

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.331 OF 2020**

DISTRICT : PUNE

Shri Harshal Radhakrishna Thube,)
Age 35 years, Assistant Professor (Forensic Medicine &)
Toxicology), R/at Flat No.A-2/9, Solace Park,)
B.T. Kawade Road, Pune)..Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Medical Education and Drugs Department,)
9th floor, New Mantralaya, G.T. Hospital Premises))
Lokmanya Tilak Road, Mumbai 400001)
2. The Director,)
Directorate of Medical Education & Research,)
Govt. Dental College & Hospital Compound,)
Near V.T. Mumbai 400001)
3. The Dean,)
B.J. Government Medical College,)
Jai Prakash Narayan Road, Railway Station Rd.)
Pune 411001)..Respondents

Smt. Punam Mahajan – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula R. Bhatkar (Chairperson)

DATE : 23rd July, 2020

J U D G M E N T

1. The issue involved in the matter is very short and therefore the matter can be decided at the stage of admission. Hence, by consent of both the parties matter is finally decided. Admit.

2. The applicant, who is an Assistant Professor (Forensic Medicine & Toxicology) at B.J. Government Medical College, Pune is aggrieved by the mid-term and mid-tenure transfer order dated 14.7.2020 from B.J. Government Medical College, Pune to Government Medical College, Baramati. Hence, he prays that the said transfer order be quashed and set aside and he is to be allowed to work as Assistant Professor (Forensic Medicine & Toxicology) at B.J. Government Medical College, Pune.

3. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

4. Pursuant to the order dated 21.7.2020, the Ld. PO on instructions from the officers of respondent no.1 viz. Shri Santosh D. Deshmukh, Under Secretary, Medical Education and Drugs Department, Mantralaya, Mumbai, who are present in the Court informs the Tribunal that the Government has followed proper procedure while transferring the applicant to the post of Assistant Professor of Forensic (hereinafter referred as 'the said post') at Government Medical College (GMC), Baramati. He submits that the proposal dated 5.5.2020 was given by the

Dean of B.J. Government Medical College (GMC), Pune for filling up the post in the GMC, Baramati. Through proper procedure the said proposal was placed before the Civil Services Board (CSB), whose meeting was held on 8.5.2020 in which the CSB took decision that in view of serious situation of COVID-19 Pandemic all the posts in the GMC, Baramati are to be filled in after taking approval from the higher authority i.e. the Hon'ble Chief Minister. The applicant was transferred to the said post of Assistant Professor of Forensic at GMC, Baramati by order dated 14.7.2020. He was relieved by order dated 20.7.2020 from B.J. GMC, Pune to GMC, Baramati.

5. The Ld. Presenting Officer has further submitted that special reasons for transfers are mentioned and thus the requirement of Section 4(4) and 4(5) of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to 'the Transfer Act' for the sake of brevity) are fulfilled and therefore the order of mid-tenure transfer of the applicant is made as per the rules and the procedure laid down under the law.

6. The Ld. Advocate for the applicant pointed out that the applicant was transferred from Pune to Baramati by this order because the said post in GMC, Barmati was shown vacant. The fact that Dr. Hemant Vaidya who was working as Assistant Professor at the relevant time was not taken into account by the higher authority and therefore she prays that the applicant who is sent back to Pune from Baramati by order dated 20.6.2020 is to be maintained.

7. Ld. PO in reply has pointed out that the appointment of Dr. Hemant Vaidya was on temporary basis and it was not permanent appointment and the applicant was sent to Baramati on deputation and therefore he was transferred from Pune to Baramati by CSB and higher authorities.

8. The admitted facts are as follows:

(i) The applicant was working as the Assistant Professor of Forensic, GMC, Pune and was transferred on deputation on 5.3.2019. He joined on 6.3.2019 and worked there on deputation till 20.6.2020.

(ii) The Dean of GMC, Baramati by using powers under the GR dated 8.10.2001 has appointed Dr. Hemant Vaidya on temporary basis as Assistant Professor of Forensic and therefore the applicant who was on deputation was transferred back to his original post i.e. Assistant Professor, GMC, Pune. Accordingly applicant took charge on 21.6.2020 and he started working at Pune .

(iii) Before that, Dean, GMC, Baramati has initiated proposal of filling up all the vacant posts in Medical Colleges on 5.5.2020 and the said proposal was placed before Civil Services Board who held meeting on 8.5.2020. In the said meeting the members of the CSB considered the proposal and they filled up many posts in GMC, Baramati including the post of Assistant Professor of Forensic while filling up the said post at GMC, Baramati the CSB transferred the applicant to Baramati on the said post and thereafter the Hon'ble Chief Minister the higher authority has approved the said proposal.

9. The limited challenge in this OA is that the post of Assistant Professor of Forensic of Baramati is shown vacant when the Hon'ble Chief Minister the higher authority approved the proposal of transfers. The file of noting of the meeting of CSB of 8.5.2020 is brought today and the relevant portion of giving reasoning of the mid-term transfer is read over by the Ld. PO. The CSB is fully justified and has correctly given the

reason that the vacant post in the GMC, Baramati are to be filled up due to unprecedented and serious situation of COVID-19 Pandemic and thus there is compliance of Section 4(4) and 4(5) of the Transfer Act. Similarly, at the relevant point, the applicant was working at the said post on deputation and therefore the said post was de jure vacant.

10. Dr. Vaidya was appointed by Dean of the GMC, Baramati as Assistant Professor of Forensic on 20.6.2020. Thus, the said post was filled up by temporary appointment and it was functional. However, when the proposal was approved by the higher authority, the fact of temporary appointment of Dr. Hemant Vaidya was not placed before the authority. It was argued by the Ld. Advocate for the applicant that in this COVID-19 situation more and more doctors are to be employed and properly placed in the vacant posts. It is also pointed out by the Ld. Advocate for the applicant that the post of Assistant Professor in B.J. GMC, Pune is fallen vacant because of the transfer of the applicant.

11. A query is made by the Tribunal to the officers who are present in the Court and the Ld. PO whether the post in B.J. GMC, Pune is filled up by transferring somebody or is it still vacant. I am informed that the said post is still vacant.

12. The power of the transfers under Section 4(4) and 4(5) of the Transfer Act are completely with the Government and if the special reasons are mentioned there is no need for the Tribunal to interfere with the said order. However, if at all some omission is pointed out then the things may be reconsidered afresh in the interest of administration under the Transfer Act. In the present matter the fact that Dr. Hemant Vaidya was working temporarily on the said post and thus said post de facto was not vacant when the facts were placed before the Hon'ble Chief Minister

the higher authority and now the post of Assistant Professor of Forensic, B.J. GMC, Pune is vacant because of the transfer of the applicant.

13. Hence, the case of the applicant may be considered afresh by the CSB preferably within four weeks. With these observations the OA is disposed off.

Sd/-

(Mridula R. Bhatkar, J.)
Chairperson
23.7.2020

Dictation taken by: S.G. Jawalkar.

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