

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1042 OF 2018

DISTRICT : KOLHAPUR

Dr. Sahadev Shivgonda Patil,)
Aged Adult, Occu. Medical Superintendent,)
(Civil Surgeon, General Surgeon Cadre),)
Class-I, Working at Rural Hospital,)
Chandgad, District Kolhapur.)

Address for service of notice)
Shri Gajanan M. Savagave, Advocate)
Having office at 3rd floor, Cooper Building,)
106, Nagindas Master Road, Fort,)
Mumbai - 400 023.)

)... Applicant

Versus

1) The State of Maharashtra,)
Through Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 400 032.)

2) The Additional Secretary,)
Public Health Department,)
State of Maharashtra,)
Mantralaya, Mumbai - 400 032.)

3) The Director General of Health)
Services, Arogya Bhavan, St. George)
Hospital Compound, P.D'mello Road,)
Mumbai - 400 001.)

4) The Deputy General of Health)
Services, Kolhapur Region,)
Kolhapur - 416 003.)

5) The District Civil Surgeon,)
Chatrapati Pramilaraje Hospital)
[RH Cell], Dist. Kolhapur - 416 008.)... **Respondents**

Shri Prashant Suryawanshi, Advocate holding for Shri G.M. Savagave, learned Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 08.11.2019

J U D G M E N T

1. Heard Shri Prashant Suryawanshi, learned Advocate holding for Shri G.M. Savagave, learned Advocate for Applicant and Shri A.J. Chougule, learned Presenting Officer for Respondents.

2. The Applicant has challenged the transfer order dated 22.11.2018 whereby on the ground of serious complaints, he was transferred from the post of Medical Superintendent (Rural Hospital), Chandgad, District Kolhapur to the post of Medical Superintendent (Rural Hospital), Kankawali, District Sindhudurg invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

3. The Applicant was posted at Chandgad, District Kolhapur on vacant post by order dated 18.07.2016 and had not completed normal tenure of three years. However, he was transferred mid-term as well as mid-tenure by order dated 22.11.2018. The Applicant has challenged the transfer order

contending that it is in violation of Section 4(4) and Section 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Office Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005').

4. Shri Prashant Suryawanshi holding for Shri G.M. Savagave, learned Advocate for the Applicant sought to assail the impugned transfer order on the ground that the Applicant was transferred on complaint without verifying the veracity of the complaint, and therefore, the transfer is punitive and liable to be set aside. He further raised plea of non-approval of Civil Services Board (CSB) for the transfer of the Applicant.

5. Par contra, Shri A.J. Chougule, learned P.O. for the Respondents pointed out that there were serious complaints against the Applicant for which Show Cause Notice was also issued to him on 20.11.2017, and thereafter, on receipt of report from Director, Medical Health, the matter was placed before the CSB wherein, in view of serial complaints against the Applicant, he was recommended for transfer out of District. Accordingly, the matter was placed before the CSB who approved the recommendation of the Director, Medical Health and later with the approval of Hon'ble Chief Minister being highest Competent Authority for mid-term and mid-tenure transfer, the applicant has been transferred to Kankawali, District Sindhudurg by impugned order dated 22.11.2018. He thus sought to justify the transfer order.

6. True, the Applicant had not completed the normal tenure at Chandgad, District Kolhapur and he was transferred mid-term as well as mid-tenure. This being the position, it must be

in compliance of Section 4(5) of the 'Transfer Act 2005' which requires recording of reasons and approval of Competent Authority for such mid-term and mid-tenure transfer. At this juncture, it would be apposite to see the report and Show Cause Notice dated 20.11.2017 issued to the Applicant for involving in serious illegalities and mal-practices while working at Chandgad, District Kolhapur.

7. There were serious complaints of citizens that the Applicant also works in his private dispensary namely "Shivkrupa Multispeciality Hospital" and divert patients to his private hospitals and at the same time, he is taking Non-Practicing Allowance. The following are the major discriminatory and illegalities noted in the functioning of the Applicant in Show Cause Notice dated 20.11.2017:-

- (a) There were 20 oxygen cylinders provided to the hospital but one cylinder was found missing.
- (b) The oxygen gas cylinder was also found used by the Applicant in his private hospital i.e. Shivkrupa Multispeciality Hospital.
- (c) In the meeting dated 17.11.2017 patients also raised serious grievance about functioning of the applicant stating that they are not getting requisite medicines.
- (d) It is further specifically noted by the Civil Surgeon, Kolhapur in his Show Cause Notice that the Applicant is diverting the patients to his private hospital instead of treating them in Government hospital.

- (e) Applicant was found availing Non Practicing Allowances, still he continued practicing in private hospital.

Accordingly, Dr. L.S. Patil, Civil Surgeon, Kolhapur issued Show Cause Notice to the Applicant on 20.11.2017 as to why Departmental Enquiry / action should not be initiated against him.

8. Pertinent to note that the Applicant has submitted his reply on 27.11.2017 denying the charges against him, but there is admission on the part of some material aspects. He admits in his reply to show cause notice that he had taken one Oxygen Cylinder for Shivkrupa Multispeciality Hospital but sought to explain that it is being run by other Doctors.

9. He, further, admits that on the request of Sister Smt. Zande, two cylinders were given for use in Shivkrupa Multispeciality Hospital in emergency. As such, to some extent there is clear admission on the part of the Applicant which fortify the observations or findings noted in show cause notice dated 20.11.2017 by Dr. L.S. Patil, Civil Surgeon, Kolhapur.

10. It is on the above background the matter was placed before the CSB who recommended for immediate transfer of the applicant out of District and accordingly by the approval of Hon'ble Chief Minister, transfer order was issued.

11. True, there is delay in taking action against the applicant for transfer and there is nothing to show that charge-sheet was issued against the Applicant for alleged mis-conduct. However,

Tribunal cannot be oblivious of the fact of serious complaint against the Applicant which are found genuine in view of reply of Applicant himself. Therefore, merely because the action of transfer was belated, that cannot be ground to quash the transfer order.

12. Today, the learned P.O. for the Respondents has also tendered original file noting to show that the CSB has recommended for the transfer of the Applicant in view of serious complaints against him and the same was approved by the Hon'ble Chief Minister. Suffice to say, the Applicant was Superintendent of the Hospital and was supposed to work in the interest of patients visiting the Government hospital, but he is rather seems more interested in his private practice in defiance of rules and regularizations.

13. In rural areas, the majority of people depend upon the Government Hospital for the treatment, as they cannot afford private hospitals. However, the Applicant is found totally indifferent in the matter of service to the patient and prima facie, indulging in several mal-practices.

14. True, the record does not show about the issuance of charge-sheet to the Applicant. However, mere inaction on the part of Respondents to initiate Departmental Enquiry cannot be the ground to quash the transfer order. Otherwise, it would amount to extend the benefit to the wrongdoers. If the transfer of the Applicant was found necessary in view of serious mal-practices, then the Department was not supposed to wait for issuance of charge-sheet and further to wait for the findings of

the enquiry committee. If this is allowed to be done, the very purpose of public health services would be frustrated.

15. In this behalf, it would be apposite to refer the Judgment of Hon'ble Supreme Court in case of **(2004) 4 SCC 245 (Union of India and Ors. Vs. Janardhan Debanath & Anr.) decided on 13 February, 2004**, which is as follows :-

“12. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The Writ Petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”

16. Needless to mention that the transfer of Government servant is an incident of service and he cannot insist for continuation on the same post for stipulated period. It falls within the domain of executive. It is well settled law that the transfer can be interfered with by the Tribunal only where it is in contravention of express provisions of law or punitive or arbitrary.

17. In the present case, the Applicant was transferred in view of his indulgence in several mal-practices. As such, it was

administrative exigency to transfer the Applicant and he was rightly transferred with the approval of Hon'ble Chief Minister. There is compliance of Section 4(5) of 'Transfer Act 2005'.

18. For the aforesaid reasons, I have no hesitation to sum-up that the challenge to the transfer order is devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member (J)

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