

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.461 OF 2022

**DISTRICT: PALGHAR
SUBJECT: TRANSFER**

Dr. Kalpana Narendra Mavchi,)
Age : 47 years, Occ. Medical Officer- Group A)
Office Address : In the office of Primary Health)
Centre, Kelva Mahim, Taluka and)
District :Palghar 401 402.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through the Secretary,)
Public Health Department, Mantralaya)
Mumbai 400 032)
- 2) The Chief Executive Officer,)
Zilla Parishad, Dist. Palghar.)
- 3) District Health Officer, Z.P.)
Palghar, 116, 1st floor, Z.P.)
Palghar Boisar Road, Kolgaon,)
Taluka and Dist. Palghar 401 404.)...**Respondents**

Shri Rajesh M. Kolge, learned Advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

Smt. Geeta Gavli, learned Advocate for the Respondent Nos.2 & 3.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 27.09.2022.

JUDGMENT

1. Heard Shri R.M. Kolge, learned Advocate for the Applicant, Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent No.1 and Smt. Geeta Gavli, learned Advocate for the Respondent Nos.2 & 3.

2. The Applicant has challenged order dated 27.04.2022 issued by Respondent No.3 – District Health Officer, Zilla Parishad, Palghar whereby the Applicant was displaced and she was asked to work at Public Health Centre (PHC) Sakharshet, Tal. Jawhar, Dist. Palghar invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

3. The Applicant is a Medical Officer (Group A) and was appointed by the Government by order dated 20.07.2014. She was posted as Medical Officer, PHC, Kelwa Mahim, Tal. & Dist. Palghar by appointment order dated 20.07.2014 itself. It appears that there were certain complaints about functioning of the Applicant and therefore Respondent No.3 – District Health Officer, Zilla Parishad, Palghar by order dated 27.04.2022 shifted the Applicant from PHC, Kelwa Mahim, Tal. & Dist. Palghar to PHC Sakharshet, Tal. Jawhar, Dist. Palghar. The Applicant has challenged this transfer order *inter-alia* contending that it is in contravention of the provision of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity) there being no approval of Civil Services Board (CSB) and of Hon'ble Chief Minister which is competent Transfer authority for such mid-term Transfer.

4. The Tribunal by order dated 19.05.2022 granted stay to the Transfer order and by virtue of stay order the Applicant is continued at PHC, Kelwa Mahim, Tal. & Dist. Palghar.

5. No Reply is filed on behalf of Respondent No.1 & 2. Affidavit-in-Reply is filed by Respondent No.3 – District Health Officer, Zilla Parishad, Palghar. All that Respondent No.3 submits that in view of compliant about the performance and administration of the Applicant immediate transfer and shifting of the Applicant was necessitated, and therefore by impugned order dated 27.04.2022 she was transferred to another place. According to learned Advocate for the Applicant there was one incident of outraging modesty of Nurse by Driver Mr Vinod Thakur but the Applicant failed to make report of the incident to Zilla Parishad. She has further pointed out that preliminary enquiry was conducted wherein enquiry officer proposed for her transfer. Thus the compliant of non-performance and incapacity for administration seems to be ground for mid-term Transfer.

6. Ture, the Applicant has completed normal tenure at PHC, Kelwa Mahim, Tal. & Dist. Palghar. However, admittedly the Applicant being Medical Officer, Group 'A' Transferring competent authority for Transfer would be the Government and not Respondent No.3 – District Health Officer, Zilla Parishad, Palghar. When specific query is raised to learned Respondent all that they submit that report was made on 09.12.2021 to The Director, Health Services, Mumbai for disciplinary action and Transfer of the Applicant but no further action is taken by the Director, Health Services or the Government. It is thus obvious that it was for Respondent No.1 to take cognizance of it and take necessary steps for mid-term Transfer of the Applicant after compliance of provision of Section 4(5) of Transfer Act 2005 which necessitates approval by Hon'ble Chief Minister being competent authority read with Section 6 and Table there under of 'Transfer Act 2005'. It is thus explicit that impugned Transfer order issued by Respondent No.3 is without jurisdiction and in contravention express provisions of 'Transfer Act 2005' and liable to be quashed. Hence, the order.

ORDER

- A) The Original Application is allowed.
- B) Impugned Transfer order dated 27.04.2022 is quashed and set aside.
- C) Interim relief granted by the Tribunal on 19.05.2022 is made absolute.
- D) Competent authority is at liberty to take suitable and appropriate steps in accordance to law as they desire.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 27.09.2022
Dictation taken by: N.M. Naik.

Uploaded on: _____