

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 630/2016

Gajanan Shivdhan Nipane,
Aged about 54 years,
Occ-Service,
R/o SDO Quarter, Murtizapur.
Tq. Murtizapur, Distt. Akola.

Applicant.

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. The Secretary, State Election Commission,
Public Works Deptt., New Administrative Building,
First Floor, Hutatma Rajguru Chowk, Opp. Mantralaya,
Mumbai.
3. The Divisional Commissioner, Amravati Division,
Amravati. Tq. and Distt.
Distt. Amravati
4. The Collector,
Akola
5. Bhagwat Saindane,
Aged about 54 years,
Occ-Service,
R/o SDO Quarter, Murtizapur.
Tq. Murtizapur, Distt. Akola.

Respondents

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1. Shri Anand Deshpande, Advocate for the applicant.
 2. Shri A.M. Ghogre,, Presenting Officer for Respondents 1 to 4.
 3. Shri T.U. Tathod, Ld. Advocate for R.5.
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CORAM : Hon'ble Shri S.S. Hingne: Vice Chairman

DATE : 12th January, 2017

ORDER

Heard Shri Anand Deshpande, Id. counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for the respondents 1 to 4 and Shri T.U. Tathod, learned counsel for respondent No.5. With consent of Id. counsel for both the sides, the matter is heard and decided at the admission stage.

2. The Dy. Collector has challenged the transfer order dtd. 14/9/2016 by which he is transferred on the basis of the letter issued by the State Election Commission for the elections of the local bodies in Maharashtra.

3. By and large the facts are undisputed and reiteration thereof is not necessary. The State Election Commission of Maharashtra has issued communication dated 1/2/2016 to the effect that since the elections of the local bodies in Maharashtra are to be held the officers be transferred who completed three years on 1-6-2016 or completing that period between December 2016 to March, 2017. The Election Commission has laid down the guidelines and proposed the transfer of the officers in the light of those guidelines.

4. In effect, the Govt. of Maharashtra has issued the transfer order of the Dy. Collectors which is impugned. The bone of the contention of the applicant is that the orders are not issued in compliance of the provisions of the Section 4 (4) & 4 (5) of the Maharashtra Govt. Servants Regulations of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the Transfer Act.) As against this, the respondents' stand is that the transfers were proposed and matters are placed before the Civil Services Board and with the prior approval of the Hon'ble Chief Minister orders are issued.

5. In the meantime Writ Petitions were filed before the Hon'ble High Court of Judicature Bench at Bombay challenging the authority of the Election Commissioner. The Hon'ble High Court had granted stay in these W.Ps. The Hon'ble High Court decided the W.Ps. No.9499/2016 (Smt. Jyoti Hanuman Patil –vs. The Principal Secretary, (Revenue and others) and others and Their Lordships of the Bombay High Court by order dtd. 16/12/2016 vacated the stay orders. Their Lordships observed that the order of the Election Commission is issued in view of the large public interest.

6. Armed with the order, the Id. P.O. submits that now there is no merit in the O.A. However, it is to be seen whether the transfer

order is issued in compliance with the provisions of the Transfer Act or not. The Id. P.O. submitted that the orders are issued complying all the provisions i.e. proposals of transfers were made, they were approved by the Civil Services Board and with the prior approval of the Hon'ble Chief Minister. He proceeded to argue that the orders issued on the basis of the communication of the Election Commission are itself sufficient to hold that the orders are legal and valid. However, one cannot lost sight of the fact that the court has to consider whether the orders are issued in compliance of the provisions of the Transfer Act or not.

7. This leads to test the case on the anvil of the provisions of the Transfer Act. The Election Commission's communication clearly shows that to have the free and transparency in the election process, the officers who will complete the 3 years period on the post on 1/6/2016 or during the period November, 2016 to February, 2017 be transferred. So also the officer who are in their home districts they also be transferred. As per clause 4 (c) of communication dated 1-2-2016, the officers should not be the resident of within the limits of the local area of local body of which the election is scheduled.

8. If the applicant is transferred as he was to complete three years' period between December 2016 to February 2017. All these

reasons are mentioned in the proposal placed before the Civil Services Board and on this ground the applicant is transferred. It is manifest from the above that the case of the applicant is covered as per the observations and falls in guidelines made in the communication of the Election Commission.

9. Needless to mention that if on such grounds the employees are transferred it has to be held that there was administrative exigency to transfer them. The Election work is most important in nature and the election process needs to be free and transparent. The guidelines are laid down by the Election Commission for that and if on the basis of such guidelines the transfer orders are issued, it has to be held that the said reason is sufficient and satisfactory to effect the mid-term and mid-tenure transfers. Meaning thereby the reason is of special nature and case falls in category of exceptional circumstances.

10. The applicant also contended that he was working at Murtizapur and no election of local bodies in the district are taking place. Therefore, it was not necessary to transfer the applicant and it deserves consideration. However, there is no specific pleading on the point at stake. In absence of the same, the point canvassed cannot be considered.

11. The applicant has pleaded that he has undergone bypass surgery and his heart functioning is at a higher lower side. He has also filed several medical documents on record for that. However, it is well settled that such reasons are to be considered by the department. The Tribunal or the Court cannot consider such aspects, but at the most can observe that the respondents to consider such case taking sympathetic view.

12. In the above state of affairs, the O.A. is rejected. However, the applicant is at liberty to make representation on the health ground opting for posting at convenient place and in that event, respondents to consider his case sympathetically. No order as to costs.

(S.S. Hingne)
Vice-Chairman.

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