

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.484 of 2020

District : Nashik

Smt. Rupali S. Nagare,)
Aged 33 years, Occ : Awal Karkun in the office)
Of below named Respondent (in Tenancy Law)
Branch), R/at Flat No.8, Raviraj Empire-A,)
Samarth Nagar, Dwarka, Nashik.)...**Applicant**

Versus

The District Collector, Nashik, having office)
At Nashik.)...**Respondent**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.
Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 25.08.2021

J U D G M E N T

The Applicant has challenged the transfer order dated 11.09.2020 whereby she was transferred mid-term and mid-tenure in contravention of provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005).

2. Shortly stated facts giving rise to Original Application are as under:-

The Applicant was serving in the cadre of Clerk on the establishment of Collector, Nashik. By order dated 23.06.2020, she along with other employees were temporarily promoted on the post of Awal Karkun and accordingly she was posted in Collector office, Tenancy Law Branch on vacant post which was earlier occupied by Shri P. D.

Gondale. Accordingly, the Applicant joined on promotion post on 24.06.2020. However, within three months, she was transferred by impugned transfer order dated 11.09.2020 from Nashik to Tahsil office, Yeola. The Applicant has challenged this transfer order *inter-alia* contending that it is in blatant violation of provisions of 'Act 2005' and directions given by the Hon'ble Supreme Court in **T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732.**

3. Learned Counsel for the Applicant submits that the Applicant being Group-C employee of non secretariat level, she is entitled for six years tenure but hardly within three months, she has been transferred without any reason much less in compliance of Section 4(5) of 'Act 2005'. He has further pointed out that no approval of Civil Services Board (CSB) is obtained for her mid-term and mid-tenure transfer.

4. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer made feeble attempt to justify the transfer order *inter-alia* contending that initially on promotion itself the Applicant was given posting at Yeola in DPC meeting, and therefore, by order dated 11.09.2020, she was restored to her position at Yeola.

5. Before going ahead what Respondents states in reply needs to be looked into. In reply, it is stated that the transfer order dated 11.09.2020 is not transfer but it is proposed posting of the Applicant by way of restoration. In reply, it is further stated that due to complaints, and application against the Applicant, the proposal was forwarded to Divisional Commissioner for restoring the position of Applicant at Yeola and with approval of Divisional Commissioner (Revenue), the impugned order has been passed. The stand taken in reply is totally un-understandable and unpalatable.

6. True, the perusal of minutes of DPC reveals that on promotion the Applicant was shown proposed to be posted at Yewala. However, no such order of posting at Yeola has been issued. On the contrary, she was

given posting on the establishment of Collector, Tenancy Law Branch on vacant post by order dated 23.06.2020 issued by the Collector. There is absolutely no such reference in order dated 23.06.2020 that it is temporary posting. Once the Collector had issued specific order dated 23.06.2020 posting the Applicant at Nashik. Once she joined there, she was entitled to normal tenure of six years as contemplated under Section 3 of 'Act 2005'.

7. However, the Applicant has been transferred hardly within three months by order dated 11.09.2020. Notably, in transfer order dated 11.09.2020 also there is no such mention that it is the order of restoration of the Applicant to Yeola. Conversely, there is a specific mention in impugned order that it is mid-term transfer invoking Section 4(4)(ii) of 'Act 2005'. This totally belies the theory of restoration of posting.

8. This being the position, the contentions raised by learned P.O. that impugned transfer order is only restoration order is totally fallacious and has to be rejected out rightly.

9. Apart, admittedly the matter was not placed before CSB as mandated by the Hon'ble Supreme Court in **T.S. R. Subramanian's** case which also vitiates the transfer order. Furthermore, no special reason for administrative exigency as contemplated under Section 4(5) of 'Act 2005' is forthcoming. Once the Applicant was given posting at Nashik and was entitled to six years tenure, mid-terms transfer without recording any special reasons with the approval of immediately superior authority as contemplated under Section 4(5) read with Section 6 and table there under is totally bad in law. No such case of administrative exigency is forthcoming. She is transferred arbitrarily and mechanically.

10. Even alleged complaints referred in reply as well as in approval of Divisional Commissioner is not placed on record for the reasons best known for the Respondents.

11. True, the transfer is incident of service and no Government servant can claim particular place for particular period as vested right. However, now the transfers are regulated and governed by the provisions of 'Act 2005' and it is not left to whims and caprice of the executive. Where transfer is found in contravention of express provisions of law, interference in transfer is inevitable. Otherwise very purpose and intent of the 'Act 2005' would get frustrated.

12. In this view of the matter, I have absolutely no hesitation to sum up that impugned transfer order is in blatant violation of provisions of 'Act 2005' and bad in law. It is totally indefensible. Hence, the following order :-

ORDER

- (A) Impugned transfer order is quashed and set aside.
- (B) Interim relief granted by the Tribunal by order dated 25.09.2020 is made absolute.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Date : 25.08.2021
Place : Mumbai
Dictation taken by :
Vaishali Santosh Mane
Uploaded on :