

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 588 OF 2023**

**DISTRICT:- LATUR**

Dr. Laxman S/o Sarjerao Deshmukh  
Age: 57+ years, Occu. Service  
(as Civil Surgeon),  
R/o, Kulswamini Nagar, New Barshi  
Road, Latur, Tq. & Dist. Latur.

.. **APPLICANT.**

**V E R S U S**

1. The Secretary,  
Public Health Department,  
Maharashtra State, St. George  
Hospital Campus,  
Commissionerate of Health  
Department, Mumabi.
2. The Commissioner,  
Public Health Services,  
Maharashtra State,  
St. George Hospital Campus,  
Commissionerate of Health  
Department, Mumabi.
3. The Deputy Director of Health,  
Latur, Collector office Campus,  
Latur, Tq. & Dist. Latur.
4. Dr. Pradeep M. Dhele,  
Age: Major, Occu. Service  
R/o. C/o. Civil Surgeon,  
Civil Hospital, Latur,  
Tq. & Dist. Latur.
5. Dr. Ujwala Shivajirao Badade,  
Age: Major, Occu. Service as  
(Assistant Director (Medical))  
R/o. C/o. Deputy Director,  
Health Services, Latur,  
Tq. & Dist. Latur.

.. **RESPONDENTS.**

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APPEARANCE : Shri K.G. Salunke, learned counsel for  
the applicant.  
: Shri N.U. Yadav, learned Presenting Officer  
for the respondent Nos. 1 to 3.  
: Shri Ashish B. Rajkar, learned counsel for  
respondent No. 4.  
: Shri Avinash S. Deshmukh, learned counsel  
for respondent No. 5.  
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**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN**

**DATE : 25.08.2023**  
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**ORAL-ORDER**

Heard Shri K.G. Salunke, learned counsel for the applicant, Shri N.U. Yadav, learned Presenting Officer for the respondent Nos. 1 to 3, Shri Ashish B. Rajkar, learned counsel for respondent No. 4 and Shri Avinash S. Deshmukh, learned counsel for respondent No. 5.

2. The applicant has preferred the present Original Application seeking quashment of the order dated 30.6.2023, whereby he has been transferred from his existing post of Civil Surgeon, District Hospital, Latur to Medical Superintendent, Civil Hospital, Udgir, Dist. Latur. The applicant has questioned the impugned order on various grounds. It is the contention of the applicant that he was not due for transfer since he has not completed the ordinary tenure

of 3 years on the existing post. As is revealing from the pleadings in the O.A. the applicant was transferred and posted as Civil Surgeon, District Hospital, Latur w.e.f. 1.10.2020 and before completing the ordinary tenure of 3 years on the said post he has been transferred. It is the further contention of the applicant that he would be retiring on 30.6.2024 and in the circumstances a request was made by him to retain him till his retirement at the existing post of Civil Surgeon, Latur. Another ground as has been raised by the applicant is that his wife is suffering from cancer and her treatment is going on at Latur. Vide his letter dated 6.4.2023 applicant had made a request to the authorities concerned seeking his retention at Latur on the aforesaid 2 grounds. In spite of the said request, vide the impugned order the applicant has been transferred to Udgir. Applicant has alleged that he has been transferred with an only object of accommodating respondent no.4 in his place.

3. Learned counsel for the applicant submitted that though in the impugned order, whereby the applicant has been transferred and another order of the even date whereby respondent no. 4 has been transferred and posted in his place, the respondents have invoked the provisions u/s 4(4)(2) and 6 of the Maharashtra Government Servants regulation of Transfer and Prevention of

Delay in Discharge of Official Duties Act, 2005 (for short Transfer Act, 2005).

4. Learned counsel for the applicant submitted that perusal of both the aforesaid orders would reveal that no exceptional circumstance has been stated in any of the said orders. Learned counsel submitted that in the affidavit in reply filed on behalf of the State authorities though they have disclosed certain reasons, the reasons as are assigned by the respondents cannot be accepted to be exceptional circumstance for effecting the transfer of the applicant. Learned counsel further submitted that when the applicant would be retiring within 1 year of passing of such order and though his wife is suffering from cancer, respondents have instead of considering his request have illegally transferred the applicant. Learned counsel, in the circumstances, has prayed for setting aside the impugned order.

5. Respondent no. 1 has filed affidavit in reply thereby opposing the contentions raised and prayers made by the applicant in the O.A. Respondent nos. 4 & 5 both have also filed their respective affidavits in reply. Both have resisted the contentions raised in the O.A. The sum and substance of the contentions raised in the affidavit in reply filed on behalf of respondent no. 1 is that the transfer of the applicant has been made by following due process of

law and after approval of the Civil Services Board, as well as, the competent authority. It has also been contended that respondent no. 4 is senior to the applicant and he was out of posting and hence was required to be transferred and posted in place of the applicant. Respondent no. 4 in his affidavit in reply has taken similar contentions. Respondent no. 4 has contended that the State authorities have power and authority to transfer the Government employee even without completing the ordinary tenure by the said Government servant at one place considering the administrative exigency. It is, therefore, the contention of this respondent that there is no violation of any of the provision in transferring respondent no. 4 in place of the applicant. It is contended that respondent no. 4 has already resumed the charge of the said post and is discharging duties of the said post.

6. Respondent no. 5 has opposed the submissions made in the O.A. and has come out with the case that she has been unnecessarily impleaded as party respondent in the present O.A. Respondent No. 5 has also contended that the applicant does not have any right or authority to suggest as to where respondent No. 5 is to be posted and in whose place and whether she holds required qualification or not.

7. Learned Presenting Officer in his arguments reiterated the contentions raised in the affidavit in reply filed on behalf of respondent No. 1. He further contended that respondent No. 4 has already taken over the charge of the post of Civil Surgeon at Latur. In the circumstances, it may be unjust to now cause any interference in the impugned order. It has also been suggested by the learned P.O. that if the applicant makes a representation, the respondents are open for its consideration on merits. Learned P.O. has, therefore, sought dismissal of the O.A.

8. It is the argument on behalf of respondent no. 4 that the State authorities have after following due process have given posting to him and such order has been approved by the highest competent authority. It has also been contended that considering the seniority of respondent no. 6 and further that he was without any posting in the past for quite some period he has been posted in place of the applicant. It has also been argued that it would be unjust to cause any interference in the impugned order after respondent no. 4 has resumed the charge of the subject post.

9. Learned counsel for respondent No. 5 has assailed the O.A. on the ground of unnecessary impleadment of respondent No. 5 and has claimed heavy cost therefor.

10. I have duly considered the submissions made on behalf of the applicant as well as respondents. It is not in dispute that the applicant was brought on the post of Civil Surgeon, Latur w.e.f. 01.10.2020. He had thus not completed the ordinary tenure of three years on the date of issuance of impugned transfer order i.e. 30.06.2023. It is for this reason the respondents seems to have invoked the provisions u/s 4 (4) (ii) of the Transfer Act, 2005. It is the case of the applicant as noted hereinabove that he is due for retirement on 30.06.2024. This fact has not been denied or disputed by the respondents. It is also the case of the applicant that his wife is suffering from Cancer. This fact has also not disputed or denied by the respondents. It is also the case of the applicant that by making representation on 06.04.2023 to the competent authority i.e. Principal Secretary of Health Services, the applicant had prayed for his retention at Latur on the aforesaid two grounds. The fact of submitting representation by the applicant as above on 06.04.2023 has also not been disputed or denied by the respondents. In the background of the facts as aforesaid, the impugned order and the contentions raised by the parties to that effect, will have to be examined.

11. As mentioned in the impugned order the State has invoked powers u/s 4(4) (ii) of the Transfer Act, 2005 for ordering the

transfer of the applicant. I deem it appropriate to reproduce the entire Section 4 of the said act, which reads thus:-

**“4. Tenure of transfer.**

*(1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.*

*(2) The Competent Authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.*

*(3) Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:*

*Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.*

*(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:*

*Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:*

*(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;*

*(ii) where the Competent Authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.*

*(5) Notwithstanding anything contained in section 3 or this section, the Competent Authority may, in special cases, after recording reasons in writing and with the prior permission of the immediately preceding Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”*

12. It is undisputable that although section 3 of the Transfer Act, 2005 envisages the tenure posting and tenure transfer not to be

less than 3 years on a given post, the appropriate authority can, if the administrative exigency so warrants, direct the transfer of the Government servant before completion of tenure or posting. This position is restated in section 4(4)(ii) and 4(5) of the Transfer Act, 2005. Sub section 4 of section 4 predicates that the transfer of the Government servant shall ordinarily be made only once in a year in the month of April or May. Clause (ii) of proviso under section 4(4) enables the competent authority when satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording same in writing and with the prior approval of the next higher authority to transfer the concerned Government servant even before the normal period and even beyond the month of April or May. The quintessence for exercising said power is the satisfaction of the competent authority that the transfer is necessitated due to exceptional circumstances or special reasons, which it has to record in writing and before giving effect thereto, prior approval of the next higher authority has to be obtained.

13. The question to be considered in the instant matter is whether the case of the present applicant falls within the category of special case or case involving any exceptional circumstances or special reasons. In the order of transfer of the applicant, which has been impugned in the present O.A., though it has been

mentioned that the transfer of the applicant is being made under the provisions of section 4(4)(ii) and section 6 of the Transfer Act, 2005, no reason has been provided therein. In the order of transfer it may not be necessary to elaborate the reasons for such transfer but the competent authority is under an obligation to record such reasons in writing while submitting the proposal for transfer of such an employee for consideration of the Civil Services Board. The minutes of the meeting of the Civil Services Board are placed on record by respondent no. 1. However, the proposal submitted for consideration of the Civil Services Board is not filed on record. The minutes of the meeting of the Civil Services Board do not disclose any reason or any exceptional circumstance. It is only mentioned that the transfer is being effected on administrative grounds.

14. In the affidavit in reply filed on behalf of respondent no. 1 in para 9 thereof it is contended that respondent no. 4 was out of posting and he is senior to applicant. It is further stated that the Civil Services Board recommended the name of respondent no. 4 for transfer as Civil Surgeon, Laatur and posting has been given after approval of the competent authority. In para 7 of the reply it is stated that the post of Medical Superintendent at General Hospital, Udgir was vacant and respondent no. 1 has, therefore,

transferred the applicant to the said post from the post of District Civil Surgeon, Latur.

15. As has been observed by the Division Bench of Hon'ble Bombay High Court in the case of **Ramakant Baburao Kendre Vs. the State of Maharashtra & Ors, 2012 (Supp.) Bombay Cases Reporter 735**, *'when the Transfer Act, 2005 mandates recording of reasons, such reasons are to be recorded in the original file'*. As I have noted hereinabove, no such record is produced by respondent no. 1. The reasons have been disclosed in the reply filed by respondent No. 1. This cannot be said to be in compliance of the provisions under the Transfer Act, 2005. Reasons must have been recorded in contemporaneous record and that record must be produced. No such record has been produced.

16. Going ahead if the reasons as are assigned in the affidavit in reply are examined, it is apparently revealed that the applicant came to be transferred only for the reason that respondent no. 4 was to be given posting in his place and one more reason as I have mentioned above that the post of Medical Superintendent at General Hospital, Udgir was vacant. The latter ground may not be considered for the reason that the transfer of the applicant has not been made by invoking provisions under Section 4 (4)(i) of the Transfer Act, 2005 but has been made by invoking power under

Section 4 (4) (ii) of the said Act. Even otherwise in view of the law laid down by Hon'ble Bombay High Court in the case of **Purushottam Govindrao Bhagwat Vs. State of Maharashtra & Ors., 2012 (3) Bom. C. R. 442**, when the applicant had not completed his ordinary tenure on the existing post, he could not have been transferred under Section 4(4)(i) of the Act. Thus, the only reason which deserves consideration is that respondent No. 4 was to be given posting in place of the applicant. As observed by the **Hon'ble Andhra Pradesh High Court in the case of A.S. Rama Gangi Reddy Vs. Government of A.P., 1992 Lab. I.C. 1113** the transfer order, which is made to accommodate another employee is not a bona fide exercise of power. The Division Bench of Hon'ble Bombay High Court in the case of **Sheshrao Umap Vs. State of Maharashtra and Ors., 1984 (2) SLR 328 (Bom.)** has held that, a midterm transfer effected only to accommodate another employee will be mala fide.

17. It is interesting to see what was the special reason for making transfer of respondent No. 4 by invoking the same power i.e. under Section 4(4)(ii) of the Transfer Act, 2005. In the order dated 30.6.2023 by which respondent No. 4 was transferred in place of the applicant, admittedly there are no reasons disclosed except mentioning that the transfer is being made under the provisions of Section 4(4)(ii) and Section 6 of the Transfer Act, 2005. It is

however, significant to note that in the said order itself it is mentioned that transfer of respondent No. 4 is being made on his request. I reiterate that the powers under Section 4(4)(ii) can be exercised by the competent authority only in the case when it is satisfied that transfer is essential due to exceptional circumstance or special reason and the competent authority has to record such reason in writing. It appears to me that a request made by the Government employee for his transfer ordinarily cannot be an exceptional circumstance or special reason essential for ordering his transfer.

18. In the present matter, respondent No. 4 in his affidavit in reply has not disclosed any reason much less the special reason for requesting his transfer to the post of Civil Surgeon, District Hospital, Latur. It was respondent No. 4 alone who could have disclosed such special reason or exceptional circumstance when he had requested for his transfer in place of the applicant. In the minutes of meeting of Civil Services Board also nothing has been mentioned as about the exceptional circumstance or special reason for accepting the request of respondent No. 4 while recommending his transfer at the place requested by him. The reason which respondent No. 4 himself has not provided has been provided in the affidavit in reply filed on behalf of respondent No. 1. It is

stated that respondent No. 4 was out of posting and he is senior to the applicant. Why respondent No. 4 was out of posting is not disclosed by respondent No. 1 and even by respondent No. 4 if it would be the reason 'that respondent No. 4 was out of posting' it cannot be held to be an exceptional circumstance or special reason for transferring the applicant in his mid-term to accommodate respondent No. 4 in his place. If at all respondent No. 1 was intending to give posting to respondent No.4 for the reason that he was out of posting it is not understood why posting was not given to him on the post of Medical Superintendent, Civil Hospital, Udgir, which was admittedly lying vacant. In any case to accommodate respondent No. 4, respondents could not have shifted the applicant from his existing post when he is on the verge of retirement and would be retiring within one year of passing of impugned order dated 30.06.2023.

19. The respondents could not have accommodated the respondent No. 4 in place of the applicant when by making representation on 06.04.2023 he has specifically requested for his retention at Latur on the ground that he was going to retire on 30.06.2024 and that the treatment of his wife was being done in Latur for her ailment of Breast Cancer. The applicant had resumed the post of Civil Surgeon, Latur on 05.10.2020. He would

have completed his normal tenure of 3 years on 04.10.2023 and he was to retire on attaining the age of superannuation on 30.06.2023 i.e. within 8 months after completing the period of ordinary tenure at Latur. Section 5 of the Transfer Act, 2005 specifically provides that the tenure of posting of a Government servant or employee laid down in Section 3 may be extended, if employee is due for transfer after completion of tenure at a station of posting or post has less than 1 year for his retirement. Moreover there is a policy in force that on the ground of sickness of the Government employee himself or his wife or children from the diseases like cancer ect. the request of such Government employee either for his retention at the place or for his transfer to a particular place must be considered with preference. I regret to state that though the applicant has well in advance submitted a representation seeking his retention at the existing post on the ground of illness of his wife with Breast Cancer and further that after completion of his tenure at the existing station, he was to retire within the period of less than one year, the authorities instead of considering his request directed his transfer to accommodate respondent No. 4 in his place without there being any special reason or exceptional circumstance in favour of respondent No. 4. Such order cannot be sustained and deserves to be set aside.

20. After having considered the entire facts and circumstances involved in the present Original Application, I am satisfied that there is nonobservance of the statutory requirements of the Transfer Act, 2005 on part of the respondents. Without there being any exceptional circumstance or special reason making essential the transfer of the applicant, the respondents have transferred the applicant with the only object to accommodate respondent No. 4. As stated above, it cannot be said to be bona-fide exercise of power by the respondents. On the contrary, as held by the Hon'ble Division Bench of the Bombay High Court in the case of **Sheshrao Umap Vs. State of Maharashtra and Ors.** (cited supra), the mid-term transfer effected of the applicant only to accommodate respondent No. 4 in his place is mala-fide. In the circumstances, both the orders of even date i.e. 30.06.2023 one pertaining to the transfer of the applicant and other in respect of respondent No. 4 deserve to be quashed and set aside. They are accordingly set aside. The respondents shall forthwith repost the applicant on the post of Civil Surgeon, District Hospital, Latur from which he has been transferred. The respondents may transfer respondent No. 4 at any other suitable place or post by following due procedure in that regard.

21. Insofar as respondent No. 5 is concerned, I agree with the contention raised on behalf of the said respondent that she has been unnecessarily impleaded as party respondent in the present matter, though learned counsel for the applicant tried to justify her impleadment as respondent, I am not convinced with the submissions so made. In the circumstances the applicant is directed to pay costs of Rs. 3,000/- to respondent No.5 within four weeks from the date of this order.

22. The Original Application stands allowed in the aforesaid terms.

**VICE CHAIRMAN**