

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.604 OF 2019

DISTRICT : SOLAPUR

Shri Anil Chandu Gherade.)
Age : 32 Yrs., Occu.: Talathi residing at)
C/o. Mrs. Avantika Manik More,)
Irrigation Colony, Indapur, Dist : Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
General Administration Department,))
Mantralaya, Mumbai – 400 032.)
2. Sub-Divisional Officer.)
Malshiras Division, Akluj,)
District : Solapur.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 22.11.2019

JUDGMENT

1. The Applicant is working as Talathi and has challenged the impugned transfer order dated 31.05.2019 whereby he was transferred from Village Tambave to Talathi of Village Girvi, Tal.: Malshiras, District : Solapur.

2. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the impugned order contending that the Applicant

being Class-C employee is entitled for two full tenures in terms of provision to Section 3(1) 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), but he was transferred mid-tenure without compliance of Section 4(5) of 'Transfer Act 2005', and therefore, his transfer order is unsustainable in law.

3. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned order contending that the transfer of the Applicant was necessitated on administrative ground in view of vacancy at Village Girvi and further submits that the Applicant himself has made request for transfer.

4. Undisputedly, the Applicant was posted as Talathi at Village Tambave by order dated 22.07.2014, but he is transferred by order dated 31.05.2019 citing administrative reason. In so far as the tenure of the Applicant is concerned, admittedly, he falls in Group 'C', and therefore, as per proviso to Section 3(1) of 'Transfer Act 2005', he is entitled for six years tenure.

5. Here, it would be apposite to reproduce Section 3(1) with proviso, which is as under :-

“3(1) For all India Service Officers and all Groups A, B and C State Government Servants or employees, the normal tenure in a post shall be three years :

Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or Department :

Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be continued in the same Department for more than two consecutive tenures.”

6. As such, it cannot be disputed that the Applicant being Group 'C' employee was entitled for two full tenures. The learned P.O. could not point out contrary position to disentitle the Applicant for six years tenure at one place. As such, the positions boiled down to the effect that the Applicant having not completed six years tenure, the impugned transfer order is mid-tenure, and therefore, there has to be compliance of Section 4(5) of 'Transfer Act 2005', which is completely missing in the present case.

7. Here, let us see Section 4(5) of 'Transfer Act 2005'.

“4(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

8. Admittedly, the Applicant was transferred by S.D.O. and there is no approval of immediately preceding Competent Transferring Authority as contemplated under Section 4(5) of 'Transfer Act 2005'. Besides, admittedly, there is no recommendation of Civil Services Board (CSB) as mandated by Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**. The learned P.O. fairly concedes that there is no recommendation from CSB nor approval of immediately preceding Competent Transferring Authority for such mid-tenure transfer.

9. In so far as the request made from the Applicant is concerned, true, by letter dated 17.05.2019, he made request for transfer by giving specific Options of Village Malshiras, Lavang and Sangam. Except these three places, he did not ask for any other place. As the Applicant was not due for transfer and if Department was ready to accept his mid-term transfer, then it should not have been beyond the Options given by the Applicant. However, it is not so. The Applicant

was transferred at different place i.e. Village Girvi, Tal.: Malshiras, District Solapur.

10. In case, SDO was not ready to accept the Options given by him, then he was free to transfer him at some other place, if administrative exigency is made out, that too, with compliance of Section 4(5) of 'Transfer Act 2005'. However, admittedly, there is no approval of next preceding Competent Transferring Authority neither there is recommendation of CSB. It is thus apparent that the SDO has taken shelter of the request letter of the Applicant, which is nothing but to circumvent the provisions of law.

11. The perusal of impugned order reveals that by citing administrative reason, the Applicant is shown transferred to Girvi without elaborating or explaining what was the administrative exigency. Apart, no other material is produced in the form of minutes of CSB, otherwise to substantiate that there was any such administrative exigency or special reasons to transfer the Applicant mid-tenure. Suffice to say, no reason even for name sake is forthcoming and impugned order is in blatant violation of provisions of 'Transfer Act 2005'.

12. This being the position, the impugned transfer order is *ex-facis* unsustainable in law and liable to be quashed.

13. The totality of aforesaid discussion leads me to sum-up that the impugned order being unsustainable in law deserves to be quashed and set aside and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 31.05.2019 is hereby quashed and set aside.
- (C) The Applicant be reposted at Village Tambave, Tal.: Malshiras, District Solapur within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 22.11.2019

Dictation taken by :

S.K. Wamanse.

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