

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.828/2016.

Jagan Ramji Rathod,
Aged about 46 years,
Occ-Service,
R/o 1, Gopalkrishna Park, Wadgaon Road,
Yavatmal.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Principal Secretary,
Department of Agriculture
Mantralaya, Mumbai-440 032.
- 2) The Commissioner of Agriculture (M.S.),
Central Building, Pune-1.
- 3) The Chief Executive Officer,
Zilla Parishad, Yavatmal.
- 4) Shri Dattakumar Radhakrishna Kalsait,
Sub-Divisional Agriculture Officer, Darwha.
Distt. Yavatmal.

Respondents

Shri Bharat Kulkarni, Ld. Counsel for the applicant.
Shri M.I. Khan, learned P.O. for the respondent Nos. 1 and 2.
Shri A.D. Girdekar, the learned counsel for respondent No.3.
Shri A.P. Sadavarte, the learned counsel for respondent No.4.

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

JUDGMENT

(Delivered on this 11th day of April 2017.)

Heard Shri Bharat Kulkarni, the learned counsel for the applicant, Shri M.I. Khan, the learned P.O. for respondent Nos. 1 and 2, Shri A.D. Girdekar, the learned counsel for respondent No.3 and Shri A.P. Sadavarte, the learned counsel for respondent No.4.

2. The applicant came to be promoted as Maharashtra Agriculture Service, Group-A Service and was posted as Sub-Divisional Agriculture Officer at Pandharkawada, District Yavatmal on 17.6.2008. Vide order dated 14.6.2012, he came to be transferred from Pandharkawada to Yavatmal on the post of Agriculture Development Officer in Zilla Parishad, Yavatmal which is nothing but a deputation order. The applicant joined the said post on 3.12.2012.

3. One Pravin Deshmukh was President of Zilla Parishad, Yavatmal and he tried to get his bogus bills cleared for which the applicant objected. Being aggrieved by the said action, Shri Pravin Deshmukh demanded enquiry against the applicant in the Standing Committee meeting of Zilla Parishad and a resolution was passed against the applicant on 12.7.2016. The applicant has filed an appeal against the said resolution.

4. In the meantime, one Mr. Deepak Singla joined as Chief Executive Officer, Zilla Parishad, Yavatmal in the month of April 2016. He had issued show cause notice to the applicant on 7.9.2016,

making several allegations. The applicant was also asked to explain as to why the disciplinary action should not be taken against him. The financial and administrative powers of the applicant have been withdrawn on 1.12.2016. On the proposal forwarded by respondent No.3, respondent No.1 transferred the applicant in mid-term which has caused great prejudice and inconvenience to the applicant. Vide impugned order dated 22.12.2016, the applicant has been transferred from the post of Agriculture Development Officer, Z.P., Yavatmal to the post of Deputy Director of Agriculture, VANAMATI, Nagpur. The said impugned order dated 22.12.2016 has been challenged in this O.A. According to the applicant, said order is against the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the "Transfer Act"). It is mid-term order and the same is illegal. The applicant has, therefore, prayed that the impugned order dated 22.12.2016 transferring the applicant from Yavamtal to VANAMATI, Nagpur be quashed and set aside. It is stated that vide another order dated 22.12.2016, respondent No.4 has been transferred from Darwha to Yavatmal in place of the applicant and the said order is also illegal, arbitrary and in violation of the provisions of the Transfer Act.

5. Respondent Nos. 1 and 2 have filed their reply affidavit and justified the transfer. According to the respondents, the applicant is habituated to avoid duty. Citizens of Yavatmal and office staff have made complaints regarding non-performance of duty and misbehaviour of the applicant. The applicant was non-cooperative with the office colleagues and superiors. It is further stated that the impugned order clearly states that the same has been passed as per proviso to section 4 (5) of the Transfer Act. A departmental enquiry has been initiated against the applicant on the proposal of respondent No.4 and, therefore, continuing the applicant on the same post may hamper enquiry. The applicant has also completed his tenure at Yavatmal, since he is working there for more than four years. He was due for transfer.

6. Respondent No.3 Chief Executive Officer, Zilla Parishad, Yavatmal denied the allegations made against him by the applicant and justified the transfer. It is stated that respondent No.3 has requested the Government vide his letter dated 27.9.2016 to transfer the applicant and to initiate departmental enquiry and, therefore, the applicant has been transferred on administrative exigency.

7. Respondent No.3 i.e. the Chief Executive Officer, Zilla Parishad, Yavatmal also justified the order and has also placed on record a copy of chargesheet served on the applicant.

8. The learned counsel for the applicant submits that the order of transfer of the applicant is mid-tenure and mid-term. It is true that the impugned order has been passed in the month of December 2016 i.e. on 22.12.2016 and, therefore, it is not passed in the month of April / May of the year as required. However, that itself will not mean that the applicant was not due for transfer. From the admitted facts on record, it is clear that the applicant was working as Agriculture Development Officer in Zilla Parishad, Yavatmal and he has joined there since 3.12.2012 vide order dated 14.6.2012. Thus admittedly, he has completed more than three years at Yavatmal and due for transfer. The only material question to be considered whether there was administrative exigency to transfer the applicant immediately ? The respondents have placed on record the minutes of the meeting of the Committee which was established to consider the transfers of the officers of Class-I cadre. The said minutes are placed on record alongwith affidavit in reply of respondent Nos. 1 and 2. Perusal of the said minutes shows that the applicant's case for transfer was considered as he was due for transfer and while considering his

transfer, report of the Chief Executive Officer, Zilla Parishad, Yavatmal (R.3) was also taken into consideration alongwith the conduct of the applicant. The copy of the said report dated 27.9.2016 submitted by respondent No.3 to the Secretary, Department of Agriculture, Govt. of Maharashtra shows that the respondent No.3 has recommended the departmental enquiry against the applicant. Even though he has made certain allegations against the applicant, it is an internal correspondence between the C.E.O., Z.P., Yavatmal and the Secretary, Department of Agriculture, Govt. of Maharashtra. Considering the overall behaviour of the applicant, complaint against him and on the recommendation of C.E.O., Z.P., Yavatmal and considering the fact that the applicant was already over due for transfer, the Competent Committee seems to have taken decision to transfer the applicant from Yavatmal to VANAMATI, Nagpur. It is not necessary for this Tribunal to consider whether the allegations against the applicant were true or not. Fact remains that the departmental enquiry was proposed against the applicant and in the affidavit-in-reply, respondent Nos. 1 and 2 have stated that presence of the applicant at Yavatmal from continuation of said enquiry may hamper the enquiry and, therefore, I feel that the action of transfer cannot be said to be illegal.

9. It is also pertinent to note that the Standing Committee of Zilla Parishad, Yavatmal had passed some resolution against the applicant whereby his administrative and financial powers have been withdrawn. The applicant has filed an appeal against the said action which is pending before the Divisional Commissioner, Amravati Division, Amravati. Considering this fact coupled with the fact that the applicant has already completed more than four years at Yavatmal, action taken by respondent authority cannot be said to be illegal.

10. The learned counsel for the applicant has invited my attention to the judgment delivered by the Hon'ble High Court in case of **(i) Shriprakash Maruti Waghmare V/s State of Maharashtra and others reported in [2010 (2) Mh.L.J. 58 and (ii) Kishor Shridharrao Mhaske V/s Maharashtra OBC Finance and Development Corporation Ltd., Mumbai and others reported in 2013 (3) Mh.L.J. 463** wherein it is held that, *mid-term or premature special transfer must be effected by a reasoned order in writing and after the due and prior approval from the Competent Authority concerned*. In the present case, in the impugned order, it has been stated that the transfer order has been issued as per the provisions of Section 4 (5) of the Transfer Act. The respondents have placed on record the copies of the chargesheet served on the applicant from

which it is clear that a departmental enquiry has been initiated against the applicant, his administrative and financial powers have been withdrawn and he has also completed more than four years at Yavatmal and, therefore, in such circumstances, his stay at Yavamtal may hamper the proceedings of enquiry. The applicant has already been relieved and respondent No.4 has already taken over the charge of his post and, therefore, in such circumstances it will not be in the interest of justice and equity to interfere in the impugned order of transfer. There is nothing on record to show that the transfer of respondent No.4 in place of the applicant has been done with any malafide intention and hence, the following order:-

ORDER

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

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

pdg

