

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO 626 OF 2020**

**DISTRICT : SATARA**

Dr Dattatraya Baburao Bamane )  
Working as Medical Superintendent, )  
Sub District Hospital, Bhore, Tal-Bhore, )  
Dist-Pune. R/o: Palshi Road, )  
Shirwal, Tal-Khandala, Dist-Satara. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through Addl. Chief Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai 400 032. )  
2. Dr. Bhagwanrao Kakane, )  
Medical Superintendent, )  
Sub District Hospital, Bhore, )  
Dist-Pune. From the post of )  
Additional Civil Surgeon, )  
District Hospital, Aundh, )  
Dist-Pune. )...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondent no. 1.

Dr Bhagwanrao Kakane, Respondent no. 2 present in person.

**CORAM : Justice Mridula R. Bhatkar (Chairperson)**

**RESERVED ON : 24.12.2020**

**J U D G M E N T**

1. Heard Shri B.A Bandiwadekar, learned advocate for the Applicant, Smt Kranti S. Gaikwad, learned Presenting Officer for Respondent no. 1 and Dr Bhagwanrao Kakane, Respondent no. 2 present in person.
2. The applicant, Medical Superintendent, Sub-District Hospital, Bhor, challenges the transfer order dated 1.10.2020 passed by Respondent no. 1, transferring him from Sub-District Hospital, Bhor to the post of Medical Superintendent, Rural Hospital, Saswad, Dist-Pune, so also Respondent no. 2 was transferred from the post of Additional Civil Surgeon, Dist Hospital, Aundh, Pune in place of the applicant.
3. Learned counsel for the applicant has challenged the transfer order on the following grounds:-
  - (a) The applicant has not completed his tenure of three years at the present place of posting, but has completed one year and two months. Hence, he was not due for transfer.
  - (b) The Respondent no. 1 has not followed the procedure under Sections 4(4)(ii) & 4(5) of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as 'ROT Act 2005' for brevity).
  - (c) No approval of the competent authority as mentioned in Sec 6 of the ROT Act, 2005 was obtained.
  - (d) Applicant though transferred from Bhor to Saswad, when he went to join the posting at Saswad, he could not join because one Dr. Tapase was working at Saswad.
  - (e) Applicant was transferred at the instance of Member of Legislative Assembly, which is illegal.
  - (f) Applicant was going to retire on 31.5.2021 and under such circumstances, he should not have been transferred.
4. Respondent no. 1 filed affidavit in reply through Dr Pradeep Vyas, Principal Secretary, Public Health Department, Mantralaya, Mumbai. The learned Presenting Officer has produced a set of documents and relying on the affidavit in reply justified the order of transfer. She

submitted that on 8.8.2020, the meeting of the Civil Services Board has taken place. The minutes of the meeting of the Civil Services Board is placed before the Tribunal. She submits that at serial no. 43, the applicant was transferred. She submitted that the performance of the applicant was not good at Bhor and complaints were received against him from the public that he was very arrogant and having a bad administration. The applicant was careless towards the patients. On these grounds the applicant was transferred. Learned P.O submitted that the post where the applicant was transferred was not vacant, as one Dr. Tapase had already joined in July, 2020. A revised proposal was placed before the Civil Services Board and considering the vacancy and urgency, the Civil Services Board recommended now to transfer the applicant to Rural Hospital, Khandala, Dist-Satara, by order dated 18.12.2020.

5. Learned Presenting Officer in support of her submissions relied on the judgment of the Division Bench of the Bombay High Court, passed by the First Court dated 16.12.2020 in **Dr. Soudamini S. Chaudhari Vs. The State of Maharashtra & Ors, Writ Petition no. 2585 of 2019.**

6. Respondent no. 2, Dr. Babanrao Kakane, filed affidavit in reply. He submitted that he was already due for transfer. However, he has asked for extension because he was going to retire on 31.5.2021, on the same day, when the applicant is going to retire. He submitted that he has already sent two letters on 3.10.2020 and 5.10.2020 expressing his regret to order dated 1.10.2020. He has mentioned health issues and submitted that he should not have been transferred when 8 months of his retirement were left and he should have been given extension. He further submitted that because of the transfer great injustice is caused to him especially when he wanted a posting as a Civil Surgeon to the place of his choice as a last posting, instead he is given a posting as Superintendent, at Sub-District Hospital, Bhor in place of the applicant without considering his preferential option. He submitted that he has joined the post at Bhor as a part of his duty under protest.

7. Heard the submissions and perused the affidavit in reply filed by Respondents no 1 and 2, so also the documents produced by both the parties. At the outset, it is noted that the applicant though relieved on 6.10.2020, till 18.12.2020 he was not given any posting and he was kept without any work. In the judgment relied on by the learned Presenting Officer in **Dr. Soudamini Chaudhari's case (supra)**, the petitioner, a Doctor has challenged her transfer order. She was transferred on the ground of complaint against her. The order was challenged by the petitioner on the ground that the transfer should not be punitive and relied on the ratio laid down by the Hon'ble Supreme Court in Union of India & others Vs. Janardhan Debanath & another, reported in (2004) 4 SCC 245. In the judgment, the Division bench has discussed the law when the transfer is made on the basis of complaint, then such transfer not necessarily a punishment, but it is issued for the efficient administration. The Division Bench also referred to the ratio laid down in the case of Somesh Tiwari Vs. Union of India, reported in (2009) 2 SCC 592.

8. In the case of **Dr. Soudamini Chaudhari**, (supra) the Division Bench has upheld the transfer mainly on the ground that there was a detail report prepared by the Dean of the Department against the applicant, Doctor. The Division Bench has made valuable observations and held in para 22 as under:-

22. Of course, we are not unmindful that a case could arise where a person in public employment often creates situations (without violating his service terms and conditions) which are not too comfortable or palatable for the employer and perceiving the employee's further presence undesirable at the particular place and to deter him from creating similar such situations in future, the employer under the veil of a seemingly innocuous order of transfer, which does not affect duty, responsibility, pay and promotional prospects and issued purportedly in administrative interest transfers the employee to get rid of him as a punitive measure. Indeed, a purpose of the nature referred to above could be achieved by the employer without passing a stigmatic order. However, despite not having suffered any penal consequences, the employee could feel sng WP-2585.2019 aggrieved even by such order of transfer claiming that he has been punished for no fault on his part and may argue that the impugned order should be interdicted bearing in mind the law laid down in Somesh Tiwari (supra). Such cases, as and when they are brought before the Court, have to be dealt with in a manner known to law. Although the Courts are loath to interfere in

matters relating to transfer issued in administrative exigencies, nothing prevents a Court, if it is prima facie satisfied with the case of the aggrieved employee, to lift the veil and ascertain whether any mala fide motive has triggered the transfer and/or the employee has been dealt with in any manner violative of his rights in the matter of public employment.”

9. Keeping the facts and ratio of Dr. Soudamini Chaudhari’s case on the background, let us deal with the facts involved and the procedure followed in the present case.

10. I had taken on record the letter written by Shri V.P Ghodke, Deputy Secretary, Public Health Department, which was addressed to the learned Chief Presenting Officer, Maharashtra Administrative Tribunal, Mumbai. In the said letter, it is stated that the reason for transfer of the applicant was on account of complaint received from the representative of the people in respect of his failure in discharging his duties. It is stated in the said letter that Dr. Uttam Tapase, Medical Superintendent, was transferred from Rural Hospital, Karanja, Dist-Washim, in the month of May, 2020 to Rural Hospital, Saswad, Dist-Pune, in a vacant post, and he joined on 10.7.2020. However, in the meeting of the Civil Services Board, which was conducted on 8.8.2020, due to oversight the applicant was transferred to the post of Medical Superintendent, Rural Hospital, Saswad, Dist-Pune by impugned order dated 1.10.2020 and he was relieved on 6.10.2020. Since the post at Rural Hospital, Saswad, Dist-Pune, where the applicant was transferred was not vacant, the Civil Services Board in its meeting held on 13.10.2020 recommended the transfer of the applicant to Rural Hospital, Jejuri, Dist-Pune. It is surprising that orders were not issued immediately for two months as there was no approval from the competent transferring authority. However, on 10.12.2020, the transferring competent authority changed the recommendations and the applicant was transferred to Rural Hospital, Khandala, Dist-Satara. Thereafter, the transfer order of 18.12.2020 is issued.

11. I have perused the original notings from page nos 55 to 93 which consists of minutes of two meetings of the Civil Services Board, i.e. on 8.8.2020 and 13.10.2020. I do not find the approval or signature of the

Hon'ble The Chief Minister in the file noting of the minutes of the Civil Services Board. However, on the last page of the minutes of the meeting of the Civil Services Board dated 13.10.2020, it was mentioned in the supplement that the transfers are recommended. The Minister from Public Health Department and the Hon'ble The Chief Minister both have signed on the file. Thus, it appears that both the recommendations of transfer of the applicant made in the meeting of the Civil Services Board were rejected by the Hon'ble The Chief Minister and the applicant was transferred.

12. In the entire noting, I had come across the reason for transfer of the applicant mentioned in the first meeting of the Civil Services Board, i.e. the complaint received against him. The said complaint was given by Mr Sangram Thopte, Member of Legislative Assembly on 20.6.2020. It was written to Mr. Rajesh Tope, Hon'ble Minister, Public Health Department. The residents of Bhor have protested against the applicant. He kept the hospital closed on the day of Ram Navmi and during the period of Corona Pandemic, and therefore, offence was registered against the applicant. He tortures staff mentally and physically and he does not give respectful treatment to the representatives of the people, and therefore, he is to be transferred immediately. Mr Thopte, M.L.A in his letter also stated that he has received many complaints against the applicant and he would be sending those complaints to the Minister.

13. No record is produced to show that these many complaints were placed before the Civil Services Board or the competent transferring authority. It appears that there is no verification of the complaints received from the people against the applicant by the higher authority. The letter addressed by Mr. Thopte, M.L.A and the other complaints in fact should have been forwarded to the higher authority of the applicant, who should have verified and investigated into the issue. If there would have been a report or remarks of the higher authority regarding the default or misbehavior of the applicant while working as Medical Superintendent, Sub-District Hospital, Bhor, then that could have been a good ground and the case of Dr. Soudamini Chaudhari would have

been rightly applied to justify the said transfer order. The genuine complaints of the public should not go unattended and proper relief should be given to them. Under such circumstances, the transfer cannot be treated as a punishment, but it is a relief given to the people. However, it is obligatory on the part of the higher authority to verify the truthfulness of such complaints and then propose the transfer. A perception cannot be mistaken as a misconduct or failure in duty.

14. Moreover, the applicant was not due for transfer and he is going to retire on 31.5.2021, i.e nearly after eight months. Under such circumstances, it is necessary for the Department to specify section 5 of the ROT Act, 2005, while placing the case of the applicant before the Civil Services Board and the competent transferring authority. There is no reference to either in the proposal or in the minutes of the meeting of the Civil Services Board. Under such circumstances, the transfer order cannot pass the test of legality.

15. In view of the facts and law discussed above, it is difficult to accept the reasons given for transfer of the applicant. Therefore, the impugned transfer order is found not legal and requires interference.

### **ORDER**

- (a) The Original Application is allowed.
- (b) The impugned transfer order dated 1.10.2020 is hereby quashed and set aside.
- (c) The applicant is directed to join at his previous place of posting at Sub-District Hospital, Bhor, forthwith.
- (d) No order as to costs.

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 24.12.2020**  
**Dictation taken by : A.K. Nair.**