

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.414 OF 2023

DISTRICT: Solapur
Subject: Transfer

Shri Manoj Rajaram Thakare)
Age: 35 yrs, Occ: Executive Engineer, Public)
Works Division No.1, Solapur.)
R/o. Chirabandi Bungalow, Ratandeeep Hsg.)
Society, Gandhinagar, Solapur City,)
Dist. Solapru – 413 003.).....Applicant

VERSUS

- 1] The State of Maharashtra, through the)
Additional Chief Secretary, PWD,)
Mantralaya, Mumbai 400 032.)
- 2) Shri Dattatray M. Gawade, Occ. Executive)
Engineer, Public Works Division,)
Pandharpur, Dist. Solapur.)..Respondents.

Shri P. A. Daga, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent No.1.

None present on behalf of Respondent No.2.

CORAM : Shri Debashish Chakrabarty, Member (A)

DATE : 29.02.2024

J U D G M E N T

1. The Applicant who was working on post of 'Executive Engineer' PWD No.1 Solapur has invoked provisions of 'Section 19' of 'Administrative Tribunals Act 1985' to challenge 'Transfer Order' dated 17.04.2023 of PWD to post him as 'Executive Engineer Directorate of Municipal Administration MC, Sangli' and also 'Transfer Order' dated

1.04.2023 of PWD to post Respondent No.2 as 'Executive Engineer PWD No.1 Solapur'.

2. The Applicant was represented by Shri P.A. Daga, learned Advocate; while 'Respondent No.1' was represented by Smt. Kranti Gaikwad, learned P.O. However, 'Respondent No.2' did not choose to remain present either 'In Person' or to be represented by any learned Advocate.

3. The learned Advocate for Applicant stated that Applicant came to be promoted to cadre of 'Executive Engineer' of PWD on 05.01.2022 and was thereupon was posted as 'Executive Engineer PWD No.1 Solapur'.

4. The learned Advocate for Applicant further stated that Applicant was working on post of 'Executive Engineer PWD No.1 Solapur' until by 'Transfer Order' dated 17.04.2023 of PWD, he came to be suddenly transferred to vacant post of 'Executive Engineer Directorate of Municipal Administration MC, Sangli' within just 1 year and 3 months as against 'Normal Tenure' of 3 Years in contravention of provisions of 'Section 3(1)(a)' through unlawful exercise of 'Statutory Powers' under 'Section 4(4)(ii)' and 'Section 4(5)' of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

5. The learned Advocate for Applicant thereupon contended that Applicant was thus transferred 'Mid Tenure' and 'Mid Term' due to 'Political Influence' exercised by 'Respondent No.2' who instead should

have been directly posted to the vacant post of 'Executive Engineer Directorate of Municipal Council Administration MC, Sangli'.

6. The learned Advocate for Applicant argued that there was no 'Special Reasons' or 'Exceptional Circumstances' to justify the 'Mid Tenure' and 'Mid Term' transfer of Applicant. He further contended that grounds cited in 'Transfer Order' dated 17.04.2023 of PWD are only 'Public Interest' and 'Administrative Reasons'.

7. The learned Advocate for Applicant further contended that provisions of 'Section 6' of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 were not observed as there was no consultation between 'Minister-in-Charge of PWD' and 'Additional Chief Secretary PWD'.

8. The learned Advocate for Applicant emphasized that Applicant has been posted as 'Executive Engineer Directorate of Municipal Administration MC, Sangli' which is an 'Ex Cadre' post for 'Executive Engineers' of PWD. The Applicant was therefore sent on 'Deputation Post' in contravention of guidelines in GAD GR dated 17.12.2016. The learned Advocate for Applicant further emphasized that being 'Mid Tenure' & 'Mid Term' transfer; the guidelines in GAD GR of 11.02.2015 were not observed by PWD.

9. The learned Advocate for Applicant summed up his arguments by emphatically stating that Applicant had worked diligently to complete all works on time which were being executed under jurisdiction of 'Executive Engineer No.1 PWD Solapur'. The Applicant was not given any opportunity of being heard by Chief Engineer PWD Pune Region Pune. The 'Transfer Order' dated 17.04.2023 of PWD was outcome of 'Arbitrary Exercise' of 'Statutory Powers'. Hence, 'Transfer Order' dated 17.04.2023 of PWD deserves to be quashed and set aside and Applicant should be posted back as 'Executive Engineer PWD No.1 Solapur'.

10. The learned P.O. relied on Affidavit-in-Reply filed on 19.07.2023 on behalf of 'Additional Chief Secretary, PWD' by stating that Applicant was transferred from post of 'Executive Engineer PWD No.1 Solapur' by 'Transfer Order' dated 17.04.2023 of PWD for 'Special Reasons' which have been diligently recorded by 'CSB' in meeting held on 13.02.2023 and thereupon its recommendations were accepted by 'Competent Transferring Authority' and next 'Superior Transferring Authority' as per provisions of 'Section 4(4)(ii)' and 'Section 4(5)' of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005

11. The learned P.O. explained at length that overall performance of Applicant as 'Executive Engineer PWD No.1 Solapur' was not upto the expected level and gave details of the important projects which had been

delayed as per report submitted by Chief Engineer PWD Pune Region; Pune dated 07.02.2023 to Secretary (Roads) PWD.

12. The learned P.O. contended that based on report of 'Chief Engineer PWD Pune Region Pune' dated 07.02.2023; the 'CSB' had to promptly hold meeting on 13.02.2023 under Chairmanship of the 'Additional Chief Secretary, PWD'. The 'CSB' had justifiably recommended the transfer of Applicant to the vacant post of 'Executive Engineer Directorate of Municipal Administration MC, Sangli' and subsequently 'CSB' had proposed that Respondent No.2 who was serving as 'Executive Engineer PWD Pandharpur' be posted as 'Executive Engineer PWD No.1 Solapur' based on his request letter dated 24.03.2023. The transfer of Respondent No.2 was made under provisions of 'Section Rule 4(1)', 'Section 4(2)' and 'Section 4(3)' of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Further no 'Political Influence' was been entertained by 'CSB' before recommending transfer of Applicant to post of 'Executive Engineer Directorate of Municipal Administration MC, Sangli' as per provisions of 'Section 4 (4) (ii)' and 'Section 4(5)' of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

13. The learned P.O. then relied again on Affidavit in Reply dated 19.07.2023 filed on behalf of Additional Chief Secretary, PWD to explain that transfer of Applicant to post of 'Executive Engineer Directorate of

Municipal Administration MC, Sangli' was not transfer to 'Deputation Post' under Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981. She referred to GAD GR dated 17.12.2016 relating to transfer of Government Servants on 'Deputation Post' and stressed that after change of 'Policy Guidelines' by GAD GR dated 16.12.2018; as the post of 'Executive Engineer Directorate of Municipal Administration MC, Sangli' had been created by PWD GR dated 04.07.2022 it was required to be filled up directly by the 'Cadre Controlling Authority' of 'Executive Engineers' of PWD and did not require consent of Applicant.

14. The learned P.O. concluded her arguments by reiterating that transfer of Applicant to post of 'Executive Engineer Directorate of Municipal Administration MC, Sangli' was done as per recommendations of 'CSB' which held meeting on 13.02.2023 and upon its approval by 'Competent Transferring Authority' and next 'Superior Transferring Authority' under 'Section 4(4)(ii)' and 'Section 4(5)' of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Hence, case of Applicant had no merit and 'Transfer Order' dated 17.04.2023 of PWD by which he has been posted as 'Executive Engineer Directorate of Municipal Administration MC, Sangli' need not be interfered with and so also 'Transfer Order' dated 17.04.2023 of PWD by which Respondent No.2 had been posted as 'Executive Engineer PWD No.1 Solapur'. The transfer of Respondent No.2 to post of Executive Engineer PWD No.1 Solapur was

approved under provisions of 'Section 4(1)'; 'Section 4(2)' and 'Section 4(3)' of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 as he was due at time of 'General Transfer 2023'.

15. The CSB in meeting held on 13.02.2023 considered only the report of Chief Engineer PWD Pune Region, Pune dated 07.02.2023 submitted to Secretary (Roads) PWD. The 'Minutes of Meeting' of CSB reproduced only extracts from report of Chief Engineer PWD Pune Region, Pune dated 07.02.2023. The report of Chief Engineer PWD Pune Region, Pune dated 07.02.2023 drew quick conclusion about under performance of Applicant while serving as Executive Engineer PWD No.1 Solapur based on progress of just four works viz (i) Construction of Solapur District Public Trust Building (ii) Construction of Wireless Building of SP (Rural) Solapur (iii) Renovation Work of PWD Guest House, Solapur and (iv) Specific Repair Programme of Solapur Regional Office Buildings.

16. The report of Chief Engineer PWD Pune Region, Pune dated 07.02.2023 to Secretary (Roads) PWD thus failed to make an 'Objective Assessment' of entire work done by Applicant as Executive Engineer PWD No.1 Solapur before arriving at conclusion that Applicant was not competent enough to hold the post of Executive Engineer PWD No.1 Solapur and therefore Applicant must be forth with transferred out of jurisdiction of 'Chief Engineer PWD Pune Region, Pune' to any 'Non-Executive Post'.

17. The report of Chief Engineer PWD Pune Region, Pune dated 07.02.2023 to Secretary (Roads) PWD does not have any whisper about the 'Comparative Performance' of Applicant vis-a-vis those serving in Solapur District (i) Executive Engineer PWD No.2 Solapur and (ii) Executive Engineer PWD Pandharpur who is the Respondent No.2. Also without any supportive evidence it attempts to peremptorily conclude that Applicant did not heed to directions given by his 'Superior Officers' who are Superintendent Engineer PWD Solapur and Chief Engineer PWD Pune Region, Pune and failed to have effective coordination with Administrative Heads serving in Solapur District.

18. The transfer of Applicant inevitably is 'Mid Tenure' and 'Mid Term' but was effected upon recommendation made by 'CSB' in meeting held on 13.02.2023 which has only reproduced extracts from report of Chief Engineer PWD Pune Region Pune dated 13.02.2023. The CSB held its meeting on 13.02.2023 within just few days after report of Chief Engineer PWD Pune dated 13.02.2023 reached Secretary (Roads) PWD which indicates that there was certain degree of haste to convene it so as to somehow transfer Applicant from post of 'Executive Engineer PWD No.1 Solapur'. The 'Minutes of Meeting' of 'CSB' do not indicate adequate 'Application of Mind' as copy paste was casually done of few extracts taken from report of Chief Engineer PWD Pune Region, Pune dated 13.02.2023. The 'CSB' was expected to observe guidelines in GAD GR dated 11.02.2015 about restrained action in effecting 'Mid Tenure' and 'Mid Term' transfers but instead side stepped it conveniently to quickly

arrive at prejudicial conclusion to recommend transfer of Applicant from post of Executive Engineer PWD NO.1 Solapur believing the report of Chief Engineer PWD Pune Region, Pune dated 13.02.2023 to be the 'Gospel Truth'.

19. The transfer of Applicant to post of 'Executive Engineer Directorate of Municipal Administration MC, Sangli' falls in the category of 'Foreign Service' as defined under 'Rule 9(19)' of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 and are thus governed by guidelines in GAD GR dated 17.12.2016.

20. The PWD GR dated 04.07.2023 by which 'Deputation Post' of 'Executive Engineer Directorate of Municipal Administration MC, Sangli' was created along with several others in cadres of (i) Superintendent Engineer of PWD and (ii) Executive Engineers of PWD were embedded in domain of the 'Directorate of Municipal Administration' under Urban Development Department. The updated guidelines about filling up of 'Deputation Posts' are in GAD G.R. dated 16.02.2018 by which earlier GAD GR dated 17.12.2016 came to be partially amended was with intent to ease procedural interfaces between 'Administrative Departments'. The GAD GR dated 16.02.2018 clarified in 'Para 5(A)(6)' that only if 'Deputation Posts' are created within establishment of receiving 'Administrative Departments' then it would not require their prior concurrence and lending 'Administrative Departments' as 'Cadre

Controlling Authority' can directly post Government Servants on such 'Deputation Posts' by invoking provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

21. The guidelines in 'Para 5(A) (6)' of GAD GR dated 16.02.2018 would have been applicable if post of 'Executive Engineer Directorate of Municipal Administration MC, Sangli' and several others in cadres of (i) Superintending Engineers of PWD and (ii) Executive Engineer of PWD who were predesignated to work only for the 'Directorate of Municipal Administration' in offices of (i) Divisional Commissioners and (ii) Municipal Councils were to have been created under the Urban Development Department so as not be considered as posts under 'Foreign Service'. The posts which were created by PWD G.R. dated 04.07.2022 of (i) Superintendent Engineer of PWD (ii) Executive Engineers of PWD have thus been correctly classified as 'Foreign Service' under 'Rule 9(19)' of provisions of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981. The PWD GR dated 04.07.2022 in 'Para 3' uses the caption "कार्यकारी अभियंता (स्थापत्य) संवर्गात दि.१८.०१.२०२२ रोजीच्या शासन निर्णयानुसार प्रतिनियुक्तीवर १२१ पदे असून त्यामध्ये खालीलप्रमाणे २२ पदांची वाढ होत आहे." Hence, these posts come under the sway of 'Rule 36' of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 which mandatorily require prior consent from concerned Government Servants. However, evidently it was not done in case of Applicant before he was transferred

from post of Executive Engineer PWD No.1 Solapur. The 'CSB' which had met on 13.02.2023 failed to take cognizance of 'Rule 36' under the provisions of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 and choose not to diligently understood the guidelines in GAD GR dated 17.12.2016 read with GAD GR dated 16.02.2018.

22. The following extract from landmark judgment of Hon'ble Supreme Court of India in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732, dated 31st October, 2013*** which highlights the vulnerability of Government Servants particularly under State Governments to frequent transfers is required to be reproduced as it amplifies their predicament. The Hon'ble Supreme Court of India had observed the following :

We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society."

23. The Hon'ble Supreme Court of India in the case of ***East Coast Railway & Another Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678*** has unequivocally emphasized on 'Application of Mind' and recording of reasons by 'Public Authority' so that there is no scope of arbitrariness in taking decisions. The Hon'ble Supreme Court of India had observed the following :-

“There is no precise statutory or other definition of the term “arbitrary”. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable.”

24. The Hon’ble High Court of Bombay in ***W.P. (L) No. 1940 of 2011 decided on January 24, 2012 (Shri S.B. Bhagwat V/s. State of Maharashtra & Ors.)*** has elaborated on the need for circumspection by the Competent Transferring Authority and next Superior Transferring Authority when they chose to exercise ‘Statutory Powers’ relating to ‘Mid Tenure’ and ‘Mid Term’ transfers by observing that :-

“An employee who has not completed his normal tenure of three years may yet be subjected to transfer, as provided in sub-section (5) of section 4. Sub-section (5) of section 4 begins with an overriding non-obstante provision, but requires that reasons have to be recorded in writing in a special case for transferring an employee even prior to the completion of tenure. Merely calling a case a special case does not constitute a sufficient reason. The rationale why the legislature has required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers. Indeed, the matter of transfers has been brought within a regulatory framework laid down in the statute enacted by the State legislature. Section 4(5) permits as an exceptional situation, a transfer to be carried out, notwithstanding anything contained in section 3 or in section 4. The exceptional power must be exercised strictly in accordance with sub-section (5) of section 4. It is a settled position in law that when a statutory power is conferred upon an authority to do a particular thing, that exercise has to be carried out in the manner prescribed by the statute.”

25. The Hon’ble High Court of Bombay in ***Writ Petition No.5465/ 2012 decided on March 07, 2013 (Shri Krishor Shridharrao Mhaske Vs. Maharashtra OBC, Finance & Development Corporation & Ors.*** has further explained about the specific role and responsibility of ‘Competent Transferring Authority’ with respect to ‘Mid Tenure’ and ‘Mid-Term’ Transfers by observing that:-

“Section 4(5) which begins with the non-obstante clause obligate the Competent authority to seek prior approval of the competent transferring authority as indicated in Section 6 of the Act and also to record reasons in writing in special case of the mid-term or pre-mature transfer of any Government servant who has not completed three years of normal tenure on particular post. Section 6 of the Act lays down the categories of the Government servants in column no (1) of the table who may be transferred by the competent transferring authorities as mentioned in column (2) of the table.”

“The mid-term or pre-mature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or bye-passed. The exceptional reasons for the special mid-term or pre-mature transfer ought to have been stated in writing. Vague, hazy and meager expression such as "on administrative ground" cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements. The impugned order of the transfer in the absence of mention of special and exceptional reasons was passed obviously in breach of the statutory obligations and suffers from the vices as above.”

26. In Hon'ble High Court of Bombay in ***Shri Santosh Machhindra Thite Vs. The State of Maharashtra & Ors., 2019(4) ALL MR 681*** has also highlighted the importance of consultation between 'Competent Transferring Authorities' and 'Secretaries of Administrative Departments' with respect to 'Mid Tenure' and 'Mid Term' transfers by observing that :-

“The power of transfer under sub-section (5) of section 4 is to be exercised by the Competent Authority only in special cases, after recording reasons in writing and that also with the prior approval of the immediately superior Transferring Authority (in the present case, the Hon'ble Chief Minister). According to the stand of the State Government, the power was exercised by the Hon'ble Minister as a Competent Transferring Authority within the meaning of section 6.

Therefore, the power purportedly exercised is not in consonance with sub-section (5) of section 4 as the concerned Secretaries were not consulted. The Hon'ble Minister can exercise the powers as a Competent Transferring Authority under section 6 only after consultation with the Secretaries of the concerned Departments. Hence, the Hon'ble Minister had no power to pass orders under sub-section (5) of section 4 of the said Act without consultation with the Secretaries.”

27. The Hon'ble Bombay High Court in ***Seshrao Nagarao Umap Vs. State of Maharashtra, (1985)II LL J 73(Bom)*** has summarized the law on the aspects of colourable exercise of powers to accommodate another Government Servant for undisclosed reasons by observing that :-

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilize the services of its employees. However this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colorable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair."

28. The Hon'ble High Court of Bombay in ***Writ Petition No.8987 of 2018 (Shri Balasaheb Vitthalrao Tidke Vs State of Maharashtra & Ors.)*** had recorded with disdain on basis of Affidavit in Reply filed by Chief Secretary, Government of Maharashtra about growing attempts of 'Political Influence' in processes of transfers of Government Servants and observed that :-

"Now there is a clear assurance that all transfers will be effected strictly in accordance with the provisions of the said Act of 2005 and none of the transfers will now be influenced by the recommendations of the political leaders including the Hon'ble Ministers (Who are not a part of the process of transfers). We direct that the statements made in para-1 of the said Affidavit are brought to the notice of all the concerned who have to exercise powers of transfers under the said Act of 2005 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants".

29. The Hon'ble Supreme Court of India in ***(State of Punjab and Others vs. Inder Singh and Others, reported in (1997) 8 SCC 372,*** explained the concept of deputation and emphasized on the critical necessity to seek consent of Government Servant and observed that :-

“18. The concept of ‘deputation’ is well understood in service law and has a recognized meaning. ‘Deputation’ has a different connotation in service law and the dictionary meaning of the word ‘deputation’ is of no help. In simple ‘deputation’ means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation, the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post.”

30. The facts and circumstances leading to transfer of Applicant from post of Executive Engineer PWD No.1 Solapur without his express consent to post of ‘Executive Engineer Directorate of Municipal Administration MC, Sangli’ which constitutes posting on ‘Foreign Service’ for cadre of ‘Executive Engineer of PWD makes it necessary to ‘Lift the Veil’ from the often used grounds of ‘Public Interest’ and ‘Administrative Exigency’

31. The report of Chief Engineer PWD Pune Region, Pune dated 07.02.2023 was unusually submitted to Secretary (Roads) PWD instead of Additional Chief Secretary PWD who leads the ‘Administrative Department’. No mention has been made about how an objective assessment was done to amplify individual responsibility of Applicant alone for the timely completion of four works as the report of Chief Engineer, PWD Pune Region Pune dated 07.02.2023 to Secretary (Roads) P.W.D. does not mention any details whatsoever of (i) Dates of Work Orders (ii) Dates of Commencement of Works (iii) Milestones and Time Schedules (iv) Completion Dates etc. which are standard benchmarks for concurrent ‘Evaluation of Progress’ of such Public Projects.

32. The CSB of PWD in meeting held on 07.02.2023 for reasons which still remain wrapped in confidentiality even after Affidavit in Reply was filed on behalf of Additional Chief Secretary, PWD Department on 19.07.2023 is why it did not consider necessary to seek corroborative evidence by way of independent reports from (a) District Collector, Solapur, (b) SP (Rural) Solapur and (iii) Deputy Charity Commissioner, Solapur about the underperformance of Applicant while serving as Executive Engineer PWD No.1 Solapur and conjectured inability to coordinate with other 'Administrative Heads' working in Solapur District. Hence, the 'CSB' of 'PWD' has grossly failed to objectively examine the proposal for transfer of Applicant in its entirety and conclusively establish veracity of claims made in report of Chief Engineer PWD Pune Region Pune, dated 27.02.2023 that action was required to be forthwith taken as Applicant had indeed failed to maintain devotion of duty as was expected of him under Rule 3(1) and Rule (2) of MCS (Conduct) Rules, 1979. The 'CSB' was equally required to take note of the fact that Government Servants who hold 'Supervisory Posts' are themselves expected to take all possible steps to ensure integrity and devotion to duty of those Government Servants who work under their control and authority as per provisions of Rule 3(2) of the MCS (Conduct) Rules 1979. Hence, (i) Chief Engineer PWD Pune Region, Pune and (ii) the Superintending Engineer PWD Circle Solapur holding 'Supervisory Posts' could not have absolved themselves from overall responsibility for undue delays in completion of four works viz (i) Construction of Solapur District Public Trust Building (ii) Construction of Wireless Building of SP (Rural) Solapur (iii) Renovation work of PWD Guest House, Solapur and (iv)

Specific Repair Programme of Solapur Regional Office Buildings by comfortably shifting the entire blame on Applicant.

33. The 'CSB' of 'PWD' which held meeting on 13.02.2023 was completely oblivious about imperativeness of observing landmark judgments of Hon'ble Supreme Court of India and Hon'ble High Court at Bombay. The guidelines in GAD Circular dated 11.02.2015 to regulate rampant occurrence of 'Mid Term' and 'Mid Tenure' transfers came to be relegated to just some paraphrases of not much significance. The 'CSB' in its meeting held on 13.02.2023 wanted to do only brisk exercise to anyhow recommend transfer of Applicant from post of 'Executive Engineer PWD No.1 Solapur'. The 'Competent Transferring Authority' and next 'Superior Transferring Authority' in such backdrop were thus expected to act with restrain while accepting recommendation made by 'CSB' based only on the cursory report of Chief Engineer, PWD Pune Region, Pune dated 07.02.2023. Therefore, decision taken by 'Competent Transferring Authority' and next 'Superior Transferring Authority' who are also custodians of 'Statutory Powers' does not inspire much confidence as to whether there indeed was 'Application of Mind' on their part before invoking provisions of 'Section 4(4) (ii)' and 'Section 4(5)' of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Hence, this decision of 'Competent Transferring Authority' and next 'Superior Transferring Authority' to abruptly transfer the Applicant from post of Executive Engineer PWD No.1 Solapur without his express consent to

post of 'Executive Engineer Directorate of Municipal Administration MC, Sangli' falters on test for arbitrariness in decision making by 'Public Authority'. Further deep shades of prejudice against the Applicant are clearly visible in report of Chief Engineer, PWD, Pune Region, Pune dated 07.02.2023. The Chief Engineer PWD Pune Region, Pune therefore was directed through the Additional Chief Secretary PWD to file 'Additional Affidavit-in-Reply' on or before 16.11.2023 in support of his contentions but he failed to do so without any good reason although adequate time was accorded to him. Hence, the M.A.No.725/2023 filed on behalf of Additional Chief Secretary PWD to condone delay on the part of Chief Engineer, PWD, Pune Region, Pune came to be rejected on 23.11.2023.

34. The post of 'Executive Engineer Directorate of Municipal Administration MC, Sangli' to which Applicant was transferred attracts provisions of 'Rule 36' of 'Foreign Service' under Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981. So also it was necessary for PWD as 'Cadre Controlling Authority' to seek prior concurrence of Urban Development Department as 'Para 5(A) (9)' of GAD GR dated 17.12.2016 has not been amended by GAD GR dated 16.01.2018.

35. The 'Competent Transferring Authority' and next 'Superior Transferring Authority' should have exercised 'Statutory Powers' under 'Section 4(4)(ii)' and 'Section 4(5)' of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official

Duties Act, 2005 with much greater restraint before deciding to impetuously transfer Applicant from post of 'Executive Engineer No.1 PWD Solapur' without his express consent to 'Deputation Post' of 'Executive Engineer Directorate of Municipal Administration MC, Sangli' and not transgressed the legal space created by landmark judgements of Hon'ble Supreme Court of India and Hon'ble High Court of Bombay.

36. The 'Transfer Order' dated 17.04.2023 of PWD by which Applicant has been transferred from post of 'Executive Engineer No.1 PWD Solapur' to post of "Executive Engineer Directorate of Municipal Administration MC, Sangli" for all reasons stated above; stands rather infirm against the might to law and rules. The 'Transfer Order' dated 17.04.2023 of PWD by which Applicant was posted as "Executive Engineer Directorate of Municipal Administration MC, Sangli" unequivocally suffers from the vice of (a) 'Unlawful Exercise' of Statutory Powers, (b) 'Arbitrary Exercise' of Statutory Powers, (c) 'Colorable Exercise' of Statutory Powers. Hence the following order:-

ORDER

- (A) Original Application is Allowed.
- (B) The Transfer Order dated 17.04.2023 of PWD by which Applicant was posted as "Executive Engineer Directorate of Municipal Administration MC, Sangli" is quashed and set aside.

- (C) The 'Transfer Order' dated 17.04.2023 of PWD by which Respondent No.2 was posted as 'Executive Engineer PWD No.1 Solapur' is also quashed and set aside.
- (D) The Applicant to immediately join back on post of 'Executive Engineer PWD No.1 Solapur' and submit his 'Joining Report' to Additional Chief Secretary PWD.
- (E) No Order as to Costs.

Sd/-

(Debashish Chakrabarty)
Member (A)

Dictation taken by: VSM
Place: Mumbai
Date: 29.02.2024
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