

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON ORDER IN O.A. NOS. 467, 468, 469 & 479 OF 2017

(1) ORIGINAL APPLICATION NO. 467/2017

DIST. : AURANGABAD

Sharmila Ravindra Nikale,
Age. 45 years, Occ. : Service,
As Warden at Dr. Babasaheb
Ambedkar Boys Hostel (Old),
Aurangabad, R/o HIG – 1/5,
MHADA Colony, Opp. Baba Petrol
Pump, Aurangabad.

-- APPLICANT

V E R S U S

1. The Commissioner for Social
Welfare, Maharashtra State,
3, Church Road, Pune -1.
2. The Regional Deputy Commissioner
Of Social Welfare, Khokadpura,
Near Shivaji High School,
Aurangabad.
3. Mr. Pravin R. Salunke,
Age. Major, Occu. Service,
As Warden at Govt. Residential
School, Bhokardan, Dist. Jalna.--

RESPONDENTS

WITH

(2) ORIGINAL APPLICATION NO. 468/2017

DIST. : AURANGABAD

Meena Marutirao Survey,
Age. 50 years, Occ. : Service,
as Warden at Sant Tukaram
Govt. Boys Hostel, Killeark,
Aurangabad, R/o Chinar Garden,
Padegaon, Aurangabad.

-- APPLICANT

VERSUS

1. The Commissioner for Social Welfare, Maharashtra State, 3, Church Road, Pune -1.
2. The Regional Deputy Commissioner Of Social Welfare, Khokadpura, Near Shivaji High School, Aurangabad.
3. Sharad s/o Ramrao Waghmare, Age. Major, Occu. Service, As Warden at Dr. Babasaheb Ambedkar Backward Class Govt. Boys Hostel, Jalna. --

RESPONDENTS

WITH

(3) ORIGINAL APPLICATION NO. 469/2017

DIST. : AURANGABAD

Kishan s/o Babasaheb Pathade,
Age. 34 years, Occ. : Service,
as Warden at Backward Class
Boys Govt. Hostel, Kannad,
R/o Urus Maidan, Kannad,
Tq. Kannad, Dist. Aurangabad.

-- APPLICANT

VERSUS

1. The Commissioner for Social Welfare, Maharashtra State, 3, Church Road, Pune -1.
2. The Regional Deputy Commissioner Of Social Welfare, Khokadpura, Near Shivaji High School, Aurangabad. --

RESPONDENTS

WITH

(4) ORIGINAL APPLICATION NO. 479/2017

DIST. : AURANGABAD

Sujata Hiranman Lasure,
Age. 43 years, Occ. : Service,
as Warden at Govt. Girls Hostel,
Vaijapur, Dist. Aurangabad,
R/o Dagunana More Nagar,
Pimpalgaon – Baswant,
Tq. Niphad, Dist. Nashik.

-- APPLICANT

VERSUS

1. The Commissioner for Social Welfare, Maharashtra State, 3, Church Road, Pune -1.
2. The Regional Deputy Commissioner Of Social Welfare, Khokadpura, Near Shivaji High School, Aurangabad.
3. Sharmila Ravidra Nikale, Age. 45 years, Occu. Service, As HIG 1/5, MHADA Colony, Opp. Baba Petrol Pump, Aurangabad.

-- RESPONDENTS

APPEARANCE :- Shri S.D. Joshi, learned Advocate for the Applicants in O.A. nos. 467, 468 & 469/2017.

Shri A.D. Gadekar, learned Advocate for the Applicant in O.A. no. 479/2017.

Shri M.S. Mahajan, learned C.P.O.. Smt. Deepali S. Deshpande, S/shri D.R. Patil & I.S. Thorat, learned P.Os. for respondent nos. 1 & 2 in respective matters.

Shri A.S. Deshmukh, learned Advocate for respondent nos. 3 in O.A. nos.467 & 468/2017.

Shri S.D. Joshi, learned Advocate for
respondent no. 3 in O.A. no. 479/2017.

CORAM : **Hon'ble Shri B.P. Patil, Member (J)**
DATE : **1st September, 2017**

ORDER

1. These O.As. are being decided by this common order as the facts and issue involved therein are similar and identical.
2. The applicants have challenged their transfer orders dtd. 31.5.2017 issued by the res. no. 2 by filing the present O.As.
3. The applicants are working as Wardens Group (C) posts since their appointment. The applicant in O.A. no. 467/2017 viz. Smt. Sharmila Ravindra Nikale is working as a Warden at Dr. Babasaheb Ambedkar Boys Hostel (Old), Aurangabad since 2.1.2015. The applicant in O.A. no. 468/2017 viz. Smt. Meena Marutirao Survey, is working as Warden at Sant Tukaram Govt. Boys Hostel, Killeark, Aurangabad since 4.12.2014. The applicant in O.A. no. 469/2017 viz. Shri Kishan s/o Babasaheb Pathade is working as Warden at Backward Class Boys Govt. Hostel, Kannad, Dist. Aurangabad since the date of his appointment i.e. from 4.10.2012. The applicant in O.A. no. 479/2017 viz. Smt. Sujata Hiranman Lasure is working as Warden

at Govt. Girls Hostel, Vaijapur, Dist. Aurangabad since 9.7.2012 i.e. from the date of her initial appointment. All the applicants have not completed their tenure of posting at the respective places of posting. They are not due for transfer. On 31.5.2017, the res. no. 2 issued the transfer orders and transferred the applicant in O.A. no. 467/2017 viz. Smt. Sharmila Ravindra Nikale to Govt. Girls Hostel, Vaijapur, Dist. Aurangabad. The applicant in O.A. no. 468/2017 viz. Smt. Meena Marutirao Survey has been transferred to Govt. Girls Hostel, Jalna. The applicant in O.A. no. 469/2017 viz. Shri Kishan s/o Babasaheb Pathade has been transferred to Dr. Babasaheb Ambedkar Boys Hostel, Jalna, while the applicant in O.A. no. 479/2017 viz. Smt. Sujata Hiranman Lasure has been transferred to Govt. Girls Hostel, Sailu, Dist. Parbhani. The applicants Smt. Sharmila Ravindra Nikale, Smt. Meena Marutirao Survey & Shri Kishan s/o Babasaheb Pathade have made a common representation on 3.6.2017, 17.6.2017 & 21.6.2017 to the Hon'ble Chief Minister, Hon'ble Minister for Social Welfare and the Commissioner for Social Welfare i. e. the res. no. 1 raising their grievance about the midterm and mid tenure transfer. They also raised the grievance regarding the violation of provisions of sec. 3 (1) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short Transfer Act,

2005) while effecting the transfers. They have also contended that their transfers have been effected only to accommodate some of the employees and the res. no. 2 had not made the transfer of the employees, who are due for transfer and they have retained in the same Dist from last 8 to 10 years. They have further contended that the provisions of sec. 6 (2) of the Transfer Act, 2005 had also been violated by the res. no. 2 while issuing the impugned transfer order.

4. On the basis of the representation / complaint of the applicants, the Hon'ble Chief Minister on 3.6.2017 had issued directions to the Hon'ble Minister for Social Welfare. As per the said directives on 5.6.2017 the res. no. 1 was pleased to grant stay to the general transfer orders issued for the year 2017-18 dtd. 31.5.2017 and directed the concerned to not to relieve the Wardens from the present places of their posting. Thereafter on the basis of the order of stay issued by the Hon'ble Minister, a Committee was constituted to enquire into the complaints received from the Wardens with a direction to the submit the report in that regard within a period of 8 days. So also all the Regional Deputy Commissioners were directed to furnish the detailed information in respect of the Wardens working under them. By another letter dtd. 16.6.2017, all the Regional Deputy

Commissioners were directed to remain present on the respective dates mentioned therein for giving the factual information in respect of the Wardens working under them. The said order was in operation till 12.7.2017. On 12.7.2017, the stay granted in respect of all other regions except the Wardens working in Pune Region was vacated and accordingly the res. no. 1 issued a letter to that effect. Thereafter the res. no. 2 served the transfer order upon the applicants along with communication dtd. 13.7.2017 and directed them to handover the charge of their posts. It is contention of the applicant that the impugned transfer order was in violation of the provisions of the Transfer Act, 2005. The said transfer orders of the respective applicants have been issued to accommodate some of the employees viz. Shri S.R. Waghmare & P.R. Salunke and they have been transferred to Aurangabad within a short span of their tenure at their present posting. It is their contention that their transfers have been effected with mala-fide intention without authority by the res. no. 2. It is their contention that the impugned transfer order transferring the applicants was against the provisions of Transfer Act, 2005. Therefore, they prayed to quash the impugned order dtd. 31.5.2017 to the extent of their transfers by filing the O.As.

5. The res. nos. 1 & 2 have filed affidavit in reply and resisted the contentions of the applicants. They have not disputed about the fact of date of joining of the applicants and their appointments at the present posting. It is their contention that in view of the provisions of sec. 3 (1) of the Transfer Act, 2005 the normal tenure of posting of a Gazetted Officers as well as Group (A) to Group (C) employees is of 3 years. All the applicants have completed their normal tenure of posting and they are due for transfer. It is their contention that as per the letter dtd. 8.2.2017, it is mandatory to appoint female Warden at Girls Hostel. Therefore, two representations have been submitted to the res. no. 2 in that regard that there are vacancies of Wardens at Girls Hostels and, therefore, he was requested to appoint ladies Wardens at Girls Hostels. At some of the Girls Hostel, gents wardens has been appointed and it is not proper and legal for the security of the girls. The res. no. 2 considered the said representation received to him while making the proposal for transfer of the ladies Wardens.

6. It is further contention of the respondents that the Civil Services Board has been established by the order of the res. no. 2 dtd. 20.5.2017. The meetings of the said committee has been held on 23.5.2017 and 25.5.2017. The representation received to the res. no. 2 had been considered by the said Board and accordingly

a decision has been taken to transfer female Wardens viz. Smt. Sharmila Ravindra Nikale and Smt. Meena Marutirao Survey, who were working at Boys Hostels at Aurangabad and, therefore, they have been transferred and posted at Girls Hostels. Accordingly a proposal in that regard has been forwarded on 26.5.2017 to the res. no. 1. By communication dtd. 31.5.2017 the res. no. 1 had delegated the powers to res. no. 2 regarding issuing of transfer of the employees in the category of Group (C) on the basis of G.R. dtd. 15.5.2017 and also had given permission to transfer the ladies Wardens those who are presently working at Boys Hostels to the Girls Hostels. Accordingly the applicant Smt. Meena Marutirao Survey and Smt. Sharmila Ravindra Nikale have been transferred from Boys Hostels, Aurangabad to Girls Hostels at Jalna & Aurangabad respectively. There was no violation of the provisions of sec. 6 (2) of the Transfer Act, 2005. The said transfers have been made in view of provisions of sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005 by obtaining prior approval of res. no. 1. It is their contention that the transfer of the applicants Shri Kishan s/o Babasaheb Pathade and Smt. Sujata Hiranman Lasure had also been made on the recommendation of the Civil Services Board and the res. no. 2 had issued their transfer orders on 31.5.2017 in view of provisions of sec. 4 (4) of the Transfer Act, 2005.

7. It is contention of the respondents that on the representation made by the applicants, the res. no. 1 granted stay to the order of transfer of 2017-18 and constituted a Committee to enquire in to the complaints made by the applicants. The Committee submitted its report within the stipulated period. Thereafter, the res. no. 1 vacated the stay vide communication dtd. 12.7.2017. Thereafter, the res. no. 2 issued the order dtd. 12.7.2017 to all the Assistant Commissioner, Social Welfare, Aurangabad / Jalna / Beed / Parbhani and informed them to implement the transfer order dtd. 31.5.2017. Accordingly, the Assistant Commissioner, Social Welfare, Aurangabad issued the relieving orders along with the transfer order dtd. 31.5.2017 to the applicants. It is their contention that, there was no violation of the provisions of the Transfer Act and transfers have been effected on administrative ground by obtaining approval of the higher authority. It is their contention that the transfer of the applicant Smt. Meena Marutirao Survey and Smt. Sharmila Ravindra Nikale were made in view of communication dtd. 8.2.2017, which states that the post of wardens of Girls Hostels be filled in only from the ladies Wardens. On these grounds, they prayed to dismiss the O.A.

8. The res. no. 1 filed additional reply and contended that as per the G.R. dtd. 15.5.2017 powers of transferring the employees of Group (C) are delegated to the Regional Deputy Commissioners. In respect of midterm and mid tenure transfers, powers are delegated to the Commissioner of Social Welfare, Pune. It is his contention that pursuant to the letter dtd. 19.5.2017 he informed all the Dy. Commissioners to send transfer proposal along with recommendations of Civil Services Board no.3 for granting permission to mid-term / mid tenure transfers and out of division transfers. As per the said directions, the res. no. 2 vide letter dtd. 26.5.2017 forwarded the proposal along with the recommendations of Civil Services Board no. 3 for granting permission for mid tenure transfer & out of division transfer including transfers of the applicants. Civil Service Board no. 2 established in the office of res. no. 1 considered the proposals forwarded by the res. no. 2 as per G.R. dtd. 15.5.2017. Thereafter res. no. 1 has granted permission / approval for mid tenure transfer of the applicants. It is his contention that he had not delegated the powers of mid tenure transfer to the res. no. 2. It is his contention that entire process of transfer has been conducted in view of the provisions of the Transfer Act. Therefore, he prayed to reject the O.A.

9. The applicants have filed rejoinder and contended that the transfer order was issued in violation of the provisions of the Transfer Act and there is no decision of Govt. or rule not to appoint female Wardens at Boys Hostels. They have cited instances where the lady Wardens are working in Boys Hostel at present also. It is their contention that they have been transferred with mala – fide intention to accommodate some of the employees, who are in good books of the respondents.

10. I have heard Shri S.D. Joshi, learned Advocate for the Applicants in O.A. nos. 467, 468 & 469/2017. Shri A.D. Gadekar, learned Advocate for the Applicant in O.A. no. 479/2017, Shri M.S. Mahajan, learned C.P.O., Smt. Deepali S. Deshpande, S/shri D.R. Patil & I.S. Thorat, learned P.Os. for respondent nos. 1 & 2 in respective matters, Shri A.S. Deshmukh, learned Advocate for respondent nos. 3 in O.A. nos.467 & 468/2017 and Shri S.D. Joshi, learned Advocate for respondent no. 3 in O.A. no. 479/2017.

11. Admittedly, the applicant in O.A. no. 467/2017 viz. Smt. Sharmila Ravindra Nikale is working as a Warden at Dr. Babasaheb Ambedkar Boys Hostel (Old), Aurangabad since 2.1.2015. The applicant in O.A. no. 468/2017 viz. Smt. Meena Marutirao Survey is working as Warden at Sant Tukaram Govt.

Boys Hostel, Killeark, Aurangabad since 4.12.2014. The applicant in O.A. no. 469/2017 viz. Shri Kishan s/o Babasaheb Pathade is working as Warden at Backward Class Boys Govt. Hostel, Kannad, Dist. Aurangabad since the date of his appointment i.e. 4.10.2012 and the applicant in O.A. no. 479/2017 viz. Smt. Sujata Hiranman Lasure is working as Warden at Govt. Girls Hostel, Vaijapur, Dist. Aurangabad since 9.7.2012 i. e. from the date of her initial appointment. Admittedly all the applicants are Group - C employees. Admittedly, they have not completed their 2 full tenures of 3 years each i. e. total 6 years on the present posts. Admittedly, the applicants are transferred from their present post by the impugned order dtd. 31.5.2017 and they came to be relieved by the order issued by the res. no. 2 on 13.7.2017.

12. The learned Advocates for the applicants have submitted that the applicants have not completed their tenure of 6 years at the present post as provided u/s 3 of the Transfer Act, 2005 and they have been transferred by the impugned orders dtd. 31.5.2017. He has submitted that the present transfer of the applicants are mid tenure transfers. They have submitted that the impugned transfer orders have been issued by the res. no. 2 with the prior approval of res. no. 1, but it is in violation of sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005. They have submitted

that, no exceptional circumstances and special reasons have been recorded by the res. no. 2 while issuing the impugned transfer orders of the applicants. They have submitted that the impugned orders are in contravention of provisions of sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005. They have submitted that the impugned transfers of the applicants are mid tenure transfer orders and the powers thereof are vested with the Head of the Department i. e. res. no. 1 in view of provisions of sec. 6 of the Transfer Act, 2005. They have submitted that the impugned transfer orders had been issued by the res. no. 2, who is a Regional Head of the Department and, therefore, the impugned orders are illegal and against the provisions of sec. 6 of the Transfer Act, 2005. Therefore, they prayed to quash the impugned transfer orders.

13. Learned Advocates for the applicants have submitted that the res. no. 2 has issued the impugned orders only to accommodate some of the employees i. e. Mr. Pravin R. Salunke , res. no. 3 in O.A. no. 467/2017 and Shri Sharad s/o Ramrao Waghmare res. no. 3 in O.A. no. 468/2017. They have submitted that the said respondents have not completed their normal tenure at their places of posting and they have been transferred to Aurangabad again within a period of 6 months or a year. They

have submitted that Mr. Pravin R. Salunke, res. no. 3 in O.A. no. 467/2017 and Shri Sharad s/o Ramrao Waghmare res. no. 3 in O.A. no. 468/2017 have served most of their service period at Aurangabad and again on their request they have been brought to Aurangabad, though they were not due for the transfer. The learned Adv. for the applicants have submitted that the res. no. 2 has exercised the powers of transfer to favour & accommodate Shri Pravin R. Salunke, res. no. 3 in O.A. no. 467/2017 and Shri Sharad s/o Ramrao Waghmare res. no. 3 in O.A. no. 468/2017. They have submitted that the impugned transfers have been made with mala-fide intention to accommodate said respondents in O.A. nos. 467 & 468/2017 under the pretext that a lady Warden has to be posted in Girls Hostel. They have submitted that there is no provision or Govt. decision, which bars a lady Warden to work at Boys Hostel. They have submitted that there were no complaints against Smt. Sharmila Ravindra Nikale, Smt. Meena Marutirao Survey & Smt. Sujata Hiranman Lasure (applicants in O.A. nos. 467, 468 & 479/2017). They further submitted that in case of Smt. Sujata H. Lasure, the Civil Services Board has not recommended her transfer, which is clear from the recommendation filed at paper book page 40 in O.A. no. 479/2017. In spite of that she has been transferred. They have further submitted that the impugned transfer order is not in

accordance with the provisions of the Transfer Act, 2005. Therefore, they prayed to allow the present O.As. and to repost the applicants at their earlier places of working.

14. Learned C.P.O. & P.Os. have submitted that the Govt. has decided to post lady Warden at Girls Hostel and, therefore, transfer of the applicants viz. Smt. Sharmila Ravindra Nikale & Smt. Meena Marutirao Survey have been made on administrative ground and they have been posted at Girls Hostels from Boys Hostels. He has submitted that the transfers of other 2 applicants have been made on administrative ground. The learned C.P.O. & P.Os. have submitted that the transfer orders have been issued by the res. no. 2 with prior approval of res. no. 1 as per the recommendations of the Civil Services Board. He has submitted that the res. no. 1 has issued the transfer orders, which are mid tenure transfers. He has submitted that the respondents have followed the provisions of sec. 4 (4) (ii) & 4 (5) of the Transfer Act, 2005 and there is no illegality in the transfers of the applicants. They have further submitted that the applicants have completed the normal tenure of postings i. e. 3 years at their respective postings and, therefore, they have been transferred and there is no illegality in the said transfer orders. Therefore, he supported the impugned transfer orders.

15. Learned C.P.O. & P.Os. have submitted that, in view of the G.R. dtd. 15.5.2017 the Regional Deputy Commissioner, Social Welfare was entrusted with the powers of competent transferring authority so far as transfers of Group – C employees excluding midterm and mid tenure transfers and the said powers in respect of midterm & mid tenure transfers are retained with the Commissioner of Social Welfare and in view of the said powers, the res. no. 2 had effected the said transfer orders. Therefore, he prayed to reject the O.As.

16. In order to consider the matter, it is necessary to go through the provisions of Sections 3, 4 & 6 of the Transfer Act, 2005 which are relevant in these matters. Sec. 3 of the Transfer Act, 2005 provides for tenure of posting. So far as these O.As are concerned, provision of sec. 3 is material and, therefore, it is reproduced hereunder :-

“3. Tenure of posting.

(1) *For All India Service Officers and all Group A, B and C State Government Servants or employees, the normal tenure in a post shall be three years:*

Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenure at that office or department, to another office or Department:

Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be continued in the same Department for more than two consecutive tenures.

- (2) *Employees in Group D shall normally not be subjected to fixed tenure. They shall be transferred out from the station where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them.”*

17. On considering the provisions of sec. 3 it is revealed that the applicants, who are Group – C employees shall be transferred from the post on completion of their two full tenures at their Office or Department. It means that the applicants shall be transferred from the present posts on completion of their two full tenures of 3 years each. In the instant cases, the applicants have been transferred before completion of their two full tenures at the present postings.

18. Sec. 4 of the Transfer Act, 2005 provides tenure of transfer. The Sec. 4 (4) & sec. 4 (5) of the Transfer Act are material and, therefore the same are reproduced hereunder :-

“4. Tenure of transfer.

1.....

2.....

3.....

4. *The transfers of Government 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) -- -- --

(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.”*

19. Sec. 6 of the Transfer Act makes provision as regards the transferring authority. Entry (c) in the Table mentioned in the table of sec. 6 provides the competent transferring authority for non-gazetted employees in Group – B & C. The said entries (B) & (C) in the table of sec. 6 are reproduced hereunder :-

“6. Transferring Authority.

TABLE

| | Groups of Government servants | Competent Transferring Authority |
|--|--|---|
|--|--|---|

| <i>1</i> | <i>2</i> | <i>3</i> |
|------------|--|---|
| <i>(b)</i> | <i>All Officers of state Services in Group A having pay scales less than Rs. 10,650-15,850 (and all Gazetted Officers) in Group 'B'.</i> | <i>Minister-in-charge in consultation with Secretaries of the concerned Department.</i> |
| <i>(c)</i> | <i>All [non-Gazetted employees in Group 'B' and 'C']</i> | <i>Head of Departments.</i> |

”

20. Second Proviso to sec. 6 of the Transfer Act, 2005 provides that the competent transferring authority specified in the table may be by general or special order delegate its powers under this section to any of its subordinate authority.

21. By keeping in mind above provisions, I have to consider the rival contentions of both the sides.

22. The applicants are Group – C employees. They have not completed their two full tenures of posting at their respective present posts. They are not due for transfer and, therefore, the competent authority for transfer of the applicants is the Head of the Department i. e. Commissioner of Social Welfare. The said fact has not been disputed by either of the parties.

23. No doubt, in view of provisions of sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005, the competent authority may transfer a

Govt. servant any time in the year after being satisfied that the transfer is necessary due to exceptional circumstances or special reasons after recording the same in writing and with prior approval of the next higher authority, before completion of his tenure on the post.

24. In the instant cases, the res. no. 1 is the competent authority as provided in Entry no. (c) in the Table given in the sec. 6 of the Transfer Act, 2005. The said powers are not delegated by the res. no. 1 to the res. no. 2 by general or special order as provided in second Proviso to sec. 6 of the Transfer Act, 2005. This fact has been answered by res. no. 1 in his additional affidavit in reply at paper book page no. 72 in para no. 4. Even on going through the G.R. dtd. 15.5.2017 from page 76 of the O.A. no. 468/2017, it appears that the said powers are kept with the res. no. 1 only. The res. no. 1, who is the competent authority for midterm and mid tenure transfers of the Govt. servants shall have to record in writing the reasons and exceptional circumstances in which the transfers of the Govt. servants have been effected and with the prior approval of his next higher authority i. e. Hon'ble Minister In-charge of the Department as mentioned in entry (b) in the table in the sec. 6 of the Transfer Act, 2005 to effect the transfers of the concerned employees. But in the instant matters,

the res. no. 1 has not made the transfer of the applicants by recording special reasons and mentioning the exceptional circumstances under which he made transfers of the applicants as provided in sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005. Not only this, but he had not obtained prior approval of the next higher authority i.e. Hon'ble Minister of the concerned department for making transfers of the applicants in view of sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005. It is material to note that the Civil Services Board no. 2 has not made specific recommendation as regards transfers of the applicants and their new postings while recommending their transfers to res. no. 1. Not only this, but the res. no. 1 has made vague recommendation of the transfers of the applicant and he has directed the res. no. 2 to make transfers of the applicants accordingly by giving approval to the proposal. This fact is evident from the letter dtd. 31.5.2017 issued by the res. no. 1 (page 55 of the O.A. no. 468/2017). The res. no. 2, the Civil Services Boards 2 and 3 had not made concrete proposal for transferring the applicants at a particular place while recommending their transfers to the res. no. 1 and the res. no. 1 without considering the said fact, blindly granted approval for the proposal. On the basis of the said letter the res. no. 2 issued the impugned orders dtd. 31.5.2017, which is in violation of sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005.

25. It is material to note that the res. nos. 1 & 2 have filed a common affidavit in reply in all these matters, which is sworn by Shri Prakash Bhaginath Bachhav, Regional Dy. Commissioner, Social Welfare Department, Aurangabad. In para 4 at page 36 in O.A. no. 468/2017, they have specifically contended that the impugned order has been issued by the res. no. 2 with the prior approval of the res. no. 1. The said para reads as under :-

“4. -- -- -- -- --

I further say and submit that, as per the decision of said Civil Service Board, it is found that the office of respondent no. 1 has given transfer order to the Applicant on Boys Hostel. So that the proposal dated, 26.5.2017 bearing outward no. 1383 has been forwarded for taking appropriate steps as well as guidance in respect of transfer of the applicant from Boys Hostel to Girls Hostel. The copy of proposal dated, 26.5.2017 is annexed at Exh. R-4.

I further say and submit that, the office of respondent no. 1 given directions by letter dated, 31.5.2017 vide outward no. 1242 that, as per the G.R., dated 15.5.2017 the power has been dedicated in respect of transfer of the employee and also given permission for premature transfer (सुदन्तपूर्व बदली) in the category of group 'C' as well as also given permission to transfer the Ladies Warden those presently working at Boys Hostels and also given the list along with the letter dated, 31.5.2017. In this said list the applicant namely shown at sr. no. 8. The copy of letter dated 31.5.2017 and G.R. dated 15.5.2017 is annexed at Exh. R.5.

Considering the above decision by the respondent no. 1 the present deponent has issued order dated, 31.5.2017 and the applicant transferring from Sant Tukaram Boys Hostel, Kileark, Aurangabad to Govt. Girls

Hostel Jalna which is legal and proper as well as directions given by the respondent no. 1. The said transfer is done by the provision of regulation of transfer act there is no violation of section 6 (2). As per the provision of transfer act 2006 section 4 sub clause (4) (2) and section 4 sub clause (5) the said transfer is made by the permission of respondent no. 1 in this provision the prior permission is necessary to the highest authority and in this case the prior permission has been given by the respondent no. 1.”

26. In the said reply, they have specifically contended that the res. no. 1 delegated the powers in respect of transfer of the employees and also permission for premature transfer i.e. mid-tenure transfers of the employees in the group – C as well as given permission to transfer a lady Wardens those who are working in Boys Hostels to Girls Hostels.

27. The res. no. 1 again filed affidavit in reply in view of the directions of the Tribunal and stated on oath that the powers of transfer in respect of employees in Group – C are delegated to the Regional Deputy Commissioner excluding midterm or mid tenure transfers as per the G.R. dtd. 15.5.2017 and in respect of midterm and mid tenure transfers of Group – C employees the said powers are with him. The said para 4 of the additional reply which is material, is as under :-

“4. As per G.R. dated 15.5.2017, power of transfer in respect of employees in Group – C, are delegated to Regional Deputy Commissioner excluding midterm or mid

tenure transfers. In respect of midterm or mid tenure transfer, powers are delegated to Commissioner Social Welfare, Maharashtra State, Pune. The copy of G.R. dated 15.5.2017 is annexed herewith and marked as Exh. R-1. Pursuant to said G.R. Respondent No. 1 vide letter No. 1130 dated 19.5.2017 informed all the Regional Deputy Commissioner to send their transfer proposal along with the recommendation of the Civil Service Board No. 3 for granting the permission to mid tenure transfer / midterm transfer and out of division transfers along with the relevant documents before on 22.5.2017. The copy of letter dated 19.5.2017 is annexed herewith and marked as Exh. R-2.”

28. On going through the documents placed on record by the respondents, it appears that, respondent no. 1 has made contradictory statements in his two replies. At once he has come with a contention that the res. no. 2 has effected the transfers of the applicants with his approval, but again he changed his contention and contended that the powers regarding midterm and mid tenure transfers are retained with him and he effected the said transfers. The very fact shows that the respondents are in two minds and they are now sure about their own powers.

29. On going through the G.R. dtd. 15.5.2017, it appears that the powers regarding midterm and mid tenure transfers of Group – C employees are retained with the Commissioner of Social Welfare. In case Commissioner decides to make transfers of Group – C employees before completion of their normal tenure then he has to record the reasons and exceptional circumstances

in writing and then issue the transfer orders with prior approval of the next higher authority as provided in section 4 (4) (ii) & 4 (5) of the Transfer Act, 2005, but said provisions has not been followed by the res. no. 1 while effecting the transfers of the applicants. The res. no. 1 misinterpreted and misread the G.R. dtd. 15.5.2017 and acted as if he is the next higher authority as provided in sec. 6 of the Transfer Act, 2005 and granted approval to the proposal of transfers of the applicants sent by the res. no. 2. The said action of the res. nos. 1 & 2 is in violation of the sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005 & provisions of G.R. dtd. 15.5.2017.

30. On going through the record it reveals that the transfers of the applicants has been made before completion of their two full tenures of postings at their present posting. No special reasons have been recorded while making their transfers. No exceptional circumstances for their transfers have been mentioned Not only this, but the transfers of the applicant in O.A. no. 479/2017 viz. Shri Sujata Hiranman Lasure has been made though the Civil Surgeon Board has not recommended her transfer (page 40 of the O.A. no. 479/2017). The record shows that the res. no. 3 viz. S/shri Waghmare & Salunke O.A. Nos. 468 & 467/2017 respectively have been transferred to Aurangabad on their request

within the span of 6 months to one year though they were not due for transfers. They have been brought back to Aurangabad though previously they worked at Aurangabad. The said fact supports the contentions of the applicants that the impugned orders have been issued by the respondents to accommodate the said res. nos. 3 and to favour them. The res. nos. 1 & 2 have not followed the provisions of sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005.

31. Impugned transfer order has been issued by the res. no. 2 with the approval of res. no. 1, which reads as follows :-1

- “वाचा :- १. शासकीय कर्मचा-यांचे बदल्यांचे विनियमन करण्यासाठी शासकीय कर्तव्य पार पाडतांना होणा-या विलंबास प्रतिबंध अधिनियम २००५, दिनांक २५ मे २००६.
२. शासन निर्णय सामाजिक न्याय व विशेष सहाय्य विभाग, मंत्रालय, मुंबई दिनांक २०.१०.२०१२.
३. शासन निर्णय सामाजिक न्याय व विशेष सहाय्य विभाग, मंत्रालय, मुंबई दिनांक १५ मे २०१७.
४. नागरी सेवा मंडळ क्रं. ३ ची बैठक दिनांक २५.०५.२०१७ नुसार शिफारस.
५. मा. आयुक्त, समाज कल्याण, महाराष्ट्र राज्य, पुणे यांचे पत्र क्रं. १२४२ दिनांक ३१.०५.२०१७.

ज.क्रं. प्राउसकविओ/आस्था/सर्वसाधारण बदल्या/प्र.शा./२०१७-१८/१४२४/ दिनांक ३१.५.२०१७

आदेश

प्रादेशिक उपायुक्त, समाज कल्याण विभाग, औरंगाबाद हे उपरोक्त संदर्भ क्रं. १ बदली अधिनियम व संदर्भ क्रं. २, ३, ४ व ५ अन्वये प्राप्त झालेल्या अधिकाराच्या अधिन राहून गृहपाल / अधिक्षक या संवर्गातील खालील कर्मचा-यांचे बदल्यांचे आदेश निर्गमित करीत आहे.

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32. This shows that the res. no. 2 has issued mid-tenure transfer order of the applicants without authority in contravention of provisions of the Transfer Act, 2005. The res. no. 1, who is competent transferring authority for midterm & mid-tenure transfer had had never delegated the said powers to the res. no. 2. Res. no. 1 gave approval to said mid-tenure transfer by his letter dtd. 31.5.2017 (page 53 in O.A. no. 467/2017), which is as follows:-

“प्रति,
प्रादेशिक उपायुक्त,
समाज कल्याण विभाग (संबंधित)

विषय :- मुदतपूर्व बदली मंजूरी बाबत.

संदर्भ :- १. शासन निर्णय दिनांक १५.५.२०१७.

२. आपले कार्यालयीन गठीत नागरी सेवा मंडळ शिफारस.

संदर्भीय शासन निर्णयान्वये गट - क संवर्गाती कर्मचा-यांचे मुदतपूर्व बदलीस मंजूरीबाबतचे अधिकार संदर्भीय शासन निर्णयान्वये प्रत्यार्पित करून आयुक्त, समाज कल्याण महाराष्ट्र राज्य पुणे यांना अधिकार प्रदान करण्यात आलेले आहे.

संदर्भ क्रं. २ अन्वये आपलेकडील गठीत नागरी सेवा मंडळाच्या शिफारशी आयुक्तालय स्तरावर विचारात घेऊन शासन निर्णयानुसार प्रदान केलेल्या अधिकाराचा वापर करून या सोबत जोडलेल्या विवरणानुसार केवळ बदलीच्या ठिकाणी पद रिक्त असल्यास मुदतपूर्व बदलीस मंजूरी देण्यात येत आहे.

तसेच ज्या मुलांच्या शासकीय वसतिगृह / अनु. जाती मुलांची निवासी शाळांमध्ये महिला गृहपाल कार्यरत आहेत अशा महिला गृहपालांच्या बदल्या संबंधित प्रादेशिक उपायुक्त यांनी त्यांच्या विभागातील रिक्त पद असलेल्या मुलींचे शासकीय वसतिगृह व अनु. जाती मुलींची शासकीय निवासी शाळांमध्ये

पदस्थापना देण्याबाबत कार्यवाही करावी. अशा बदली पात्र ठरत असलेल्या महिला गृहपालांच्या बदलीस मंजूरी देण्यात येत आहे.

*सहि/-
आयुक्त, समाज कल्याण,
महाराष्ट्र राज्य, पुणे.”*

33. The res. no. 1 granted approval to mid-tenure transfers presuming himself as next higher transferring authority though in fact he is the competent transferring authority to mid-tenure transfers. All these facts show that the res. no. 1 exceeded his powers & acted against the provisions of the Transfer Act, 2005. The res. no. 2 issued the mid tenure transfer orders without authority. The impugned transfers are in violation of provisions of the Transfer Act, 2005. The same are vitiated on account of favoritism. Therefore, the impugned orders transferring the applicants require to be quashed.

34. The impugned transfer orders of the applicants are the transfers against the provisions of the Transfer Act, 2005. It smells of favoritism. The very object of enactment of provisions of Transfer Act, 2005 has been frustrated due to issuance of the impugned transfer orders and, therefore, same deserve to be quashed. In these circumstances, in my opinion, the impugned transfer orders deserve to be quashed so far as the present

applicants are concerned as the same are in violation of sec. 4 (4) (ii) & 4 (5) of the Transfer Act, 2005 by allowing the O.As.

35. In view of above said discussion, O.As. are allowed. The impugned transfer orders dtd. 31.5.2017 so far as the present applicants are concerned are hereby quashed and set aside. The respondents are directed to repost the applicants at their earlier posts immediately, if they are relieved. There shall be no order as to costs.

MEMBER (J)

ARJ-O.A. NOS. 467, 468, 469 AND 479 OF 2016 BPP (TRANSFER)