding anything contained in section 3 of this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of the immediately superior Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.+

10. In view of the discussion in foregoing paras, I am, therefore, satisfied that the impugned order of transfer has been issued in the administrative convenience and in order to meet out administrative exigency of non availability of post of Paediatrician at Gadchandur and also in view of the fact that no post of Paediatrician was available at Chandrapur. The said order has been passed with due compliance of the provisions of Section 4 (4) & 4(5) of the Transfer Act, 2005 and, therefore, I do not find any reason to interfere in the same. Hence, I proceed to pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

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

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