

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.453 OF 2019**

**(Subject :- Transfer)**

**DISTRICT : BEED**

**Jagdish Anandrao More,** )  
Age: 55 years, Occ: Service, )  
As Child Development Project Officer, )  
R/o. Swarajya Nagar, Barshi Road, )  
Beed , Tq. & Dist. Beed. )...**Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Joint Secretary, )  
Woman and Child Development )  
Department, Mantralaya, Mumbai. )
2. **The Commissioner,** )  
Woman and Child Development )  
Department, 28, Queen Garden, )  
Pune. )
3. **The Commissioner,** )  
Integrated Child Development Services )  
Raigad Bhavan CBD, Belapur, )  
Navi Mumbai. )...**Respondents.**

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**Shri A.C. Darandale, learned Advocate holding for Shri P.S. Dighe, learned Advocate for the Applicant.**

**Shri M.P. Gude, learned Presenting Officer for the Respondents.**  
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**CORAM : B.P. PATIL, ACTING CHAIRMAN**

**RESERVED ON : 20.11.2019.**

**PRONOUNCED ON : 22.11.2019.**

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**ORDER**

1. The Applicant has challenged the order dated 31.5.2019 passed by the Respondent No.1 transferring him from Beed to Sindhudurg by filing the present Original Application.

2. The Applicant was appointed as Agricultural Officer on 30.12.1994. In the year 2007 he was promoted as Child Development Project Officer (Group-B) at Talasari, Tq. Palghar. On 01.07.2016, he came to be promoted on the post of Child Development Project Officer (Group-A) at Beed. Accordingly, he joined the said post at Beed on 09.08.2016. Since then he was working there till issuance of the impugned order. It is his contention that he had not completed his tenure of three years on the post of Child Development Project Officer at Beed as provided under Section 3 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfer Act, 2005"). But the Respondent No.1 issued the impugned order dated 31.5.2019 and

transferred him from the post of Child Development Project Officer, Beed to the post of District Woman and Child Development Officer, Sindhudurg.

3. It is his contention that the impugned order has been issued in contravention of the provision of the Transfer Act, 2005. The Respondent No.1 had not considered the fact that he was not due for transfer as he has not completed his three years' tenure at Beed. It is his contention that the impugned order is arbitrary. It is his further contention that some of the officers, who had completed the period of three years' tenure, due for transfer but the Respondent had not transferred them and gave them extension of one year. The Respondent No.1 transferred the Applicant though he was not due for transfer and therefore, the act of the Respondent is malafide and arbitrary. It is his contention that he is due for retirement in the year 2022 and therefore, he ought not have been transferred. On these grounds, he has challenged the impugned order and prayed to quash and set aside the impugned order by allowing the present Original Application.

4. The Respondent Nos.1 to 3 have filed their affidavit-in-reply and resisted the contention of the Applicant. It is their contention that the Applicant is Group-A officer and therefore, he has to work anywhere in Maharashtra. It is their contention that

the Applicant is going to retire in the year 2022 and he has to serve for three more years. Therefore, his case is not fit to get extension as provided under Section 5 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Therefore, the Applicant cannot seek extension on the post at Beed. It is their contention that the department of Women and Child Development is performing the sovereign functions for the development and rehabilitation of the orphans, Juveniles, Shelterless, deserted, destitute women and children and beggars and therefore, transfer of the Applicant has been made on the administrative ground. In view of the said transfer order, one Shri C.S. Kekani took charge of the post of the Applicant and Applicant has been relieved on 06.06.2019.

5. It is their contention that the Applicant had not joined the post at Sindhudurg and without joining the post, he approached this Tribunal. Therefore, the Original Application requires to be dismissed in view of the observation made by this Tribunal bench at Nagpur in O.A.No.201 of 2007. Therefore, they prayed to reject the Original Application.

6. I have heard Shri A.C. Darandale, learned Advocate holding for Shri P.S. Dighe, learned Advocate for the Applicant and Shri M.P. Gude, learned Presenting Officer for the Respondents.

7. Admittedly, the Applicant was initially appointed as Agriculture Officer on 30.12.1994. He was promoted in the year 2007 as Child Development Project Officer, Group-B at Talasari, Tq. Palghar. On 01.07.2016, he came to be promoted on the post of Child Development Project Officer, Group-A at Beed. Accordingly, he joined the said post on 09.08.2016. Admittedly, the Applicant had not completed three years' tenure at Beed as defined under Section 3 of the Transfer Act, 2005 and he was not due for transfer at the time of General Transfer of the year 2019.

8. Learned Advocate for the Applicant has submitted that the Applicant was due to retire in the year 2022. He has not completed his three years' tenure as provided under Section 3 of the Transfer Act, 2005. He served on the post at Beed hardly for 2 years and 8 months only. The Respondent No.1 had not called options from him at the time of general transfer of 2019 but issued the impugned order transferring the Applicant from Beed to Sindhudurg. He has submitted that the said order is arbitrary, malafide and in violation of the provisions of the Transfer Act, 2005. He has submitted that the Respondent No.1 had given extension to some of the officers who have completed their tenure. But without reason, the Respondent No.1 had transferred the Applicant. He has submitted that the said impugned order shows

that the officers at Sr.No.6,10, 16 to 18 and 31 had given extension of one year on the post where they are serving. He has submitted that the said act on the part of the Respondents transferring the Applicant before completion of tenure is malafide and arbitrary. Therefore, it requires to be quashed by allowing the Original Application.

9. Learned P.O. for the Respondents has submitted that the impugned order has been issued by the Respondent No.1 on administrative ground. He has submitted that the Applicant was transferred in the year 2016 and he was due for transfer at the time of general transfer of the year 2019 as he has completed 3 years' tenure at Beed. Therefore, he has been transferred in view of the provision of Section 4 of the Transfer Act, 2005. There is no illegality in the impugned order and therefore, he has supported the impugned order and prayed to reject the Original Application.

10. On going through the documents on record it reveals that the Applicant was promoted as Child Development Project Officer, Group-A, Beed in view of the order dated 01.07.22016 and posted at Beed. Accordingly, the Applicant joined the said post on 09.08.2016. The Applicant had not completed his three years' tenure as defined under Section 3 of the Transfer Act, 2005 either from the date of issuance of order or from the date of joining on the

post of Child Development Project Officer, Beed. In view of the provision of Transfer Act, 2005, the Applicant was not due for transfer at the time of general transfer of the year 2019. But the Respondent No.1 issued the impugned order at the time of general transfer of the year 2019 and transferred the Applicant on administrative ground. No doubt that the competent transferring authority is empowered to transfer the Applicant before completion of the tenure at any time in exceptional circumstances by recording the reasons in writing in view of the provisions of Section 4 (4) and 4(5) of the Transfer Act, 2005. But no special reason in writing has been recorded by the Respondent No.1 as contemplated under Section 4(4) and 4(5) of the Act. Therefore, the impugned order cannot be justified on that ground. The record produced by the Respondents shows that the Applicant was considered as due for transfer at the time of general transfer of the year 2019 and therefore, he has been transferred. But the Respondent No.1 had not considered the fact that the Applicant had not completed his normal tenure at Beed and he was not due for transfer at the time of transfer of the year 2019. The Competent Transferring Authority had not considered the provision of Section 4 with proper perspective. Therefore, the impugned order is not in accordance with the Section 4 of the Transfer Act, 2005.

11. It is also material to note that the Respondent Nos.1 to 3 have not denied the allegation made by the Applicant in O.A. regarding his transfer before completion of tenure in their affidavit-in-reply. They kept mum in that regard. When they have not specifically denied the contentions raised by the Applicant in the Original Application, it amounts admission on their part. The Respondent No.1 had not given satisfactory and justifiable reason for transfer of the Applicant before completion of his tenure. The impugned order is in violation of the Transfer Act, 2005 and therefore, it requires to be quashed and set aside by allowing the Original Application.

12. In view of the discussion in the foregoing paragraphs, the Original Application is allowed. The impugned order dated 31.5.2019 transferring the Applicant from the post of Child Development Project Officer, Beed to the post of District Woman and Child Development Officer, Sindhudurg is hereby quashed and set aside. The Respondent No.1 is directed to repost the Applicant on the post of Child Development Project Officer, Beed immediately. There shall be no order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**Place:- Aurangabad**

**Date :- 22.11.2019**

Sas. O.A.No.453 of 2019.Transfer. BPP