

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.1 OF 2022**

DISTRICT : MUMBAI

Dr. Mrs. Rajashree Dayanand Katke,)
Aged : 51 years, working as Professor (Obstetrics)
and Gynecology), at. J.J. Group of Hospital,)
Byculla, Mumbai 400 008)
R/o. Dhanvantari Bldg. No.2, 2nd floor, Flat No.5,)
J.J. Group of Hospital, Byculla, Mumbai 400 008) **..Applicant**

Versus

The State of Maharashtra,)
Through Secretary, Medical Education and)
Drugs Department, having office at Mantralaya,)
Mumbai 400 032) **..Respondent**

Mr. M.D. Lonkar - learned Advocate for the Applicant.

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondent.

CORAM : JUSTICE MS. MRIDULA BHATKAR, CHAIRPERSON

DATE : 17.02.2022

J U D G M E N T

1. In this matter the Applicant, Professor (Obstetrics and Gynecology), at J.J. Group of Hospital, challenges the order of transfer dated 31.12.2021 issued by the Respondent as illegal and bad in law and to be quashed and set aside.

2. The facts and averments in respect of service and service conditions of the Applicant, so also her appointment by nomination to the post of Professor on 13.07.2017 after completing almost 20 years' service as Lecturer and Assistant Professor in the Government hospital are admitted by the Respondent. Similarly, the fact that by order dated 06.05.2019 the applicant was transferred from Mumbai to Ambejogai and further by order dated 29.09.2020 transferred from Ambejogai to Mumbai is also admitted by the Respondent. As per the Respondent the reason for her transfer to Kolhapur is two fold,

Firstly, that she has been working in Mumbai for a long period i.e. nearly more than 20 years.

Secondly, many complaints have been received against the applicant about her conduct which is prima facie found in violation of the provisions of Rule 3 of the Maharashtra Civil Service (Conduct) Rules, 1979.

3. It is the case of the Respondent that the process of Departmental Enquiry (D.E.) has already been initiated against the Applicant and therefore the applicant was transferred to Kolhapur for special reasons recorded in writing after following the procedure laid down in the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, (hereinafter

referred as 'ROTA 2005' for brevity). According to the Respondent she has been relieved from duty on 31.12.2021. The Respondent has given details of the claims, harassment and humiliation suffered by other doctors at the hands of the Applicant.

4. The learned Advocate Mr. Lonkar appearing for the Applicant has challenged this order mainly on the two grounds,

- (1) Firstly, on merit and
- (2) Secondly, on the composition of the Civil Services Board (C.S.B.)

The learned Advocate relied on the Government Resolution (G.R.) dated 31.01.2014 which was issued in respect of the composition of the Committee of C.S.B. for taking decision of the Professors of Group-A and Group-B who are Government servants. The relevant portion from the said G.R. for reference is quoted below :

(अ) नागरी सेवा मंडळ (१)

१	प्रशासकीय विभागाचे अपर मुख्य सचिव / प्रधान सचिव / सचिव	अध्यक्ष
२	प्रशासकीय विभागाचे अन्य प्रधान सचिव / सचिव (विभागात एकापेक्षा अधिक अपर मुख्य सचिव / प्रधान सचिव / सचिव असल्यास)	सदस्य
३	राज्यस्तरीय विभागप्रमुख (विभागात एकच अपर मुख्य सचिव / प्रधान सचिव / सचिव असल्यास)	सदस्य
४	समाजिक न्याय व विशेष सहाय्य विभाग किंवा आदिवासी विकास विभागाचे सचिव / सहसचिव अथवा सामान्य प्रशासन विभागाचे सह/ उपसचिव (सेवा) (राज्यस्तरीय विभागप्रमुख नसल्यास)	सदस्य

नागरी सेवा मंडळ (१) मध्ये अध्यक्ष आणि अ क्र.२, ३ व ४ पैकी दोन सदस्य यांचा समावेश राहिल.

5. The Government gave directions to the concerned Department to establish the C.S.B. accordingly. The Medical Education and Drugs Department issued G.R. dated 30.04.2014 pursuant to G.R. dated 31.01.2014 and declared for constitution of the Committee of C.S.B. as under :-

१	विभागाचे अपर मुख्य सचिव/ प्रधान सचिव / सचिव	अध्यक्ष
२	संचालक वैद्यकीय शिक्षण व संशोधन, मुंबई	सदस्य
३	सचिव / सहसचिव, सामाजिक न्याय व विशेष सहाय्य विभाग	सदस्य

Thus, the learned Advocate has pointed out the minutes of meeting of C.S.B. held on 11.11.2021 and submitted that in the said meeting,

- (1) Mr. Saurab Vijay, the Secretary,
- (2) Mr. Virendra Singh, the Member, Commissioner, Medical Education.
- (3) Dr. Ajay Chandanwala, Joint Director, Medical Education were present.

However, the 4th Member i.e. the Secretary / Joint Secretary from Social Justice and Special Assistance Department was not present. He submitted that the Applicant belongs to reserved category and therefore the presence of Member from the Social Justice and Special Assistance Department was necessary. Therefore the composition of the Committee of the C.S.B. was not as per the legal requirement and therefore the minutes recorded in the meeting of the C.S.B. cannot be accepted in law.

6. The learned C.P.O. was called upon to make submissions on this point first. The learned C.P.O. relied on the affidavit-in-reply and pointed out further development i.e. G.R. dated 02.12.2021 issued by the Medical Education and Drugs Department.

7. The learned Advocate has further raised objection that as per the earlier G.R. of 2015 the Director of Medical Education and Drugs was required to be present. However, not the Director, but the Commissioner whose post is not mentioned in the composition of the C.S.B. as per G.R. dated 30.04.2014 has attended. In order to meet the submissions of learned Advocate, learned C.P.O. pointed out the modification made by the Medical Education and Drugs Department by issuing G.R. dated

02.12.2021. She said the new post of Commissioner was created by the State level Head of the Department. Therefore, the Member of C.S.B. who was earlier the Director, was substituted by the Commissioner, Medical Education and Drugs Department. She argued that as per this G.R. dated 02.12.2021 the Committee was constituted not of 4 persons, but Committee was constituted of 3 persons which is as follows :

१	विभागाचे अपर मुख्य सचिव/ प्रधान सचिव / सचिव	अध्यक्ष
२	आयुक्त, वैद्यकीय शिक्षण	सदस्य
३	समाजिक न्याय व विशेष सहाय विभागाचे सचिव / सह सचिव	सदस्य

२. संदर्भ क्रमांक (१) व (२) येथील शासन निर्णयात नमूद केल्यानुसार नागरी सेवा मंडळाची कार्यपध्दती व अन्य तरतूदी कायम राहतील.

The learned C.P.O. submitted that at the time of meeting of C.S.B. held on 11.11.2021 by which the applicant was transferred the Secretary, Mr. Saurab Vijay and Commissioner, Mr. Virendra Singh were present. Notice was given to the Deputy Secretary, Secretary and Joint Secretary of Social Justice and Special Assistance, however they did not attend. It was given the retrospective effect from 06.10.2021.

8. In view of the submissions of both sides without going into merits restricting to the 2nd point raised by the learned Advocate for the Applicant the matter can be decided on the basis of objections raised by the Applicant regarding constitution of the C.S.B. As per the minutes of the meeting of C.S.B. the Secretary of the Department and Director of Medical Education and Research were present on the meeting held on 02.12.2021 by which the requisite number of Members of C.S.B. of the Medical Education and Research was modified and is made applicable retrospectively i.e. from 06.10.2021. Thus, in meeting of the C.S.B. the Committee was constituted under G.R. dated 02.12.2021. In the said G.R. reference is made of the earlier G.R. dated 31.01.2014 and

30.04.2014 which is relied by both the parties. As per the G.R. of 02.12.2021 all other conditions and the provisions mentioned in those two G.R.s are made applicable for functioning of the C.S.B. meeting. Thus, except the change in the number of Members and designation of the two Members, all other conditions in G.R.s of 2014 are applicable. Admittedly, in the meeting of C.S.B. dated 11.11.2021 the Chairman and only one Member out of two required Members were present for the meeting. The Secretary of Medical Education Department, Mr. Saurab Vijay and the Commissioner, Mr. Virendra Singh were present. However, 3rd Member i.e. Secretary, Deputy Secretary of Social Justice and Special Assistance was absent. Thus, the issue of requisite quorum was raised and hence needs to be answered.

9. In the G.R. dated 02.12.2021 there is no reference of the quorum. However, in the G.R. dated 31.01.2014 in clause 2 it is mentioned that while C.S.B. quorum of the Chairman and two Members, out of (2), (3) and (4) should be present. As per clause (2) of G.R. dated 02.12.2021 other conditions mentioned in earlier G.R. dated 31.01.2014 or 30.04.2014 are applicable. In G.R. dated 30.04.2014 nothing is stated about quorum. However, in G.R. dated 31.01.2014 the requirement of the quorum is mentioned in clause 2(a). Accordingly, the Chairman and other two Members form the Quorum of the C.S.B. However, one modification i.e. Secretary / Deputy Secretary of Social Justice and Special Assistance remained absent and therefore the quorum was not complete. If the decision is taken by the Committee which does not fulfill the requisite quorum then the said decision cannot be said legal.

10. The learned C.P.O. for the Respondents while meeting this challenge of requisite Quorum has drawn my attention to the signatories of the minutes, wherein, the name of Dr. Ajay Chandanwale who is holding the

post of Joint Director, Medical Education has signed. The learned C.P.O. has submitted that Dr. Ajay Chandanwale in fact belongs to the reserved category and therefore there was representative of the Member from the reserved category and so the requirement of presence of one Member from reserved category was fulfilled. This submission of learned C.P.O. cannot be accepted. As per the requirement of G.R. dated 02.12.2021 the designation of the Members and Chairman are specifically mentioned, so the Secretary / Deputy Secretary of Social Justice and Special Assistance is the one of the designation of the Members of the Committee. We called upon learned C.P.O. to show provision or G.R. allowing substitution. We have not come across any policy decision of the Respondent-State by which such substitution of any person from the reserved category is allowed in the place of the Secretary / Deputy Secretary of Social Justice and Special Assistance. The person who is designated should remain present in the Committee constituted for holding the meeting of C.S.B. Though the Secretary, Social Justice and Special Assistance was given notice to attend the meeting dated 11.11.2021 he did not attend. Serving notice cannot be considered the presence of the said Member. The constitution of C.S.B. is the outcome of the ratio laid down in the judgment of Hon'ble Supreme Court in ***Writ Petition (Civil) No.82/2011 (T.S.R. Subramanian & Ors. Vs. Union of India & Ors.) dated 31st October, 2013*** and according to the Respondent-State has issued G.R. from time to time consistent with the said ratio.

11. The learned C.P.O. relied on the judgment dated 27.01.2022 passed in O.A.No.289 of 2021, Mr. Shivram R. Gavande Versus The State of Maharashtra & Ors. In the said judgment the applicant Police Constable has challenged his transfer and one of the grounds of challenge was the constitution of Police Establishment Board (P.E.B). In the said case though formal minutes of PEB were not available, all the members were

present at the time of P.E.B. and had unanimously taken the decision of the transfer. Hence, the challenge to the said transfer was rejected and O.A. was dismissed. This is not the case in the present matter. The learned C.P.O. has further relied on the judgment dated 09.09.2019 passed in O.A.No.207 & 211/2019, Mr. Pramod Kisan Hile Versus The State of Maharashtra & Anr.. The same challenge i.e. constitution of C.S.B. Committee was given. In the Hile's case the Committee of C.S.B. was formed of Additional Chief Secretary, Revenue (Chairman), Principal Secretary, Forest (Member) and Member Secretary and one of the Member of CSB from Tribal Development Department was absent. The Tribunal held that the absence of one of the Member of C.S.B. ipso-facto does not render the decision taken by remaining Members invalid and needless to mention that the role of C.S.B. is of recommendatory body and final decision or authority rests with the executive and the said O.A. was dismissed. Thus, considering the composition of the C.S.B. in Hile's case (supra) the present case is distinguishable especially on the basis of having specific provision of requirement of quorum in G.R. dated 31.01.2014.

12. Thus, without going into other aspects of the merit, the order of transfer needs to be cancelled on the sole ground of breach of requirement of quorum.

13. I allow the Original Application with following order :-

O R D E R

- (a) The Transfer order dated 31.12.2021 of the Applicant is hereby quashed and set aside.

- (b) The Applicant to continue to work as Professor (Obstetrics and Gynecology), at. J.J. Group of Hospital as she was working before her transfer.
- (c) The Department is free to take steps in accordance with law and as per ROTA 2005.

SD/-

**(Mridula Bhatkar, J.)
Chairperson**

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