

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1179 OF 2022

DISTRICT : MUMBAI

Sub.:- Transfer

Shri Vasant B. Helavi [Reddy].)
Age : 60 Yrs, Working as Principal,)
Elphinstone College, M.G. Road,)
Mumbai – 32 and residing at B-206,)
Om Shivkrupa CHS, MTNL Road,)
Dadar (W), Mumbai – 400 028.)...**Applicant**

Versus

The State of Maharashtra.)
Through Principal Secretary,)
Higher & Technical Education Department)
[Higher Education], Mantralaya,)
Mumbai – 400 032.)...**Respondent**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 13.04.2023

JUDGMENT

1. The Applicant has challenged his transfer order dated 09.11.2022 whereby he is transferred from the post of Principal, Elphinstone College, Mumbai to the post of Examination Coordinator [Higher Education], State Common Entrance Test Cell, Mumbai (CET), invoking jurisdiction

of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was directly recruited through Maharashtra Public Service Commission (MPSC) and posted as Director, Administrative Services and Training Centre, Kolhapur by order dated 30.08.2008. Later, during the course of service, he was transferred and posted as Director, Government Vidharbha Institute of Science, Amravati by order dated 14.06.2019. On his representation, he was transferred from Amravati and posted as Principal, Elphinstone College, Mumbai on vacant post by order dated 24.09.2021. He claims to be entitled to 3 years' tenure in the said post in terms of Section 3(1) 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). However, abruptly, Respondent – Government by order dated 09.11.2022 transferred and posted him on the post of Examination Coordinator [Higher Education], CET on administrative ground, invoking Section 4(5) of 'Transfer Act 2005' on the allegation that during his tenure at Government Vidharbha Institute of Science, Amravati, he indulged in serious financial irregularities and caused heavy loss to the Government. The Applicant has challenged the transfer order dated 09.11.2022 in the present O.A. inter-alia contending that he is transferred out of cadre amounting to reduction to lower post and punitive amongst other grounds.

3. The Respondent resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that while Applicant was serving as Director, Government Vidharbha Institute of Science, Amravati, he indulged in gross financial irregularities and caused heavy financial loss to the Government. The Government had appointed Committee to inspect the record and submit the report. Accordingly, Committee submitted report

on 08.02.2022 attributing serious financial irregularities to the Applicant and thereby causing loss of Rs.3,29,75,488/- to the Government. Therefore, the transfer of the Applicant was found necessitated, so as to avoid any such recurrence and posted him at CET, Mumbai. The Respondent contends that though the said post was carrying less pay scale, after transfer order dated 09.11.2022, the Government has protected his pay by issuing order of pay protection on 09.12.2022. As regard departmental action for alleged financial irregularities, the Respondent contends that initiation of departmental proceeding is under consideration.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant in reference to pleadings sought to assail the impugned transfer order on following grounds :-

- (i) The basic appointment of the Applicant is on the post of Principal or Director, but by impugned transfer order, he is posted on out of cadre post carrying less pay scale, change of duties which amount to reduction to lower post and punishment in law.
- (ii) The mandate of the decision of Hon'ble Supreme Court in **(2013) 15 SCC 732 [T.S.R. Subramanian Vs. Union of India]** for placing the transfer matter before Civil Services Board (CSB) is not complied with and there is flagrant breach of the direction of Hon'ble Supreme Court and that count itself, transfer is totally unsustainable.

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer sought to justify the impugned transfer order *inter-alia* contending that in view of serious financial irregularities and heavy financial loss caused to the Government by the Applicant during his tenure at Vidharbha Institute of Science, Amravati, his transfer was found necessitated to avoid any such recurrence at Elphinstone College where he was posted and accordingly,

the Government by invoking Section 4(5) of 'Transfer Act 2005' transferred the Applicant with the approval of Hon'ble Chief Minister as a competent authority for such mid-term and mid-tenure transfer. As regard absence of recommendation of CSB, she fairly concedes that matter was not placed before CSB. However, she sought to justify the transfer on the ground that it was found necessitated and approved by Hon'ble Chief Minister. She does not dispute that the posting at CET given to the Applicant by impugned transfer order is out of cadre post carrying different pay scale as well as different nature of duties. However, learned P.O. submits that by order dated 09.12.2022 (passed after one month from the date of transfer order), the Government protected the pay of the Applicant, and therefore, there is no such financial loss to the Applicant. On this line of submission, she sought to justify the impugned transfer order.

6. In view of pleadings and submissions, the issue posed for consideration is whether the impugned transfer order is legally sustainable in law.

7. Needless to mention, transfer being an incidence of Government service, the Government servants have no legally enforceable right to claim particular post for a specific period and it is for the competent authority to decide who should be transferred where. As such, if transfer is made for administrative exigencies in *bonafide* manner and if there is no violation of any statutory provisions, the Tribunal should not interfere in the transfer order. However, at the same time, if transfer is found in violation of statutory provisions or it has effect of directing a Government servant to discharge duties of a post carrying less pay scale and the nature of duties are totally different, in that event, such transfer would amount to punishment in law. A Government servant can be reduced to lower rank or post carrying less pay scale only by way of punishment after he found guilty in departmental enquiry (DE).

8. Indisputably, the Applicant was directly recruited through MPSC to fill-in the post of Principal/Director of Government Institutes in 2008. Thus, in view of his selection, he could be posted either as a Principal or Director of Government Academic Institutes and not outside this cadre. It is in pursuance of his appointment, he was posted as Director, Government Administrative Services Training Institute, Kolhapur and later, transferred to the post of Director, Government Vidharbha Institute of Science Amravati and then transferred to Principal, Elphinstone College, Mumbai. However, by impugned transfer order dated 09.11.2022, he was transferred out of cadre and posted at CET as Examination Coordinator, which is administrative post. Whereas, his initial cadre is from teaching cadre. It is also not in dispute that the post of Examination Coordinator (CET) carries less pay scale than the pay scale which the Applicant was getting as Principal, Elphinstone College, Mumbai. It is only after one month by order dated 09.12.2022, the Government realizing the mistake protected pay and allowances of the Applicant stating that he will be paid same pay and allowances which he was getting as Principal, Elphinstone College, Mumbai. This being so, obviously, transfer was on the post carrying less pay scale with different nature of duties as well as it was on different post outside the cadre of Applicant.

9. The learned P.O. could not point out any provision where transfer on a post carrying lower pay scale and on a post with different nature of duties would be permissible. All that, she submits that in view of serious financial irregularities, the transfer was found necessitated to avoid any such recurrence in Elphinstone College, Mumbai at the hands of Applicant. In my considered opinion, this could be hardly legally acceptable reason for transfer. In absence of any such Rules, a Government servant cannot be asked to work on a post carrying lower pay scale and to discharge different duties which are totally alien to his cadre and post to which he belongs. It is only by way of punishment

after DE, such course of action would be permissible, if law provides the same.

10. On the basis of some *prima-facie* material of indulgence in financial irregularities, all that it was required and expected from the Government to take appropriate departmental action against the Applicant and to take it to the logical conclusion. However, instead of adopting appropriate legal procedure and method, the Respondent resorted to short-cut method of mid-term and mid-tenure transfer on a lower post carrying less pay scale with different nature of duties, which is totally unsustainable in law.

11. Shri Bandiwadekar, learned Advocate for the Applicant in this behalf rightly referred to the observations made by Hon'ble High Court in **2022(6) Mh.L.J. [Dattatray K. Pawar Vs. Union of India]**. In that case, while dealing with the order of transfer of Central Government employees, in Para No.17, it has been held as under :-

“17. By way of reiteration, we observe that an order of transfer would amount to a punishment if by reason thereof the officer/employee has been asked to discharge duty of a post lower than that he had been holding or if his pay has been downgraded or his promotional prospects are jeopardized or if the order is stigmatic, in the sense that he would have to carry an indelible stain for the rest of his service career without there being any finding of guilt recorded against him. None of these incidents is present in the case of the petitioner's transfer. We, therefore, cannot hold his transfer as punitive.”

12. In that case, there was no such transfer on lower post, and therefore, transfer was held not punitive. However, the principles laid down holds the field that where employee has been asked to discharge the duties of a post lower than he had holding or if his pay has been downgraded or his promotional aspects are jeopardized or the order is stigmatic, in that event, it amounts to punishment.

13. Apart, there is one more fundamental defect in the impugned transfer order since admittedly it was not placed before the CSB as

mandated by the Hon'ble Supreme Court in **T.S.R. Subramanian's** case. No explanation whatsoever is forthcoming for not placing the matter before CSB. In terms of directions given by the Hon'ble Supreme Court, the Government had constituted the CSB at various levels in terms of G.R. dated 31.01.2014 and placing of the matter before CSB is mandatory requirement. However, there is blatant defiance and disregard to binding precedent laid down by the Hon'ble Supreme Court in **T.S.R. Subramanian's** case.

14. Notably, the disregard and disobedience of the directions of the Hon'ble Supreme Court given in **T.S.R. Subramanian's** case was brought to the notice of Chief Secretary of Government of Maharashtra by the Tribunal (preceded over by the Hon'ble Chairperson in order dated 09.11.2017 passed in **O.A.No.770/2017 (Sunil Saundane V/s State of Maharashtra)** wherein transfer order was quashed and set aside on the ground of non-placing of the matter before CSB. In Para Nos.14 and 15, the Tribunal held as under :-

*"14. In order that the observance of dictate contained in the case of **T.S.R. Subramanian's** and Others case supra is meticulously followed and the incident of side tracking or ignoring the direction contained in the judgment of Hon'ble Supreme Court does not recur, it is necessary to issue certain directions to the Chief Secretary of Government of Maharashtra, which are issued in operative part of this judgment.*

15. Hence, the following order is passed :-

(A) The Chief Secretary of Government of Maharashtra is directed as follows :-

(i) Chief Secretary should submit a note to the Hon'ble the Chief Minister and remind and apprise the Hon'ble the Chief Minister about binding nature and directions contained in the case of **T.S.R. Subramanian's** and Others Versus Union of Indian and Others, decided on October 31, 2013.

(ii) Chief Secretary should suggest and request Hon'ble the Chief Minister to issue an advisory to all Hon'ble Ministers for due observance of the case of **T.S.R. Subramanian's** and Others Versus Union of Indian and Others, decided on October 31, 2013.

(iii) Chief Secretary should cause an advisory to be issued to the Secretarial Staff of the Hon'ble the Chief Minister and other Hon'ble

*Ministers' offices to be vigilant in observance of the mandate contained in the judgment in **T.S.R. Subramanian's** and Others Versus Union of Indian and Others, decided on October 31, 2013.*

(iv) Place before this Tribunal a report of action taken on this judgment.

(B) Original Application is allowed in terms of foregoing paragraphs 11 to 13.

(C) The costs be the cost in the cause."

15. Unfortunately, despite aforesaid directions disregard to the binding precedent of **T.S.R. Subramanian's** case is continued unabatedly. Regretfully, the Respondents have no regard to the observance of law and directions given by the Hon'ble Supreme Court in **T.S.R. Subramanian's** case as well as directions given by the Tribunal in the matter of **Sunil Soundane's** case decided on 09.11.2017.

16. Admittedly, though the Committee has submitted report on 08.02.2022 which *prima-facie* shows serious financial irregularities, no further steps are taken by the Government for initiation of appropriate departmental proceeding, though the period of more than one year is now over. During the course of hearing when repeatedly the query was raised about inaction of the Government for initiating D.E, all that learned P.O. submits that it is under consideration. This again shows inaction and lethargy on the part of Respondents to initiate appropriate departmental action and to take it to logical conclusion.

17. True, if there is *prima-facie*, material about some financial irregularity or misconduct, it was permissible to the Respondent's to transfer the Applicant in the cadre without prejudice to his service conditions and there was no necessity to wait for final decision in D.E. The Applicant could have been transferred within cadre and if necessary by withdrawing powers of Drawing and Disbursing Authority from him so that there would be no recurrence of any such financial irregularity. However, instead of adopting proper legal method and procedure, the

Respondent has adopted strange way of transferring the Applicant out of cadre to a lower post carrying less pay scale with total change in duties assigned to the post, affecting further prospect of promotion which is totally arbitrary and impermissible in law. Indeed such order amounts to punishment. The impugned order is, therefore, liable to be quashed and set aside.

18. However, it is clarified that it is open to the Respondents to consider the need of transfer of the Applicant within the cadre adhering to provisions of law and to initiate appropriate departmental proceeding for alleged financial irregularities in accordance to law and to take it to logical conclusion expeditiously.

19. The totality of the aforesaid discussion leads me to sum up that impugned transfer order is arbitrary and in blatant contravention of the mandate of the Hon'ble Supreme Court in **T.S.R. Subramanian's** case and liable to be quashed and set aside. The Applicant needs to be reposted on the post from which he was transferred. The Government is free to reconsider the need of transfer in observance of law. Hence, the following order :-

ORDER

- (A) Original Application is allowed.
- (B) The impugned transfer order dated 09.11.2022 is quashed and set aside.
- (C) The Applicant be reposted on the post he was transferred from within a week. Thereafter, it is open to the Government to reconsider the need of transfer adhering to the provisions of law.

(E) No order as to costs.

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

Mumbai

Date : 13.04.2023

Dictation taken by :

S.K. Wamanse.

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