

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.610 OF 2018

DISTRICT : MUMBAI

Dr. Soudamani S. Chaudhari)
Working as Professor, Age : 54 Yrs,)
Residing at 1, Gomati, Khan Abdul Gafar)
Khan Road, Worli Sea Face,)
Mumbai - 400 030.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Medical Education & Drugs Dept.,)
Gokuldas Tejpal Hospital Building,)
9th Floor, Lokmanya Tilak Road,)
Mumbai - 400 001.)
2. Director.)
Directorate of Ayush (M.S),)
4th Floor, St. Georges Hospital)
Compound, Dental College Complex,)
P. Demello Road, Mumbai 400 001.)
3. Dean.)
Government R.A. Podar Ayu Medical)
College, Annie Besant Road, 18,)
Worli, Mumbai 400 018.)

4. Dr. Sulekha J. Deolkar.)
Professor, Govt. R.A. Podar Ayu)
Medical College, Annie Besand Road, 18,)
Worli, Mumbai 400 018.)...Respondents

Mrs. Punam Mahajan, Advocate for Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Respondent Nos.1 to 3.

Ms. Lata Patne, Advocate for Respondent No.4.

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

DATE : 04.01.2019

JUDGMENT

1. The Applicant has challenged her transfer by impugned order dated 21.06.2018 whereby she was transferred from the post of Professor, Podar Ayurved Medical College, Mumbai to the post of Professor, Government Ayurved College, Nanded invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated the facts giving rise to this application are as under :

The Applicant joined as Professor at Podar Ayurved Medical College, Mumbai on 20.06.2016 and since then, she was working at the said place till passing of impugned order dated 21.06.2018 whereby, she has been transferred to the post of Professor, Government Ayurved College, Nanded and in her place, the Respondent No.4 – Dr. Sulekha J. Deolkar, who was working in Government Ayurved College, Nanded was posted at Podar Ayurved Medical College, Mumbai. The Applicant contends that she has been transferred to accommodate Respondent No.4 and secondly, the transfer is punitive, and therefore, not

sustainable in law and facts. During the Applicant's tenure at Podar Ayurved Medical College, Mumbai, she was pursuing Respondent No.3 i.e. Dean, Podar Ayurved Medical College for availing certain facilities in her Department for the convenience of the patients. However, the Respondent No.3 got annoyed and earlier on 19.05.2017 submitted report to Respondent No.2 – Director of Ayush for her transfer. Since then, the Respondent No.3 was antagonized and was bent upon to transfer her, but he could not succeed in 2017. Thereafter again, the Respondent No.3 submitted report / complaint dated 24.05.2018 to Respondent No.2 – Director of Ayush alleging incompetency and misbehavior as well as non-performance of the Applicant. The Applicant contends that the report dated 24.05.2018 was nothing but an attempt to oust her and to accommodate Respondent No.4 in her place. It is on this background, she has been transferred by impugned order dated 21.06.2018 from Mumbai to Nanded. She claims to have been victimized by the Respondents though her performance was good enough. She further asserts that, it is in contravention of Government Circular dated 11.02.2015 which provides that, there should not be transfer on mere complaint. The Applicant, therefore, contends that the impugned transfer order is malafide and not in consonance with the provisions of Sections 4(4)(ii) and 4(5) 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').

3. Per contra, Respondent Nos.1 to 3 resisted the application by filing common Affidavit-in-reply *inter-alia* denying the allegations made by the Applicant in the application that the transfer is punitive and was made out of vengeance. It is not in dispute that the Applicant has not completed three years normal tenure and at the time of impugned order, was not due for transfer. The Respondents contend that the relation of the Applicant with Staff Nurses and other colleagues was not cordial. The Nurses working under the Applicant was also unhappy with the behavior of the Applicant and made representation to the

Dean. The Respondents further contend that, since the Applicant took over the charge of Head of Department due to incompetency and indifferent behavior of the Applicant, there was drastic reduction in number of patients visiting the Hospital for treatment. As such, the Applicant was not discharging her duties faithfully and efficiently, resulting in diminishing the number of patients visiting the Hospital. The Respondent No.3, therefore, submitted the report on 24.05.2018 recommending her transfer to Respondent No.2 – Director of Ayush who accordingly forwarded the proposal for her transfer to Civil Services Board (CSB). In pursuance of it, the matter was placed before the CSB. The issue was pondered and discussed. The CSB in its meeting dated 29.05.2018 considered the proposal and in view of the report of Dean, recommended her transfer to Government Ayurved College, Nanded in place of Respondent No.4 and consequently, the Respondent No.4 was transferred in place of Applicant at Mumbai. As it was mid-term and mid-tenure transfer, the proposal was placed before Hon'ble Minister who approved the same, and thereafter, it was placed before Hon'ble Chief Minister who was pleased to accord sanction to the transfer of the Applicant from Mumbai to Nanded.

4. The Respondents thus contend that the transfer was necessitated from the point of administrative exigencies and in view of report of Dean and it was necessary for the smooth functioning of the Hospital and for betterment of Medical Services to the poor and needy persons. As such, according to Respondents, there is no malice or arbitrariness in the impugned order. On the contrary, it was the need of administration and accordingly, after necessary compliance of Sections 4(4)(ii) and 4(5) of 'Transfer Act 2005' transfer order has been issued. On these pleadings, the Respondent Nos. 1 to 3 prayed to dismiss the application.

5. The Respondent No.4 has also resisted the application by filing reply *inter-alia* denying that the Applicant has been transferred to accommodate her at

Mumbai. The Respondent No.4 thus supported the pleadings and stand taken by Respondent Nos.1 to 3 and contends that the transfer is legal and challenge is without any merit.

6. The Applicant has also filed Affidavit-in-rejoinder thereby reiterating the contentions raised in the O.A.

7. The Respondent Nos. 1 to 32 have also again filed Affidavit-in-sur-rejoinder reiterating the grounds raised in Affidavit-in-reply filed earlier.

8. Heard Smt. Punam Mahajan, learned Advocate for the Applicant, Ms. S.T. Suryawanshi, learned Presenting Officer for the Respondent Nos.1 to 3 and Ms. Lata Patne, learned Advocate for Respondent No.4.

9. Learned Advocate for the Applicant sought to contend that the Applicant was admittedly not due for transfer, and therefore, it being mid-term and mid-tenure transfer has to be in strict compliance of the provisions of Sections 4(4)(ii) and 4(5) of 'ROTA Act 2005' which is according to her missing in the present matter. She further emphasized that the very foundation of the transfer of the Applicant is the report / complaint of Dean, and therefore, the transfer is punitive as in absence of regular D.E, there cannot be transfer on such report / complaint, which amounts to punishment. She further sought to contend that, in fact, the Applicant during her tenure at Mumbai was discharging her duties efficiently, but Dean was antagonized with her because of some correspondence she made with the Dean, which was in fact aimed for better facilities in the Hospital. Thus, the sum and substance of the submission of learned Advocate for the Applicant is that the said transfer is punitive, and therefore, not sustainable in law. The Applicant's Advocate in support of her submission placed reliance on certain decisions, which would be dealt with a little later.

10. Per contra, Ms. Suryawanshi, learned Presenting Officer submitted that, in view of fact finding report of Dean and in the light of diminishing number of patients because of unsatisfactory work of the Applicant, it was necessary to transfer the Applicant for administrative convenience as well as for smooth functioning of the Hospital. The proposal of transfer made by Director, Ayush was placed before the CSB and after his approval, it was approved by the Hon'ble Minister as well as Hon'ble Chief Minister being highest competent authority. As such, the transfer was made in compliance of provisions of Sections 4(4(ii) and 4(5) of 'Transfer Act 2005'.

11. Ms. Lata Patne, learned Advocate for Respondent No.4 also supported the impugned transfer order and adopted the stand taken by the learned P.O. She contends that, her client's transfer at Mumbai was in consequent to the transfer of the Applicant and Respondent No.4 has no role to play in it.

12. Before reverting to the facts, it would be apposite to highlight the legal aspects to be borne in mind while considering the issue in question.

13. The learned Advocate for the Applicant referred to following decisions :

(A) **(2009) 2 SCC 592 (Somesh Tiwari Vs. Union of India)** wherein the Hon'ble Supreme Court in Para No.16 held as under :

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous compliant. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed in lieu of punishment, the same is liable to set aside being wholly illegal.

(B) **2015 (2) Mh.L.J. 679 (State of Maharashtra Vs. Dr. Padmashree Bainade)** wherein Hon'ble Supreme Court in Para No.23 held as follows:

"23. The transfer is a part of service contract and/or the service jurisprudence. "Transfer is an incidence of service" "Reason to be recorded" cannot read to mean, no reason should not be communicated at any circumstances, specially when it is obligatory on the part of the State to act fairly, transparently and reasonably. The decision needs to be actuated by consideration based on law and the record and certainly not an extraneous consideration. Unreasoned order is always vulnerable to challenge and stated to be mala fide. The State/ Authority needs to act bona fide. Therefore, cannot be restricted to means for and / or with the private record/ department. It must be reflected before taking any action/ order. Perversity or irrationality, bona fide legality of reasons difficult to test, if not disclosed at the time of order / action itself. It is normally the unreasoned mid-term order or such orders are vulnerable to challenged. An executive order on undisclosed or unreasoned foundation of alleged misconduct and dereliction of duty is also vulnerable to challenge on the ground of malice in law. Such undisclosed burdened mid-term order of transfer affects the status of the employee, it violates the service conditions thus illegal, though it is administrative order. It has civil consequence. The principle of natural justice is applicable. The State Act and not any guidelines govern such State Government transfer order, such transfer order is arbitrary, irrational and violates Article 14 of the Constitution of India.

(C) Judgment of Hon'ble High Court in **Writ Petition No.7960/2011 (Harish Baijal Vs. State of Maharashtra)** wherein in Para No.10 held as follows :

"It is well settled that transfer of a government servant is an incident of service and the courts should not interfere with such transfer orders, ordinarily. A government servant holding a transferable post has no vested right to continue at a particular posting or at one place or the other. However, in the State of Maharashtra, the transfer orders are governed by a special statute i.e. the Transfer Act and if the procedure, as set out in the said Act, is not followed while issuing the transfer order, such order would be unsustainable. Similarly, if an order of transfer suffers from malice or if it has been issued by way of victimization or by way of a penal action, the court would be justified in setting aside such order."

14. In addition to above, the learned Advocate for the Applicant referred to the decision of this Tribunal in **O.A.No.832/2018 (Shri Ravindar Kadampatil Vs. State of Maharashtra, decided on 17.10.2018)**, **O.A.No.527/2018 (Ravindranath Chauhan Vs. State of Maharashtra, decided on 19.11.2018)**, **O.A.No.952/2017 (Vilas Shirolkar Vs. State of Maharashtra, decided on 23.02.2018)** and **O.A.No.1023/2014 (Vijay Patil Vs. State of Maharashtra, decided on 24.12.2014)**.

15. In so far as the decisions rendered by this Tribunal in the above mentioned O.As are concerned, the facts and circumstances of the case, the transfer orders were quashed. It is not necessary to deal with the facts and circumstances of each case, as the decisions given in one case cannot be made applicable out rightly to another case. Needless to mention that the ratio of any decision must be understood in the background of the fact of that case and little difference in the facts or additional fact make a lot of difference in the precedential value of a decision. As such, each case needs to be decided on the factual background keeping in mind the legal principles and statutory provisions.

16. Besides, the learned Advocate for the Applicant also placed reliance on Clause No.8 of Circular dated 11.02.2015 issued by G.A.D. which is as follows :

“८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचा-यांच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचा-याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी/कर्मचा-यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिका-याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचा-यांच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्यातबाबत बदली प्राधिका-याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-याचे मत झाल्यास त्याबाबतची कारणामिमांसा नमूद करून बदली प्राधिका-री संबंधीत अधिकारी/कर्मचया-याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिका-याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिका-याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिका-याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिका-याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिका-याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिका-याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी/कर्मचारी यांची बदली

करण्यात येते अशा प्रकरणात संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”

17. At this juncture, it would be appropriate to reproduce the decision of Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India Vs. Janardhan Debanath & Anr.)** in Para No.14 is as follows :

“14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”

18. The propositions enunciated in the aforesaid Judgments can be summarized as follows :

- “(A) An order of transfer is an administrative order and ordinarily is an incidence of service. Therefore, it should not be interfered with except whether malafides on the part of authority is proved.
- (B) Transfer which is made on the ground of complaint is punitive in nature. Punitive transfer cannot be effect without an enquiry and substantiation of the same by the competent authority.
- (C) In case of mid-term or mid-tenure transfer, it must be shown that the matter has been examined objectively and the transfer is

necessitated on account of administrative exigencies and it should be in compliance of provisions of Sections 4(4)(ii) and 4(5) of 'Transfer Act 2005'.

19. In-so-far as the Circular dated 11.02.2015 quoted above is concerned, it stipulates that the employee shall not be transferred merely on the basis of complaints and there must be some investigation or material on record to substantiate the same and if the competent authority satisfied that the transfer is necessitated, then in that event, the authority should record the reasons, and thereafter, it should be approved by the concerned authority with objective satisfaction. As such, the transfer is permissible once complaint is substantiated.

20. Now, turning to the facts of the present case, admittedly, the Applicant has not completed the normal tenure of three years at the time of impugned transfer order, and therefore, the transfer is mid-term as well as mid-tenure. Furthermore, the transfer was admittedly made on the basis of report made by Dean dated 24.05.2018 (Page No.55 of the P.B.). Consequent to report of Dean, the Director, Ayush (Respondent No.2) submitted proposal before CSB for the transfer of the Applicant. The recommendation of CSB which is at Page No.133 shows that the CSB in its meeting dated 29.05.2018 discussed the issue and recommended transfer of the Applicant in view of report of Dean. Later it was approved by the Hon'ble Minister, and thereafter, by Hon'ble Chief Minister being higher competent authority, in view of provisions under Sections 4(4)(ii) and 4(5) of 'Transfer Act 2005'.

21. Now, the crux of the matter is, whether the transfer is punitive or it was necessitated on the basis of report made by Dean and secondly, whether the report of the Dean can be said substantiated, so as to render the transfer order legal and valid.

22. The learned Advocate for the Applicant has invited my attention to certain letters/correspondence made in between Applicant and Dean to show that because of insistence of the Applicant for some facilities and cleanliness, the Dean was antagonized which triggered submission of report to the Director, Ayush for Applicant's transfer. In this behalf, she referred letter dated 21.07.2016 written by the Applicant addressed to Dean (Page No.34 of the P.B.). In the said letter, the Applicant has requested the Dean for facilitating the services of anesthetics on payment of charges by the patients. However, the Dean by his letter dated 11.08.2016 (Page No.35 of the P.B.) informed the Applicant that as per practice prevalent, the services of approved anesthetics can be availed free of cost and the matter of availing the services of anesthetics on contract basis is under consideration of the Government. The learned Advocate for the Applicant also referred to Applicant's letter dated 09.12.2016 (Page No.45 of the P.B.) wherein the Applicant had requested the Dean for appointment of additional staff to maintain cleanliness and hygiene. However, the Dean by his reply dated 17.12.2016 (Page No.46 of the P.B.) replied that he took round in the Department and see nothing unhygienic. In this connection, there is one more letter dated 20.12.2016 written by the Applicant addressed to Dean wherein she raised grievance that she is not being taken in confidence by Dean while allotment of duties in the Department. On the same day i.e. on 20.12.2016, she has sent one more letter addressed to Dean wherein she alleged that the Dean is caste-bias and her grievances raised in the earlier correspondence are not attended to properly. This correspondence in fact shows lack of coordination and nothing else. Therefore, this correspondence is of little assistance to the Applicant to jump to the conclusion that the Applicant has been victimized by transferring her from Mumbai to Nanded.

23. Now, turning to the report made by Dean dated 29.05.2017 (Page No.51 of P.B.) and 24.05.2018 (Page No.55 of P.B.). For the present matter, the second

report dated 24.05.2018 is material as on the basis of said report, the Director, Ayush forwarded proposal to CSB. Before adverting to the report dated 24.05.2018, it would be appropriate to refer complaints dated 17.10.2016 (Page No.36 of P.B.) and 16.11.2016, 22.11.2016 which are at Page Nos.38 to 41 of P.B. These are the complaints made by Staff Nurses against attitude and behavior of the Applicant. The Staff Nurses alleged that they have been subjected to harassment, insult and intimidation at the hands of Applicant. In these letters addressed to Dean, Staff Nurses had also referred certain specific instances and requested the Dean to take necessary steps for smooth functioning of the Department.

24. Now, let us see the report dated 24.05.2018 made to Dean for transfer of the Applicant. It would be appropriate to reproduce the report for understanding in proper perspective.

“अत्यंत महत्वाचे /तातडीचे

जा.क्र.राआपोम/आस्था/बदली/विनंती/२०१८/३६३६

दिनांक : २४ मे, २०१८

प्रति,
मा.संचालक,
आयुष संचालनालय,
महाराष्ट्र राज्य, मुंबई.

विषय : वैद्या. सौदामिनी सु.चौधरी, विभागप्रमुख तथा प्राध्यापक, प्रसुतीतंत्र विभाग यांची तातडीने बदली करण्याबाबत.

संदर्भ : या कार्यालयाचे पत्र क्र.राआपोम/आस्था/२०१७/२९६२-६३, दिनांक २९ मे, २०१७.

मा. महोदय,

विषयाकितं प्रकरणी आपले लक्ष संदर्भित नमूद पत्राकडे वेधण्यात येत आहे.

संदर्भित पत्रान्वये आपणांस वैद्या.सौदामिनी चौधरी, विभागप्रमुख तथा प्राध्यापक, प्रसुतीतंत्र विभाग यांची एकदंर कार्यशैली,रुग्णलयातील इतर कर्मचा-यांशी असलेले त्यांचे वर्तन व त्यामुळे रुग्णालयातील रुग्णसेवेवर होणारा विपरीत परिणाम व रुग्णालयातील परिचारीका वर्ग व इतर कर्मचा-यांना होणारा त्रास याबाबत कळविण्यात आलेले होते.

वैद्या.चौधरी यांचे वर्तन हे दिवसागणिक अधिकच त्रासदायक होत असून त्यामुळे रुग्णालयातील परिचारीका वर्ग व इतर कर्मचा-यांना त्यांच्या वर्तनाचा नाहक त्रास सहन करावा लागत आहे. त्याचप्रमाणे रुग्णालयातील कर्मचा-यांच्या कामकाजाबाबत अकारण तक्रारी करणे, अधिष्ठाता यांनी दिलेल्या आदेशांचे पालन न करणे, विभागात मनमानी पध्दतीने काम करणे अशा प्रकारच्या घटनांमध्ये वाढ झाल्याचे निदर्शनास आलेले आहे. वैद्या. चौधरी यांचे अयोग्य वर्तनामुळे परिचारीका वर्ग त्रस्त असून अनेक परिचारीक कर्मचा-यांनी वैद्या.चौधरी यांचेकडून सातत्याने मानहानी होत असून त्यांचेकडून अपमानास्पद वागणूक मिळत असल्याबाबत नमूद केलेले आहे.

वैद्या. चौधरी यांचे रुग्णाविषयक धोरण देखिल अयोग्य असून त्यामुळे रुग्णालयातील रुग्णसेवेवर त्याचा विपरीत परिणाम झालेला आहे. वैद्या. चौधरी यांचे नियुक्ती पूर्वी रुग्णालयात महिलांच्या प्रसुती, शस्त्रक्रिया व आयुर्वेद चिकित्सा पध्दतीने करण्यात येणारे उपचार इ.बाबी या नित्यनियमाने करण्यात येत होत्या. रुग्णालयीन आस्थापनेवर भूलतज्ञ हे पद मंजूर नसल्याने शस्त्रक्रियेकरीता आवश्यक असणारी भूलतज्ञाची सेवा ही मानवसेवा पध्दतीने उपलब्ध करून घेण्यात येत होती व प्रत्येक शस्त्रक्रियेकरीता नियमानुसार रु.१०००/- इतके मानधन घेवून भूलतज्ञ देखील चांगल्या प्रकारची सेवा देत असल्यामुळे त्याचा लाभ हा विभागातील गरजू व गरीब महिलांना होत होता. परंतू वैद्या.चौधरी यांनी मानद व निशुल्क सेवा देणा-या भूलतज्ञांची सेवा घेण्यास नकार देवून त्याठिकाणी नव्याने भूलतज्ञ या पदावर कर्मचारी नियुक्त करणेबाबत मागणी केलेली होती. याकरीता शासनाच्या विहित कार्यपध्दतीनुसार वर्तमानपत्रात जाहिरात देवून वैद्य.भालेराव यांची भूलतज्ञ या पदावर मानवसेवा कर्मचारी म्हणून नियुक्ती केली. मुळातच भूलतज्ञ हे त्यांचे विषयात तज्ञ असल्यामुळे ते मानवसेवा देण्यास तयार नसतात व त्यामुळे भूलतज्ञ उपलब्ध होत नसतात. पर्यायाने त्याचा परिणाम हा रुग्णसेवेवर होत असतो. परंतू वैद्या.चौधरी यांचे वर्तनामुळे वैद्य. भालेराव यांनी देखिल रुग्णालयात रुग्णसेवा देण्याचे बंद केलेले आहे. पर्यायाने रुग्णालयातील प्रसुतीतंत्र विभागाशी संबंधित शस्त्रक्रिया या पुर्णपणे थांबलेल्या आहेत व महिला रुग्णांचे हाल होत आहेत. वस्तूतः म. आ.पोदार रुग्णालय हे मुंबई शहरातील एकमेव शासकीय आयुर्वेद रुग्णालय असून इतर चिकित्सा पध्दतीपेक्षा अतिशय प्रभावी व कोणत्याही प्रकारचे प्रतिकूल परिणाम नसणा-या आयुर्वेद उपचार पध्दतीकेडे रुग्णांचा कल वाढत आहे परंतू वैद्या.चौधरी यांचे कार्यशैलीमुळे गरीब व गरजू व विशेषतःआर्थिक परिस्थितीमुळे शासकीय रुग्णालयात उपचार घेणा-या महिलांना उपचार घेणे दुरापास्त झालेले आहे. याउलट रुग्णालयातील शल्य, शालाक्य विभागात भूलतज्ञ हे सेवा देत असून त्याठिकाणी त्याचा लाभ हा रुग्णांना होत आहे. रुग्णांच्या हिताकरीता व प्रसुतीतंत्र विभागातील रुग्णांना चांगल्या प्रकारे रुग्णसेवा उपलब्ध व्हावी तसेच विभागातील प्रत्येक वैद्यांना कर्तव्याची समान संधी उपलब्ध व्हावी याकरीता अधिष्ठाता यांनी सारासार व सर्वकष विचार करून रुग्णशय्येचे नियोजन करून तत्संधीचे कार्यालयीन आदेश निर्गमित केलेले होते. तथापि, वैद्या. चौधरी यांनी मनमानी करीत अधिष्ठाता यांनी दिलेल्या आदेशांचे पालन केलेले नाही.

सद्यस्थितीत बदलत्या जीवनशैलीमुळे समाजात वंध्यत्वाचे प्रमाण वाढत असून त्याकरीता अतिशय खर्चिक अशा उपचार पध्दतीनचा अवलंब न करता रुग्ण अतिशय प्रभावी अशा आयुर्वेद चिकित्सा पध्दतीचा उपचार घेण्याचा रुग्णांचा प्रयत्न असतो. त्याकरीता रुग्णदेखिल रुग्णालयात येत असतात. परंतू वैद्या.चौधरी या त्यांचे विभागा अधिनस्त येणा-या कोणत्याही वैद्यांना निदान उपचार करू देत नाहीत. यामुळे अपत्य प्राप्तीसाठी प्रयत्न करणा-या नवदाम्पत्यांना या रुग्णालयात उपचार घेता येत नाहीत व त्याचा त्रास रुग्णांना होत आहे. वैद्या.चौधरी यांचे एकदंर वर्तन हे रुग्णहिताचे दृष्टीने अयोग्य असून त्याचा विपरीत परिणाम हा प्रसुतीतंत्र विभागात उपचारार्थ येणा-या रुग्णसंख्येवर झालेला आहे. प्रसुतीतंत्र विभागात उपचारार्थ येणा-या रुग्णांची संख्या हि दिवसागणिक कमी होत असून पूर्वीपेक्षा हि संख्या निम्म्यावर आलेली आहे.

वैद्या.चौधरी यांनी रुग्णालयातील प्रसुतीतंत्र विभागात स्वच्छतेच्या दृष्टीने केलेल्या तक्रारीच्या अनुषंगाने अधिष्ठाता व निवासी वैद्यकीय अधिकारी यांनी शहानिशा करणेसाठी विभागाची पाहणी केली असता, वैद्या.चौधरी यांनी केलेल्या तक्रारीत तथ्य आढळून आले नाही. सदर बाब वैद्या.चौधरी यांना कळविली असता त्यांनी अकारण प्रकरणाला वेगळा रंग देण्याचा प्रयत्न करून अधिष्ठाता यांनी जातीय आकसाने प्रतिकूल टिका टिप्पणी केली असल्याबाबत त्यांचे दिनांक २०.१२.२०१६ पत्रात नमूद केलेले आहे. अशाप्रकारे महाविद्यालय व रुग्णालय प्रमुखांवर अकारण जातीय आकसासारखे आरोप करणे

खचितच योग्य नाही. भविष्यात देखिल वैद्या.चौधरी यांचेकडून अशाप्रकारचे आरोप होवून अधिष्ठाता व इतर कर्मचा-यांना अडचणीत आणण्याचा प्रयत्न केला जाण्याची शक्यता नाकारता येत नाही.

रुग्णालयांत उपचारार्थ येणा-या गरीब व गरजू रुग्णांचे हित, रुग्णालयात चांगल्या प्रकारच्या रुग्णसेवेकरीत कर्मचा-यांमध्ये आवश्यक असलेले सौहार्दाचे संबंध, वैद्या.चौधरी यांचे एकदंर वर्तन त्यामुळे कर्मचा-यांना होणारा त्रास, बाधित होणारे रुग्णहित व अधिष्ठातांवर अनाटायी व खोटे जातीय आकासारखे आरोप करण्याची वृत्ती या सर्व बाबी विचारात घेता, वैद्या.चौधरी यांची तात्काळ अन्यत्र बदली करणे आवश्यक आहे. (सोबत आवश्यक त्या सर्व तकारी व इतर दस्तावेजांच्या छायांकित प्रती तात्काळ संदर्भास्तव जोडण्यात येत आहेत.)

यास्तव आपणांस विनंती करण्यात येते की, उक्त नमूद सर्व बाबींचा गांभिर्याने विचार करून वैद्या.चौधरी, प्राध्यापक, प्रसुतीतंत्र विभाग यांची तात्काळ अन्यत्र बदली करावी अन्यथा वैद्या.चौधरी यांचे वादग्रस्त वर्तन व कार्यशैलीचा त्रास हा कर्मचा-यांना, विशेषतः रुग्णांना व वरीष्ठ अधिका-यांनी याचप्रकारे होत राहिल किंबहुना त्यामध्ये वाढच होईल.

सही/-

(वैद्य.गो.या.खटी)

अधिष्ठाता, रा.आ.पोदार वैद्यक महाविद्यालय (आयु),

वरळी, मुंबई १८."

25. In addition to above, the Respondents have also placed on record the Chart about the performance of the Applicant as well as Respondent No.4 during their tenure which is at Page No.83 of the P.B. It is reproduced as under :

“Dr. Surekha Devaikaar

Exhibit – R-1

	2014	2015	2016
OT Procedure	241	161	35 (ward closed From 04/01/16 08/06/16)
Delivery	210	225	52
Yonidhavan	2102	2022	720
Yonipichoo	1839	1920	948
Basti	2724	2644	3900
Uttarbasti	704	608	916
Yongiahbyang	54	48	77
Yonipratisaran	162	170	08
Yonidhupan	310	220	169
Referred Patients	5	7	00

नस्य	35	40	38
सर्वांग स्नेहन-स्वेदन	2724	2644	3900
वमन	07	10	06
विरेचन	30	20	40
जलौकावचारण	02	--	01

Dr. Saudamini Chaudhari

(16/6/2016 to 22/06/2018)

	2016	2017	2018
OT Procedure	37	14 (OT closed from 15/03/17)	00
Delivery	62	88	25
Yonidhavan	212	619	112
Yonipichoo	151	729	62
Basti	2101	2650	52
Uttarbasti	612	720	121
Yongiahbyang	50	49	00
Yonipratisaran	00	07	00
Yonidhupan	00	01	00
Referred Patients	69	152	57
नस्य		16	22
सर्वांग स्नेहन-स्वेदन		2650	52
वमन		05	1
विरेचन		11	05
जलौकावचारण			
गर्भिणी अर्श			

26. Thus, it is obvious from the facts and figures that, during the tenure of Applicant, the performance of the Department headed by the Applicant was diminished in all respect. The Dean in his report dated 25.05.2018 took note of these aspects and opined that the continuation of the Applicant would cause

inconvenience to the poor and needy people who visit the Hospital for treatment. His observation seems based on the facts and figures. There is reduction of procedure and number of patients visited the Hospital for their treatment.

27. As such, the cumulative reading of report as well as Chart reproduced above, clearly demonstrates the transfer was necessitated due to attitude and inefficient performance of the Applicant. Needless to mention that the Government Hospital is the institution for poor and needy people for medical treatment, as they cannot afford private Hospitals. Thus, the authority seems to have formed that the continuation of the Applicant as Head of Department would not be in the interest of patients as well as in the interest of public at large, and therefore, the CSB accepted the report of the Dean and recommended for the mid-term and mid-tenure transfer of the Applicant. The decision to transfer the Applicant seems to be conscious and objective. It cannot be termed arbitrary or malicious.

28. The learned Advocate for the Applicant sought to contend that, ACR of the Applicant written by none other than Dean reflects that the performance of the Applicant was good enough, and therefore, the report submitted by Dean dated 24.05.2018 is contrary to his own assessment of the Applicant reflected in his C.Rs. The Applicant has produced copies of ACR of the year 2016-17 which is at Page Nos.107 to 111 of the P.B. The Dean is Reporting Officer and Director, Ayush is Reviewing Officer. As per Dean's assessment, overall gradation was '7' out of '10'. No doubt, the Dean has not written anything adverse in this ACR. However, it is significant to note that this ACR pertains to period 20.06.2016 to 31.03.2017. Whereas, in the present case, the report of Dean which was foundation for the transfer is dated 24.05.2018, and therefore, the relevant

period of ACR would be 2017-18. However, ACRs of 2017-2018 are not produced.

29. It seems that the Applicant had also approached Maharashtra State Scheduled Caste, Scheduled Tribe Commission (SC/ST Commission) raising the grievance of discrimination in gradation in ACR. The letter of SC/ST Commission dated 23.11.2017 addressed to Principal Secretary is at Page No.53. In the said letter, it was recommended to consider the upgradation of the ACR of Applicant. To my mind, this aspect is not relevant in the present controversy.

30. As such, the transfer of the Applicant seems necessitated in view of her non-satisfactory performance and general attitude. The Dean has elaborately commented upon it in his report. It is self-speaking report highlighting the necessity of transfer of Applicant. This being the position, it cannot be said that this is a case of transfer on mere substantiated complaint, which is vulnerable to attack as not sustainable in law. In the present case, there seems to be performance appraisal of the Applicant by none other than Dean who had an opportunity to observe her performance and amongst other things. As such, on objective assessment of situation, he opined that the continuation of the Applicant would not be appropriate for smooth administration of the Department and Hospital. Thereupon, the Director, Ayush forwarded the proposal of her transfer to CSB which approved the same in its meeting dated 29.05.2018. It being mid-term and mid-tenure transfer has been also approved by the higher competent authority i.e. Hon'ble Chief Minister as per the requirement of Sections 4(4)(ii) and 4(5) of the 'Transfer Act'. Section 4(5) of 'Transfer Act 2005' provides that, in special cases, after recording the reasons in writing, the higher competent authority can approve mid-term and mid-tenure transfer. It seems to have been treated as a special case in view of report of Dean. Thus, the transfer seems to have been made in public interest.

31. In this view of the matter, the contention of the learned Advocate for the Applicant that the employee cannot be transferred without holding regular departmental enquiry, is not acceptable, particularly in the light of the Judgment of Hon'ble Supreme Court in **Janardhan Debanath's** case (cited supra). The situation is clearly covered by the ratio laid down by the Hon'ble Supreme Court that, for the purpose of effecting a transfer, the question of holding an enquiry to find out whether there was misbehavior and conduct of an employee is unnecessary and what is pleaded is the prima-facie satisfaction of the authority concerned on the contemporary report about occurrence of complaint and if the Department holding an elaborate enquiry is to be insisted upon, the very purpose of transferring the employee in public interest or exigencies of administration would get frustrated. The Hon'ble Supreme Court also highlighted that the question whether the employee could be transferred to a different Division is a matter for the employer to consider depending upon the administrative exigencies and the extent of solution on the problems faced by the administration and it is not for the Court to direct one way or the other. This dictum laid down by the Hon'ble Supreme Court holds the field in the present set of facts.

32. In **Somesh Tiwari's** case (cited supra), the transfer was made on the basis of anonymous complaint which was investigated, but nothing adverse was found yet, he was transferred from Bhopal to Shilong. It is in this context, it has been held that the order has been passed on material which was non-existent, and therefore, quashed it being punitive. Whereas, the facts of the present case are quite distinguishable.

33. In **Padmashree S. Bainade's** case (cited supra), the transfer was on the basis of complaint of misconduct but there was no proper reasoning to bring it within the ambit of special case as contemplated under Section 4(5) of 'Transfer

Act 2005'. Whereas in the present case, the transfer order is supported by material and found necessary in administrative exigency and for public interest. Therefore, with respect, this authority is of little assistance to the Applicant in the present context.

34. Reference is also made to Judgment of Hon'ble High Court in ***Writ Petition No.7960/2011 (Harish Maganlal Baijal Vs. The State of Maharashtra & Ors.)*** which relates to transfer of Deputy Commissioner of Police on complaint. However, the matter was not placed before Police Establishment Board in terms of G.R. dated 25.07.2008 and Judgment of Hon'ble Supreme Court in ***Prakash Singh and others Vs. Union of India and others (2006) 8 SCC 1*** and it was held serious illegality. Therefore, in fact situation, the order of transfer as quashed. As facts involved in present case are quite different, this authority is of no help to the Applicant.

35. Here, it would be apposite to refer one more Judgment of Hon'ble Bombay High Court in ***V.B. Gadekar, Deputy Engineer Vs. MHADA : 2007 (6) BOM CR 579*** having bearing over the present case, wherein it has been 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."

36. Thus, what transpires from the material placed on record that the transfer order was necessitated for administrative exigencies and public interest in view of report made by Dean exhibiting non-performance and indifferent attitude of

the Applicant, which was severely affecting medical services to the underprivileged people. There is full compliance of provisions under Sections 4(4)(ii) and 4(5) of 'Transfer Act 2005'.

36. The necessary corollary of above discussion leads me to sum-up that the application is devoid of merit and deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is hereby dismissed with no order as to costs.

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

Mumbai

Date : 04.01.2019

Dictation taken by :

S.K. Wamanse.