

MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
NAGPUR BENCH NAGPUR  
ORIGINAL APPLICATION NO. 581 to 584/2016

ORIGINAL APPLICATION NO. 581/2016

Mohan Wamanrao Paturkar,  
Aged about 54 years,  
R/o Anjangaon Surji,  
Tq. Amravati, ,  
Distt. Amravati.

-----Applicant.

Versus

1. The State of Maharashtra,  
Through its Secretary,  
Revenue and Forest Deptt.,  
Mantralaya, Mumbai.
2. The Secretary, State Election Commission,  
Public Works Deptt., New Administrative Building,  
First Floor, Hutatma Rajguru Chowk, Opp. Mantralaya,  
Mumbai.
3. The Divisional Commissioner, Amravati Division,  
Amravati. Tq. and Distt.  
Distt. Amravati
4. The Collector, Amravati.  
Tq. and Distt. Amravati. ----- Respondents

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ORIGINAL APPLICATION NO. 582/2016

Manohar Anandrao Kadu,  
Aged about 54 years,  
R/o Amravati, Tq. and Distt. Amravati.

Versus

1. The State of Maharashtra,

Through its Secretary,  
Revenue and Forest Deptt.,  
Mantralaya, Mumbai.

2. The Secretary, State Election Commission,  
Public Works Deptt., New Administrative Building,  
First Floor, Hutatma Rajguru Chowk, Opp. Mantralaya,  
Mumbai.
3. The Divisional Commissioner, Amravati Division,  
Amravati. Tq. and Distt.  
Distt. Amravati
4. The Collector, Amravati.  
Tq. and Distt. Amravati. ----- Respondents

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ORIGINAL APPLICATION NO. 583/2016

Vinod Ramchandra Shirbhate,  
Aged about 55 years,  
R/o Amravati, Tq. and Distt. Amravati.

Versus

1. The State of Maharashtra,  
Through its Secretary,  
Revenue and Forest Deptt.,  
Mantralaya, Mumbai.
2. The Secretary, State Election Commission,  
Public Works Deptt., New Administrative Building,  
First Floor, Hutatma Rajguru Chowk, Opp. Mantralaya,  
Mumbai.
3. The Divisional Commissioner, Amravati Division,  
Amravati. Tq. and Distt.  
Distt. Amravati

4. The Collector, Amravati.  
Tq. and Distt. Amravati. ----- Respondents
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ORIGINAL APPLICATION NO. 584/2016

Pramod M. Deshmukh,  
Aged about 53 years,  
R/o Amravati, Tq. and Distt. Amravati.

Versus

1. The State of Maharashtra,  
Through its Secretary,  
Revenue and Forest Deptt.,  
Mantralaya, Mumbai.
2. The Secretary, State Election Commission,  
Public Works Deptt., New Administrative Building,  
First Floor, Hutatma Rajguru Chowk, Opp. Mantralaya,  
Mumbai.
3. The Divisional Commissioner, Amravati Division,  
Amravati. Tq. and Distt.  
Distt. Amravati
4. The Collector, Amravati.  
Tq. and Distt. Amravati. ----- Respondents

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1. Shri Anand Deshpande, Advocate for the applicant.
  2. Shri M.I. Khan, Presenting Officer for the Respondents.

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CORAM: S.S. Hingne: Vice Chairman

DATE : 12<sup>th</sup> January, 2017

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**ORDER**

Heard Shri Anand Deshpande, Id. counsel for the applicants and Shri M.I. Khan, Id. P.O. for the respondents. With consent of Id. counsel for both the sides, the matter is heard and decided at the admission stage.

2. The 4 O.As. arise out of the one order, the issues involved are also same, hence all these O.A. are disposed of by the common order :-

3. The Dy. Collectors have challenged the transfer order dtd. 14/9/2016 by which they are transferred to different places on the basis of the letters issued by the State Election Commission for the elections of the local bodies in Maharashtra.

4. By and large the facts are undisputed and reiteration thereof is not necessary. The State Election Commission of Maharashtra has issued communication dtd. 1/2/2016 to the effect that since the elections of the local bodies in Maharashtra are to be held, the officers be transferred who completed three years on 1-6-2016 or who complete that period between December 2016 to March,2017. The Election Commission

has laid down the guidelines and proposed the transfer of the officers in the light of those guidelines.

5. In effect, the Govt. of Maharashtra has issued the transfer orders of the Dy. Collectors which are impugned in these cases. The bone of the contention of the applicants' is that the orders are not issued in compliance of the provisions of the Section 4 ( 4) & 4 (5) of the Maharashtra Govt. Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ( hereinafter referred to as the Transfer Act.) As against this, the respondents' stand is that the transfers were proposed and matters are placed before the Civil Services Board and with the prior approval of the Hon'ble Chief Minister orders are issued.

6. In the meantime Writ Petitions were filed before the Hon'ble High Court of Judicature Bench at Bombay challenging the authority of the Election Commissioner. The Hon'ble High Court had granted stay in these W.Ps. However the Hon'ble High Court decided the W.Ps. No.9499/2016 ( Smt. Jyoti Hanuman Patil –vs. The Principal Secretary, ( Revenue and others ) and others and by order dtd. 16/12/2016 vacated the stay orders. Their Lordships observed that the order of the Election Commission is issued in view of the large public interest.

7. Armed with the order, the Id. P.O. submits that now there is no merit in these O.As. However, it is to be seen whether the transfer orders are issued in compliance with the provisions of the Transfer Act or not. The Id. P.O. submitted that the orders are issued complying all the provisions i.e. proposals of transfers were made, they were approved by the Civil Services Board and the prior approval of the Hon'ble Chief Minister is taken. He proceeded to argue that the orders issued on the basis of the communication of the Election Commission are itself sufficient to hold that the orders are legal and valid. However, one cannot lost sight of the fact that the court has to consider whether the orders are issued in compliance of the provisions of the Transfer Act or not.

8. This leads to test the case on the anvil of the provisions of the Transfer Act. The Election Commission's communication clearly shows that to have the free and transparency in the election process, the officers who will complete the 3 years period on the post on 1/6/2016 or during the period November, 2016 to February, 2017 be transferred. So also the officers who are in their home districts they also be transferred. As per clause 4 (c) of communication dated 1-2-2016, the officers should not be the resident of within the limits of the local area of local body of which the election is scheduled.

9. The chart is filed, which demonstrates details of each applicant. The applicants in O.A. Nos. 581 and 582/2016 are transferred because they are the resident of that district. The applicant in O.A. 583/2016 completed three years and is also resident of that district. It reveals from it that the applicant in O.A. No. 584/2016 will complete tenure of 3 years during the above period, as such they are transferred. All these reasons are mentioned in the proposal placed before the Civil Services Board and on this ground these 4 officers are transferred. It is manifest from the above that the cases of these 4 applicants are covered as per the observations and fall in guidelines made in the communication of the Election Commission.

10. Needless to mention that if on such grounds the employees are transferred it has to be held that there was administrative exigency to transfer them. The Election work is most important in nature and the election process needs to be free and transparent. The guidelines are laid down by the Election Commission for that and if on the basis of such guidelines the transfer orders are issued, it has to be held that the said reason is sufficient and satisfactory to effect the mid-term and mid-tenure transfers. Meaning thereby the reason is of special nature and case falls in category of exceptional circumstances.

11. In this view of the matter the cases propounded by the applicants are devoid of any merit . Consequently, the O.As. are rejected with no order as to costs.

**S.S. Hingne**  
**Vice-Chairman.**

Skt.