

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.555 OF 2018

(SUBJECT : TRANSFER)

DISTRICT: PUNE

Shri Namdeo Pandurang Shendkar, )  
Working as Senior Lecturer, )  
(Maharashtra Education Service, Group A) )  
Original Establishment District Institute Education, )  
Continuous Professional Development (DIECPD), Satara )  
Temporary Deputation at Maharashtra Vidya Pradhikaran )  
(MSCERT), Kumathekar Marg, Sadashiv Peth, Pune )  
Address for service of notice : )  
Shantiniketan CHS A/p. Saswad, Tal.Purandhar, )  
District Pune. )

.. Applicant

**Versus**

- 1) The State of Maharashtra, )  
Through Principal Secretary (Education), )  
School Education & Sports Department, )  
Having office at Mantralaya, )  
Mumbai 400 032. )
- 2) The Commissioner (Education), )  
(M.S.), Pune, having office at Central Building, )  
Dr. A.B. Marg, Pune 1 )
- 3) The Maharashtra Vidya Pradhikaran, )  
Having office at Sadashiv Peth, Pune 30 )
- 4) Dr. Dayanand Dhondiram Jatnure, )  
Working as Senior Lecturer, )  
In District Institute of Educational Continuous )  
Professional Development (DIECPD), Osmanabad. )

..Respondents

Shri A.V. Bandiwadekar, the learned Advocate for the Applicant.

Ms. S. Suryawanshi, the learned Presenting Officer for the Respondents.

**CORAM** : **SHRI A.P. KURHEKAR, MEMBER(J)**  
**RESERVED ON** : 24.01.2019.  
**PRONOUNCEMENT ON** : 08.02.2019.

### **J U D G M E N T**

1. In the present Original Application challenge is to the impugned transfer orders dated 17.07.2017 as well as 18.05.2018 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to this Original Application can be stated as follows :-

The Applicant was serving as Senior Lecturer at the District Institute of Educational Continuous Professional Development at Satara and was due for transfer at the time of impugned order dated 17.07.2017. The Respondent No.1 by impugned transfer dated 17.07.2017 transferred the Applicant at District Institute of Educational Continuous Professional Development, Lonikalbhor, Pune in place of Smt. Bhalerao Ratnaprabha who by the same order was transferred at Nashik. In pursuance of the said order Applicant joined at Pune. However, Smt. Bhalerao Ratnaprabha being aggrieved by the transfer at Nashik she had filed O.A.No.904 of 2017 in this Tribunal wherein the interim relief was granted to stay the execution of the said order. Consequently, Smt. Bhalerao Ratnaprabha was reposted at Pune. Therefore, Respondent No.1 by order dated 31.10.2017 modified the order dated 17.07.2017 and repatriated the Applicant at Satara temporarily. As it was inconvenient to her to continue at Satara she made representation to Respondent No.1 for giving posting at Pune. Accordingly, Respondent No.1 by order dated 17.11.2017 posted Applicant at Maharashtra Vidya Pradhikaran, Pune temporarily. Accordingly, Applicant joined the office of Respondent No.3 on 13.11.2017. Thereafter O.A.No.904/2017 was disposed of by the Tribunal on 22.03.2018 in view of cancellation of transfer order dated 17.07.2017 pertaining to transfer of Smt. Bhalerao Ratnaprabha. However, in general transfer of 2018, Respondent No.1 by order dated 18.05.2018 posted Respondent No.4

Dr. Dayanand Dhondiram Jatnure in place of Smt. Bhalerao Ratnaprabha at Pune on which Applicant was posted by earlier order dated 17.07.2017. Applicant contents that Respondent No.1 ought to have brought her back at District Institute of Educational Continuous Professional Development, Lonikalbhor, Pune where she was earlier posted by order dated 17.07.2017 which was later on cancelled in view of order passed in O.A.No.904/2017. However, Respondent No.1 posted Dr. Dayanand Dhondiram Jatnure on that place. Applicant, therefore, challenged both the orders i.e. 17.07.2017 as well on 18.05.2018 in present application on 21.06.2018. According to the Applicant, Respondent No.4 is not interested to join at Pune and therefore the said post be offered to him.

3. Respondents resist the application by filing the affidavit-in-reply (from page 34 to 45 of paper book) *inter alia*, denying the entitlement of the applicant for the relief claimed. The factual position as contended by the transfer orders dated 17.07.2017 and 18.05.2018 is the matter of record. Respondents content that in view of the order passed in O.A.No.904/2017 the earlier transfer order dated 17.07.2017 was modified and consequently the Applicant was also posted at Satara. Thereafter, the applicant himself made representation on 02.11.2017 for accommodating him at Pune. In the representation Applicant himself requested to post him in the office of Respondent No.3 at Maharashtra Vidya Pradhikaran, Pune. Accordingly request was accepted and by order dated 13.11.2017. Applicant was posted in the office of Respondent No.3 on deputation till 30.09.2019 i.e. till further order from the Government. Applicant has accepted the order of deputation and joined in service with Respondent No.3.

4. Respondents therefore content that having accepted the order of deputation without any demur or challenge now the applicant has no *locus standi* to challenge the order dated 18.05.2018. Respondents further content that applicant has no concern with the order dated 18.05.2018 and therefore he can't be termed as aggrieved person so as to challenge the said order. Both the offices i.e. District Institute of Educational Continuous Professional Development as well as Maharashtra Vidya Pradhikaran, Pune are located at Pune itself, therefore there is no hardship to the applicant. On these pleadings Respondents prayed to dismiss the application.

5. Shri A.V. Bandiwadekar, the learned Advocate for the Applicant sought to contend that in this Original Application the Applicant is only seeking implementation of the transfer order dated 17.07.2017 whereby the applicant was initially posted at Pune and therefore even if the said order has been modified by the Government later on in view of proceedings of O.A.No.904/2017, the Applicant is entitled to seek posting in pursuance of order dated 17.07.2017. In my considered opinion having regard to the subsequent development this submission is misconceived.

6. Admittedly, earlier order dated 17.07.2017 was modified by the Government and Applicant was sent back to Satara as temporary arrangement in view of order passed in O.A.No.904/2017, thereafter Applicant himself made a representation on 02.11.2017 whereby requested for is transfer at Maharashtra Vidya Pradhikaran, Pune (Respondent No.3). His request was accepted and Applicant was posted at Pune. Applicant joined the said posting in November 2017 itself, and since then he is continued at Pune. Significantly at any point of time he did not challenge the order dated 17.07.2017 and continued to work in the office of Respondent No.3 at Pune which he got as per his own request without any challenge or demur.

7. Applicant approached this Tribunal only after subsequent order dated 18.05.2018 passed in general transfer whereby Respondent No.4, Dr. Dayanand Dhondiram Jatnure was posted at Pune i.e. place where Applicant was earlier posted by order dated 17.07.2017 which was later modified and cancelled. This being the position, strictly speaking applicant has no concern with the transfer order dated 18.05.2018. Even assuming that he has any locus to challenge order dated 18.05.2018 he is estoppel from challenging the said order once he joined at Pune with Respondent No.3 which he got on his own representation. Therefore the principle of Rule of estoppel embodied in Section 115 of the Indian Evidence Act, 1872 would certainly apply.

8. Respondents have made it clear that Dr. Dayanand Dhondiram Jatnure who was transferred at District Institute of Educational Continuous Professional Development in terms of order dated 18.05.2018 has joined his post on 16.08.2018. Therefore, the contention of the Applicant that Dr. Dayanand Dhondiram Jatnure is not interested in joining the said post and the said post be offered to him is totally incorrect.

9. Thus what emerges from the actual position is that the Applicant has not challenged the order dated 17.07.2017 at any point of time though in view of order passed in O.A.No.904/2017 he was sent back to his earlier post at Satara. Thereafter on his own representation and considering his family difficulties he was accommodated and posted in the office of Respondent No.3. He accordingly joined in November 2017. He by his own conduct waived his right and therefore now he cannot be allowed to turn around and plead contrary. Both working places i.e. District Institute of Educational Continuous Professional Development as well as Maharashtra Vidya Pradhikaran are in Pune itself. Therefore, it cannot be said that Applicant is put to any kind of hardship or inconvenience.

10. Needless to mention the transfer is an incidence of service. Government servant has no right to remain posted at one place or to ask for one particular place. Courts should not interfere with the transfer orders as to Appellate Authority and it is for administration to look into the requirement of this situation. As such unless the transfer order is shown *malafide* or in-contravention of express provision of law the same cannot be interfered with. In the present case, no such contravention of law or malafide exists. The Applicant seems to be insisting for transfer on the post where he was earlier transferred by order dated 17.07.2017 which was later on modified and cancelled. It seems that the Applicant is perusing the remedy as if he has vested right or lien on the said post. Suffice to say challenge to the order dated 17.07.2017 as well as 18.05.2018 is without any substance in law or facts.

11. At this juncture, it would apposite to refer the Judgment of Hon'ble Bombay High Court in **2008 (2) Mh.L.J. 640 (Shri V.V. Gadekar, Deputy Engineer Vs. MHADA)** wherein the Hon'ble High Court held as follows :

*“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”*

12. The necessary corollary of the aforesaid discussion leads to sum up that challenge to the impugned order is devoid of merit and Original Application deserves to be dismissed.

#### **ORDER**

- (i) Original Application is hereby dismissed with no order as to costs.
- (ii) Interim relief granted on 21.12.2018 to keep the post of Shri D.E. Patil vacant, stands vacated.

Sd/-  
**(A.P. Kurhekar)**  
**Member(J)**

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