

O.A. No. 333/2016.

Ku. Saroj Shankarrao Athawale V/s State of Maharashtra & 2 others.

(Shri R.B. Meshram, Advocate for the applicant and Mrs. S.V. Kolhe, learned P.O. for respondents.)

Coram : S.S. Hingne, Member (J).

Dated : 4th October 2016.

Order

With the consent of counsel for both parties, matter is heard and decided at the admission stage.

2. Heard Shri R.B. Meshram, learned counsel for the applicant and Mrs. S.V. Kolhe, learned P.O. for the respondents.

3. The applicant-Incharge Sister has filed this O.A. challenging the order dated 31.5.2016 (P. 27, A.8) by which she is transferred from Nagpur to Yavatmal.

4. According to the applicant, she was transferred on the present post vide order dated 31.3.2015 (P. 16, A.2). Thus, she was not due for transfer. However, she is subjected to present transfer at the instance of the Dean, Govt. Medical College and Hospital (GMCH), Nagpur (R.3). Reason was that earlier she was posted in the OTC Department vide order dated 19.8.2014 and thereafter the Dean, GMCH, Nagpur transferred her from Autoclave to Matron office vide order dated 22.5.2015 and she protested it and complained to the higher authorities and the Minister, therefore, the Dean was annoyed. It is further

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submitted that several sisters are working at the station since long and posted earlier to the applicant and working there for last 20 to 22 years, but are not transferred. Thus, the order is malafide.

5. The respondents' case is that there are several complaints against the applicant from all the staff members. The superior authorities of the applicant under whom she is working have also proposed to the Dean (R.3) to transfer the applicant. She is facing prosecution in one case and also enquiries. For the smooth administration, proposal for transfer was made. Same is approved by the Civil Services Board and the order is issued.

6. The transfer order is issued on 31.5.2016. As such, it is not a mid-term transfer. However, learned P.O. submits that it is issued before completion of the tenure, but on compliance of Section 4 (5) of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as, "Transfer Act").

7. The learned counsel for the applicant urged that the complaints referred to above pertain to the years 2010, 2011, 2012 and 2015 and thus the same are old and, therefore, cannot be considered being stale. However from the record made available by the learned P.O., it reveals that there are several complaints from all the staff

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members of the office against the applicant. She has come with a case that she is transferred at the instance of the Dean (R.3).

8. The perusal of the record reveals that only few complaints are filed on record in this case and there are several other complaints and the applicant had sent complaint to the Hon'ble Health Minister in December 2015. Some complaints are filed against the applicant by several staff members by assigning the reasons that the day to day working is affected thereby. It is submitted that the applicant remains absent from duty without intimation, comes late, leaves the office any time for a prolonged period, thereby the important work like operation is affected. She quarrels with the other employees. She is also facing prosecution U/s 324 of I.P.C., because she attacked a woman in the beauty parlour as her hair style was disturbed. She also disturbs the work of other employees. Even instances and details are given in the complaint. She opens the tap and, thereby allows to waste the water. Sometimes she switches off the electric supply. She does not pay any heed even to the Technicians in the operation theatre. Some complaints are signed by more than 37 employees complaining against the applicant. Applicant also made several complaints against the several staff members.

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9. According to the respondent No.3, thus the administrative work was disturbed and hence he proposed by communication dated 22.7.2015 to the Director to transfer the applicant giving details. Accordingly all the details were placed before the Civil Services Board in the meeting dated 19th May 2016. After considering the same, the Civil Services Board approved for transfer of the applicant to Yavatmal and accordingly order is issued.

10. Needless to mention that if the official work is to be done in a routine manner maintaining the official and administrative discipline. If several employees complain against one employee and the said employee also goes on to complain and make representations in writing to the level of the Hon'ble Minister, it definitely affects the administration. Considering the above instances, it goes without saying that such instances not only disturb the official discipline but also affect the Government work at large and thereby public interest adversely. It is worthwhile to note that the complaints are against a particular person only and that particular person has complained against all the staff members and superiors. Instances are not sporadic but going on continuously since long. Faced with this situation, the proposal was made to transfer the applicant. There is no ^{an} iota of material on record that the officer who has made proposal had any animus for the applicant.

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Thus these reasons can be termed as "sufficient" to treat the case as special case for the transfer. The Civil Services Board has also given approval for transfer.

11. However, the matter does not end here. The order is issued by the competent authority. However, there is nothing on record that it is issued with the prior approval of the immediately superior transferring authority. No doubt the order is issued on 31.5.2016 and it is not a mid term transfer. However, the applicant was working on the post from 31.3.2015 (A.2, P.16) and has not completed the tenure and, therefore, it is mid tenure transfer and ought to have been issued complying the provisions of Section 4 (4) (5) of the Act. The order issued by the Director who is head of the Department and competent authority to transfer Group-B & Group-C employees. As per Table (C) of Section 6, the next immediately superior transferring authority is the Minister Incharge. However the order is not issued with the prior approval of that authority as contemplated by Section 4 (5) of the Act. As such the order cannot be said to be legal and valid.

12. In effect, the O.A. deserves to be allowed. However, as observed earlier, there are sufficient reasons to transfer the applicant in the nature of complaints and the transfer can be panacea to maintain

smooth administration. As such it is made clear that the respondents can issue fresh transfer order on complying the legal provisions.

13. Consequently the transfer order dated 31.5.2016 is quashed.

The respondents are at liberty to issue fresh transfer order if they want on complying the legal provisions.

No order as to costs.



(S.S.Hingne)
Member (J)

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