

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.30 OF 2016

DISTRICT : PUNE

Shri Deepak Eknath Shinde.)
Aged 34 Yrs. Working as Tahasildar,)
Hatkanangale, Dist : Kolhapur and)
Residing at Jawale, Post : Nirgudsar,)
Tal.: Ambegaon, District : Pune.)...**Applicant**

Versus


1. The State of Maharashtra.)
Through the Principal Secretary)
(Revenue), Revenue & Forest Dept.)
Mantralaya, Mumbai - 400 032.)
2. Shri Gurningappa T. Birajdar.)
Age : Adult, Occu. Government)
Service as Tahasildar, Akkalkot,)
District : Solapur.)...**Respondents**

Shri B.A. Bandiwadekar, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondent No.1

Shri G.M. Savagave, Advocate for Respondent No.2.

PER : R.B. MALIK (MEMBER-JUDICIAL)



DATE : 10.08.2016

JUDGMENT

1. This Original Application (OA) is directed against the order of transfer of the Applicant who is Tahsildar, Hatkanangale, District Kolhapur to Gaganbawda in the same District. The 2nd Respondent has been transferred from Akkalkot to Hatkanangale. Both are working as Tahsildars. The transfers admittedly are mid-term and mid-tenure and the Applicant is aggrieved thereby while the 2nd Respondent supports the said transfer.

2. I have perused the record and proceedings and heard Mr. B.A. Bandiwadekar, the learned Advocate for the Applicant, Smt. K.S. Gaikwad, the learned Presenting Officer for Respondent No.1 and Shri G.M. Savagave, the learned Advocate for Respondent No.2.

3. Be it noted at the outset that on 12.1.2016, the Single Bench of the Hon'ble Chairman was pleased to stay the transfer order observing inter-alia that no reasons much less special reason or exceptional circumstance came to be recorded by the Government while ordering the impugned transfer order and it was found *prima facie* that the said order was in violation of the mandatory provision



of Section 4(4) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and on this ground, interim relief was granted which in fact, left the 2nd Respondent in the manner of speaking stranded. However, the Hon'ble Chairman by his order of 5.5.2016 clarified that the State Government was free to give a regular or transit posting pending this OA to the 2nd Respondent and it is clear that in view thereof, the 2nd Respondent has been given some posting. I am herein concerned only with the validity of the orders of transfer of the Applicant from Hatkanangale to Gaganbawda and the 2nd Respondent from Akkalkot to Hatkanangale.

4. I think, I must make it very clear that quality-wise, nothing has moved for the betterment of the State from the day, the Hon'ble Chairman was pleased to make the interim orders till now. Much as the Respondents and more particularly, the 1st Respondent whose cause was ably espoused by the learned P.O. Smt. Gaikwad pat themselves on the back for having followed the procedure, I do not think, they are justified in doing so. The record shows that one Hon'ble Member of legislative assembly had grievance and complaint against the Applicant. Now, I need not closely examine that aspect of the matter, save

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and except to make an observation that ultimately, the said complaints were enquired into by the Collector of Kolhapur who submitted his report to the Divisional Commissioner, Pune (Revenue Establishment) on 21.12.2015 and concluded in effect that there was nothing against the Applicant, and therefore, the complaint against him could be filed.

5. Now, that is in so far as the facts are concerned. It is very clear that the service condition of transfer of employees has now been codified by the Transfer Act, and therefore, any and every order of transfer must conform to the said enactment. A very detailed reference to each and every legal provision thereof may not be really necessary or germane hereto and herefor. But broadly so speaking, a combined reading of Sections 3 & 4 (1) of the said Act, in its application to the present facts would show that the Applicant quite clearly did not complete his tenure at Hatkanangale, and therefore, the Transfer Act would clearly apply and the State will have to clearly establish the compliance therewith. Here, I do not think, there is any material on record to show that the said compliance was made in letter and spirit especially in spirit. It must be clearly understood that in so far as complaints are concerned, there may be substance therein or may not be.

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But when it comes to the provisions of the Transfer Act, there is a peculiar hue thereto and generally so speaking, mere citation of complaints would not be sufficient to uphold the order of mid-term and/or mid-tenure transfer. If the transfers are to be made and if Transfer Act is attracted, then the provisions thereof must be complied with. If some other provision or Rule relating to some other service condition is attracted in view of the complaints, etc. the State will be free to take recourse thereto, but under the garb of complaints, the State cannot give a go-bye to the express provisions of the Transfer Act. At Exh. 'F' hereto (Page 29 of the P.B.), there is a G.R. dated 11th February, 2015 issued as a result of a few pronouncements of this Tribunal, passages wherefrom have been quoted. The guideline is that in the first place transfers should not be made till such time as the statutory tenure is completed. The provisions of the Transfer Act are referred to and several guidelines have been laid down as to how to go about implementing the Transfer Act for the purposes of this O.A. It is not really necessary for me to closely read the various segments of that particular G.R. But it is very clear that in the context of the present facts, the State has not complied with its own G.R. nor has it with the provisions of the Transfer Act. Mere repetition several times that the procedure was

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followed will not be sufficient. If a ground under the above quoted provisions is invoked that must be clearly pleaded in the first place and then made good at the time of arguments. The matter after-all is before a judicial forum which exercises jurisdiction of judicial review of administrative action. No doubt, there are jurisdictional circumspection and limitations, but then that is not to be confused with the state of no jurisdiction, and therefore, when such matters are placed in the judicial crucible, there must be material to convince the Tribunal that the facts were such that the steps taken by the State was such as to be capable of being taken and in the set of circumstances such as they are and here that is quite clearly not there.

6. The 2nd Respondent has laid emphasis on the point that the Applicant despite the transfer would still continue to be within Kolhapur District and hence, there will be no prejudice caused to him. No doubt, the 2nd Respondent has filed a detailed Affidavit-in-reply which stand was efficiently pursued by his Advocate Shri Savagave, but in my view, the question of prejudice is not so much significant as is, the compliance with statutory mandate of the Transfer Act. If the transfers are such as to deviate from the dictates of law then that is it. I find no



reason to differ from the interim order and in the same line, I pass the following order.

ORDER

The order transferring the Applicant from Hatkanangale to Gaganbawda and the 2nd Respondent from Akkalkot to Hatkanangale (Exh. 'A' colly., Pages 16 & 17 of the P.B.) stand hereby quashed and set aside. The Applicant shall continue to function at Hatkanangale as if the impugned order was never made. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)

Member-J

11.08.2016

11.08.16

Mumbai

Date : 11.08.2016

Dictation taken by :

S.K. Wamanse.

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