

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 802 OF 2017 (S.B.)**

Prabha D/o Balkrushna Dupare,  
(Sau. Prabha W/o Ravi Shambharkar)  
Aged about : 45 years, Occ. Service, R/o Qtr. No. 38, MHADA Colony,  
Kalmana Basti, Old Kamtee Road,  
Nagpur-440 026.

**Applicant.**

**Versus**

- 1) The Jt. Secretary,  
State of Maharashtra,  
Department School Education &  
Sports, Mantralaya, Mumbai-32.
- 2) The Director of Education,  
(Secondary & Higher Secondary), Maharashtra State,  
Pune 441 001.

**Respondents**

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**Shri A.K.Waghmare, the Id. Adv. for the applicant.**

**Shri S.A.Sainis, the Id. P.O. for the respondents.**

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

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**JUDGMENT**

**(Delivered on this 05<sup>th</sup> day of April, 2018)**

Heard Shri A.K.Waghmare, the learned counsel for the applicant and Shri S.A.Sainis, the learned P.O. for the respondents.

2. The applicant was appointed in the General State Service Group-B (Clerical Grade) and was posted at Etapalli, Dist. Gadchiroli, as Superintendent, Mid-day meal at 05/02/2004.

3. Subsequently, she was transferred to Hingna, Katol and Kuhi, Nagpur District on the same post in between 2005 to 2017. She was serving at Kuhi, District Nagpur at the time of impugned order of transfer dated 07/07/2017.

4. Vide impugned order dated 07/07/2017, the applicant has been transferred from the post of Superintendent Kuhi to Hinganghat, (Annexure-A-1), P.B., Pg. No. 17. According to the Id. Counsel for the applicant, the said order is mid-term and has been passed against the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

5. According to the applicant, the applicant is a married woman employee and as per the Government Resolution dated 14/03/1988 it is stated that at any cost, the married woman employee's request for transfer shall be considered. The respondents, however, did not follow the said directions and transferred the applicant away from Nagpur at a distance of about 90 kms.

6. It is further stated that as per Government Resolution dated 27/11/1997 and particularly at para no. 3 of the said G.R., the Government employee should not be transferred frequently and as per para no. 4 of the said G.R. it was incumbent upon the transferring authority to prepare a list of Government servants in the month of October every year, as who were due for transfer in the next year and the employee shall be asked to give choice for three-four places and after considering such request and administrative exigency, the employee shall be transferred in the month of May of every year. However, the impugned order of transfer is passed in the midst of July and, therefore, the same is mid-term.

7. It is further stated that the transfer order is regulated by Nagari Seva Mandal and the said mandal is not a statutory authority under the Maharashtra Civil Services Rules and under the Transfer of Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. The order is issued in the violation of certain statutory provisions under Section 4 (4)(i)(ii) and (5) of the Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. No special reasons are given for the transfer. The transfer order is, therefore, liable to be quashed and set aside.

8. It is further stated that the applicant is a married woman, having a daughter of seven years age, who is studying in IInd standard. The applicant's husband and old parents are residing at Nagpur. The applicant is also suffering from Rheumatoid Arthritis (Amavat) and she is also a patient of Diabetic and is taking medical treatment at Nagpur. Her husband is an Advocate and practising in Nagpur and, therefore, all the facts should have been considered. Moreover, there are vacancies available at Nagpur. The applicant has, therefore, prayed that the order dated 07/07/2017 whereby she has been transferred from Kuhi (Dist. Nagpur) to Hinghanghat (Dist. Wardha), be quashed and set aside.

9. The respondent nos. 1 and 2 has justified the order of transfer. In their affidavit-in-reply, so far as the frequent transfer of the applicant as alleged by her is concerned, it is stated that the applicant was transferred on her own request to Hinghanghat on 03/11/2004 and she worked there upto 24/06/2009. Thereafter she was transferred from Hinghanghat to Katol. She worked there between 25/06/2009 to 02/06/2013. Thereafter she was transferred to Kuhi, where she joined her duties on 03/06/2013 and has already completed three years of tenure. She was very much due for transfer. So far as the G.R. dated 14/03/1988 is concerned, it is stated that the said G.R. has been struck down/ replaced by the G.R. dated 07/06/2006. The Civil Services Board has been constituted as per G.R. dated 31/01/2014. The Civil Services

Board is the only authority to recommend and post the employee by transfer and the said recommendation has been approved by the competent authority. Prior approval has also been taken for the applicant's transfer.

10. According to the respondents, there are some posts vacant in Nagpur district. But there are more vacant posts in Wardha and other District in the cadre of Superintendent, General State Service Board, Group-B. In para no. 9 of the affidavit-in-reply, the respondents have given a chart of the vacant posts, from which it seems that at Nagpur there are three posts vacant, whereas at Wardha there are nine posts vacant and at Bhandara there are five posts vacant. It is therefore, stated that the applicant has been transferred at Kuhi on administration ground and she has not yet joined at her transferred post.

11. The applicant has filed rejoinder on 01/02/2018 and 12/03/2018. Vide these rejoinders, the applicant tried to convince that the other employees in the State like one Mr. Nilesh Waghmare, Mr. G.P.Gedam and Smt. S.D.Bhilwal were adjusted at their choice posts. It is not known under what circumstances they were transferred. No malice has been alleged against the respondent authorities.

12. So far as the transfer of the applicant is concerned, it is true that it is passed in the month of July, 2017. As per transfer of Maharashtra Government Servants Regulation of Transfers and

Prevention of Delay in Discharge of Official Duties Act, 2005, the transfer order shall be issued in the month of April/ May of every year. The impugned order of transfer has been issued in the month of July in which as many as 46 employees have been transferred throughout Maharashtra.

13. Merely because it was not issued in the month of May, but in the Month of July, it cannot be said that it is a mid-term transfer of the officer who have been transferred in the month of July instead in the month of April/May. It is not that the general transfer order had been issued in the month of April/ May and only the applicant's transfer order has been issued in the month of July.

14. From the record, it seems that the applicant was due for transfer from Kuhi and, therefore, it cannot be said that her transfer is mid-tenure transfer. The applicant's husband is not serving anywhere but he is a legal practitioner and, therefore, the applicant cannot claim as of right that she is entitled to be adjusted on the ground that her husband is practising at Nagpur. From the affidavit-in-reply, it seems that on so many occasions, the applicant has been adjusted at/or nearby Nagpur, such as at Hinghanghat, Katol, Kuhi etc. For all the time, she cannot be adjusted at Nagpur only on the ground that her husband is practising at Nagpur.

15. The Id. counsel for the applicant has invited my attention to the representation filed by the applicant on 15/05/2017 i.e. prior to her transfer. In the said representation, it is stated that she was experiencing Amvat and is suffering from Diabetic and that she was taking treatment of Doctors at Nagpur. She has stated that her husband was practising as an Advocate in the District Court and High Court at Nagpur. In her representation dated 13/07/2017, she has added one new ground, stating that her daughter is of seven years old and is taking education in IInd standard and her parents i.e. her mother-in-law is old and she has to maintain them. Not only that her transfer seems to have been recommended by the local M.L.A., Krishna Khopde to the Hon'ble concerned Minister vide letter dated 21/08/2017. The respondent have stated that the applicant, instead of joining at transferred place tried to bring political pressure by giving a letter from the Member of Legislative Assembly and this action seems to be an actionable one as per Rule 23 of The Maharashtra Civil Services (Conduct) Rules, 1979. It is crystal clear that the applicant seems to have tried to bring political pressure for her posting from the local M.L.A. The respondents are not prohibited from taking action as per Rules against the applicant for such interference.

16. It seems from the affidavit-in-reply that the respondent authorities have taken into consideration the administrative difficulties. More posts are lying vacant in Wardha District and, therefore, the

respondent have thought it proper to transfer the applicant in Wardha District as per administrative convenience. Admittedly, the transfer order has been issued by the competent authority on the recognition of Civil Service Board and no malafides are alleged against the respondents for transfer of the applicant at her choice posting.

17. As per the various circulars issued in respect of choice posting, it is clear that the employee has to give options, three months prior to the date of transfer. The employee must give choice options atleast 3 in number and may file representation in advance. In the present O.A., the representation is filed on 15/05/2017, when the applicant was knowing full well that she was due for transfer in the month of April/May, 2017. The next representation is filed on 13/07/2017 as per (Annexure-A-6) after the applicant was transferred. The respondent authorities may consider the said representation on its own merits at the time of Annual General Transfers, 2018. In the impugned order, it is stated that the competent board has been set up as per Section 6 of the Transfer Act, 2005 for considering the transfer of the employee. It, therefore, cannot be said that the competent Civil Services Board having is no authority to recommend the transfer of the applicant and other employees. The applicant's transfer was recommended by the Civil Services Board and the said recommendation has been approved by the competent authority i.e. Government and, therefore, it cannot be said



that the order of transfer is illegal or in violation of the provisions of the Act, 2005. The directions issued vide G.R. dated 27/11/1997 (Annexure-A-3), P.B. Pg. No. 23 which are not mandatory in nature and no malafides are proved for issuing the transfer order in respect of the applicant.

18. In view of the discussion in foregoing paras, I, therefore, do not find any merits in the O.A. The Id. P.O. submitted that the most objectionable conduct on the part of the applicant is that, she has not yet joined at her post. However the respondent authorities will be at liberty to take proper action for such act on the part of the applicant. Hence the following order:-

**ORDER**

The O.A. stands dismissed with no order as to costs.

**Dated :- 05/04/2018**

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