IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.1143 OF 2022

DISTRICT : MUMBAI

Sub : Transfer

Smt. Rachita Subrat Ratho ,)
Age : 56 Yrs, Occu.: Associate Professor,)
Elphinstone College, Fort, Mumbai.)
R/o.1101, Harsiddhi Heights, Worli Sea)
Face, Worli, Mumbai.)**...Applicant**

Versus

The State of Maharashtra, through Addl.)
Chief Secretary, Higher and Technical)
Education Department, (Higher Education))
having office at Mantralaya, Mumbai 32.)**...Respondent**

Shri A. V. Bandiwadekar, Advocate for Applicant.

Ms S. P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 06.04.2023

JUDGMENT

1. The applicant has challenged transfer order dated 07.11.2022 whereby she is transferred from the post of associate professor, Govt Law college to Elphinstone Law college, Mumbai by the Government invoking section 4 (4) (ii) and 4 (5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity).

2. Shortly stated facts giving rise to O.A. are as under:-

The applicant was serving as Associate Professor, Govt Law college, Mumbai from 1995 to till date of impugned order except the period from 2011 to 2015. In 2011 she was transferred by Order dated 03.11.2020 to Elphinstone college, Mumbai which she had challenged by filing OA No. 1032/2011 which was dismissed on 07.11.2012. Being aggrieved by it, she filed W.P. No. 564/2013 before Hon'ble High Court. However, before the Hon'ble High Court, the statement was made by Govt pleader that applicant's case was again considered in meeting held on 10.02.2015 at Mantralaya for re-transferring to Govt Law College. Accordingly, W.P. was disposed off and applicant was again re-posted in Govt Law College in 2015. Admittedly, she had completed normal tenure at one place of posting and was overdue for transfer but she was not transferred in general transfer which are to be affected in the month of May in terms of provisions of Transfer Act, 2005. The Govt by order dated 07.11.2022 transferred her along with one Shri Panchabai which is under challenge in the present OA *inter alia* contending that she is victimized because of raising certain grievances against Principal and impugned transfer order being punitive and mid-term is liable to be quashed.

3. The O.A. is resisted by filing affidavit in reply of Smt Asmita Vaidya, Principal, Govt Law College, Mumbai at whose instance applicant was transferred by impugned order dated 07.11.2022 and Respondent/Government did not file separate reply which was in fact essential in the facts and circumstances of the present case. Be that as it may, the question posed for consideration is whether impugned transfer order dated 07.11.2022 is legally sustainable in the facts and circumstances of the case.

4. Learned counsel for the applicant sought to assail the transfer order dated 07.11.2022 *inter alia* contending that even if applicant was overdue for transfer, the way and manner in which she is transferred is nothing but victimization, punitive and it does not meet requirement of special case or any such administrative exigency for such mid-term transfer as required under section 4 (5) of Transfer Act, 2005. He has pointed out that very foundation of transfer is the grievance raised by applicant against Principal but instead of addressing the grievance, the applicant is victimized only to gag her mouth and it is not a case of any such administrative exigency warranting mid-term transfer. He has further raised plea of incorrect composition of civil services board which recommended transfer of the applicant.

5. Per contra, learned CPO sought to justify impugned transfer order *inter alia* contending that the Principal, Law College by letter dated 30.09.2022 requested for transfer of the applicant and Govt found that transfer is essential so that there should be smooth functioning of the administration and college. She has further pointed out that applicant was overdue for transfer and transfer being in Mumbai itself at Elphinstone college which is hardly 03 km away from Law college, it need not be interdicted by the Tribunal in limited jurisdiction of judicial review. As regards, formation of CSB, she has pointed out that Govt by GR dated 25.05.2015 constituted separate and independent CSB for Higher and Technical Education Department and there is no such irregularity in the composition of CSB. On this line of submission, she submitted that challenge to the transfer order is without any merit.

6. True, the applicant was serving at Law college from 1995 till impugned transfer order except four years in between 2011 to 2015. As such, she was long overdue for transfer. However, the fact remains that she was not transferred in general transfer which were to be effected in the month of May of each year in terms of Transfer Act, 2005. It is

equally true that transfer being incidence of Govt Service, the Govt servant has no legally vested right to claim a post for particular period. However, at the same time now the transfers are being governed by provisions of Transfer Act, 2005, it must be in consonance with the provisions of Transfer Act, 2005.

7. This is unusual case where Govt servant is transferred because of grievances raised by her against Principal or administration. Normally the Tribunal comes across the cases where Govt servants are transferred because of complaints against them and because of complaints, the transfers are found necessitated. Whereas in this case, it is other way ground.

8. At this juncture, it would be apposite to see file noting which is at page no. 54 and 55 of paper book. It is in vernacular and contains therein are as under:-

> " प्राचार्य शासकीय विधी महाविदयालय, मुंबई यांच्या दिनांक ३०.०९.२०२२ च्या पत्राच्या अनुषंगाने सादर.
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> २. सदर पत्रान्वये,शासकीय विधी महाविदयालय, मुंबई येथील डॉ.रचिता रथो, सहयोगी प्राध्यापक (राज्यशास्त्र) व डॉ.श्रीनाग पंचभाई, सहयोगी प्राध्यापक (कायदा) यांचेकडून वारंवार करण्यात येणा-या तक्रारी, माहिती अधिकार अधिनियम, २००५ अंतर्गत करण्यात येणारे अर्ज, पोलीस तक्रारी, कायदेशीर नोटीस यामुळे महाविदयालयाचे वातावरण दूषित होत असल्याचे नमूद करून, सदर अध्यापकांची शासकीय विधी महाविदयालय, मुंबई येथून बदली करण्याची विनंती केली आहे.
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> ३. उच्च शिक्षण संचालनालयाच्या आस्थापनेवरील सहाय्यक प्राध्यापक, शासकीय महाविदयालये/संस्था, गट-अ या संवर्गातील सन २०२२ च्या नियतकालिक बदल्यांबाबत दिनांक २६.०५.२०२२ रोजी नागरी सेवा मंडळाची बैठक आयोजित करण्यात आली होती. मात्र, सामान्य प्रशासन विभागाने दिनांक २७.०५.२०२२ च्या शासन निर्णयान्वये सन २०२२-२०२३ या आर्थिक वर्षी दिनांक ३० जुन, २०२२ पर्यंत बदल्या करण्यात येऊ नये. तथापि, प्रशासकीय कारणास्तव तातडीने एखादी बदली करणे आवश्यक असल्यास, अशी बदली मा.मुख्यमंत्री महोदयांच्या मान्यतेने करावी, अशा सुचना दिल्या आहेत. त्यामुळे बदल्याचे प्रस्ताव प्रलंबित ठेवण्यात आले.
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> ४. शासकीय विधी महाविदयालय, मुंबई येथिल गट ''क''व ''ड'' मधील कर्मचा-यांनी डॉ. पंचभाई, सहाय्यक प्राध्यापक (विधी) यांच्याकडून होत असलेल्या मानसिक त्रासाबाबत प्राचार्याकडे तक्रार केली होती. तसेच डॉ.पंचभाई, सहाय्यक प्राध्यापक (विधी) यांनी शासकीय विधी

महाविदयालय, मुंबई येथिल गट क व ड मधील कर्मचा-याविरूध्द पोलीसात तक्रार दाखल केली आहे. प्राचार्य, शासकीय विधी महाविदयालय, मुंबई यांनी सदर तक्रारीबाबत उचित कार्यवाही करावी जेणेकरून महाविदयालयाचे कामकाज सुरळीतपणे करता येईल अशी शासनास विनंती केली आहे.

सदर तक्रारीबाबत चौकशीसाठी विभागीय सहसंचालक उच्च शिक्षण मुंबई यांच्या अध्यक्षतेखाली समिती गठीत केली असून, समितीचा अहवाल प्रलंबित आहे.

५. डॉ.श्रीनाग पंचभाई, सहाय्यक प्राध्यापक (विधी)यांनी दिनांक ४.२.२०२२ च्या पत्रान्वये, त्यांच्या वडिलांचे निधन नोव्हेंबर, २०२१ मध्ये झाले असून, आईचे वय ७५ वर्षापेक्षा जास्त असल्याने तब्येत ठीक राहत नाही. त्यामुळे प्री.आय.ए.एस. सेंटर नागपूर येथे बदली करावी, अशी विनंती केली आहे.

६. डॉ.रचिता रथो, सहाय्यक प्राध्यापक (राज्यशास्त्र) यांच्याकडून शासकीय विधी महाविदयालयातील कामकाजाच्या अनुषंगाने खालीलप्रमाणे तक्रारी करण्यात आल्या आहेत -

(अ) महाविदयालयातील शिक्षकेतर कर्मचा-यांना ५ दिवसांचा आठवडा लागू नसूनही कर्मचारी शनिवारी कामावर येत नाही.

(ब) मुंबई विदयापीठाच्या दिनांक २९.०१.२०२२ च्या १०० टक्के फॅकल्टी उपस्थितीच्या परिपत्रकाचे अनुपालन होत नाही.

(क) प्राचार्यांकडून मानसिक त्रास होत आहे.

(ड) ऑगस्ट, २०२२ च्या वेतनातून अवैधपणे रू.६३००/- आयकर कपात केली आहे.

(इ) कॅस अंतर्गत प्राध्यापक पदावरील स्थाननिश्चितीसाठी निवड समितीने शिफारस केली नसल्याने त्यांना प्राध्यापक पदावर स्थाननिश्चिती करण्यात आली नाही, याबाबत त्यांनी शासनाकडे वेळोवेळी निवेदन सादर केले आहे. याबाबत त्यांना समितीचा निर्णय कळविण्यात आल्यानंतरही याबाबत विविध स्तरावर निवेदन सादर केले आहे. विदयापीठ अनुदान आयोगाने विहित केलेल्या अटी व शर्तीनुसार त्या कॅस अंतर्गत पदोन्नतीसाठी पात्र ठरत नाही.

७. प्राचार्य, शासकीय विधी महाविदयालय, मुंबई यांनी केलेल्या शिफारशीनुसार,सहाय्यक प्राध्यापकांच्या बदलीचा प्रस्ताव दि..०३.१०.२०२२ रोजीच्या बैठकीमध्ये सादर करण्यात आला. नागरी सेवा मंडळाने सहाय्यक प्राध्यापकांच्या बदलीबाबत शिफारस केली असून, त्याचा तपशिल विवरणपत्र-अ मध्ये दिलेला आहे.

८. डॉ. श्रीनाग आर.पंचभाई व डॉ.रचिता रथो यांचा सेवा तपशील विवरणपत्र -ब मध्ये दिलेला आहे.

९. शासन निर्णय दि.०३.०७.२०१३ अन्वये शासकीय विधी महाविदयालयाच्या कामकाजाबाबत नियामक परिषद गठीत करण्यात आली आहे. सदर परिषदेचे अध्यक्ष मा.उच्च न्यायालयाचे न्यायमुर्ती असून व मा.महाअधिवक्ता, विधी तज्ञ व इतर वरिष्ठ अधिकारी सदस्य आहेत. सदर परिषर्देकडून महाविदयालयाच्या कामकाजाचा वेळोवेळी आढावा घेण्यात येतो.

त्याचप्रमाणे सदर महाविदयालयातील शिक्षकीय पदे भरण्यासाठी मा.महाअधिवक्ता याच्या अध्यक्षतेखाली निवडमंडळ गठीत करण्यात आले आहे.

१०. उक्त परिच्छेद ३, ४, व ५ येथील वस्तुस्थिती व नागरी सेवा मंडळाने केलेली शिफारस विचारात घेता, शासकीय विधी महाविदयालय, मुंबई येथील शैक्षणिक कामकाज सुरळीत राहण्यासाठी व विदयार्थ्यांचे शैक्षणिक नुकसान होऊ नये, यासाठी डॉ. पंचभाई व डॉ.रथो यांची शासकीय विधी महाविदयालयातून बदली करण्याचे प्रस्तावित करण्यात येत आहे.

तसेच, शासकीय विधी महाविदयालय हे महाराष्ट्रातील शासनाचे एकमेव अत्यंत प्रतिष्ठीत असे महाविदयालय आहे या महाविदयालयाचा दर्जा कायम ठेवण्यासाठी शिक्षकीय पदे भरणे आवश्यक आहे. त्यानुसार शासकीय विधी महाविदयालयातील रिक्त पदे भरण्याबाबत आवश्यक ती कार्यवाही करण्याच्या सूचना प्राचार्य, शासकीय विधी महाविदयालय, मुंबई यांना देण्याचे प्रस्तावित करण्यात येते.''

9. Thus para no. 6 of file noting is the only foundation/ reason for the transfer of the applicant. It appears that applicant had raised certain grievances against the administration. She raised grievance that though five days week is not made applicable, the employees are not attending on Saturday. There is no compliance of Circular dated 29.01.2022 for 100% attendance of faculty members. She has also raised grievance of incorrect deduction of income tax of Rs.6,300/- from the salary of August 2022 and promotion under CAS (Career Advancement Scheme). I really fail to understand how this could be the ground for transfer in law. The grievances raised by the applicant as set out in file noting by no stretch of imagination can be termed disruptive to the administration so as to justify the transfer in such a manner. Instead of addressing grievance, she was transferred which is nothing but victimization and punitive. There is not a single complaint by students or anybody else about teaching of the Applicant nor there is any other material to show that her behavior was causing any kind of hurdle or obstruction to the administration for functioning of the college. Raising of grievance for betterment of administration as well as some personal grievance of deduction of income tax and non-promotion under CAS can hardly be termed the ground to transfer the applicant mid-term. This is nothing but attempt to muzzle the voice of employee and to have autocracy. Notably, the grading of the applicant in ACR is consistently very good

from 2015 to 2021. However, Smt. Asmita Vaidya present Principal suddenly down graded her ACR for 2021- 2022 which also indicate some bias.

10. Needless to mention under section 4 (5) of Transfer Act, 2005, there has to be a special case or administrative exigency and after recording reasons in writing only such mid-term transfer is permissible with the approval of Competent Authority. Only approval of Competent Authority i.e. Hon'ble Chief Minister would not legalize the transfer order. There has to be recording of reasons in writing so as to make out special case or any such administrative exigency which is completely missing in the present case. On the contrary, apparently, the applicant is transferred because of certain grievances raised by her. If a Govt servant is transferred because of raising some legitimate grievance, it would certainly attract malice and such transfer would be impermissible.

11. In file noting, the department itself recorded the nature of grievance raised by the applicant but there is no further mention or reasoning as to why the transfer is necessitated or how it is a special case for such mid-term transfer. Only on the letter forwarded by Principal, the applicant is transferred without bothering as to whether grievance raised by applicant could be the ground for such mid-term transfer. At the cost of repetition, it is necessary to again point out that except the grievances made by Applicant against the Principal of college as recorded in Para No. 6 of file noting, there is absolutely no other material or ground to show that applicant's behavior or nature was in any way is of disruptive or obstructive to the administration or her behavior was affecting the administration and functioning of the college. Suffice to say, only on *ipse dixit* of principal, the Applicant is transferred without there being any such legal ground.

12. In so far as composition of CSB is concerned, I find no such irregularity in the composition of CSB. True, initially, the Govt by GR dated 31.01.2014 constituted CSB No.1 comprising of three members. As per this GR, one member as to from Social Justice and Special Assistance Department. However, later the Govt issued another GR for Higher and Technical Education Department, dated 25.05.2015 thereby constituting independent CSB consist of five members for the transfer of Govt servants falling under Higher and Technical Education Department. It is in terms of GR dated 25.05.2015, the matter was placed before the CSB which recommended for transfer of the Applicant. I see no irregularity in composition of CSB.

13. The perusal of minutes of CSB however reveals all that CSB recommended for transfer of the applicant to Elphinstone college. Except recommendation, there is absolutely nothing in minutes as to why such mid-term transfer is necessitated. It mechanically recommended for transfer without recording any reason or necessity for transfer.

14. In this view of the matter, I have no hesitation to sum up that impugned transfer order dated 07.11.2022 is totally arbitrary and unsustainable in law. It is liable to be quashed. Since the applicant is overdue for transfer, the Govt may consider to transfer her in ensuing general transfers which are due in next 2-3 months. However, the transfer order dated 07.11.2022 being totally arbitrary and unsustainable is liable to be quashed and applicant is required to be reinstated in Law College, Mumbai. Hence the following order:-

ORDER

(A) Original application is allowed

(B) Impugned transfer order dated 07.11.2022 is quashed and set aside.

(C) The applicant be reposted in Government Law College within two weeks from today.

(D) No order as to cost.

Sd/-
(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 06.04.2023
Dictation taken by : V.S. Mane
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