

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 613 of 2017 (S.B.)
WITH CIVIL APPLICATION NO.396 of 2017

Baby Sarode,
Aged about 56 years, Occ. Telephone Operator,
R/o Plot no.20 Chandika Nagar,
Manewada Besa Road, Nagpur-27.

Applicant.

Versus

- 1) Director, Medical Education and Research having its office at Directorate of Medical Education and Research, Government Dental College & Hospital building, St. George's hospital compound, near V.T. Mumbai-400 001.
- 2) Dean, Indira Gandhi Government Medical College and Hospital, having its office at IGGMCH-MAYO Hospital, Nagpur.
- 3) Mr. Yashwant Govindrao Ghormunde, Occ. Telephone Operator, through Dean, IGGMCH, Nagpur.
- 4) Secretary, Medical Education Department, having its office at Mantralaya, Maharashtra Government, Mumbai.

Respondents

Shri N.B. Rathod, Barun Kumar, Advocates for the applicant.

Shri A.M. Ghogre, learned P.O. for the respondent nos.1,2&4.

None for respondent no.3.

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

JUDGEMENT

(Delivered on this 22nd day of November,2017)

Heard Shri N.B. Rathod, Id. Counsel for the applicant and Shri A.M.Ghogre, Id. P.O. for the respondent nos. 1,2 and 4. None for respondent no.3.

2. This O.A. along with the C.A. No.396/2017 are being disposed of by this common order. The C.A. is for stay to the order of transfer dated 15/6/2017 and order dated 4/7/2017. Since the applicant has already joined at her post and the matter is being decided on merits, the C.A. stands rejected.

3. The applicant Baby Sarode is Telephone Operator. Vide impugned order dated 15/6/2017 she has been transferred from Indira Gandhi Government Medical College and Hospital (IGMC), Nagpur to Cama Albliss Hospital, Mumbai. The reason for her transfer is shown to be administrative and in view of the request made by respondent no.3, Mr. Yashwant Govindrao Ghormunde. The respondent no.3 has been transferred in place of applicant. It is the case of the applicant is that the said order of transfer is against the provisions of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act") and has been issued in view of the interference made by the Minister and in order to adjust respondent no.3, the applicant

has been transferred. It is also the case of the applicant that she is due for retirement within 1½ years.

4. After impugned order of transfer the applicant filed representation on 19/6/2017 as per Annex-A-5 on her personal ground as well as on her medical ground to the Director of Medical Education, Mumbai. In view of her representation her order was stayed by the Director vide letter dated 25/6/2017. The respondent no.3 also came for joining in place of applicant, but he was not allowed to join. Thereafter, the Hon'ble Minister intervened in the matter and on his intervention the applicant was immediately relieved all of a sudden on 4/7/2017. The applicant has therefore prayed that the impugned order of her transfer dated 15/6/2017 be quashed and set aside.

5. The respondent nos. 1,2&4 have filed reply-affidavit and submitted that the applicant has already been relieved from her post on 4/7/2017 and has joined at Cama Hospital, Mumbai as per transfer. It is stated that the transfer is incident of service and every government servant is bound to obey the same. It is further stated that the applicant is working at Nagpur from last 20 years, i.e., from her initial appointment till the impugned order of transfer and therefore she was overdue.

6. The learned counsel for the applicant placed reliance the Judgment in W.P. 2212 of 2015 in the case of **Jitendra S/o Mahadeo**

kekan Vs. State of Maharashtra & Ors., delivered by the Hon'ble High Court of Judicature at Bombay Bench at Nagpur on 24th July,2015, wherein due to political interference the transfer order was issued and it was quashed. The learned counsel for the applicant also placed reliance the Judgment delivered by this Tribunal at its Mumbai Bench in O.A.679 of 2016 with MCA no.444 of 2016 in O.A.679 of 2016 in case of **Mr. Rajesh M. Bhapkar Vs. State of Maharashtra & Ors.**, delivered on 10/11/2016. In the said case also the Minister interfered in the transfer order and the same was quashed.

7. According to the learned counsel for the applicant the competent authority to stay the order of transfer was the Director of Medical Education, i.e. respondent no.1 and on the representation filed by the applicant, the Director was pleased to stay the order temporarily vide its letter dated 25/6/2017 (Annex-A-6). Not only that the respondent no.3 was not allowed to join since the applicant was not relieved and her order was stayed. This correspondence in this regard is at Annex-A-7. However suddenly vide letter dated 4/7/2017 the applicant has been relieved as per Annex-A-8 and in the said letter it is mentioned as under :-

^i j a r w l n h k z d z 6 u d k j e k - e a - h e g k n ;] o s k d h ; f ' k { k . k o v k s k / k h n d ; s f o H k k x] e a - k y ;] e m b z ; k p s k h i R ; { k H k z . k / o u h o # u O k s u O n k j s l a F k s h y e k - v f / k " B k r k ; k a u k v k y s o R ; k p s k h > k y Y ; k I d k n k i z e k . k s R ; k a u h d G f o y s d h] J h - ? k i j e k M s g s f n u k a d 4 @ 7 @ 2 0 1 7 j k s t h e p b z ; F k u ; k d k ; k y ; k r # t w g k s ; k d j h r k i k B f o . ; k r ; s v k g s

*rjh Jherh csh I jksj nj/ouh pkyd ; kauk rRdkG izkl dh; dkj.kkLro cnyh >kyY; k fBdk.kh dk; ZDr dj.; kr ; kosvl sfunzk fnysvl Y; keGso I mHkZdz5 ekU; >kyY; k fVli .kh uq kj Jherh csh I jksj nj/ouh pkyd ; kauk fnukad 4@7@2017 jksth ek/; kUgki dz dk; ZDr dj.; kr ; s vks vkiyh cnyh izkl dh; dkj.kkLro vl Y; keGsvki .kkd inxg.k vo/kho i dkl HRRrk vuKs vks***

8. It is thus clear that the applicant has been relieved suddenly due to interference of the Minister. However that itself will not mean that the order passed by the Director of Medical Education was illegal. It is because the applicant has already completed her tenure of 20 years at Nagpur and therefore it cannot be said that the applicant was not due for transfer. It is however true that the competent authority ought to have considered the representation filed by the applicant.

9. I have perused the representations filed by the applicant on 19/6/2017 and 14/7/2017. Vide both these representations the applicant has stated that she is due for retirement within 1 year and 8 months and she has to maintain Mother which is aged about 90 years, two disabled Sisters one aged about 75 years and other aged about 54 years who are dependent upon her. She has never visited Mumbai. All these aspects are not considered while relieving the applicant and that seems to be only because of the directions were given by the concerned Minister to relieve the respondent no.3. Since technically the order of applicant cannot be said to be illegal and the

said impugned order of transfer has been implemented and since the applicant and respondent no.3 have already joined at their respective places of transfer, it will not be proper to quash and set aside the order of transfer. However the application can be disposed of with necessary directions. Hence, the following order :-

ORDER

The application is partly allowed. The applicant's request to quash and set aside the impugned order of transfer dated 15/6/2017 is rejected. The respondent no.1 is however directed to consider the representations filed by the applicant on 19/6/2017 and 14/7/2017 (Annex-A-5 & 9) with a proper perspective without being influenced by any of the observations made in this order. The representations be considered on its own merits and so as to see whether the applicant can be re-posted at any available post at Nagpur. Appropriate decision shall be taken on such representations within six weeks from the date of this order and the same shall be communicated to the applicant in writing. No order as to costs.

Dated :- 22/11/2017.

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