

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.459 of 2020

District : MUMBAI

Shri Pravin Koutuk Kodollikar)
85/2, Gautam Rajgruh CHS,)
Vichare Mal, Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra,)
Through Secretary, Higher and)
Technical Education Department,)
Mantralaya, Mumbai.
2. Director of Higher Education,)
Higher Education, Central Building,)
(M.H.), Pune.)
3. Regional Joint Director, Higher Education)
Rajaram College Campus, Vidhya Nagar,)
Kolhapur.)
4. Principal, Rajaram College, Kolhapur.) **...Respondents**

Shri Sandeep S. Dere, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 11.02.2021

J U D G M E N T

The challenge is to the transfer order dated 24.08.2020 whereby the Applicant who is serving as a Junior Clerk at Rajaram College, Kolhapur was transferred to the office of Divisional Joint Director, Higher Education, Nagpur invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to Original Application, which rather discloses total non application of mind on the part of concerned authority while passing the impugned order, are as under :-

The Applicant was appointed on compassionate ground on the post of Junior Clerk (Group-C) by order dated 17.09.2011 on the establishment of Respondent No.3 – Regional Joint Director, Higher Education, Kolhapur. As per Stipulation No.13 of appointment order, his services were transferable within Kolhapur Division only. He was transferred at Rajaram College, Kolhapur by order dated 30.05.2017 and accordingly joined at Rajaram College, Kolhapur. His normal tenure is six years in terms of Section 3 of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005) being Group-C employee of non secretariat cadre and his services were not transferable out of Kolhapur range. However, the Respondent No.1 –Government through Secretary, Higher & Technical Education Department, Mumbai transferred the Applicant from Kolhapur to the office of Regional Joint Director, Higher Education, Nagpur by order dated 24.08.2020 under the caption of administrative ground which is under challenge in the present Original Application.

3. Shri S.S. Dere, learned Counsel for the Applicant assailed the impugned transfer order dated 24.08.2020 on the following grounds:-

(A) In terms of appointment order, the service of the Applicant was transferable within Kolhapur Division only but by impugned transfer order, the Applicant is transferred in Nagpur Division, and therefore, it is *ex-facie* illegal.

(B) The ground taken by the Government in reply that there were complaints against the Applicant and it was the reason for transfer is totally nonexistent since after inquiry, nothing was found against the Applicant.

4. Per contra, Smt. Archana B. K., learned Presenting Officer made feeble attempt to support the impugned transfer stating that there was serious complaint of Shri Raju Shetty, Member of the Parliament and on that basis the Applicant was transferred. When she was specifically asked as to how and under what provisions the Applicant was transferred out of division in view of specific stipulation in posting order that his post is transferable within Kolhapur region only, she has no answer for the same. All that she stated that because of the complaint, the Applicant was transferred which is also infact incorrect since nothing was found against the Applicant in inquiry conducted by the Registrar of Shivaji University, Kolhapur.

5. Indisputably, the Applicant's post was transferable within Kolhapur division only. As such, even if there were complaints against him and found substantiated by some material, he could not have been transferred out of Kolhapur division. However, he is transferred to Nagpur division which shows total non application of mind.

6. Material to note that while transferring the Applicant, he was simply shown transferred along with seventeen other Government servants. As regard, seventeen other Government servants, they were shown transferred on request. Whereas, the Applicant is shown as transferred on administrative ground. It appears that those other seventeen Government servants have requested for transfer out of region on the basis of G.R. dated 03.06.2011 which *inter-alia* provides for out of division transfer. Significant to note that G.R. dated 03.06.2011 has been repealed and replaced by G.R. dated 15.05.2019 by imposing more stringent condition where the Government servant, Group-C seeks transfer out of division. Here again, though G.R. dated 03.06.2011 is repealed by G.R. dated 15.05.2019, in impugned order, the reference is made of G.R. dated 03.06.2011 which again shows casual approach of the concerned.

7. Be that as it may, as per G.R. dated 15.05.2019 where the Government servant requests for out of division transfer, he losses entire seniority and he also required to execute bound agreeing to terms and conditions set out in G.R. dated 15.05.2019. Admittedly, the Applicant has never requested for out of division transfer much less executed bond in terms of G.R. dated 15.05.2019. Suffice to say, the Applicant has never made any kind of request for out of division transfer so as to forgo his earlier service.

8. Now, turning to the aspect of complaint, true, in letter dated 19.07.2020 (Page No.61 of PB) purportedly written by Shri Raju Shetty, Member of Parliament it is alleged that the Applicant is involved in corruption and takes bribes for official work and harassing the educational societies. In this behalf, allegedly there was one more complaint made by Dr. Vinayak Gawade. Material to note that Shri Nandawadekar, Registrar, Shivaji University, Kolhapur conducted inquiry and submitted the report (Page Nos.65 to 67 of PB). It appears that Registrar had investigated the complaint in respect of alleged irregularities in the selection process for the post of Lecturer. It was transpired that Dr. Gawade did not make any such complaint and it was fictitious. In preliminary inquiry, his statement was recorded. Accordingly, he submitted the report to Divisional Joint Director, Higher Education, Kolhapur. In so far as complaint of Shri Raju Shetty, Member of Parliament is concerned, the Divisional Joint Director, Higher Education, Kolhapur in his letter dated 04.08.2020 observed that there is no such written material to substantiate irregularities allegedly committed by the Applicant. Accordingly, he forwarded the report to Director, Higher Education, Pune. As such, this is the only material in respect of alleged complaint against the Applicant which did not make out any specific conclusion attributing any misconduct to the Applicant. Applicant seems given clean chit. Surprisingly, despite this position, the

Applicant was transferred that too out of Kolhapur Division though his services was not transferable out of Kolhapur Division.

9. Thus, in so far as the complaints are concerned, the Applicant has been transferred on nonexistent material. Secondly, his transfer being made out of Kolhapur Division itself is unsustainable in law in view of the admitted position that he was not transferable out of Kolhapur Division. As such, the Applicant has been transferred without proper scrutiny of the matter which shows total non application of mind and casual approach of the concerned.

10. For the aforesaid reason, I have no hesitation to conclude that the impugned transfer order is totally bad in law and deserves to be quashed out rightly qua the Applicant. Indeed having regard to total non application of mind and casual approach of the concerned, the Original Application ought to have been allowed with exemplary cost. However, Smt. Archana B. K., learned P.O. submits that cost may not be imposed and assures that herein after the department will take care while processing with the matter. Hence the following order:-

ORDER

- (A) Impugned order dated 24.08.2020 is quashed and set aside.
- (B) In view of interim order passed by the Tribunal, the Applicant is continued at Kolhapur.
- (C) Interim relief is made absolute.
- (D) No order as to costs.

Sd/-

**(A.P. KURHEKAR)
MEMBER (J)**

Date : 11.02.2021
Place : Mumbai
Dictation taken by :
Vaishali Santosh Mane
Uploaded on :
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