

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.507 OF 2020

DISTRICT : MUMBAI

Dr. Ashok Ramchandra Anand.)
An adult, Indian Inhabitant, residing at)
2/16, Dhanvantari, J.J. Hospital Campus,))
Byculla, Mumbai – 400 008.)...**Applicant**

Versus

1. Dr. T.P. Lahane, Director,)
Medical Education & Research,)
And Nodal Officer, COVID-19,)
Having his address at Government)
Dental College and Hospital)
Building, 4th Floor, St. George's)
Hospital Compound, P.D. Mello)
Road, Fort, Mumbai – 400 001.)
2. Grant Government Medical College)
And Sir J.J. Group of Hospitals)
Through its Dean,)
Mumbai – 400 008.)
3. The State of Maharashtra.)
Through the Secretary,)
Medical Education & Drugs Dept.,)
New Administrative Building,)
9th Floor, G.T. Hospital Compound,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Miss Sonal, Advocate for Applicant.

Ms. S.P. Manchekar, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 09.01.2021

JUDGMENT

1. The Applicant has invoked jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging the legality of order dated 05.08.2020 whereby Respondent No.1 deputed him at Government Medical College and Hospital, Ambejogai invoking the powers of Epidemic Diseases act, 1897 (hereinafter called as 'Act of 1897' for brevity) read with Maharashtra Covid-19 Regulation, 2020 (hereinafter referred to as 'Regulation of 2020' for brevity).

2. Shortly stated facts giving rise to this O.A. are as under :-

The Applicant was serving as Professor and Head of the Department (HOD) of Gynecology & Obstetrics, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai. He became HOD of the Gynecology and Obstetrics Department in the year 2017. The Grant Government Medical College is Non-Covid Hospital. The Applicant claims to have been discharging his duties to the best of his ability. Abruptly, Respondent No.1 – Director, Medical Education & Research by impugned order dated 05.08.2020 invoking powers under the 'Act of 1897' deputed the Applicant at Government Medical College and Hospital, Ambejogai on the ground that Applicant was not available in the Hospital to discharge his duties as HOD in J.J. Hospital as well as in Cama Albless Hospital for the treatment and management of Covid patients. The Enquiry Committee had submitted report that there is lack of coordination and the Applicant was not attending the Office during the period of Epidemic. On the basis of Enquiry Committee Report dated 14.05.2020, the Respondent No.1 deputed Applicant at Ambejogai by impugned order dated 05.08.2020 which is under challenge in the present O.A.

3. Miss Sonal, learned Advocate for the Applicant sought to assail the impugned order dated 05.08.2020 mainly on the following grounds :-

(i) No opportunity of hearing was given to the Applicant by Enquiry Committee as well as by Respondent No.1 before passing the impugned order and there is breach of principles of natural justice.

(ii) The impugned order being stigmatic and by way of punishment without giving an opportunity of hearing is unsustainable in law.

(iii) The impugned order being essentially of transfer under the garb of deputation without compliance of the provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity) is bad in law.

(iv) The Respondent No.1 - Director, Medical Education & Research & Nodal Officer is not legally empowered to exercise the powers of deputation/transfer under 'Act of 1897'.

5. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer vehemently urged that the Applicant being HOD in Gynecology and Obstetrics Department of J.J. Hospital was supposed to remain himself available in J.J. Hospital as well as Cama and Alibless Hospital for the treatment of patients and particularly to manage Covid-19 pandemic situation. She submits that the Enquiry Committee consists of 3 Experts headed by Dr. Ajay Bhandarwar was appointed into the matter of discharge of 2 Covid patients viz. Mrs. Soni Begum and Mrs. Alfiya Khan in the unit of Applicant. The Expert Committee had tendered questionnaire of 11 questions to the Applicant, which was answered by the Applicant. After considering the same, the Expert Committed submitted report against the Applicant on 14.05.2020. In view of the

said report, Smt. Vinita Singhal, Nodal Officer (Covid-19) by her letter dated 17.07.2020 had also expressed serious displeasure and asked the Government to take appropriate steps. It is on this background, the Respondent No.1 – Director, Medical Education & Research being “Empowered Officer” under Section 2(1) of ‘Act of 1897’ read with Clause 3 of ‘Regulation of 2020’ had exercised the power to shift the Applicant from J.J. Hospital and deputed him at Government Medical College and Hospital, Ambejogai as a remedial measure. She has further pointed out that though initially by impugned order dated 05.08.2020 the Applicant has been deputed till Covid-19 pandemic situation exists, later by order dated 05.01.2021, the Respondent No.1 – Director clarified that the deputation period will be upto 31.03.2021. The copy of order dated 05.01.2021 was tendered before the Tribunal during the course of hearing on 05.01.2021 and the same is taken on record. The learned CPO, therefore, submits that this is not a case of transfer requiring compliance of provisions of ‘Transfer Act 2005’ but the same is purely deputation upto March, 2021 which was necessitated due to lapses on the part of Applicant. She thus submits that no *mala-fide* can be attributed to the Respondents and challenge to the order of deputation is devoid of merit.

6. To begin with, let us see the questionnaire and the Enquiry Committee Report. Admittedly, except questionnaire (Page No.73 of Paper Book), no other Notice or Memo was issued to the Applicant in reference to alleged lapses and the order of deputation. It is also an admitted position that even after receipt of Enquiry Committee Report, the Respondent No.1 did not ask for the explanation from the Applicant on the report of Expert Committee before issuance of impugned order, non-supplied copy of report to him.

7. The questionnaire which is at Page No.73 is as follows :-

- “1. Do you perform Covid Tests before Patients are taken to OT or labour.

2. When the 1st patient was discovered covid positive and who.
3. Whether PNC patients under your care were in the same ward are positive.
4. Did you deliberately discharge patients under your care knowing fact that they are exposed to covid positive patients.
5. Which doctor were quarantined in ward 43/34 after they came in contact with positive patient.
6. Were you still looking after patient after they came positive telephonically.
7. Did you order quarantine of patients who were in contact with positive patients like that of residents or sealed wards.
8. Did you discharge both patients.
9. Did both patients underwent normal delivery & what was date of delivery.
10. Do you routinely discharge PNC patient on day 2.
11. What action you had taken when you came to know the discharged patients were positive.”

The Applicant had submitted his reply (Page Nos.74 to 76 of P.B.) to the questionnaire, which is as follows :-

“Vijay Bhandarwar (Prof, HOD)
Dept. of Surgery,
Chairman of Enquiry Committee.
JJH

Respected Sir,

I am submitting the reply of questionnaire which is given to me as a part of enquiry. I was quarantined when the patients were discharged.

- 1) First Covid positive patient Samina Querishi was sent to St. George's Hospital as we suspected her to be covid positive, through dept. of medicine under Dr. VSN on 21/4/2020, Patient tested covid Negative on 22/4/2020, Patient was transferred back from St. George to Medicine CCUJJH and later we were informed that her covid swab report dated 24/4/2020 was positive. Simultaneously other patient Deepika Tambe who was tested despite being asymptomatic due to BMC guidelines provided by Nodal Officer OBGY also came positive and patient was transferred to Nair Hospital. On 26/4/2020 due to which unit I OBGY JJH was asked to get quarantined from 26/4/2020.

As per the guidelines from Nodal Officer we have transferred patients who tested positive to BMC Covid Hospitals.

- 2) Meeting was held twice and as per meeting held on 9/4/2020 following protocols were made i.e. all the health workers, patients and relatives have to wear masks, maintain social distancing, no relatives to be allowed inside wards and testing of all ANC patient for Covid-19 above 34 weeks and testing of all symptomatic patient.

- 3) Yes. Medicine Department was informed about all positive patients.
- 4) Yes, the ward was sealed and all the patients were quarantined and later wards were fumigated after quarantined patients were discharged, after their swab reports were negative.
- 5) Discharges of the patients were done as per routine protocol. At that time I was quarantined and was not aware that swabs has been sent as I was not informed.
- 6) ICMR, BMC guidelines for quarantine was followed. As per letter dated 26/4/2020 following health workers were quarantined i.e. Dr. Ashok Anand, Dr. Priyadarshani Mane, Dr. Sharayu Dalal, Dr. Anjali Balachandran, Dr. Binita Shah, Dr. Pratibha Vashishth, Dr. Saman Syed, Dr. Payal Saha, Dr. Shruti Raut, Dr. Saran Shaikh, Dr. Pooja.
- 7) No, we did not have any set guidelines for discharging patients since it was the first time we had started screening asymptomatic patients. Yes the patients were contacted immediately and were asked to report to St. George Hospital on follow up patients and relatives were found to be healthy.

Without Symptoms.

Thanking you,

Sd/-

Dr. Ashok R. Anand

Prof & HOD

Dept. of Obstetrics & Gynecology

JJH”

8. Whereas, the relevant portion from two-page Enquiry Report dated 14.05.2020 (Page Nos.229 & 230 of P.B.) is as follows :-

“Facts and Chronology of Events :

1. Mrs. Soni Begum was admitted on 23/05/2020 and was delivered normally on 24/05/2020 And Mrs. Alfiya Khan was admitted on 23/05/2020 and underwent LSCS on 23/05/2020.
2. On 25/04.2020, Mrs. Deepika Tambe, patient of ANC ward 29 turned out to be positive for COVID. Hence the entire ARA unit doctors with healthcare workers of ward 29 were quarantined.
3. On 26/04/2020, Dr. Priyadarshini Mane and Dr. Sharayu Mujumdar received call from Sister Incharge of PNC ward 31 seeking permission to discharge patients who wer due for discharge as they were unable to maintain social distancing.

4. The Faculty including Dr. Ashok Anand, Dr. Priyadarshini Mane and Dr. Sharayu Mujumdar were not informed about the throat swab of the unit patients been sent for COVID testing.
5. Dr. Payal Saha JR I was told to discharge the patients who were due for discharge. As the JR I was unaware that throat swab was already sent so she discharged Mrs. Soni Begum and Mrs. Alfiya Khan on 26/05/2020 in afternoon.
6. On 26/05/2020, the reports of the swabs came and the two patients Mrs. Soni Begum and Mrs. Alfiya Khan were found to be positive for COVID.
7. On the same night the patients and the relatives were telephonically contacted and advised to get admitted to St. George Hospital.
8. JJ Hospital administration including Dr. Sunil Bhaisare, Dr. Tushar Palve were also informed about the said event.
9. Both the patients were admitted in St. George Hospital later on and were under the treatment of Dr. Varsha Patil and Dr. Sandeep Pophale till 30/05/2020.

Other Facts noted by the Committee :

1. The first Covid patient Mrs. Deepika Tambe was detected in ANC ward 29 on 25/05.2020, the faculty and healthcare workers exposed to the patient were quarantined.
2. Though the PNC ward was not exposed to Covid patients, the residents of PNC ward 31 on high index of suspicion, sent list of patients to get swab sticks from Microbiology Department. Accordingly throat swabs of the patients were taken by microbiology department few of which turned out to be covid positive.
3. Majority of faculty OBGY concerned unit were quarantined. There was confusion regarding exact protocols to be followed during COVID situation.
4. Protocols submitted by Dr. Ashok Anand are Non-specific and irrelevant.
5. Mrs. Purnima H. Kantharia, Government Pleader, High Court, Mumbai dated 30/04/2020 has filed a Public Interest Litigation for whether pregnant lady being refused admission at JJ Hospital who delivered at home.

Remarks of the Committee :

Dr. Ashok Anand, Professor & Head, OBGY department was quarantined in the beginning of the epidemic. However, during Covid situation and

epidemic period he is not attending his department office, wards, labour room and emergency surgery operation theatre. He has not handed over the charge of the department to anyone during his absence for which he has not taken any official leave or permission from competent authority. This was verified from labour room and emergency operation theatre records and college administration. Hence there is a coordination problem with other unit in charge, colleagues and residents. This in turn has affected department administration and management of patient care during the Covid epidemic. His guidance and assistance is not available to his subordinates, residents and patients. The Public Interest Litigation supporting the video shown in 'Gallinews Official' which was titled 'pregnant lady delivered baby at home - Hospital refused admission after labour pain' - Mumbai" has tarnished the image of institute.

Date : 14/05/2020

Place : Mumbai"

9. There is no denying that since one patient in the unit of the Applicant was found Covid Positive, the Applicant and other Doctors or Staff were quarantined w.e.f.25.04.2020. The Applicant in Para No.6.10 to 6.12 of O.A. has specifically contended that despite being quarantined, he attending the emergency surgeries, as 194 patients were admitted and emergency surgery was conducted on 16 patients an 27 minor surgeries were conducted by his unit. He further contended that he has chaired meetings held by the Department so as to discuss the measures to be adopted during pandemic situation. He further specifically contends that he did not take even a single day leave during this period. Whereas, the Respondent No.1 in his reply sought to contend that the said work was in fact done by unit and not by the Applicant personally.

10. The Applicant has produced letters/Certificates issued by various Doctors / Professors working in his Department that Applicant was always available for medical consultation during the pandemic situation , which are at Page Nos.255 to 271 and at Page Nos. 286 to 289 of Paper Book. On receipt of impugned order also, the Applicant had submitted representation to Respondent No.1 wherein he reiterated the work done by his Department during pandemic situation, which is as follows :-

“करोनाच्या काळामध्ये मी व माझ्या पथकाने केलेले काम खालीलप्रमाणे

- * कोरोनाच्या कालावधीत मार्च, २०२० रोजीपासून पथकामध्ये एकूण १,७१३ रुग्णांची तपासणी करण्यात आली.
- * पथकातील केलेल्या १,७१३ रुग्णतपासणी पैकी मी स्वतः ३१२ रुग्णांची तपासणी केली आहे.
- * ९१ महिला रुग्णांची **LSCS** माझ्या असत्यारीत करण्यात आली आहे. त्यापैकी स्वतः अतिगंभीर १ रुग्णांची **OBSTETRIC HYSTERECTOMY** केली.मी स्वतः अतिगंभीर १ रुग्णांची **LSCS** केले.
- * **२५० Normal Deliveries** करण्यात आल्या.
- * **१९४ IPD** रुग्ण दाखल करण्यात आले.
- * **३९ रुग्णांवर Emergency** शस्त्रक्रिया केल्या.
- * या दरम्यान मी, **High Court Cases** चे ७ रिपोर्ट दिले आहेत.
- * तसेच ५ माता मृत्यूच्या बैठका घेतल्या.
- * कोरोनाच्या कालावधीत रुग्णसेवेसाठी व सुरक्षेबाबत विभागातील अध्यापक, पदव्युत्तर विद्यार्थी तसेच सिस्टर इंचार्ज व स्टाफ नर्स यांच्या समवेत ३ बैठका घेण्यात आल्या होत्या.
- * मी प्रत्यक्ष कोरोनाचा कालावधीत कोरोनाचे नियम पाळून **Fellowship Exam** ग्रॅशवैम घेण्यात आली.
- * **All India International Online** दि.३०/०६/२०२० रोजीला घेण्यात आली.
- * **DNB मुंबई** (लीलावती रुग्णालय) येथे होणा-या परिक्षेसाठी दि.२३/०७/२०२० रोजी परिक्षक म्हणून गेलो होतो.

माझे घर हे माझ्या रुग्णालयाच्या आवारात म्हणजे माझ्या विभाग इमारतीच्या ५० फूट शेजारी आहे. हे आपणास माहित आहे. मी, कोरोनाच्या काळामध्ये एक ही दिवस सुट्टी घेतली नाही. शिवाय २४ तास रुग्णसेवेसाठी उपलब्ध होतो. एक कोरोना positive रुग्णांच्या संपर्कात आल्याने मी व माझे पथक कॉरेटाईन असतांना देखील विभागाचे व पथकाचे काम मी सांभाळले.

शासनामध्ये माझी ३२ वर्षे सेवा केली असून कधीही कर्तव्यात कसून केल्याबाबत तसेच समन्वाचा अभाव असल्याबाबत या पूर्वी कधीही विभागाने किंवा अधिष्ठाता यांनी कळविले नाही. आकरिमतरीत्या माझ्याविरुद्ध एकतर्फी चौकशी करून समितीने मी दोषी असल्याचा निष्कर्ष काढणे, निवेदन करण्याची संधी न देणे तसेच हृदयविकाराचा गंभीर आजार, शस्त्रक्रिया याचाही विचार न होणे, त्यामुळे ही कार्यवाही नैसर्गिक न्याय हक्का विरुद्ध आहे.”

11. Material to note that, when the Applicant was quarantined, he immediately brought it to the notice of Dean, Grant Government Medical College by letter dated 26.04.2020 (Page No.382 of P.B.) By the said letter, he had appointed Dr. Ashrulina, Dr. Alia, Dr. Priya Deshmukh and Dr. Varsha Motwani in Unit No.1. As such, the Dean was aware that the Applicant has been quarantined. Surprisingly, despite this position, no steps were taken by Dean to appoint somebody else in the place of Applicant during his quarantine period which was expected to do, so that situation is handled properly. It appears that even if the Applicant was quarantined, he was doing some work. Be that as it may, the fact remains that the Applicant was quarantined and it was brought to the notice of Dean, but no further steps was taken to give charge to somebody else to fill in vacuum and to handle emergent situation.

12. Now turning to the Enquiry Committee Report, as stated above, no opportunity of hearing was given to the Applicant. Even after receipt of

Enquiry Committee Report, the copy of it was not served upon the Applicant nor his explanation was sought before passing the impugned order of deputation. In so far as Expert Committee Report is concerned, all that, the Committee observed that the protocol submitted by Applicant are non-specific and irrelevant. The Committee was aware that Applicant was quarantined in the beginning of the epidemic. He was quarantined on 25.04.2020. As per the observation of the Committee, during Covid situation the Applicant was not attending the Office or operation theatre and was absent without prior permission from competent authority and it affected the Administration and management of patients. The Committee has also taken note of Public Interest Litigation referred by Committee regarding refusal of admission to an expecting lady on the ground that she did not carry Covid-10 Negative Certificate.

13. Significant to note that the Applicant was quarantined on 25.04.2020. Whereas, the Committee submitted his report on 14.05.2020. As stated above, the Dean was made aware of the quarantine of the Applicant by letter dated 26.04.2020 referred to above. Interestingly, in this period, not a single notice or Memo was issued to the Applicant attributing alleged lapses on his part. As such, there appears lack of coordination and confusion about the exact protocol to be followed while discharging the patients at all level. The report itself makes it clear that the Applicant was not made aware that swab of patient viz. Mrs. Soni Begum and Mrs. Alfiya Khan was taken for Covid Test. After delivery, they were discharged on 24.05.2020 and 23.05.2020 respectively. Before discharge swab was taken and sent to the Laboratory. It was only after discharge, the reports were received on 26.05.2020 that they were Covid Positive. Thereafter, they were contacted and admitted in St. George's Hospital for Covid treatment. The Committee has specifically observed in report that faculty including the Applicant, Dr. Mane and Dr. Mazumdar were not informed about the throat swab of the patients were taken and sent for Covid testing.

Though the Enquiry Committee observed that protocol submitted by the Applicant was non-specific or irrelevant, no further details were mentioned as to what was the exact protocol submitted by the Applicant and how it was non-specific or irrelevant. At any rate, the Applicant ought to have been given an opportunity of hearing by Expert Committee before arriving at such conclusion. It is on the basis of this report, without calling any explanation from the Applicant, the Respondent No.1 passed impugned order of deputation arbitrarily, as there is non-observance of principles of natural justice. The order of deputation should not be matter of punishment to a Government servant by prejudging his guilt without giving fair opportunity to explain his side.

14. Material to note that the Committee has submitted its report on 14.05.2020. However, no further action was taken on the report for near about three months and abruptly, by order dated 05.08.2020, the Respondent No.1 deputed the Applicant exercising powers under the 'Act of 1897' read with 'Regulation of 2020'. If the situation was alarming requiring immediate remedial measures, then appropriate action in accordance to law ought to have been taken by the concerned immediately on receipt of report or within reasonable time. However, there is delay of near about three months which watered down the alleged severity of the issue. It is nowhere the case of the Respondents that immediately some body else more competent was brought in place of Applicant.

15. In so far as Public Interest Litigation referred by Committee is concerned, it was pertaining to refusal of admission to an expecting lady in J.J. Hospital on the ground that she did not produce Covid-19 Negative Report, and therefore, she had delivered child at some other place. In Writ Petition, the Municipal Commissioner has filed Affidavit showing the steps taken by the Government including J.J. Hospital for smooth delivery of an expecting lady. The Hon'ble High Court gave clean chit to State and disposed of the Writ Petition on 22.05.2020 observing

that the Corporation and State have lived up to the expectations of the people in general and the expecting ladies in particular. In Para No.6, the Hon'ble High Court observed as under :-

“6. Based on the above facts and figures, we record our satisfaction that the Corporation and the State Government have lived up to the expectations of the people in general and the expecting ladies in particular. The number of deliveries performed during the past three months provides reason to hold that the contentions urged by Mr. Sakhare and Ms. Chavan are sound and that there has not been any reported incident of negligence does not call for judicial intervention on this PIL petition.”

16. It appears that the Expert Committee was much influenced because of filing of PIL, but ultimate result was in favour of Hospital. Thus, one of the ground referred by Expert Committee that because of filing of Writ Petition, the image of Government is tarnished becomes non-existent.

17. As stated above, this is not a case of simple deputation, but it is stigmatic attributing certain lapses to the Applicant. The impugned order has been issued in utter breach of principles of natural justice. Indeed, from the tenor of order and the pleadings, it is explicit that the Respondents wanted to punish the Applicant attributing certain lapses or negligence and in colourable exercise of power of 'Act of 1897' read with 'Regulation of 2020' passed order of deputation of the Applicant only to circumvent the provision of 'Transfer Act 2005'. Initially, the deputation was for indefinite period but in damage control exercise Respondent No.1 by order dated 05.01.2021 made it for period till March, 2021. Indeed, the Applicant being Group 'A' Officer, the State Government was the only competent authority for passing appropriate orders of deputation or transfer, if warranted so in law.

18. Now turning to the aspect of exercise of powers under 'Act of 1897' and 'Regulation of 2020', the perusal of Act and relevant Clauses goes to show that it empowers Respondent No.1 to take suitable and other

remedial measures as are necessary to prevent the outbreak of Covid-19 only and it do not confer powers of deputation or transfer.

19. Section 2 of 'Act of 1897' is as follows :-

“2. Power to take special measures and prescribe regulations as to dangerous epidemic disease.— (1) When at any time the [State Government] is satisfied that [the State] or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the [State Government], if [it] thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as [it] shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.

(2) In particular and without prejudice to the generality of the foregoing provisions, the [State Government] may take measures and prescribe regulations for—

(b) the inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.”

20. Whereas Clauses 3, 9 and 10 of 'Regulation of 2020' issued by Government of Maharashtra in exercise of powers conferred under Section 2 of 'Act of 1897' are as follows :-

“3. Empowered Officer” under Section 2(1) of the Act shall be Commissioner, Health Services, Director of Health Services (DHS-I & II), Director, Medical Education & Research (DMER), all Divisional Commissioners of Revenue Divisions & all Collectors and Municipal Commissioners & they are empowered to take such measures as are necessary to prevent the outbreak of COVID-19 or the spread thereof within their respective jurisdictions.

9. Officers empowered under the Act are authorized to isolate and / or admit a person who develops symptoms simulating that of the COVID 19 infection as per the case definition criteria published by WHO or Government of India from time to time. The empowered officer may initiate action under section 188 of Indian Penal Code (48 of 1860) against the person who refuses to comply with such advice of isolation and/or admission.

10. In the event of COVID-19 being reported from a defined geographic area such as village, town, ward, colony, settlement, the Collector of the concerned District / Municipal Commissioner of the concerned Municipal Corporation shall be competent to implement following containment measures, but not limited to these, in order to prevent spread of the disease.

- i. Sealing of the geographical area.
- ii. Barring entry and exit of population from the containment area.
- iii. Restricting Vehicular Movement in the area.
- iv. Closure of schools, offices, cinema halls, swimming pools, gyms, etc. and banning mass congregations, functions as may be deemed necessary.
- v. Initiating active and passive surveillance of COVID-19 cases.
- vi. Hospital isolation of all suspected cases and their contacts.
- vii. Designating any Government or Private Building as a quarantine facility.
- viii. Any other measure as directed by Public Health Department of Government of Maharashtra.

Staff of all Government Departments and Organizations of the concerned area will be at the disposal of Collector/Municipal Commissioner for discharging the duty of containment measures. If required, Collector/Municipal Commissioner may requisition the services of any other person also.”

21. Thus, it is explicit that the powers conferred upon Respondent No.1 pertains to taking certain measures to prevent outbreak of Covid-19 which includes sealing of geographical area, declaration of containment zone, restricting moment in containment zone, closure of Schools, etc. There is absolutely nothing in ‘Act of 1897’ or ‘Regulation of 2020’ empowering Respondent No.1 to transfer a Government servant on the ground of failure to handle pandemic situation. The transfers if necessitated mid-term or mid-tenure by certain situation, then one need to take recourse of the provisions of ‘Transfer Act 2005’ if so warranted in fact situation. However, in the present case, the Respondent No.1 under the garb of ‘Act of 1897’ usurped the powers of transfer of the Applicant in disguise of deputation, which is not at all permissible in law. His powers are restricted to adopt remedial measures to control epidemic disease and it cannot be stretched to the extent of powers of transfer unless so specifically provided in ‘Act of 1897’. No such power of transfer

is conferred upon empowering officer under the 'Act of 1897' or 'Regulation of 2020'.

22. Even assuming for a moment that there were certain deficiencies or short-comings or lapses on the part of Applicant, he ought to have been given an opportunity of hearing to explain his side as a principle of natural justice but Respondent No.1 arbitrarily passed the impugned order which is in essence stigmatic on 32 years' career of the Applicant. There is absolutely nothing on record that any point of time in his service period, any Memo or Show Cause Notice was issued him. This being the position, the order of deputation is nothing but in essence punitive transfer under the garb of deputation in colourable exercise of powers. The provisions of 'Act of 1897' or 'regulation of 2020' of which shelter has been taken as a source of power does not empower Respondent No.1 to pass any such order of deputation which is in essence the transfer of a Government servant. The State Government is only competent authority for such exercise, if situation warranted and it should have been in consonance with the provisions of 'Transfer Act 2005'.

23. In view of aforesaid discussion, there is no escape from the conclusion that the impugned order does not stand to scrutiny in law and facts and not at all sustainable in law. It deserves to be quashed. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 05.08.2020 is hereby quashed and set aside.
- (C) The Respondents are directed to repost the Applicant within a week.

(D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 09.01.2021

Dictation taken by :

S.K. Wamanse.

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