

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO 1151 OF 2012

DISTRICT : MUMBAI

Dr Sudhir Vithal Medhekar, )  
Professor, Skin and VD Department, )  
Grant Medical College, Mumbai and )  
Having Residential Address as 9-A/704, )  
Powai Cosmopolitan Society, )  
MHADA Complex, Ram Baug, )  
A.S Marg, Powai, Mumbai 400076. )...**Applicant**

**Versus**

1. The Government of Maharashtra, )  
Through the Principal Secretary, )  
Medical Education & Drugs Dept. )  
Mantralaya, Mumbai 400 032. )  
2. Dean, )  
Grant Medical College, Mumbai. )

3. Dr M.M Kura, )  
Professor, Skin and VD Department, )  
Grant Medical College, Mumbai. )...**Respondents**

Shri M.D. Lonkar, learned advocate for Applicant.

Shri N.K. Rajpurohit, learned Presenting Officer for Respondents No 1 & 2.

Shri A.V. Bandiwadekar, learned advocate for Respondent No. 3

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 18.04.2013**

**ORDER**

1. Heard Shri M.D. Lonkar, learned advocate for Applicant, Shri N.K. Rajpurohit, learned Presenting Officer for Respondents No 1 & 2 and Shri A.V. Bandiwadekar, learned advocate for Respondent No. 3

2. The facts of the case in brief are as follows:-

The Applicant was working as Associate Professor in Shri Bhausaheb Hire Government Medical College, Dhule and was promoted to the post of Professor. He was posted by order dated 30.6.2012 to Grant Medical College, Mumbai. The Applicant was not allowed to join his duty by the Respondent No. 2. By order dated

4.12.2012, the Applicant was posted as Professor at Government Medical College, Aurangabad and the Respondent No. 3's transfer order from Grant Medical College, Mumbai to Shri Bhausahab Hire Government Medical College, Dhule was cancelled. The Applicant is aggrieved by order dated 4.12.2012 and has requested that the said order may be quashed and set aside.

3. The learned Advocate Shri M.D. Lonkar, for the Applicant argued that the order dated 4.12.2012 is malafide and has been issued in breach of the mandatory statutory provisions of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the Transfer Act). The sole intention behind the impugned order is to show undue favour to the Respondent No. 3 who is working in Mumbai since 1996. The learned counsel for the Applicant has argued that the Respondents No 2 and 3 deliberately did not obey order dated 30.6.2012 and did not allow the Applicant to resume his duty at Grant Medical College, Mumbai. The Applicant has old mother who requires advance medical treatment and therefore, he has requested for a posting at Mumbai. The cancellation of order dated 30.6.2012 by the impugned order is in violation of the provisions of the Transfer Act. Learned Counsel for the Applicant cited judgment of the Hon. High Court, Bombay in Writ Petition No 5465/2012 in

which it was held that "The impugned order of transfer in the absence of special and exceptional reasons was passed obviously in breach of the statutory obligation and suffers from the vices as above." In the present case, no special and exceptional reasons have been cited in the impugned order and as such it is bad in law. In another judgment in W.P No. 1940/2011, Hon. Bombay High Court had struck down a transfer which was in violation of Section 4(5) of the Transfer Act (as no exceptional reasons for transfer were given) was held to be not in public interest but to accommodate another employee. In Writ Petition 2665 of 2011, Nagpur Bench of Bombay High Court has held that mid-tenure transfer will require strict compliance of Section 4(5) of the Act. The special or exceptional reasons for such transfer should be clearly spelled out and recommendation of some office bearer/Minister is not a sufficient ground. Similar view has been taken by the Aurangabad Bench of Bombay High Court in Writ Petition No 5622 of 2009 that in the matter of mid-term transfer of exceptional cases, recording of reasons is a mandate. The learned counsel for the Applicant has also relied on the judgment of the Hon. Bombay High Court in PIL No 41 of 2008 where the Hon. Court has hauled up authorities for negligence in discharge of duties. <sup>by the said authorities</sup> The Respondents No 2 & 3, accordingly should be held responsible for failure to obey order of the Government dated 30.6.2012.

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4. The <sup>learned</sup> Presenting Officer (P.O) Shri N.K. Rajpurohit argued that the Applicant on promotion was given a posting at the Government Medical College, Aurangabad as Professor by order dated 17.5.2012. However, he never joined at Aurangabad and brought political pressure to get a posting at Mumbai. The Applicant is challenging the cancellation of transfer of the Respondent No. 3 on two counts - it was under political pressure and the Respondent No. 3 has been in Mumbai for 17 years. The Applicant has also brought political pressure for getting a posting in Mumbai and he has prior to transfer to Dhule in 2001, been in Mumbai for 11 years. Learned Presenting Officer argued that statutory provisions of the Transfer Act have not been violated, the order dated 4.12.2012 has been approved by the competent authority, and there is no malafide. Learned Presenting Officer pointed out that the impugned order is challenged on non specific grounds citing para 7.1 of the Original Application. He stated that the judgments cited by the learned counsel for the Applicant are not applicable as in the present case the Applicant is posted on promotion and there is no question of any transfer either mid-term or mid-tenure.

5. The learned Advocate Shri A.V. Bandiwadekar on behalf of Respondent No. 2 argued that the impugned order dated 4.12.2012 is not a transfer order at all. It has cancelled the earlier order dated 30.6.2012, which

was also not a transfer order under the Transfer Act. Provisions of the Transfer Act are not applicable at all in the present case. The transfer, if any, was in respect of Respondent No. 3 when he was transferred by order dated 30.6.2012 from Mumbai to Dhule. He (Respondent No. 3) never challenged his transfer order and the Respondent No. 1 cancelled the transfer order dated 30.6.2012 in respect of the Respondent No. 3 by order dated 4.12.2012. It is denied that the Respondent No. 3 has not been transferred for 17 years. He was appointed in 1996 as Lecturer and was promoted to the post of Associate Professor in 2000. He was further promoted as Professor in the year 2008. Hence, he has not been occupying the same post. The learned counsel for the Respondent No. 3 further contended that the Applicant on promotion was posted to Aurangabad initially but brought political pressure for a posting in Mumbai. The Applicant has not substantiated malafide against the Respondents No 1 and 3. Respondent No. 3 is guiding a large number of Post Graduate students for M.D Degree and Diploma. If he was transferred to Dhule in absence of M.C.I recognized teaching Department in Skin, there, the studies of these students would have been jeopardized. This might have been the reason to cancel the transfer of the Respondent No. 3.

6. I have carefully perused the material on record and considered the arguments put forth on behalf of the

parties. The Applicant is aggrieved as he was not allowed to join as Professor at Grant Medical College, Mumbai, though an order was passed by Respondent No. 1 on 30.6.2012 posting him there on promotion. By another order of the same date, the Respondent No. 3 was transferred to Dhule. The Applicant's case is based on the premise that he was posted as Professor, Grant Medical College, Mumbai, by order dated 30.6.2012 and order dated 4.12.2012 is a mid-term and mid-tenure transfer order by which he is transferred to Aurangabad from Dhule. Section 4 of the Transfer Act is reproduced below :-

“4 (1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.

(2) The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and may in the year.

(3) Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:

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Provided that any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May;

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely-

- (i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;
- (ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority".

It will be seen that the order dated 30.6.2012 is not covered by any of the provision of this section. In fact, it is a promotion order posting the Applicant at a post

become vacant due to transfer of the Respondent No. 3 from Mumbai to Dhule. The Respondent No. 3 was, however, not relieved from the post at Grant Medical College, Mumbai. The Applicant, therefore, could not join at Mumbai. Though he claimed to have assumed charged himself, that has no legal validity. It appears that the Respondent No. 2 has recommended by letter dated 5.7.2012 that the transfer of the Respondent No. 3 may be cancelled as four research projects under his guidance were under way which may require one to one and half years for completion. Moreover, Respondent No. 3 has done excellent work in Grant Medical College and Sir J.J Hospital. Considering the fact that these Institutions are Premier Medical College and Tertiary Care Hospital in the Country, the Respondent No. 2 recommended to Respondent No. 1 to cancel the transfer order of Respondent No. 3. Based on the recommendation of the Respondent No. 2, the transfer of Respondent No. 3 was cancelled. This is stated in affidavit in reply of the Respondent No. 1 and supported by noting on the files of the Respondent No. 1, approved by Hon. Chief Minister. From these, it will be clear that the provisions of Transfer Act have not been violated as regards transfer of the Respondent No. 3. Normally, the Applicant would have no locus-standi to challenge transfer of the Respondent No. 3. However, in the present case, as he was posted to the post which was to become vacant pursuant to the transfer of the Respondent No. 3, he could challenge the

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cancellation of such transfer order. It is seen above, that there were valid reasons for cancellation of transfer order of the Respondent No. 3, though he actually never left the charge. The Applicant cannot challenge the order on the ground either that the Respondent has been at Mumbai for 17 years, when he himself has been in Mumbai for 11 years, or on the ground that cancellation of transfer order of the Respondent to Dhule was due to political pressure, when he himself has brought political pressure for change in posting from Aurangabad to Mumbai. The order dated 30.6.2012 is not a transfer order. The said order was cancelled by another order (which is impugned) dated 4.12.2012. As the Applicant never actually joined in pursuance of order dated 30.6.2012, the order dated 4.12.2012 cannot be said to be a transfer order. It is a fact that Respondent No. 2 should have obeyed order dated 30.6.2012. However, as a responsible public officer, if he genuinely wanted services of the Respondent No. 3 to be continued in his institution in wider public interest, he cannot be faulted for not relieving the Respondent No. 3. The Applicant is not prejudiced, as he has been posted to Aurangabad, the post he was given by order dated 17.5.2012. It is to be noted that the order dated 17.5.2012 was modified on the behest of the Applicant by applying political pressure. As the impugned order dated 4.12.2012 is not a transfer order, provision of the Transfer Act will not be attracted. Judgment cited by Learned Counsel for the Applicant will

not be applicable. Cancellation of transfer of the Respondent No. 3 is based on sufficient reasons as discussed above.

7. In view of the above facts and circumstances of the case, it cannot be held that the order dated 4.12.2012 violates provisions of the Transfer Act. No prejudice is caused to the Applicant as the same order regularizes the period after relief of the Applicant from Shri Bhausahab Hire College, Dhule to the date of joining at Government Medical College, Aurangabad as compulsory waiting. There is no reason to interfere with the order dated 4.12.2012. The Original Application stands dismissed. There will be no order as to costs.

Sd/-

**Place : Mumbai**  
**Date : 18.04.2013**  
**Typed by : A.K. Nair.**

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**( Rajiv Agarwal )**  
**Vice-Chairman**