

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 567/2017 (SB)

Dr. Shri Dinesh S/o Yadaora Bramhankar,
Aged about 57 years, Occ. Service,
R/o Sadak Arjuni, Tahsil Sadak Arjuni,
District Gondia.

Applicant.

Versus

- 1) State of Maharashtra
through its Secretary
Public Health Department,
Mantralaya, Mumbai-400 032.
- 2) The Director of Health Services,
Arogya Bhavan, St. George Hospital Campus,
near C.S.T., Mumbai.
- 3) The District Health Officer,
Gondia, District Gondia.
- 4) The Chief Executive Officer,
Zilla Parishad, Gondia.
- 5) Dr. Shri Harshawardhan
S/o Udaram Meshram,
Talukar Health Officer, Sadak Arjuni,
Tahsil Sadak Arjuni, District Gondia.

Respondents.

S/Shri A.Z. Jibhkate, P.A. Jibhkate, Advocates for the applicant.

Shri P.N. Warjurkar, P.O. for respondent nos.1 and 2.

Shri A. Parihar, Advocate for respondent nos.3 and 4.

Shri D.M. Kakani, Advocate for respondent no.5.

**Coram :- Hon'ble Shri A.D. Karanjkar,
Member (J).**

JUDGMENT

(Delivered on this 17th day of December,2018)

Heard Shri A.Z. Jibhkate, learned counsel for the applicant, Shri P.N. Warjurkar, learned P.O. for respondent nos. 1 and 2, Shri A. Parihar, learned counsel for respondent nos. 3 and 4 and Shri G.K. Bhusari, learned counsel holding for Shri D.M. Kakani, learned counsel for respondent no.5.

2. The applicant is challenging the transfer and posting order dated 31/05/2017 by which the respondent no.1 transferred the respondent no.5 to Sadak Arjuni as Medical Officer. The applicant is also challenging the order passed by the respondent no.4 transferring the applicant from Sadak Arjuni to Pandhari and also claiming the other reliefs including the outstanding salary.

3. It appears from the facts and circumstances that the applicant was posted as Group-B Medical Officer at Sadak Arjuni, District Gondia vide order dated 19/10/2011. Thereafter vide order dated 31/05/2015 the applicant was transferred to Shivani, District Gondia. The applicant thereafter submitted representation and requested the respondent no.1-2 to modify the order of transfer and considering the grievance of the applicant vide order dated 01/07/2015 the earlier order of transfer came to be modified and

instead of Shivani, the applicant was transferred to Soni, District Bhandara. It is submission of the applicant that though he was transferred firstly to Shivani and thereafter to Soni, but he was not relieved from Sadak Arjuni by the respondent no.4 and he was continuously working at Sadak Arjuni.

4. It is contention of the applicant that without transferring the applicant from Sadak Arjuni, the respondent no.1 all of a sudden transferred and posted the respondent no.5 to Sadak Arjuni as Medical Officer, vide order dated 31/05/2017. This order is also challenged by the applicant. At the time of deciding the interim application it was observed that the respondent no.5 resumed the duty and joined at Sadak Arjuni in absence of applicant and in view of this direction was given to the respondent no.4 for not to compel the applicant to join at village Pandhari. In the course hearing it was revealed that the applicant did not challenge his order to Pandhari, consequently the applicant amended the application. The applicant is challenging the transfer order to Pandhari issued by the respondent no.4 mainly on the ground that his Transferring Authority was the respondent nos. 1&2 and the respondent no.4 was not empowered to transfer him.

5. It appears from the record that the respondent no.5 submitted application before this Bench as he was unable to draw salary due to the reason that two Medical Officers were not permitted to work on one post. As per the Government rules, the Treasury was not permitting the respondent no.5 to draw the salary. Under these circumstances vide order dated 28/08/2018 direction was issued to the respondent no.4 and Treasury for payment of the withhold salary of the respondent no.5.

6. In the above background, in order to avoid the complications, the applicant resumed the duty to Pandhari as per the transfer order issued by respondent no.4 and keeping in view these circumstances the contentions of the applicant are required to be examined.

7. After hearing the learned counsel for the applicant and the learned P.O. for respondent nos. 1 & 2 and learned counsel for respondent nos. 3,4 and 5 it appears that there is substance in the contention of the applicant that the post at Sadak Arjuni was not vacant in May 2017 for transfer and posting of respondent no.5 at Sadak Arjuni. It seems that disregarding this fact the respondent no.1 issued the transfer order and transferred the respondent no.5 to Sadak Arjuni, but for this it is not proper to blame the respondent no.1.

The respondent no.1 was authorised by law to transfer the respondent no.5 and the applicant, therefore there is no illegality in it. It appears that the applicant was for overdue for transfer as he was working at Sadak Arjuni for a period about 6 years, therefore, there is no basic violation of the provisions under The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act"). It seems that there was no co-ordination between the respondent no.4 and respondent no.2 and respondent no.1 due to which this controversy occurred.

8. As a matter of fact it was duty of the respondent no.4 to brief the respondent no.1 about the details of the vacant posts in the Gondia District, name of the Officer posted, whether Officer was due for transfer or not. In this case it is important to note that earlier the applicant was transferred in the year,2015 from Sadak Arjuni to Shivani, he made representation and considering the same, the transfer order was modified and then the applicant was transferred to Soni, District Bhandara in lieu of Shivni, but the applicant was allowed to work at Sadak Arjuni. In these circumstances it was duty of the respondent no.4 to communicate all these facts to the respondent no.1, but it seems that it was not done.

9. Here it is important to point out that though the applicant was transferred to Soni, no steps were taken by the respondent no.4 to relieve him from his duty. As a matter of fact the respondent no.4 was the Controlling Authority of the applicant and he was under obligation to see that the orders which were passed by the respondent no.1 were implemented. In this case in spite of transfer of the applicant from Sadak Arjuni to Soni (dated 01/7/2015), nothing was done by the respondent no.2 till the respondent no.1 issued the impugned transfer order dated 31/05/2017. Thus it seems that due to lack of co-ordination between respondent nos. 1 to 4 this situation occurred.

10. So far as the transfer of applicant from Sadak Arjuni to Pandhari is concerned, there cannot be a dispute about the submission that the respondent no.4 had no legal authority to issue the transfer order. Therefore, that exercise of jurisdiction by the respondent no.4 is apparently illegal. In this regard, I would like to point out that even after noticing the transfer order dated 31/05/2017, it was duty of the respondent no.4 to bring the facts to the notice of the respondent no.1 that the applicant was stationed at Sadak Arjuni and the post at Soni, District Bhandara was filled-in in due course by appointment of Dr. Bansod and it was not vacant. Thus it seems that the respondent no.4 was much responsible for this situation, perhaps

this might have happened due to lithargey or negligence of the office staff of the respondent no.4.

11. The important question arise in the above situation whether is it suitable to cancel the transfer order of respondent no.5 to Sadak Arjuni and issue direction to reinstate the applicant at Sadak Arjuni. It seems that the applicant is Group-B Medical Officer, whereas, the respondent no.5 is Group-A Medical Officer. The post of Medical Officer of Sadak Arjuni is specially for Group-A Medical Officer and as no Group-A officer was available, therefore, the applicant was posted at Sadak Arjuni and by transferring the applicant from Sadak Arjuni now the respondent no.5 is posted at Sadak Arjuni. Now if the respondent no.5 is again removed from Sadak Arjuni and the applicant is posted at Sadak Arjuni, the Group-B Officer will have to be posted though the Group-A Officer is available. In this regard I am also taking into consideration the period of about 6 years enjoyed by the applicant at Sadak Arjuni. As per the provisions under Section 3 of the Transfers Act, the Government Department is bound to transfer the Government servant on completion of two normal tenures at one station. The language of the statute is mandatory, therefore, if the applicant is again posted at Sadak Arjuni, there will be violation of the statutory provision. The learned counsel for the applicant has already made submission that if in case the applicant is not again

posted at Sadak Arjuni, then direction be given to the respondent no.1 to consider the representation of the applicant for his posting at Nagpur. It is submitted that there is a vacancy at Nagpur and if such direction is given, there would be no injustice to any one. In my opinion there is no crystal clear picture before this Bench that there is clear vacancy available at Nagpur, however relief can be granted to the applicant by issuing direction to the respondent no.1 to consider the representation of the applicant within stipulated time. In the present case the conduct of the applicant is also very material. The applicant after his first transfer to Shivani, made representation consequently as per option of the applicant he was posted at Soni Dist. Bhandara, even after receiving modified transfer order, the applicant did not join at Soni. The applicant remained silent, he never requested the respondent no.4 to relieve him from Sadak Arjuni. It must be said that in fact by remaining silent the applicant also took advantage and over stayed at Sadak Arjuni. In this background, it seems that the applicant also contributed for giving rise to this situation and due to this contribution of the applicant, he was not relieved from Sadak Arjuni for allowing him to join at Soni. In view of these facts, I do not see any merit in contention that the transfer orders are required to be set aside. In view of above, I pass the following order :-

ORDER

The application is partly allowed. The respondent nos. 1&2 are directed to consider the representation of the applicant within a period of three months from the date of this order and give him suitable posting as per his options submitted by him in representation dated 06/09/2018. The respondent nos. 1 to 4 are directed to pay outstanding salary of the applicant within two months from the date of this order. No order as to costs.

Dated :- 17/12/2018.

*dnk.

(A.D. Karanjkar)
Member (J).