

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.608 OF 2018

DISTRICT : PUNE

Shri Kishor Eknath Pawar.)
Age : 57 Yrs., Working as Block Education)
Officer, having office at Panchayat Samiti,)
Baramati, District : Pune and residing at A/P)
Pandare, Tal.: Baramati, District : Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary (Education),)
School Education & Sports Dept.,)
M.K. Road, Mantralaya Extension,)
Mumbai – 400 032.)
2. The Commissioner (Education).)
Pune, having office at Central Building,)
Dr. A.B. Marg, Pune – 1.)
3. The Chief Executive Officer.)
Zilla Parishad, Pune, Education)
Department, (Primary), Pune.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents 1 & 2.

None for Respondent No.3.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 09.05.2019

JUDGMENT

1. In the present Original Application, the Applicant has basically challenged the impugned order dated 4th April, 2018 passed by Respondent No.1, thereby withdrawing his all powers of Block Education Officer invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant joined Government service as Supervisor in 1979, and thereafter, in due course of time, he was promoted to the post of Block Education Officer. By order dated 2nd February, 2017, he was transferred to the post of Block Education Officer, Panchayat Samiti, Baramati, District Pune and in pursuance of it, he joined the said post. He contends that his service record is throughout excellent and his performance has been appreciated by his superiors. However, abruptly by impugned order dated 4th April, 2017, the Respondent No.1 by cryptic order of two sentences has withdrawn all powers attached to his post as Block Education Officer, leaving him without any work. Being aggrieved by it, the Applicant made representation to restore his powers contending that the order dated 4th April, 2018 is arbitrary and in violation of principles of natural justice. He was not given opportunity before issuing such stigmatic order, and therefore, requested to restore his powers and to give him suitable posting. The Applicant contends that the impugned order has been passed on the pressure of politicians without giving any opportunity of hearing, and therefore, such order without any fault on his part, is unsustainable in law and facts. During the pendency of this O.A, the Respondent No.1 transferred the Applicant by order dated 3rd October, 2018 to Newasa, District Ahmednagar instead of giving him posting nearby Pune. In this behalf, the Applicant contends that he being due to

retire at the end of April, 2019, the impugned transfer order is in violation 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'). He contends that in absence of approval of Civil Services Board (CSB) as well as the Hon'ble Chief Minister, the impugned order of transfer is *ex-facie* illegal. He, therefore, amended the application and also included the relief for setting aside the transfer order dated 03.10.2018.

3. Apart, another development took place during the pendency of this O.A. is that, again the Respondent No.1 by order dated 30th November, 2018 on the request of the Applicant, he was attached to District Educational Consistent Business Development Organization, Pune and was directed to perform administrative duties. However, his salary was to be drawn from Panchayat Samiti, Baramati.

4. Here it is material to note that, though the Applicant stands retired at the end of April, 2019 and challenge to the transfer order dated 03.10.2018 whereby he was transferred to Newasa, District Ahmednagar has become infructuous, the proceedings are continued to determine the legality of the impugned order dated 4th April, 2018. As such, the issue involved now restricted where the order dated 4th April, 2018 withdrawing the powers of the Applicant unilaterally, is legal and valid.

5. The Respondent No.1 resisted the application by filing Affidavit-in-reply (Page Nos.25 to 33 of Paper Book) *inter-alia* denying that the impugned order dated 4th April, 2018 is arbitrary or stigmatic. The Respondent contends that in general meeting of Baramati, Panchayat Samiti, a Resolution was passed against the Applicant to discharge him from his post in view of complaints against him. Besides, Shri Ajit Pawar, Member of Legislature Assembly by his letter dated 04.01.2018 informed the Hon'ble Education Minister about the alleged

misconduct viz. adamant and insulting treatment to colleagues. It is on this background, on the instruction of Hon'ble Minister of School Education, the powers of Applicant as Block Education Officer, Panchayat Samiti, Baramati was withdrawn by order dated 4th April, 2018. The Respondent further contends that the impugned order is not the punishment nor it affected the service conditions of the Applicant, and therefore, the challenge to the impugned order is unsustainable. As he was due to retire in April, 2019, no further action was taken against him except withdrawing the powers.

6. It is not in dispute that, during the pendency of the O.A, the Applicant was transferred as Block Education Officer, Newasa, District Ahmednagar by order dated 3rd October, 2018 which was again cancelled by order dated 30th November, 2018 whereby he was assigned administrative work at District Educational Consistent Business Development Organization, Pune.

7. Shri A.V. Bandiwadkar, learned Advocate for the Applicant urged that, though the Respondent No.1 had cancelled the transfer order dated 3rd October, 2018 (transferred to Newasa) in view of subsequent order dated 30th November, 2018 whereby administrative work has been assigned to the Applicant at District Educational Consistent Business Development Organization, Pune, the impugned order dated 4th April, 2018 which is the subject matter of O.A. being stigmatic deserves to be quashed. He has pointed out that, before passing the impugned order, no opportunity of hearing was given to the Applicant, and therefore, such order amounts to stigma for the Officer at the verge of his retirement. He has further pointed out that, after issuance of impugned order, the Applicant was given clean chit by the Enquiry Officer, and therefore, the impugned order having passed without following any due procedure on non-existent ground is liable to be set aside.

8. Per contra, Ms. N.G. Gohad, learned Presenting Officer for the Respondents sought to justify the impugned order contending that because of complaint of adamant behavior of the Applicant, the Panchayat Samiti, Baramati had passed a Resolution for his transfer, and therefore, no fault can be found in impugned order dated 04.04.2018.

9. As stated above, the Applicant already stood retired in April, 2019. However, the proceedings of this O.A. has been continued to determine the legality of the impugned order dated 04.04.2018. Therefore, the limited issue posed for determination is whether the order dated 04.04.2018 is legal, though it is of no utility or of any consequences in view of retirement of the Applicant. In other words, its efficacy is limited to the academic discussion.

10. It seems that, in the meeting of Panchayat Samiti, Baramati, a Resolution was passed against the Applicant alleging that his performance is not satisfactory, and therefore, it was resolved to relieve him from the said post. It further seems that, on this background, on the instructions of Hon'ble Minister, School Education, the powers of the Applicant was withdrawn by order dated 4th April, 2018. The contents of impugned order dated 04.04.2018 are as follows :-

“श्री. के.ई. पवार, गटशिक्षणाधिकारी, बारामती, जि. पुणे यांना गटशिक्षणाधिकारी म्हणून देण्यात आलेले सर्व अधिकार पुढील आदेश होईपर्यंत काढून घेण्यात यावेत.”

11. Thus, no reasons are assigned in impugned order dated 04.04.2018 for withdrawing his powers abruptly. Admittedly, before issuance of such order, neither Show Cause Notice was given to the Applicant nor any opportunity of hearing was given to him. As such, the impugned order has been passed without observance of principles of natural justice.

12. True, the Panchayat Samiti, Baramati seems to have passed Resolution for transfer of the Applicant in its general meeting dated 14.12.2017. However, that

itself could not be the ground to pass such order of withdrawal of powers. If there are any allegations of misconduct against the Applicant, then it ought to have been dealt with in accordance to Rules by initiating proper enquiry against him. However, no such legal course of action was initiated and only on the basis of alleged complaint, the impugned order has been passed. Needless to mention that, such order of withdrawing power of the Officer at the verge of retirement without giving him an opportunity of hearing, amounts to humiliations as well as the same is stigmatic. Naturally, such order has effect of harm to the reputation as well as career of the Applicant. The learned P.O. could not point out any provision to point out empowerment of authority to pass such order in this manner, which kept the Applicant in animated suspension. Suffice to say, the order is arbitrary and such order cannot be allowed to stand in the eye of law.

13. One can understand, had there was any emergent situation to pass such order and after passing such order, logical steps are taken, so as to deal with the matter in departmental proceedings. However, no such steps have been taken by the Respondents to take the matter to the logical end in accordance to Rules. This being the position, the impugned order which seems to have been passed on political pressure have no legal sanctity and the same deserves to be set aside.

14. Indeed, as rightly pointed out by the learned Advocate for the Applicant, the Enquiry Committee appointed in this behalf did not indict the Applicant. It appears that Shri Amar Mane, Deputy Chief Executive Officer was appointed as Enquiry Officer. He found the Applicant's performance satisfactory as regard betterment of educational standard. However, the Enquiry Officer found that there was no coordination in between Applicant and local representatives. The conclusion of Enquiry Officer is as follows :-

“उपरोक्त चौकशी दरम्यान चौकशी अधिकारी म्हणून श्री.किशोर पवार, गटशिक्षणाधिकारी,पं.सं.बारामती यांच्या शैक्षणिक कामकाजाबाबत गुणवत्तावाढीसाठी चांगले प्रयत्न दिसून आले आहेत. परंतु स्थानिक पदाधिकारी यांच्याशी समन्वय ठेवणे आवश्यक आहे. त्यामुळे एकूण कामकाज करताना अडचणी उद्भवणार नाहीत, मतभेद होणार नाहीत, याची दक्षता घेण्यात यावी असे मत आहे.”

15. Thus, it appears that there was lack of coordination in between Applicant and local body members and it appears to be the only reason for passing the impugned order of withdrawal of powers. Suffice to say, there is nothing to substantiate or to justify the order of withdrawal of powers.

16. Shri A.V. Bandiwadekar, learned Advocate for the Applicant rightly referred to the decision of Hon'ble Supreme Court in **(2013) 2 SCC (L & S) 156 (Munitipal Corporation, Ludhiana & Ors. Vs. Jiwan Singh & Anr.)** wherein the Hon'ble Supreme Court in the context of dispute of the employees of Municipal Corporation held that the work of employee cannot be withdrawn arbitrarily. In that matter, the employees worked for nine years in temporary capacity, but suddenly by order dated 06.04.1992, their work was withdrawn and they were kept in suspended animation without passing appropriate order of suspension or termination. It is in that context, the Hon'ble Supreme Court held that the work of employees in such manner cannot be withdrawn. In the present case also, without taking any appropriate steps of suspension or otherwise, the Respondent No.1 has simply withdrawn the work of the Applicant which is stigmatic and being passed without giving an opportunity of hearing to the Applicant is liable to be set aside.

17. The totality of aforesaid discussion leads me to sum-up that the impugned order dated 04.04.2018 is not sustainable in law and the same deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 04.04.2018 is hereby set aside.
- (C) No order as to costs.

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

Mumbai

Date : 09.05.2019

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2019\5 May, 2019\O.A.608.18.w.5.2019.Withdrawal of Power & Transfer.doc