

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.777 of 2016

Shri G.B. Gawade)
R/at 102, Sadguru Sadan, opp. Dev)
Darshan Mhasa Road, Murud,)
Tal-Murud, Dist. Thane.) ...Applicant

Versus

1. State of Maharashtra, through the)
Secretary, Tribal Development Dept.)
Mantralaya, Mumbai 400 021.)
2. The Addl. Commissioner for Tribal)
Development, Vardan Sankul, (Wagale)
Estate), 9th floor, Passport Office,)
Thane (W).)
3. The Deputy Commissioner of Tribal)
Development, Vardan Sankul, (Wagale)
Estate, 9th floor, Passport Office,)
Thane (W).) ...Respondents

Shri L.S. Deshmukh, Advocates for Applicants.

Smt Kranti Gaikwad , Presenting Officer for Respondents.

CORAM : SHRI R.B. MALIK (MEMBER-JUDICIAL)

DATE : 09.01.2017

ORDER

Heard Shri L. S. Deshmukh, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned P.O. for the Respondents.

Affidavit-in-Reply sworn earlier is presented today. It is taken on record.

I have gone through the record and proceedings. I am of the opinion that absence of rejoinder will not affect the interest of justice.

Learned Advocate for the applicant shall be allowed to argue on the basis of denial of the adverse allegations in the affidavit-in-reply.

The O.A. is, therefore, admitted and taken up for hearing forthwith. Argument commenced.

(R.B. Malik)
Member (J)
09.01.2017

L.O.

1. This Original Application questions the impugned order dated 16.7.2016 made by the 2nd Respondent, Additional Commissioner for Tribal Development whereby the order of transferring the applicant, a primary teacher in Government Ashram School from Nandgaon, Dist. Palghar to Government Ashram School, Khutal, Dist. Thane was stayed.

2. I have perused the record and proceedings and heard Shri L. S. Deshmukh, the learned Advocate for the applicant and Smt Kranti Gaikwad, learned Presenting Officer for the respondents.

3. The impugned order is in complete violation of the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. (Act herein after). It cries for being interfered with and I am afraid I must readily oblige.

4. It is an indisputable factual position that by an order of transfer dated 31.5.2016, the applicant on his request was transferred to Khutal. Pertinently in the column "Read" there was a proposal of the Project Officer which means that the Project Officer had proposed the acceptance of the request of the applicant to transfer him and orders were consequently issued. At Exb. 'C', page 11 of the Paper-Book there is an order by the Headmaster of Government Ashram School at Nandgaon, dated 30.6.2016

whereby the applicant was relieved from so as to join at his transferred place. The applicant apparently was not allowed to join at Khutal. He brought this O.A. before this Tribunal and the matter was heard by the Hon'ble Vice-Chairman who by his order dated 28.7.2016 observed inter-alia that the applicant came to be transferred on his request. The respondents would have to explain as to why he would had not been relieved for one month and also why the Headmaster of Khutal did not allow him to join. The impugned order did not disclose any reason as to why the 2nd respondent thought it fit to stay his earlier order. In this view of the matter interim relief was granted and on the strength thereof the applicant is now functioning as a teacher at Khutal. Very pertinently even as the impugned order shows no reasons, the reasons are being sought to be supplemented by way of annexures to the affidavit-in-reply filed by the 2nd respondent. The crux of the matter according to the respondents is that for administrative reasons and to have equal strength of staff in both the schools, stay was granted. A detailed chart has been furnished at pages 26 onwards of the Paper-Book. I need not burden this judgment with the detailed content thereof.

5. Once it is accepted as it must be, that the provisions of the Transfer Act apply then in the first place there is no provision for granting stay to the order of transfer in the manner impugned order seeks to do. Further, the applicant having been relieved from his earlier post assuming that the order was to be stayed, the impugned order makes no provision for his new posting and, therefore, for all practical purposes left alone with this impugned order, the applicant must be freely suspended in the air and that is not conceivable at all in law.

6. Further once, the order of transfer was issued, granting all latitude, the respondents even if it was to be in any manner tinkered with it was within exclusive domain of the Government and not the respondent no.2 to do so. Further pertinently the 2nd proposal if one might say so of the

Project Officer to the 2nd respondent was there no order as such was made by 2nd respondent but merely a chart was made.

7. It is, therefore, quite clear that the impugned order is legally infirm and unsustainable. For all practical purposes, the interim order will have to be confirmed. The order herein impugned is hereby quashed and set aside. The interim order of this Tribunal dated 28.7.2016 is confirmed and the respondents are directed to let the applicant continue to work as a teacher in the Government Ashram School, Khutal till such time as he becomes due for transfer in accordance with the provisions of law.

8. The Original Application is allowed in these terms with no order as to cost.

(R.B. Malik)
Member (J)
09.01.2017

VSO