

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 1089 OF 2015

DISTRICT : SANGLI

Smt Manjula Shrikant Waghmare,)
Occ : Service, Mukhya Sevika in Child)
Development Project,)
R/o: Old Dhamani Road, Lane No. 4,)
Hanuman Nagar, Sangli,)
Dist-Sangli.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Principal Secretary,)
Woman & Child Development Dept,)
Mantralaya, Mumbai 400 032.)
2. The Commissioner,)
Integrated Child Development Project)
[M.S], Raigad Bhavan, Rear Wing,)
1st floor, C.B.D., Belapur,)
Navi Mumbai.)...**Respondents**

24

Shri J.N Kamble, learned advocate for the Applicants.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 17.06.2016

ORDER

1. Heard Shri J.N Kamble, learned advocate for the Applicants and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 6.10.2015 posting the Applicant in the office of the Child Development Project Officer, Pune temporarily.

3. Learned Counsel for the Applicant argued that the Applicant was working as Mukhya Sevika at Sangli from 15.6.2009. She was transferred by order dated 31.5.2010 from Sangli to Satara within one year of her posting at Sangli. She challenged the order in O.A no 649 of 2010 before this Tribunal and by order dated 24.2.2011 the Applicant was ordered to be posted back to Sangli. Now, by impugned order dated 6.10.2015, the Applicant has been transferred to Pune, before

completion of her tenure of six years as a Group 'C' employee. Learned Counsel for the Applicant argued that transfer order under the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (the Transfer Act) has to be issued in the month of April or May. However, this order is issued in the month of October. The Applicant is a Group 'C' employee and is entitled to two tenure of 3 years each before she could be transferred. However, she has been transferred due to complaints against her. However, this is not a ground for transfer in the Transfer Act. In any case, the complaint is without any basis.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant has not been transferred to Pune, but has been temporarily attached to that office. There were many complaints against the Applicant and an Enquiry Committee was appointed. The Committee submitted its report to the Divisional Deputy Commissioner, Woman & Child Welfare, Pune on 13.7.2015. The Committee found the Applicant guilty of various misconducts. As the atmosphere in the office was vitiated, the Applicant was temporarily attached to the office of C.D.P.O, Pune.

5. It is seen that the Applicant has been posted at C.D.P.O., Pune by order dated 6.10.2015. This order

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docs not state that the Applicant is transferred from Sangli to Pune. The order is temporary working arrangement. However, no period for this temporary arrangement has been mentioned in the aforesaid order. This Tribunal has consistently taken the view that temporary attachment or working arrangement in this case will amount to transfer, if no outer time limit is given in the order itself. This order is definitely a transfer. It appears that an Enquiry Committee has submitted a report on 13.7.2015 against the Applicant. It is reported that the Applicant abuses officers and staff in the office and threatens male staff that she will file complaint against them of sexual harassment. She has claimed false Travelling Allowance bills also. There are serious charges, ^{which can} ~~and~~ definitely be considered for transferring a Government servant mid-term or mid-tenure. However, for that purpose, approval of the next higher transferring authority is required for mid-term transfer under Section 4(4)(ii) of the Transfer Act. For mid tenure transfer approval of the immediately superior transferring authority in Table of Section 6 is required. The impugned order is issued in the month of October, and it is a mid-term transfer order. Admittedly, the Applicant is a Group 'C' employee and is entitled to a tenure of six years, which she had not completed when the impugned order was issued. The aforesaid order is therefore, a mid-tenure transfer order also. For Group 'C' employee, Head of Department is the Competent

Transferring Authority for general transfers and the Respondent no. 2 appears to be the Competent Transferring Authority. However, for mid-tenure transfers, the immediately superior Transferring Authority as per Table in Section 6 is Minister. The impugned transfer order has not been issued with the approval of Minister citing special case. This order is, therefore, not sustainable.

6. Having regard to the aforesaid facts and circumstances of the case, the order dated 6.10.2015 posting the Applicant to Pune is quashed and set aside. The Respondents will post the Applicant to work in her original post at Sangli within a period of 4 weeks from the date of this order. This Original Application is allowed accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 17.06.2016
Dictation taken by : A.K. Nair.