

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

CIVIL APPLICATION NOS. 349 & 350 /2018

AND

ORIGINAL APPLICATION NO.884/2018.

(S.B.)

Sanghamitra d/o Moreshwar Dhoke,
(Sanghamitra w/o Avinash Ramteke),
Aged about 49 years,
Occ-Chief Officer,
R/o Chief Officer Quarter, Saoner,
Distt. Nagpur.

Applicant.

-Versus-

The State of Maharashtra,
Through its Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai-400 032.

Respondents

Shri M.I. Dhattrak, the learned counsel for the applicant.
Shri D.M. Kakani, the learned special counsel for the respondents.
Shri Shashikant Borkar, the learned Advocate for the Intervener.

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

JUDGMENT

(Delivered on this 2nd day of January 2019.)

Heard Shri M.I. Dhattrak, the learned counsel for the applicant, Shri D.M. Kakani, the learned special counsel for the respondents and Shri Shashikant Borkar, the learned Advocate for the Intervener.

2. The applicant Sanghamitra d/o Moreshwar Dhoke (Mrs. Sanghamitra w/o Avinash Ramteke) is the Chief Officer, Municipal Council and at the time of impugned order of transfer, she was serving as Chief Officer, Municipal Council, Saoner. In the O.A., she has challenged the order of her transfer dated 6.11.2018 whereby she has been transferred as Chief Officer, Municipal Council, Saoner to the office of Divisional Commissioner, Nagpur as Leave Reserve Chief Officer (समन्वय स्वच्छ महाराष्ट्र). The said order has been challenged on the ground that it is mid-term and mid-tenure.

3. The applicant has stated in her application that the impugned order of transfer is bad in law as the same has been issued prior to completion of normal tenure of the applicant and within the span of 1 ½ years and as such is contrary to the provisions of Section 4 and 6 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 of 2005"). It is

further stated that the said order is not only mid-term but mid-tenure and the provisions of Section 4 (5) of the Transfer Act of 2005 have not been complied with. Though, the order states the reason as “administrative ground”, in fact no reason is mentioned and, therefore, it is not in compliance with Section 4 (4) and 4 (5) of the Transfer Act of 2005. It is further stated that, the applicant’s tenure at Saoner was satisfactory and extraordinary and there was no grudge of anybody against the applicant and, therefore, order is bad in law and the same has been issued with malafide intention.

4. The respondents have tried to justify the order. It is stated that there were serious complaints against the applicant as regards her work, misuse of her position as well as misuse of power and serious irregularities were found. The Hon’ble the Chief Minister has received complaints against the applicant on 5.11.2018 which was signed by 16 elected Members of Saoner Municipal Council and its President. Thus out of 22 Members, 16 Members of Saoner Municipal Council in addition to its President have filed serious complaints against the applicant and therefore, the said complaint was kept before the Civil Services Board-I on 4.10.2018 and the said Board recommended applicant’s transfer to Nagpur. Nagpur is just 28 Kms. from Saoner and no prejudice will be caused to the

applicant. It is stated that, all the provisions of the Transfer Act of 2005 have been fully complied with and the approval of the Hon'ble the Chief Minister has been taken. Since transfer is in the interest of smooth administration, it is in public interest.

5. From the facts on record, it seems that earlier also the applicant was transferred from Saoner to Narkhed vide order dated 31.5.2017 and the said order was challenged by the applicant by filing O.A.No.198/2018 before this Tribunal. This Tribunal vide order dated 3.10.2018 in the said O.A., was pleased to dispose of the said application, as the applicant's transfer at Narkhed was cancelled and her grievance was redressed. In the said O.A. also, the applicant expressed apprehension that she may be transferred by issuing a fresh order and the Tribunal expressed the opinion that the applicant will be continued at Saoner for her full tenure except for administrative exigency and in case of such a transfer, the applicant was given liberty to challenge the order of transfer by filing fresh O.A., a copy of the said order is at Page No.37.

6. The learned counsel for the applicant submits that there is a deliberate attempt on the part of the respondents to transfer the applicant. Initially, the applicant was transferred at Narkhed which was cancelled, since the applicant challenged the said order.

But now, the applicant has been again transferred. It is material to note that, though it is stated that the impugned order of transfer of the applicant is with malafide intention, reason for alleged malafide intention as mentioned in the round of appeal is that the order has been issued on the last date of official working day so as to restrict the applicant from approaching the Court. This cannot be a ground from which malafide intention can be proved. Except this, there is nothing on record to show that the order is malafide. It is also an admitted fact that, the applicant has been transferred before completion of her tenure at Saoner and, therefore, it is necessary to see as to whether transfer order is issued in compliance of the provisions of the Transfer Act, 2005.

7. Section 4 (4) and 4 (5) of the Transfer Act, 2005 reads as under:-

“4. Tenure of Transfer.

(1)

(2).....

(3).....

(4)The transfers of Govt. servants shall ordinarily be made only once in a year in the month of April or May:

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

- (i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;
 - (ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority;
- (5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior {approval of the immediately superior} Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.

8. Plain reading of the aforesaid section clearly shows that notwithstanding anything contained in section 3 or section 4, the competent authority may in special cases, after recording reasons in writing and with the prior approval of the immediately superior Transferring Authority can issue order of transfer. The aforesaid section gives ample power to the competent authority to transfer an employee even though he / she has completed the tenure for the reasons already stated in this section. In this case, the respondents are coming with a specific case that there were number of complaints against the applicant and it was in the interest of administration to transfer her. Since enquiry was to be initiated and the competent

higher authority has already sanctioned the transfer of the applicant. In order to see whether such sanction was granted or not, the original record was called for perusal of this Tribunal.

9. It seems that the applicant's case was kept before the Civil Services Board-I and the said Civil Services Board-I in the meeting dated 4.10.2018 considered the case of the applicant for transfer. It seems from the minutes of the meeting that, serious complaints received against the applicant were kept before the Civil Services Board-I and the Civil Services Board-I recommended applicant's transfer as per the provisions of Section 4 (4) & 4 (5) of the Transfer Act, 2005. The said recommendation was thereafter placed before various authorities which include Divisional Commissioner, Director of Municipal Administration, Principal Secretary-I and Principal Secretary-II and thereafter before the competent authority including the Hon'ble the Chief Minister. The reason for applicant's transfer was shown as, "प्राप्त गंभीर तक्रारीचे स्वरूप विचारात घेऊन प्रशासकीय कारणास्तव रिक्त पदावर".

10. It seems that various complaints received from 16 Members of the Municipal Council, Saoner were placed before the Civil Services Board. This Tribunal is not interested to go into the

details of the complaints lodged against the applicant by various Members of the Municipal Council, Saoner. It seems that the complaints have been sent to various authorities including the Hon'ble the Chief Minister and those complaints were considered by the Civil Services Board. In the complaints itself, it was also requested that the applicant be kept under suspension and enquiry may be held against her as regards various complaints.

11. The learned counsel for the applicant invited my attention to the judgments delivered by the Hon'ble High Court of Judicature at Bombay reported in **2011 (5) ALL MR 580 in case of Pradeepkumar Kothiram Deshbhratar V/s State of Maharashtra and others and particularly in para No.21 of the said judgment,** which reads as under:-

“21. Perusal of note, as approved by Hon'ble Minister at page 165, again does not show any specific application of mind insofar as the transfer *inter se* of the petitioner and respondent No.5 is concerned. The specific cases which can be said to be looked into by the Hon'ble Minister are already mentioned by the us above. Whether this fact which we have noticed is looked into by the Hon'ble Minister or not is not very clear. Section 4 (5) permits the competent authority in special cases to transfer the petitioner after recording reasons in

writing and that too with prior approval of the Hon'ble Minister. Thus section 4 (5) of the 2005 Act contemplates such premature transfer only in exceptional cases. The facts above show that request made by the President, Zilla Parishad and recommendation of the Hon'ble Minister has been the only reason for treating the proposal as special case. This is not contemplated by section 4 (5) of the 2005 Act and reasons to be recorded for permitting such transfers must be spelt out and must be found to be in the interest of administration. Those reasons cannot be only the wish or whim of any particular individual and such transfers cannot be ordered as special case to please the particular individual for mere asking. On the contrary, records show that respondent Nos. 2 and 3 have not recorded any special reasons at all. These respondents are not satisfied with relevance of reasons placed before the Hon'ble Minister. Hence, they have developed a new story in an attempt to justify that transfer before the court. We, therefore, do not find compliance of provisions of Section 4 (5) r/w section 6 of 2005 Act in the present matter."

12. The learned counsel for the applicant also placed reliance on the judgment reported in **2013 (3) ALL MR 116 in case of Kishor Shridharrao Mhaske V/s Maharashtra OBC Finance &**

Development Corporation and others, 2015 (4) ALL MR 336 in case of State of Maharashtra and others V/s Dr. (Ms.) Padmashri Shriram Bainade and others.

13. The learned counsel for the applicant, placing reliance on the aforesaid judgments, submits that the transfer order does not state the exact reason for applicant's transfer and, therefore, the same cannot sustain under the provisions of the Transfer Act of 2005.

14. Perusal of the transfer order shows that the said order has been passed U/s 4 (4) and 4 (5) of the Transfer Act of 2005 and the reason for transfer is shown as 'administrative reason'. Perusal of the minutes of the meeting and various documents placed on record shows that there were number of complaints against the applicant as regards her working as Chief Officer, Municipal Council. All these complaints were kept before the Civil Services Board-I and the Civil Services Board-I recommended the applicant's transfer on administrative ground considering the complaints against her. The said complaints were placed before the various competent authorities including the competent authority i.e. the Hon'ble the Chief Minister and the Hon'ble the Chief Minister has also granted sanction to such transfer. In the order, however, it is stated that the same has been

effected due to administrative exigency. In my opinion, this is sufficient compliance of the provisions of the Transfer Act, 2005. Even, there were serious complaints against the applicant as regards her working as Chief Officer of Municipal Council, Saoner and the administration found it necessary to transfer her so as to initiate fair enquiry about the allegations and for that purpose, the administration thought it proper to transfer the applicant on administrative ground, I do not find anything wrong done by the competent authority in such circumstances.

15. Shri D.M. Kakani, the learned special counsel for the State placed reliance on various judgments which include the judgment in case of **V.B. Gadekar V/s Maharashtra Housing and Area Development Authority (MHADA) reported in (2008) 2 Mh.L.J. 640,** wherein it has been held that, the transfer can be made in exceptional circumstances and in absence of any patent malafides or arbitrariness, a decision taken for administrative reasons cannot be looked into by the Court like an appellate authority. He has also placed reliance on the judgment reported in **2011 (1) ALL MR-855 in case of Kishor Mallayya Sandry V/s State of Maharashtra and others,** wherein it is held that in exercise of extraordinary writ jurisdiction, no interference is warranted for such transfer orders. The

learned special counsel for the State placed reliance on the judgment in case of **Union of India V/s S.L. Abbas reported in (1993) 4 SCC 357, AIR 1993 SC 2444.** Judgment in case of **Santosh Nandlal Dalal V/s State of Maharashtra reported in 2016 (1) Mh.L.J. 45** and in case of Sanjeev Bhagwanrao Kokil V/s **State of Maharashtra reported in 2013 (2) Mh.L.J. 107.**

16. As already stated, except mere allegations of malafides, there is nothing on record to show that any of the respondents' competent authorities is having personal grudge against the applicant. Action taken against the applicant has been taken by the Civil Services Board-I which include the officers like the Principal Secretary etc. and the Board considered the complaints against the applicant and found it necessary to transfer the applicant and has also obtained the consent of higher authorities. In any case, provisions of the Transfer Act, 2005 seem to have been complied with easily and therefore, it will not be proper to interfere in the decision taken by the competent authority which include the Hon'ble the Chief Minister.

17. C.A. No. 349/2018 has been filed by the Municipal Council, Saoner through its President. It is because the Tribunal on 6.11.2018 was pleased to direct the State not to fill up the post of

Chief Officer, Municipal Council, Saoner till further orders. As the said post was kept vacant, the Municipal Council, Saoner thought it proper to intervene, since the working of the Municipal Council, Saoner might have to come to a standstill. Except this, the Municipal Council has no other grievance. I feel that the application is bonafide and hence the learned counsel for the applicant was heard in the matter. Application, therefore, has been impliedly allowed.

18. C.A. No. 350/2018 has been filed by the President, Municipal Council, Saoner whereby he has requested that order to keep the post of Chief Officer, Municipal Council, Saoner vacant, be recalled. Decision of the O.A. on merits will automatically solve the problem of Municipal Council, Saoner and since it is found that the transfer of the applicant is as per the rules and regulations, stay will be vacated automatically. Admittedly, no stay was granted to the transfer of the applicant and the applicant had joined at her new post at Nagpur, though under protest. The learned special counsel for the State has invited my attention to the fact that in the earlier O.A. No. 198/2018 sub-para No. (xxiii) of para No.6, the applicant stated that her son was taking education in 8th standard at Saraswati Vidyalaya, Nagpur and, therefore, she should not have been transferred to

Narkhed which was 90 Kms. away from Nagpur. It was, therefore, alleged that the impugned order was harsh and by way of punishment. The learned special counsel for the State submits that the applicant has now been transferred to Nagpur itself and, therefore, her convenience has been considered. I feel that no prejudice would be caused to the applicant, if she is continued at Nagpur and on the contrary, it will be in her personal interest. If there are number of complaints against the applicant, which are to be investigated at Saoner, it will not be proper to continue her at Saoner. Hence, I proceed to pass the following order:-

ORDER

- (i) The O.A. stands dismissed no order as to costs.
- (ii) C.A. Nos. 349 & 350 of 2018 stand allowed and disposed of.

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

Dt. 2.1.2019.
Pdg.

