

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.614 OF 2017

[Subject : Transfer]

DISTRICT : SATARA

Shri Pramod Haribhau Sawakhande)
Age : 53 years, Occ : Chief Officer,)
Rahmitpur Municipal Council,)
Having office at)
A/p. Rahimatpur, Tal : Koregaon,)
Dist. Satara, R/o. A/p. Rahimatpur,)
Tal. Koregaon, District : Satara.) **..Applicant**

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)
Urban Development Department,)
Having office at Mantralaya,)
Mumbai 400 032.)
2. Mr. Shyam Gosavi,)
Aged Adult, Working as Chief Officer, Panhala,)
Municipal Council, Tal. Panhala.) **..Respondents**

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

Shri D.B. Khaire, the learned Special Counsel with Smt. Archana B.K., the learned Presenting Officer for the Respondents.

CORAM : Justice Shri A.H. Joshi, Chairman
RESERVED ON : 10.01.2018
PRONOUNCED ON : 27.03.2018.

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri D.B. Khaire, the learned Special Counsel with Smt. Archana B.K., the learned Presenting Officer for the Respondents.
2. By present Original Application, the Applicant is challenging the order dated 30.06.2017 transferring the Respondent No.2 in applicant's place of posting as Chief Officer of Rahimatpur Municipal Council in District : Satara.
3. Though Respondent No.2 was transferred in place of Applicant, he was not given any order of posting. The Applicant was relieved and the charge was taken by the Respondent No.2 in place of the applicant
4. At the time of admission hearing, the State Government filed short affidavit dated 10.07.2017 and opposed the interim relief with a plea that transfer was ordered by observing procedure prescribed under Section 4(4) and 4(5) of the ROTA Act, 2005.
5. On that date this Tribunal recorded certain observations and directed that relevant record be produced and affidavit-in-reply be filed. Applicant had caused private service on the Respondents and the case was listed for admission hearing on 10.07.2017 before this Tribunal [Coram : Shri R.B. Malik, Hon'ble Member(J)].

6. Thereafter the case had appeared on board on about five dates and ultimately detailed affidavit-in-reply answering various averments contained in O.A. affirmed by Shri Milind R. Kulkarni, Under Secretary, Urban Development Department, was filed on 01.08.2017.

7. During pendency of O.A. applicant had filed a Miscellaneous Application seeking some directions, because any order whatsoever was not passed by the Government for posting the applicant at any post and he was kept in the state of hanging animation. Therefore, this Tribunal queried as to the basis on which the applicant could remain without posting. Later the posting was given to the Applicant as Chief Officer, Municipal Council at Kandhar in District Nanded sans recourse, and applicant had joined on the said post and has continued to pursue present O.A..

8. The Applicant had filed rejoinder dated 02.08.2017 and ultimately after few adjournments the O.A. was finally heard on 06.10.2017.

9. During the final hearing, this Tribunal noticed that the Respondent No.2 was not served with this Tribunal's notice for final disposal. Hence notice to the Respondent for final disposal was ordered and has been served on the Respondent No.2. Respondent No.2 has chosen to abstain from appearing. Hence, on subsequent dates, O.A. was heard finally.

10. In order to challenge the impugned Transfer, the learned Advocate for the Applicant has placed reliance on the averments contained in paragraph No.6.11 to 6.15 of the Original Application. For ready reference, these averments are quoted below for ready reference :-

"6.11] That admittedly the Petitioner is not due for transfer since he has not completed his normal tenure of 3 years at the present place of posting where he completed only 1 year. Thus unless the special case etc. was made out on file by the Respondent No.1 vis-a-vis by the Respondent No.1 vis-à-vis transfer of the Petitioner and his transfer order issued, that it was not legally possible to issue the impugned order. This is in breach of sec 3[1] of ROTA, 2005.

6.12] That accordingly to the knowledge of the Petitioner, the Respondent No.2 has been transferred on account of complaints on his previous place of posting namely at Panhala Municipal Council and brought in place of the petitioner. That it is settled position of law, that the transfer of the Respondent No.2 can never be justified on the grounds of complaints. This is more so, when under the transfer Act the compliance is warranted as mandatory in the form of sec.4 4[ii] and 4[5] in order to justify the transfer of the petitioner. This is conspicuously absent in the present case.

6.13] That in fact the Respondent No.1 ought to have transferred the Respondent No.2 in vacant post, Considering the ground that there are complaints against the Respondent No.2. Thus it was totally illegal on the part of Respondent NO.1 to displace the petitioner under the pretext of complaints of the Respondent no.2. Thus it is clear that in order to accommodate the Respondent No.2 the transfer of the petitioner has been issued. Thus the approach of the Respondent No.1 is outrightly malafidely, arbitrary and illegal. That at present there are a few vacant post of Chief Officer namely at Panchgani Municipal Council District Satara Rajgurunagar municipal Council, and Shirur municipal Council Dist-pune and 5 other such municipal councils from District Nashik in where the Respondent No.2 hails.

6.14] That inspite of this, the Respondent No.1 has transferred the Respondent no.2 in place of the Petitioner. This is illegal and as such contrary to the Government Circular dated 11.2.2005 and dt.24.9.2015 issued through the General Administration Department. These Circular are based on the position of the law in the field laid down by the Hon'ble Tribunal, the Hon'ble Bombay High Court and the Hon'ble Supreme Court.

6.15] That in the event it is found by the Hon'ble Tribunal that the transfer of the Respondent No.2 in place of the Petitioner has been ordered by the Respondent No.1, then it is clear that it was on account of the aforesaid political pressure and therefore, the impugned order must be held to be issued by the Respondent No.1 malafide, arbitrarily and illegally with bias and prejudice mind against the Petitioner, so also in a colourable exercise of powers in order to oblige and accommodate the Respondent No.2 at the cost of the Petitioner. Thus the Respondent No.1 has not exercised his powers for professed purposes but for alien purposes."

(Quoted paragraphs 6.11 to 6.15 from pages 8 to 11 of the paper book of O.A.)

11. Summary of grounds of challenge narrated in foregoing paragraph is as below :-

- (a) Applicant has not completed his tenure of three years at Municipal Council, Rahimatpur.
- (b) Impugned Transfer order is passed in utter violation of mandatory conditions contained in Section 4(4) and Section 4(5) of ROT Act, 2005.
- (c) Sole reason assigned as basis of Applicant's transfer is Applicant's alleged act of misconduct, which is neither traced nor is enquired. The applicant is branded to be guilty without any enquiry and is punished by Transferring him, exparte and unheard.

- (d) The Applicant is transferred due to an un-substantiated complaint of misconduct.
- (e) The proposal for Applicant's transfer was not placed before the Civil Services Board.
- (f) Special reasons and exceptional circumstances do not exist for issuing the transfer order, nor are any such reasons recorded.
- (g) Applicant could not have been transferred without giving him posting.
- (h) Since the Respondent No.2 is transferred on account of complaint against him, such transfer should be on a vacant post and not by displacing applicant.
- (i) Transfer being ordered to accommodate Respondent No.2, it is mala fide.

12. The averments contained in the O.A. which are quoted in foregoing paragraph No.10 are replied in the affidavit-in-reply of Shri Milind Raghunath Kulkarni, Under Secretary, Office of Urban Development Department, Mantralaya, with following text :-

"6. As regard to para 6.3, I say that, it was brought to the notice of the Government that, the following message has been posted by the Applicant on social media.

"हेलिकॉप्टर कोसळले त्यातून राज्याचे मुख्यमंत्री फडणवीस वाचले इथवर सर्वांना माहिती आहे. पण ज्या घरावर हेलिकॉप्टर कोसळले त्यांचं काय झालं. मुख्यमंत्र्याचे हेलिकॉप्टर भरत कांबळे यांच्या घरावरचं कोसळल्याने त्यांच्या घरातील भीती पडल्या आहेत. त्यात चार जण जखमीही झालेत. घराच्या अंगणातचं हेलिकॉप्टर असल्याने पोलिसांनी घरातल्या लोकांना साधी काडेपेटी देखील पेटवू नका, असा सज्जड दम दिला आहे. त्यामुळे दोन दिवसांपासून या घरात चूल पेटली नाही. घरात ४-५ लहान मुलं उपाशी आहे. परिवारातील चार जण रुग्णालयात आहे. त्यांच्याही खाण्याचे हाल होत आहेत कारण घरात जेवणच बनत नाहीये. त्यात आता पाऊस कधीही पडू शकतो, पण कांबळे कुटुंबीयांच्या डोक्यावर छप्पर नाही. घरात धान्य असूनही चूल पेटवण्याची सोय नाही. पोलिसांचा चोवीस तास पहारा त्या घरावर आहेत. सुरक्षेचा दृष्टीकोनातून हे सांगितलं जातंय, चुलच पेटवली नाहीतर खाचयं काय आम्ही??? असा सवाल आपतिग्रस्त कांबळे कुटुंबिय करत आहेत..... तुमचे ते जीव आहेत आणि सामान्यजन ज्यांच्या जीवावर मुख्यमंत्री म्हणून मिरवता त्यांचे जीव नाहीत काय ??? कांबळे कुटुंबियांला मानसिक त्रास देणा-या पोलीस प्रशासनाचा आणि या त्या कुटुंबीयांच्या परिस्थितीकडे दुर्लक्षित करणा-या मुख्यमंत्र्याचे निषेध."

Since the Applicant is Group-B Government Officer, this act of posting such a text on public platform regarding the Hon'ble Chief Minister of the State is not proper and unbecoming of an officer. Considering this serious issue, the Applicant has been transferred by following the procedure stipulated in Section 4(5) of the Transfer Act-2005. The question of consequential posting of the Applicant is under consideration of the Government.

15. As regard to para 6.11, the applicant has been transferred mid-term, mid-tenure as per Section 4(5) of the Transfer Act-2005 by recording reasons and with the approval of Competent Transferring Authority. Therefore the contention is denied in toto.

16. As regard to para 6.12, It is admitted that the Respondent no.2 has been transferred due to complaints and he has taken over the charge of new post also. However, the Respondent no.2 has never challenged his transfer and has joined to new place of posting. The Applicant could not take resort of this so to term his transfer bad in law.

17. As regard to para 6.13, I am to state that, the transfer of the Applicant and the Respondent no.2 are in accordance with the law. The transfer of Respondent no.2 is never challenged and he has taken over the charge of his new posting and his transfer is not the subject matter of this O.A.. It is the prerogative of the Competent Transferring Authority to decide the transfer and posting. The Applicant in the present case has no authority to suggest whom should be posted where. Therefore the contention is denied in toto.

18. As regard to para 6.14, I admit that, the Transfer and posting of the Applicant and the Respondent no.2 were not recommended by the Civil Service Board but were initiated by the Administrative Department. As per the extant provisions of the Transfer Act - 2005. The power to transfer a Government Employee vests with the concerned Competent Transferring Authority and not with the Civil Service Board. Therefore the contention is denied in toto.

19. As regard to para 6.15, I say that, it was brought to the notice of the Government that, some message was posted by the Applicant on social media which was described in detail in para 6 above.

Since the Applicant is Group-B Government Officer, this act of posting such a text on public platform regarding the Hon'ble Chief Minister of the State is not proper and unbecoming of an officer. Considering this serious issue, the Applicant has been transferred by following the procedure stipulated in Section 4(5) of the Transfer Act-2005. Further, the decision was taken to post the Respondent no.2 in place of the Applicant with the approval of Competent Transferring Authority. Therefore, the contention is denied in toto.

25. As regard to para 9, I am to state that, after recording the reasons in writing and with the approval of the Competent Transferring Authority, the Applicant has been transferred as per the provisions of section 4(5) of the Transfer Act-2005. He deserves no such relief."

(Quoted paragraphs 6, 15 to 19, 25 from pages 26 to 30 of the paper book of O.A.)

13. The text of office note on which decision to transfer the applicant reads as below:-

"०२. श्री. प्रमोद सत्वाखंडे, मुख्याधिकारी, रहिमतपूर नगरपरिषद, जि. सातारा यांनी समाज माध्यमांवर (Social Media) पुढीलप्रमाणे संदेश प्रसारित केला असल्याची बाब लोकप्रतिनिधींनी निर्दशनास आणली आहे:-

“हेलिकॉप्टर कोसळले त्यातून राज्याचे मुख्यमंत्री फडणवीस वाचले इथवर सर्वांना माहिती आहे. पण ज्या घरावर हेलिकॉप्टर कोसळले त्यांचं काय झालं. मुख्यमंत्री यांचं हेलिकॉप्टर भरत कांबळे यांच्या घरावरचं कोसळल्याने त्यांच्या घरातील भीती पडल्या आहेत. त्यात चार जण जखमीही झालेत. घराच्या अंगणातचं हेलिकॉप्टर असल्याने पोलिसांनी घरातल्या लोकांना साधी काडेपेटी देखील पेटवू नका, असा सज्जड दम दिला आहे. त्यामुळे दोन दिवसांपासून या घरात चूल पेटली नाही. घरात ४-५ लहान मुलं उपाशी आहे. परिवारातील चार जण रुग्णालयात आहे. त्यांच्याही खान्याचे हाल होत आहेत कारण घरात जेवणच बनत नाहीये. त्यात आता पाऊस कधीही पडू शकतो, पण कांबळे कुटुंबीयांच्या डोक्यावर छप्पर नाही. घरात धान्य असूनही चूल पेटवण्याची सोय नाही. पोलिसांचा चोवीस तास पहारा त्या घरावर आहेत. सुरक्षेचा दृष्टीकोनातून हे सांगितलं जातंय, चुलच पेटवली नाहीतर खाचयं काय आम्ही??? असा सवाल आपतिग्रस्त कांबळे कुटुंबिय करत आहेत..... तुमचे ते जीव आहेत आणि सामान्यजन ज्यांच्या जीवावर मुख्यमंत्री म्हणून मिरवता त्यांचे जीव नाहीत काय ??? कांबळे कुटुंबियांला मानसिक त्रास देणा-या पोलीस प्रशासनाचा आणि या त्या कुटुंबीयांच्या परिस्थितीकडे दुर्लक्षित करणा-या मुख्यमंत्री यांचा निषेध.”

०३. या संदर्भात नमुद करण्यात येते की, श्री. प्रमादे सव्वाखंडे हे मुख्याधिकारी, गट-ब संवर्गातील अधिकारी असून, सध्या मुख्याधिकारी, रहिमतपूर नगरपरिषद, जि. सातारा येथे कार्यरत आहेत. श्री. सव्वाखंडे यांच्याकडून राज्याच्या मा. मुख्यमंत्री महोदयांबाबत अशा स्वरूपाचा गंभीर संदेश प्रसारित करण्याची वर्तणूक अनुचित आहे. तसेच, त्यांची ही कृती गट-ब राजपात्रित अधिका-यास अशोभनीय (Unbecoming of an officer) आहे. सदर गंभीर बाब विचारात घेता, श्री. सव्वाखंडे यांची सद्य पदावरून अन्यत्र बदली करण्याचे प्रस्तावित आहे.

०४. उपरोक्तच्या अनुषंगाने नमुद करण्यात येते की, श्री. सव्वाखंडे हे दि.१८.०६.२०१६ पासून मुख्यधिकारी, रहिमतपूर नगरपरिषद, जि. सातारा या पदावर कार्यरत आहेत. ते बदली पात्र नाहीत. तथापि, वरील परिच्छेदात नमुद श्री. सव्वाखंडे यांची अशोभनीय वर्तणूक विचारात घेता, बदली अधिनियमातील कलम ४(५) नुसार त्यांची मुदतपूर्व व अनियताकालीक बदली प्रस्तावित करण्यात येत आहे. तसेच, त्यांच्या अन्यत्र पदस्थापनेबाबत स्वतंत्रपणे प्रस्ताव सादर करण्यात येत आहे.

Sd/- 30.06.2017
अ.स. (श्री. कुळकर्णी)

Sd/- 30.06.2017
स.स. (श्री.पाटील)

Sd/- 30.06.2017
प्र.स. (नवि-२) (श्रीमती पाटणकर-म्हैसकर)

Sd/- 30.06.2017
मा. मुख्यमंत्री महोदय”

(Quoted paragraph 03 and 04 of page 51 & 52 paper book of O.A.)

14. Summary of the Respondents' submissions is as follows :-

- Impugned order is passed well within the four corners of law and within the powers of the Government.
- Since Hon'ble Chief Minister holds portfolio of Urban Development Department, he is the authority competent to pass the order.

(c) Since the competent authority is satisfied with the need of transfer, consultation of Civil Services Board turns out to be mere formality, rather it is not necessary.

15. Applicant has filed affidavit-in-rejoinder, annexing copy of order sheet which has led to Applicant's transfer copy whereof is at page 51 of paper book.

16. In order to counter the allegation of being author and disperser of the text message, the applicant has offered explanation in his rejoinder, paragraph 19 of which reads as follows :

"19. I say that there is no material at all with the Respondent No.1 to show that any enquiry has been conducted into the matter so far either by the Respondent No.1 or by any other independent agency by way of investigation as per the provisions of the Information Technology Act, 2000 as amended in the year 2008 or otherwise. I say that in fact according to my knowledge and information, the concerned message was already published in the newspaper one of which is Marathi daily published from Mumbai, namely, "Punya Nagari".

(Quoted from page 42 and 43 of paper book of O.A..)

17. The State has filed a sur-rejoinder and attempted to deny / clarify applicant's explanation in paragraphs 17 to 24 of sur-rejoinder. The averments contained in paragraph 19 quoted in foregoing paragraph are dealt with vaguely as is evident from reply to paragraphs 17 to 24 quoted below :-

"19. With reference to para 17 to 24 of rejoinder, I say that the Applicant has nowhere denied his involvement in making the said message viral. In all these paras, the Applicant has stated about the inaction on the part of the Respondent No.1 to take any further action as per the provisions of the Information Technology Act, 2000 on any provisions of M.C.S. (Discipline and Appeal) Rules. The Respondent submits that pointing out the shortcomings of the Respondent does not give a clean chit to the Applicant. I say that the Respondent No.1 may decide to take any appropriate action at the appropriate time. I say it is needless to say that actions have been taken even on the Chief Engineer for making viral some messages on social media. Therefore, the contentions raised in these paragraphs will hold good provided a disciplinary or any other action is initiated against the Applicant. Respondent No.1 has only transferred the Applicant from the present post on account of making a message viral on the social media. Moreover, it is submitted that the Applicant has been transferred by following the provisions of the Transfer Act. I further say that the contentions of para no.21 cannot be accepted and admitted even for the sake of arguments. I say that a Government servant ought to be aware of his duties and responsibilities. Therefore, the contention of the Applicant that even on the transfer post also the Applicant may commit the same thing is totally erroneous. Such statement clearly admits that the Applicant is in habit of making such type of messages viral."

(Quoted paragraph 19 from pages 62 and 63 of the paper book of O.A.)

18. Learned Advocate for the Applicant has placed reliance on the following judgments:-

| Sr. No. | Judgments |
|---------|--|
| 1. | T.S.R. Subramanian & Ors. Versus Union of India & Ors., Writ Petition (Civil) No.82 of 2011 with Writ Petition (Civil) No.234 of 2011, dated 31.10.2013. |
| 2. | S.M. Saundane Versus The State of Maharashtra & Ors., O.A.No.770 of 2017, dated 09.11.2017. |
| 3. | S.M. Deokar Versus The State of Maharashtra & Ors., O.A.No.1159 of 2016, dated 28.02.2017. |
| 4. | Shreya Singhal Versus Union of India, (2015) 5 Supreme Court Cases 1, Writ Petitions (Crl.) No.167 of 2012 with Nos.199, 222, 225 of 2013, 196 of 2014, Writ Petitions (C) Nos.21, 23, 97, 217 of 2013 and 758 of 2014, decided on March 24, 2015. |
| 5. | Vijay Shankar Pandey Versus Union of India & Anr. Civil Appeal No.9043 of 2014, decided on September 22, 2014, [(2015) 1 Supreme Court Cases (L& S) 129, (2014) 10 Supreme Court Cases 589]. |
| 6. | Govind Ragho Khairnar Versus Municipal Corporation of Greater Mumbai & Ors. Writ Petition No.1764 of 1996, decided on 04.07.1997, 1998 (1) Bom.C.R. 179. |
| 7. | Kumaon Mandal Vikas Nigam Ltd. Versus Girja Shankar Pant and others, Civil Appeal No.5747 of 1998, decided on October 18, 2000, [2001 Supreme Court Cases (L&S) 189]. |
| 8. | G.N. Nayak Versus Goa University and Others, Civil Appeal No.821 of 2002, decided on January 29, 2002, [2002 Supreme Court Cases (L&S) 350. |

19. Learned Advocate for the Applicant has strongly and fervently relied on the judgment of this Tribunal rendered in O.A.No.770 of 2017, dated 09.11.2017 (Serial No.2 of foregoing table), wherein this Tribunal has in an eye opening manner recorded grave disapproval towards Government's conduct of disregarding the judgment of Hon'ble Supreme Court in **TSR Subramanian's case supra**, as follows :

“7. Government’s decision to transfer the applicant is on a very face of it and openly in defiance of judgment of Hon’ble Supreme Court in case of **Writ Petitions (C) No.82 of 2011 with No.234 of 2011, T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013 reported in (2013) 15 SCC 732.** Moreover for observance of the said judgment, Government had to issue circular dated 31.01.2014 which is placed on record at Exhibit-R, page 75.

8. Thus, present case is a citation of patent / blatant disobedience and disregard of binding precedent laid down by Hon’ble Supreme Court in case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013** by a democratic Government under the Constitution. What has shocked further is that the officers of the rank of Secretary have failed in their constitutional obligation to bring to the illegality committed by the Government to the notice of the Government to show that the stance of the Government amounts to open disobedience of the judgment of Hon’ble Supreme Court in the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013** apart from it being in grave departure of policy declared by the State Government.

9. It is likely that the Government may not be able to keep in mind all time the provisions of law and the judgments of courts. However, Secretary of the Department who is a very senior bureaucrat ought to keep track of observance and obedience of law unless he himself wants to mutely witness defiance of binding precedent of Hon’ble Supreme Court.

10. Therefore, Secretary of the Revenue Department ought to have advised the Government about gross contempt which the Government was committing, by failing to adhere to precedent as had emerged through the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013.**

11. In the background that impugned Transfer is ordered in open and gross defiance of the judgment in the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013**, present Original Application succeeds. Impugned order, Exhibit-A, page 23 is quashed and set aside. The order passed by Divisional Commissioner dated 10.08.2017 which is based on the impugned order dated 08.08.2017 has to die a natural death.

12.

13.

14.

15. Hence, following order is passed :-

- (A) The Chief Secretary of Government of Maharashtra is directed as follows:-

- (i) Chief Secretary should submit a note to the Hon'ble the Chief Minister and remind and apprise the Hon'ble the Chief Minister about binding nature and directions contained in the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013.**
- (ii) Chief Secretary should suggest and request Hon'ble the Chief Minister to issue an advisory to all Hon'ble Ministers for due observance of the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013 .**
- (iii) Chief Secretary should cause an advisory to be issued to the Secretarial Staff of the Hon'ble the Chief Minister and other Hon'ble Ministers' offices to be vigilant in observance of the mandate contained in the judgment in **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013 .**
- (iv) Place before this Tribunal a report of action taken on this judgment.
- (B) Original Application is allowed in terms of foregoing paragraphs 11 to 13.
- (C) The costs be the cost in the cause."
(Quoted paragraphs 7 to 11 from judgment in O.A.no.770/2017 dated 09.11.2017.)

20. Learned Special Counsel for the Respondents has placed reliance on the following judgment :-

| Sr. No. | Judgments |
|---------|--|
| 1 | Santosh Nandalal Dalal Versus State of Maharashtra & Ors.,2016(1)Mh.L.J., Writ Petition No.8813 of 2014, decided on 06.05.2015. |
| 2. | Sanjeev Bhagwanrao Kokil Versus State of Maharashtra & Ors., 2013 (2) Mh. L.J., W.P. (Lodg.) No.1677 of 2012 decided on 09.10.2012. |
| 3. | Shri Avinash Pandurang Bhanushali with Shri Prakash Madhukar Patkar Versus The State of Maharashtra & Ors, O.A.No.396 of 2015 with O.A.No.397 of 2015, dated 03.08.2015. |
| 4. | Shri Siddharth Devram Shelar & Ors. Versus The Charity Commissioner & Ors., O.A.Nos.717, 718, 719, 720 and 721 of 2016, dated 23.01.2017. |

| | |
|----|--|
| 5. | T.S.R. Subramanian & Ors. Versus Union of India & Ors., Writ Petition (Civil) No.82 of 2011 with Writ Petition (Civil) No.234 of 2011, dated 31.10.2013. |
| 6. | State of Madhya Pradesh Versus Ramashanker Raghuvanshi and Another, Special Leave Petition (Civil) No.4679 of 1980, decided on February 21, 1983. |

21. In view of rival submission, question which arise for consideration are as follows :-
- Has the Government recorded special reasons and exceptional circumstances to constitute reasons for transfer of the Applicant ?
 - Do the grounds on which the impugned order of transfer is passed by the Government, constitute legal reasons ?
 - Whether there is any material on record which may have been gathered by the Government to show or suggest at least prima facie, that applicant has authored the message circulated or spreading whereof is considered to be an act unbecoming of public servant ?
 - Is reference of proposal of Transfer of applicant referred to Civil Services Board?
 - Was the Government under obligation to follow the procedure for transfer in terms of binding precedent of the judgment of Hon'ble Supreme Court in **T.S.R. Subramanian's case (supra)** ?
22. Point Nos.(h) and (i) in paragraph 9 are not pressed during hearing, and hence those are deemed to have been given up and therefore questions in regard thereto are not framed.
23. These questions pertain to fulfillment of requirement of recording of "Special reasons and exceptional circumstances" and a "substantiated complaint" to be the basis/ foundation for action by way of Transfer.
24. The question as to what shall constitute the "special reasons" and "exceptional circumstances", is the matter to be governed by the facts of the case, however recording those is mandatory.

25. It is pertinent to the aspect pleaded in paragraph 19 of rejoinder, which is quoted earlier in paragraph No.16, for ready reference, has not been denied. Specific plea raised by the Applicant that the message which is alleged to have been spread by the applicant was already spread and news as to the said message has appeared well before it was transmitted by the Applicant is not explained. Even it is not shown that any effort is made by the Respondents to show as to whether applicant's plea was not factually correct by conducting an enquiry to trace and identify the real author of the message.

26. The stand of the Government as regards special reasons is disclosed in the office note which has led to the decision to transfer and the State reply through sur-rejoinder as is contained in paragraph 19 of the sur-rejoinder which is quoted in foregoing paragraph 17, which is filed by the State for countering applicant's plea contained in paragraph No.19 of the rejoinder, has to be examined in order to ascertain as to whether those duly answer the averments and cope up the need of reasons qua the mandatory legal requirement.

27. Paragraph 3 of the text which is quoted in foregoing paragraph no.13 consists of the reasons for transfer. Relevant sentence is already underlined for identification and emphasis. Said text reveals that the cause for transfer as alleged is the conduct of the applicant of "spreading the message which is in the point of view of the Government, a conduct which is unbecoming of public servant of the rank of Gazetted-B group officer".

28. Going by record, it reveals that the formality of recording of reasons "special reasons and exceptional circumstances", is purportedly complied with. However, it has to be borne in mind that the object of ROT Act of 2005 law does not contemplate fulfillment of a formality, but contemplates fulfillment of conditions in spirit to conform to the aims and objects of law. The 'specialness of reasons and the exceptional circumstances' is the ingredient, and the facts have to confirm to requirement of the said phrase. It has also to be borne in mind that facts as would be relied by the State ought to be based on legal evidence which could entitle the competent authority to form an opinion. Imputations and evidence are two different things.

29. In order to have the satisfaction of competent authority to be legal, the Respondents were expected to show that as to what efforts were made to ascertain factum that the applicant is the author / initiator of message, to whom he has sent / forwarded / circulated the message, to what extent it has been spread by the Applicant and also as to whether Applicant's plea that said text was already in wide circulation in social media and print media.

30. It has to be recalled that the applicant has pleaded and it is not denied by Respondents that any show cause was not given to applicant nor, any investigation in relation to fact as to whether applicant is author and whether he has telecasted / spread said message. On the other hand it has been admitted on record of file and the rejoinder that transfer is ordered only because of applicant's act of spreading the objectionable message.

31. Case has proceeded on admitted fact that fact that the question as to whether the applicant is the author or disperser of objectionable message is not traced or enquired.

32. Ordering and causing an enquiry or investigation in alleged conduct of applicant, was very easy task for the Government, through the Information Technology Cell available with the Government with lot of knowledge and expertise in the field of Information Technology which is readily available with the Government through Police and / or with aid of other agency. By acting without taking recourse to easily available device of investigation and enquiry, amounts to acting with impatience and inordinate intolerance rather hyper intolerance to criticism.

33. It is thus evident that reasons which are recorded are based on hearsay, suspicion, assumptions, surmise and belief than based on findings emerging from a preliminary enquiry or enquiry of whatsoever type.

34. In the aforesaid background it appears on the face that the action of Transferring the applicant has been taken in an 'extempore' and in a 'random' manner on the basis of imputation factum whereof was not verified on enquiry or otherwise, and prima facie, on the bare allegation. Thus impugned action has been taken on the basis of assumption, supposition or a suspicion than on evidence, without calling delinquent's say through memo or show cause and without even preliminary investigation through any officer of I.T. cell of the police or any other source.

35. It is thus evident that the Applicant is being transferred by way of indictment towards his act, which has not been enquired or substantiated and action is taken barely on a report or complaint as regards allegation of spreading a text message on social media with objectionable contents and this act being unbecoming of an officer of the rank held by the Applicant.

36. The question as to truthfulness or unworthiness of the allegation contained in the message or it is being in the nature of misconduct need not be gone into.

37. Result is that reasons recorded by the Government while transferring the applicant do not satisfy the test of those being special reasons and exceptional circumstances. By employing the phraseology "special reasons and exceptional circumstances" an element of objectivity, by excluding subjectivity and caprice is sought to be imperatively eliminated. Executive cannot and ought not fall back on subjective element when law consciously insists objectivity, and abhors subjectivity.

38. In the result, this Tribunal has arrived at a conclusion that reasons and circumstances as grounds to Transfer the Applicant are recorded, though it is not possible to accept those to be based on any effort to verify the truth thereof as well sufficiency thereof in the eye of law, and hence those do not satisfy the test of those being "special reasons and exceptional circumstances".

REFERENCE TO CIVIL SERVICES BOARD [QUESTIONS (d) and (e)]

39. It is to be believed that the affidavit-in-reply filed by the Under Secretary is approved by the Government i.e. at least, Principal Secretary of the Department, or is drafted as per guidance and directions of the Principal Secretary of the Department.

40. The Officers namely Under Secretary, Deputy Secretary and Principal Secretary are not only expected, rather are supposed to know the direction contained and text of Government Resolution क्र.एसआरव्ही-२०१४/मुस-३४/प्र.क्र.३७९/१२ dated 11.02.2015 in which imperativeness of placing the matters before the Civil Services Board has been emphatically reiterated.

41. The reference of a proposal for transfer and decision by Civil Services Board is not the matter laid down or recommended through a judgment of Tribunal suo motu. Mandatory need of constitution of Civil Services Board has emanated from the binding precedent the judgment of Hon'ble Supreme Court in **T.S.R. Subramanian's case (supra)**. Considering an adverse stand adverse to the need of reference to Civil Services Board, which is taken by the Government, it has become necessary and hence attention is required to be drawn to observations and dictum as is contained in **T.S.R. Subramanian's case (supra)** in paragraphs 26 to 33 thereof as follows :-

"26. Civil servants, as already indicated, have to function in accordance with the Constitution and the laws made by the Parliament. In the present political scenario, the role of civil servants has become very complex and onerous. Often they have to take decisions which will have far reaching consequences in the economic and technological fields. Their decisions must be transparent and must be in public interest. They should be fully accountable to the community they serve. Many of the recommendations made by the Hota Committee, various reports of the 2nd Administrative Reforms Commission, 2008 and Santhanam Committee Report have high- lighted various lacunae in the present system which calls for serious attention by the political executive as well as the law makers.

27. We find it, however, difficult to give a positive direction to constitute an independent CSB at the Centre and State Level, without executive control, which Hota Committee has recommended to be statutory in nature, that too, comprising of persons from outside the Government. Petitioners placed considerable reliance on the judgment of this Court in ***Prakash Singh and Others v. Union of India*** (2006) 8 SCC 1 and urged that similar directions be given to insulate, to at least some extent, the civil servants from political/executive interference. Retired persons, howsoever eminent they may be, shall not guide the transfers and postings, disciplinary action, suspension, reinstatement, etc. of civil servants, unless supported by law enacted by the Parliament or the State Legislature.
28. CSB, consisting of high ranking in service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level, could be a better alternative (till the Parliament enacts a law), to guide and advise the State Government on all service matters, especially on transfers, postings and disciplinary action, etc., though their views also could be overruled, by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions. Parliament can also under Article 309 of the Constitution enact a Civil Service Act, setting up a CSB, which can guide and advice the political executive transfer and postings, disciplinary action, etc. CSB consisting of experts in various fields like administration, management, science, technology, could bring in more professionalism, expertise and efficiency in governmental functioning.
29. We, therefore, direct the Centre, State Governments and the Union Territories to constitute such Boards with high ranking serving officers, who are specialists in their respective fields, within a period of three months, if not already constituted, till the Parliament brings in a proper legislation in setting up CSB.
30. We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.
31. We, therefore, direct the Union State Governments and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil servants, within a period of three months.

32. We have extensively referred to the recommendations of the Hota Committee, 2004 and Santhanam Committee Report and those reports have highlighted the necessity of recording instructions and directions by public servants. We notice that much of the deterioration of the standards of probity and accountability with the civil servants is due to the political influence or persons purporting to represent those who are in authority. Santhanam Committee on Prevention of Corruption, 1962 has recommended that there should be a system of keeping some sort of records in such situations. Rule 3(3)(iii) of the All India Service Rules specifically requires that all orders from superior officers shall ordinarily be in writing. Where in exceptional circumstances, action has to be taken on the basis of oral directions, it is mandatory for the officer superior to confirm the same in writing. The civil servant, in turn, who has received such information, is required to seek confirmation of the directions in writing as early as possible and it is the duty of the officer superior to confirm the direction in writing.
33. We are of the view that the civil servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc. and they must also be protected against wrongful and arbitrary pressure exerted by the administrative superiors, political executive, business and other vested interests. Further, civil servants shall also not have any vested interests. Resultantly, there must be some records to demonstrate how the civil servant has acted, if the decision is not his, but if he is acting on the oral directions, instructions, he should record such directions in the file. If the civil servant is acting on oral directions or dictation of anybody, he will be taking a risk, because he cannot later take up the stand, the decision was in fact not his own. Recording of instructions, directions is, therefore, necessary for fixing responsibility and ensure accountability in the functioning of civil servants and to uphold institutional integrity.”

[Quoted paragraphs 26 to 33 from Hon’ble Supreme Court’s T.S.R. Subramanian’s case (supra)]

42. In so far as requirement of reference to Civil Services Board is concerned those are reiterated by this Tribunal in the judgment of this Tribunal rendered in O.A.No.770 of 2017 with reference to **T.S.R. Subramanian’s case**.

43. The manner in which reply is prepared / drafted / filed by the Under Secretary, Deputy Secretary and Principal Secretary leads to creation of an impression that these officers have divorced themselves from their primary allegiance and loyalty towards law. In the pleadings, the State has failed to explain as to how G.R. क्र.एसआरव्ही-२०१४/ मुस- ३४/प्र.क्र.३७९/१२, dated 11.02.2015, which unambiguously states that reference to Civil Services Board shall be mandatory in view of **T.S.R. Subramanian’s case (supra)**, can be ignored or neglected without being disrespectful to the dictum laid down by the Hon’ble Supreme Court. It is amazing as to

how these officers wield courage to deny the mandatory requirement of placing the matter of transfer before Civil Services Board, by disregarding the judgment of the Hon'ble Supreme Court, and judgment of this Tribunal, and prefer to abdicate to wishes of executives higher in hierarchy.

44. The Senior Officers in administrative hierarchy ought to know and follow the binding precedent of Supreme Court particularly when the Government is represented and advised by a Special Counsel. If the Senior Officers still disagree with the view or opinion of a Special Counsel, for the purpose of further guidance they ought to seek intervention of highest dignitary, the Principal Secretary, Law & Judiciary and / or constitutional dignitary such as the Advocate General. Such guidance would be of immense use if per change, the political executive shows inclination to connive at or disregard the provision of law as laid down by the Hon'ble Supreme Court, or judgment of this Tribunal.

45. Moreover on facts it is not shown by the Under Secretary or Principal Secretary that need of placing the matter before Civil Services Board was brought to the notice of Hon'ble Chief Minister. This failure of Principal Secretary in particular is an act of gross neglect to legal and moral duty as a responsible functionary.

46. In fact a reference and the decision by the Civil Services Board is an inhouse activity of the Government. All that has to be done is that group of officers under the Government who are entrusted with the work and under the orders of Government have to assemble and decide the reference in accordance to law and discretion. A trust is reposed in Civil Services Board that they have to act fairly and reasonable and in an apolitical way. Despite the said eloquent duty and entrustment, said stage and conduct is recklessly neglected, and said neglect is defended in a manner which departs from all norms of politeness to be observed before Court or Tribunal.

47. Apart from foregoing discussion, one subsequent development which has occurred after present O.A. was reserved for orders needs advertence. It is as follows :-

This Tribunal had decided O.A.No.770/2017 and had issued certain directions. Compliance of directions given in said O.A.No.770/2017 was awaited which has been filed by the Chief Secretary of the Government of Maharashtra. This affidavit has been filed on 15.03.2018.

48. Hon'ble Chief Minister has also issued circular which is annexed to the said letter which reads as follows :

“देवेंद्र फडणवीस
मुख्य मंत्री,
महाराष्ट्र

मंत्रालय
मुंबई ४०० ०३२

क्र.एसआ व्ही २०१८/प्र.क्र.०६/कार्या.१२

विषय : शासकीय अधिकारी / कर्मचारी यांची पदस्थापना तसेच सर्वसाधारण / मुदतपूर्व / मध्यावधी बदली करताना मा. महाराष्ट्र प्रशासकीय न्यायधिकरण, मुंबई यांच्या मूळ अर्ज क्र.७७०/२०१७ प्रकरणी दि. ०९/११/२०१७ रोजी दिलेल्या निर्देशानुसार, मा. सर्वोच्च न्यायालयाने श्री. टी. एस. आर. सुब्रमन्यान आणि इतर विरुद्ध केंद्र शासन व इतर प्रकरणी दिलेले न्यायनिर्णय विचारात घेऊन निर्गमित केलेल्या दि.३१.०१.२०१४ व दि. १९.०१.२०१५ च्या शासन निर्णयातील आदेशांचे पालन करण्याबाबत.

महोदय/ महोदया,

मा. सर्वोच्च न्यायालयाने, श्री. टी. एस. आर. सुब्रमन्यान आणि इतर विरुद्ध केंद्र शासन व इतर प्रकरणी दिलेले न्यायनिर्णयातील तरतूदी विचारात घेऊन, शासकीय अधिकारी / कर्मचा-यांच्या सर्वसाधारण, मध्यावधी अथवा मुदतपूर्व बदल्या करताना तसेच पदस्थापना करताना सक्षम प्राधिका-यास शिफारस करण्यासाठी दि. ३१.०१.२०१४ तसेच दि. १९.०१.२०१५ च्या शासन निर्णयान्वये नागरी सेवा मंडळ स्थापन करण्याबाबतचे निर्देश दिलेले आहेत. मा. महाराष्ट्र प्रशासकीय न्यायधिकरण, मुंबई यांनी मूळ अर्ज क्र.७७०/२०१७ प्रकरणी दि. ०९/११/२०१७ च्या न्यायनिर्णयान्वये नागरी सेवा मंडळाच्या शिफारशी विचारात घेण्याबाबत निर्देश दिलेले आहेत. मा. महाराष्ट्र प्रशासकीय न्यायधिकरण, मुंबई यांचे निर्देश व मा. सर्वोच्च न्यायालयाने, श्री. टी. एस. आर. सुब्रमन्यान आणि इतर विरुद्ध केंद्र शासन व इतर प्रकरणी दिलेल्या न्यायनिर्णयातील तरतूदी विचारात घेऊन निर्गमित केलेले दि. ३१.०१.२०१४ व दि. १९.०१.२०१५ च्या शासन निर्णयातील तरतूदीनुसार बदल्या / पदस्थापनेच्या वेळी नागरी सेवा मंडळाच्या शिफारशी कृपया विचारात घ्याव्यात.

आपला,

Sd/-

(देवेंद्र फडणवीस)

प्रति,

सर्व मंत्री / सर्व राज्यमंत्री

(Enclosed copy of letter क्र.एसआ.व्ही २०१८/प्र.क्र.०६/कार्या.१२)

49. The result is that this Tribunal has to hold and holds that the mandatory requirement as laid down in **T.S.R. Subramanian's case (supra)** quoted and referred to in foregoing paragraphs is violated by the respondents with open eyes and as a deliberate act. In the result, the Question Nos. (d) and (e) are answered accordingly. In the said affidavit-in-reply the Chief Secretary has stated as follows :-

"4. I say and submit that in compliance of the aforesaid order, the order of Hon'ble Tribunal brought to the notice of the Hon'ble the Chief Minister, Government of Maharashtra for appraisal about binding nature and direction; contained in the case of **T.S.R. Subramanian and others Versus Union of India and Others, decided on October 31, 2013.**

5. I say and submit that Hon'ble the Chief Minister, Government of Maharashtra issued an advisory letter bearing No.SRV/2018.C.R.no.06/Desk 12 to all Hon'ble Ministers to be vigilant in observance of the mandate contained in the judgment of T.S.R. Subramanian and others Versus Union of Indian and Others. The copy of the said advisory letter is annexed herewith an Annexure R-1.

6. I further say and submit that as directed by the Hon'ble Tribunal, I have also issued an advisory letter bearing no.SRV/2018.C.R. no.06/Desk 12 dated 01.03.2018 to the Secretarial staff of the Hon'ble the Chief Minister and other Hon'ble Ministers' offices to be vigilant in observance of the mandate contained in the judgment of T.S.R. Subramanian and others Versus Union of Indian and Others. The copy of the said letter is annexed herewith as Annexure R-2."

(Quoted from copy of compliance Affidavit of Chief Secretary, dated 15.03.2018.)

50. In view of the foregoing discussion now it is conclusive that impugned transfer order is vitiated due to non compliance of judgment of Hon'ble Supreme Court, Government Circulars and judgments of this Tribunal referred to hereinbefore.

51. In the result, questions framed by this Tribunal have to be answered in favour of the applicant holding that :-

(a) & (b) The transfer is vitiated on account of failure to the Government to consult the Civil Services Board on facts there did not exists any emergency for not waiting to refer the matter to Civil Services Board.

(c), (d) & (e) Special reasons and exceptional circumstances based on substantiated complaint are not recorded.

52. Before resorting to final order based on foregoing findings, this Tribunal considers it necessary to recall certain things which had transpired during hearing of this O.A..

53. During the hearing, this Tribunal had orally expressed that, prima facie, impugned decision and reasons thereto do not sound well as far as principles of response to conduct and criticism is concerned as well haste evidenced while taking action and departure from settled law which had prima facie emerged.

54. In view of the, prima facie, observations of this Tribunal, as were orally expressed, the learned Special Counsel expressed that he would ascertain if the Government was keen on adhering to the decision which was impugned in the O.A. and sought adjournment for securing Government's response. In view of the statement of learned Special Counsel, this Tribunal has recorded the statement of learned Special Counsel which reads as follows:-

- "1.
 2. In the midst of hearing, learned Special Counsel Shri Khaire states that he would like to ascertain if the Government is keen on adhering to the stance about the transfer of applicant.
 3. S.O. to 13.10.2017."

(Quoted Farad order dated 06.10.2017).

55. On the next date mostly on 22.11.2017, learned Special Counsel for the Respondents made an oral statement that Government was firm on its decision to transfer the Applicant. This Tribunal was amazed with the response, and hence by order dated 22.11.2017 this Tribunal directed the Principal Secretary of Urban Development Department to file affidavit supporting the stance that was expressed through learned Special Counsel.

56. Smt. Manisha Patankar Mhaisekar, Principal Secretary, Urban Development Department filed an affidavit on 11.12.2017, stating that the Government was firm and keen on maintaining / adhering to the decision impugned in the O.A..

57. This Tribunal had on the last date when case was finally heard and called on learned Special Counsel to answer one question. Said Question is as follows :-

Whether the affidavit filed by the Principal Secretary, Smt. Manisha Mhaisekar stating that the Government is firm on its decision is Hon'ble Chief Minister's decision, or it is the Principal Secretary's decision?

58. Learned Special Counsel has replied stating that the affidavit was filed by Principal Secretary on the basis of written approval of the Hon'ble Chief Minister.

59. Learned Special Counsel was called to produce the decision of Government of adhering to the decision to justify the Transfer and not to reconsider the decision. Learned Special Counsel had produced copy of note dated 02.12.2017 and it is taken on record.

60. This Tribunal has perused said note dated 2.12.2017.

61. It is pertinent to note that furtherance to the directions of this Tribunal given to the Principal Secretary, to file own affidavit, given by this Tribunal on 22.11.2017, the Principal Secretary was expected to file affidavit on the basis of decision already taken by the Government on the basis of which learned Special Counsel has made a statement.

62. Text of the note furnished by the learned Special Counsel reveals that it is initiated by Shri Mahesh Houdsheety, Desk Officer on 02.12.2017. It is then signed by the Under Secretary, Deputy Secretary on the same day and by Principal Secretary on 04.12.2017. Thereafter, Hon'ble the Chief Minister has signed it on 07.12.2017. Text of the said note reads as follows :-

“१. मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथे दाखल मुळ अर्ज क्र.६१४/२०१७ मध्ये मा. न्यायाधिकरणाने दि.२२.११.२०१७ रोजी पारीत केलेले पृ.१५ / प.वि. वरील आदेश कृपया पहावेत.

२. श्री. प्रमोद हरीभाऊ सवाखंडे, मुख्याधिकारी, गट-ब यांनी त्यांच्या मुख्याधिकारी, रहिमतपूर नगरपरिषद, जि. सातारा येथून दि.३०.०६.२०१७ च्या आदेशान्वये झालेल्या बदलीविरुद्ध मुळ अर्ज क्र.६१४/२०१७ मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथे दाखल केलेला आहे. सदर प्रकरणी शासनाच्या वतीने दि.३१.०७.२०१६ रोजी शपथपत्र दाखल करण्यात आले आहे.

आता, या प्रकरणी दि.२२.११.२०१७ च्या सुनावणी वेळी दिलेल्या आदेशामध्ये खालीलप्रमाणे निरीक्षणे नोंदवून निर्देशित केलेले आहे :-

5. Ld. Special Counsel then called the record from the officers who had arrived to give instructions and upon instruction Ld. Special Counsel states that any note was not put up and the decision was only communicated to him by Dy. Secretary.

6. It ought to have been noted by the Govt. that Special Counsel had made the statement only after arguing the case for some time. In fact even this Tribunal wanted that the Govt. should consider its decision. However, instead of inviting the observation or direction, Ld. Special Counsel has made the statement.

7. Therefore, the conduct of Government of showing a dustbin to the view of Special Counsel is an utmost rude conduct. It is highly shocking that any note of the

Special Counsel's statement and its background is not taken and decision of the Govt. is not sought thereon.

8. Principal Secretary, Urban Development Department is directed to file own affidavit stating as to who took the decision to brush aside Special Counsel's view that the decision be reconsidered by deciding to refuse to place a note and couch it up to the Government.

9. Affidavit be filed on or before 28.11.2017."

३. या संदर्भातील वस्तुस्थिती पुढीलप्रमाणे :-

(१) श्री. प्रमोद सव्वाखंडे, मुख्याधिकारी, रहिमतपूर नगरपरिषद, जि. सातारा यांनी मा. मुख्यमंत्री महोदयांबाबत समाज माध्यमांवर (Social Media) गंभीर संदेश प्रसारीत केला होता. सदर कृती गंभीर स्वरूपाची असल्याने, त्यांची मुख्याधिकारी, रहिमतपूर नगरपरिषद, जि. सातारा या पदावरून दि.३०.०६.२०१७ च्या शासन आदेशान्वये बदली करण्यात आली होती.

(२) सदर बदली आदेशविरुद्ध श्री. सव्वाखंडे यांनी मा. न्यायाधिकरणामध्ये मूळ अर्ज क्र.६१४/२०१७ दाखल केला.

(३) रहिमतपूर येथून बदलीमुळे श्री. सव्वाखंडे नियुक्तीच्या प्रतिक्षेत असल्याने तसेच, औरंगाबाद विभागातील मोठ्या प्रमाणावर रिक्त असलेली पदे विचारात घेवून, दि.२२.०९.२०१७ च्या आदेशान्वये मुख्याधिकारी, कंधार नगरपरिषद, जि. नांदेड या रिक्त पदावर त्यांची नियुक्ती करण्यात आली. सदर पदावर ते रुजू झाले आहेत.

४. प्रसंगत: नमूद करण्यात येते की, सदर न्यायालयीन प्रकरणी मा. न्यायमूर्ती श्री. आर.बी. मलीक महोदय यांच्या Single Bench समोर झालेल्या सुनावणीमध्ये श्री. सव्वाखंडे हे पदस्थापनेविना असल्याने त्यांना कोणत्याही पदावर पदस्थापना (anywhere) देण्याबाबत मौखिक आदेश दिले होते. मा. न्यायाधिकरणाच्या मौखिक आदेशानंतर श्री. सव्वाखंडे यांना दि.२२.०९.२०१७ च्या आदेशान्वये रिक्त पदावर पदस्थापना देण्यात आलेली आहे.

दरम्यान, सदर प्रकरण मा.चेअरमन महोदय, मॅट, मुंबई यांच्याकडे वर्ग झालेले असून, दि.०५.१०.२०१७ चे या प्रकरणातील मा. न्यायाधिकरणाचे आदेश पुढीलप्रमाणे आहेत :-

"In so far prayer (A) is concerned, applicant has accepted posting at Kandhar. Hence, MA is disposed.

In the midst of hearing, learned Special Counsel Shri Khaire states that he would like to ascertain if the Government is keen on adhering to the stance about the transfer of applicant."

४. आता, उपरोक्त नमूद न्यायनिर्णयांच्या पार्श्वभूमीवर श्री. सव्वाखंडे यांच्या बदली संदर्भात to ascertain if the Government is keen on adhering to the stance about the transfer of applicant बाबत सक्षम स्तरावर आदेश प्राप्त करून घेवून, दि. १४.१२.२०१७ रोजी ठेवलेल्या पुढील सुनावणीपुर्वी मा. न्यायाधिकरणामध्ये शपथपत्र दाखल करण्याचे प्रस्तावित आहे.

५. त्यामुळे, पुढीलप्रमाणे प्रस्तावित आहे :-

अ) श्री. प्रमोद सव्वाखंडे, मुख्याधिकारी, रहिमतपूर नगरपरिषद, जि. सातारा यांनी मा. मुख्यमंत्री महोदयांबाबत समाज माध्यमांवर (Social Media) गंभीर संदेश प्रसारीत केला होता. सदर कृती गंभीर स्वरूपाची असल्याने, त्यांची मुख्याधिकारी, रहिमतपूर नगरपरिषद, जि. सातारा या पदावरून सक्षम प्राधिकरणाच्या मान्यतेने दि. ३०.०६.२०१७ च्या शासन आदेशान्वये केलेली बदलीची कार्यवाही उचित आहे.

ब) श्री. सव्वाखंडे यांना ते पदस्थापनेविना असल्याने व औरंगाबाद विभागातील रिक्त पदावर दि. २२.०९.२०१७ च्या आदेशान्वये नियुक्ती दिली आहे. ही पदस्थापना कोणत्या विशिष्ट पदावर देण्याबाबत मा. न्यायाधिकरणाचे कोणतेही आदेश त्यावेळी नव्हते. तसेच, मा. न्यायाधिकरणाचे देखील त्यांना कोणत्याही पदावर पदस्थापना (anywhere) देण्याबाबत मौखिक आदेश दिले होते. त्यामुळे, सदरची कार्यवाही देखील योग्य आहे.

क) वरील सर्व वस्तुस्थिती विचारात घेता, सक्षम प्राधिकरणाच्या मान्यतेने घेतलेल्या श्री. सव्वाखंडे यांच्या बदली व नियुक्तीबाबत कोणताही बदल प्रस्तावित नसावा.

तथापि, मा. न्यायाधिकरणाच्या आदेशांच्या पार्श्वभूमीवर आदेशार्थ सादर.

Sd/-

२.१२.२०१७
(महेश हंशेट्टी)
कक्ष अधिकारी

Sd/-

०२.१२.२०१७
अ.स. (श्री. सहस्रबुध्दे)

यापुर्वी सादर केलेल्या टिप्पणीचे
अवलोकन व्हावे (पान १, २, ३)

Sd/-

०२.१२.२०१७
उ.स. (श्री. गोखले)

उपरोक्त अ, ब, क मान्यतेस सादर

Sd/-

०४.१२.२०१७
प्र.स. (नवि-२)

Sd/-

मा. मुख्यमंत्री महोदय ”

(Quoted from copy of submission dated 02.12.2017.)

63. What is evident from the foregoing text is that the date on which oral statement was made before this Tribunal on 22.11.2017 that the Government is firm in its decision, in fact was the statement made without actual Government decision on that date, mostly which was personal decision of someone in the chain of hierarchy of officers, who without seeking views and orders/decision of Hon'ble Chief Minister ventured to arrogate to oneself the power to speak for the Government. Thereafter in order to secure the decision in confirming with oral statement which was made by pre-empting the decision of the Government, a note which would suit the cause of securing a decision to cover up the unauthorized statement, was written / crafted and has been put up. The note has been drafted /coached in a particular fashion and it is proposed therein that the Government's decision need not be withdrawn. The department has not recorded for information of Hon'ble Chief Minister, the discussion before the Tribunal and reasons because of which a suggestion to withdraw the decision had come up.

64. This type of eloquent act seems to have done by the administration to cover their act of making statement before this Tribunal without consent and view of the Hon'ble Chief Minister, that the decision to suspend would be adhered to.

65. Even the statement was made before the Tribunal that Government is keen to adhere to the decision without consulting the Government and without securing views of Hon'ble Chief Minister. At least it is not the plea of the Principal Secretary that oral concurrence was obtained from the Hon'ble Chief Minister. A statement was made before this Tribunal that Government is firm on its stance without a Government's decision actually being taken either on record and even without informing or without consulting the Hon'ble Chief Minister. At least the office note does not disclose that even any oral such consultation was done. This attitude only proves scant respect to the system of democratic working and to the proceedings before Tribunal, and towards ethics in administration.

66. This Tribunal holds no room of doubt that view of this Tribunal as expressed could be fallable and not agreeable to the Government, and executive has power and prerogative to hold own view for good reasons, but failure of the administration to omit or avoid to put up the facts as transpired before Tribunal, is definitely a serious lapse and it reflects on the administration as regards their lack of faith in the Rule of law and of constitutional governance. Such approach and attitude is cultivated and allowed to grow, because bureaucrats seem to be willing to endure and resist the ire of courts and tribunals than slightest displeasure of their superiors in executive hierarchy.

67. In the result impugned transfer order gets vitiated due to following reasons :-

- (A) Transfer is in ultra violation of express dictate of Hon'ble Supreme Court ordered in **T.S.R. Subramanian's case (supra)**, and the policy vetted by the Government of Maharashtra to follow judgment of **T.S.R. Subramanian's case (supra)**.

- (B) Special reasons and exceptional circumstances purportedly recorded in paragraph 3 of note dated 30.06.2017 are based on hearsay & are not supported by investigation of type whatsoever hence based on surmises and therefore are devoid of evidence of even prima facie illegal evidence and turn out to be perfunctory.
- (C) Impugned order is based on an un-substantiated complaint.

68. Hence following order is passed :-

- (A) Original Application is allowed.
- (B) Impugned transfer order is quashed and set aside.
- (C) Applicant be restored to the position forthwith and in any case within 30 days from the date of order passed by this Tribunal.
- (D) Compulsory waiting period of applicant be treated as duty period.
- (E) Parties are directed to bear their own costs.

Sd/-

**(A.H. Joshi, J.)
Chairman
27.03.2018**

prk