

O.A. No.516 of 2016

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

Dated : 22 / 09 / 2016.

ORDER

Heard Mr.G.K.Bhusari, Id. Counsel for the applicant and Mr.M.I.Khan, Id. P.O. for the R-1 to 3. None for R-4. The O.A. is heard at the admission stage with the consent of the counsel for parties.

2. The applicant a Co-operative Officer (Group-C) is transferred from Sironcha to Nagpur vide order dated 30/05/2016 (A-1,P-13). He is relieved on 15/06/2016. However, he could not joined at transfer place as the transfer of R-4 is stayed by the Hon'ble Minister.

3. The applicant's case is that he worked in the naxal affected area for several years and then transferred from Sironcha to Nagpur. However, R-4 though is been serving at Nagpur for several years was transferred from Nagpur to Sironcha, but his transfer is stayed by the Hon'ble Minister. Therefore, the applicant could not join at Nagpur and the applicant is in hanging position.

4. The respondents' case is that Chairman of "egkjKv jkT; I gdljh ol=kl kx egkl ak e; kZnr" wrote a letter dated 21/06/16 (P-32)

and thereon the Hon'ble Minister for "Co-operative Textile and Marketing, Department" put the endorsement as under –

"I pkyd (oL=ks|ks) ukxij oL=ks|ks foHkxps fourth ud kj Jh lkskj dj ;kph cnyh LFkhr d: u ,d o'kZemr ok< ns;kr ;s vkgs"

The Id. counsel for the applicant urged that the Hon'ble Minister is not the competent authority to issue or stay the transfer order and moreover the order is stayed on basis representation made by the Union. Not only that but the reasons in the representation are that some proposals are to be recommended and information is to be collected and the applicant does this work effectively, are not the sufficient reasons, which are made by the Union who has no role to play in the Administration.

5. The applicant is a Group-C employee as per section 6 of *"The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005"* (In short *"Transfer Act"*) and the Head of the Department is the competent authority and accordingly to the impugned transfer order is issued by *"Divisional Joint Registrar of Nagpur Region"*. No doubt the minister-in-charge is the next higher / superior transferring authority, as per section 4 (4) (5) of

the Transfer Act but the act of the minister does not fall in the said provisions.

6. It is also worthwhile to note that the Union has no role to play in the administration and the administrative exigency can be determined by the officials of the department. However, such recourse is not adopted in the case in hand.

7. The reasons given by the union, for the continuation of the applicant are that the applicant's is working effectively. He has to make recommendation to the government and to collect the information and has to attend the meetings. This work is of the routine nature which can be handled by any officer of the equal rank. Thus there is no case for extending the continuation of applicant on post as per section 5 of the Transfer Act. It is not the case that R-4 posses such technical qualification or experience moreover he is to retire within a year.

8. On the basis of the endorsement made by the Minister the Director Textile (R-2) issued the communication dated 28/06/2016 (A-7, P- 30) and 11/07/2016 (A-8, P- 31). Therefore, the applicant could not be allowed to join at Nagpur. The ld. counsel for the applicant submitted that thus the impugned communications are not legal and valid. In support of the

submission, he relied on a case of **Pradeepkumar Kothiram Deshbhratar V/s State of Maharashtra and Ors., 2011(5) Mh.L.J.,158** wherein Their Lordships of the Mumbai High Court held that their cannot be a transfer on the wish and whim of any particular individual and the interference at the instance of the political executives is not proper. Reliance is also placed on the case **Dr. Sudhir Vithal Medhekar V/s Government of Maharashtra, and Ors., 2015 (2) Mh.L.J.,955** wherein Their Lordship held that the political patronage is not permissible in the matter of transfer.

9. As against this the Id. P.O. sought the support from the observations made by Their Lordship of the Mumbai High Court in **“Santosh Nandlal Dalal V/s State of Maharashtra, 2016 (1) Mh.L.J.,45”** wherein it is observed that the superior authority minister can interfere and correct the things. In the said case the Department had transferred only 22 Inspectors vide general transfer order issued in May. The Hon’ble minister found that in all 69 Inspectors were due for transfer and endorsed that all inspectors need to be transferred because the department was working as an enforcement department. On the basis of the endorsement of the minister, following the due procedure the transfer orders were issued in the month of

September. Mr. Deore was affected hence challenged the order before the M.A.T. Aurangabad Bench in O.A. No. 88/2014 and transfer order was quashed on 18/09/2014. The R-2, Mr. Dalal was affected adversely thereby and hence he preferred the Writ Petition, wherein Their Lordships observed that the act of the Hon'ble Minister was in the public interest. There were no allegations of malafide or malice or victimization or favour and the officers enmass were transferred in this peculiar facts Their Lordships observed that as a superior authority the minister can interfere to correct the things. Thus the indulgence by the minister was not for any ulterior purpose but for the public interest to correct the things.

10. In the case in hand the indulgence by the Hon'ble Minister cannot be turned to serve the public interest. On the contrary the endorsement by the Hon'ble Minister cannot be said to be legal and valid from any view. The transfer of the applicant cannot be stalled or stayed by any impugned communications on the basis of the said endorsement.

11. In the result, the O.A. is allowed. The impugned communications dated 28/06/2016 (A-7, P-30) and dated 11/07/2016 (A-8, P-31) are quashed. The applicant be allowed to join at Nagpur. The transfer order 30/05/2016 be

implemented and the respondents are directed to allow the applicant to join at Nagpur within a week from today.

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

aps.

