

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.65 OF 2019

DISTRICT : SOLAPUR

Shri Deepak M. Jadhav.)
Age : 46 Yrs., Occu.: Sr. Clerk, [Working under)
Assistant Commissioner, Department of)
Fisheries, Collector Office Compound and)
Residing at Bhosale Building, Near 1st Church)
Railway Lines, Solapur.)...Applicant

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Department of Fisheries, Mantralaya,)
Mumbai 400 032.)
2. The Commissioner.)
Department of Fisheries,)
Taraporwala Mashtyalay, Netaji)
Subhash Marg, Charni Road,)
Mumbai 400 002.)
3. The Assistant Commissioner.)
Department of Fisheries, having office)
in the compound of Collector Office,)
Solapur.)...Respondents

Mr. M.R. Mhamane, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 18.03.2019

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 10th December, 2018 whereby he was transferred from Solapur to Ratnagiri.
2. Heard Shri M.R. Mhamane, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.
3. The Applicant was working as Senior Clerk in the office of Assistant Commissioner, Department of Fisheries, Solapur from 07.06.2017. However, abruptly, by impugned order dated 10th December, 2018, he was transferred to Ratnagiri. The Applicant contends that, it being mid-term and mid-tenure transfer, the compliance of provisions of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' was essential, but the same being not done, the transfer order is *ex-facie* illegal.
4. The Respondents all that sought to contend that the transfer was made in pursuance of approval given by the Hon'ble State Minister. This is the only stand taken by the Respondents in their Affidavit-in-reply.
5. Shri Mhamane, learned Advocate for the Applicant has pointed out that there is no approval from Civil Services Board (CSB) for mid-term and mid-tenure transfer of the Applicant and only to accommodate one Shri Ahankari, the Applicant has been displaced mid-tenure. He has further pointed out that there are no special reasons for mid-term- and mid-tenure transfer, and therefore, the impugned transfer order is liable to be set aside.

6. Whereas, Smt. A.B. Kololgi, learned Presenting Officer was at pain to defend the impugned order. All that she stated that it was as per the approval given by the Hon'ble State Minister.

7. Admittedly, the Applicant has not completed normal tenure at the time of impugned transfer order, and therefore, it is mid-term and mid-tenure transfer. Furthermore, the proposal was not at all placed before the CSB.

8. The only issue posed for consideration in this O.A. is whether the impugned order dated 10th December, 2018 is sustainable in law in the light of provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' (hereinafter referred to as 'Transfer Act 2005') and the answer is in negative.

9. The Respondents along with the reply has tendered the Xerox copy of representation of Shri Ahankari wherein he has requested for his transfer from Ratnagiri to Solapur. The Respondents have also placed on record the Xerox copy of approval of Hon'ble State Minister (Page No.42), which shows as follows :

वरिष्ठ लिपीक

अ.क्र.	नाव	सध्या कार्यरत असलेले ठिकाण	बदलीने पाहिजे असलेले ठिकाण
०१	श्री. प्रदिप मो. जाधव	सहाय्यक आयुक्त कार्यालय, मालवण (सिंधुदुर्ग)	स.आ.म.कार्यालय, जालना
०२	श्री. संजय राठोड	स.आ.म.कार्यालय, जालना	स.आ.म.कार्यालय,मालवण (सिंधुदुर्ग)
०३	श्री. श्रीनिवास रं. अहंकारी	स.आ.म. रत्नागिरी	स.आ.म. सोलापूर
०४	श्री. दि.मा. जाधव	स.आ.म. सोलापूर	स.आ.म.रत्नागिरी

मान्य

सही/-

(अर्जुन खोतकर)

राज्यं मंत्री

पशुसंवर्धन, दुग्धविकास व

मत्स्याविकास आणि वस्त्रोद्योग

महाराष्ट्र शासन

10. It is thus obvious that only to accommodate Shri Ahankari, the Applicant has been displaced by order of Hon'ble Minister. Surprisingly, not a single reason for mid-term or mid-tenure transfer is forthcoming. Except word 'मान्य', there is absolutely nothing in the order. It is thus obvious that the procedure contemplated under Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' has been completely disregarded.

11. Furthermore, as per Section 6 of 'Transfer Act 2005', the Head of the Department is the competent authority for general transfer for Group 'C' employees and there has to be Notification of the Head of Department. In the present case, no such Notification specifying particular Head of Department as a competent authority, let alone the publication is forthcoming. It being made mid-term and mid-tenure transfer as per Section 4(5), the reasons in writing are required to be recorded, but except word 'मान्य', nothing is mentioned in the order. As such, there is no compliance of the mandatory provisions of 'Transfer Act 2005'. In the wake of enforcement of 'Transfer Act 2005', the transfers are regulated in the manner laid down therein and not left to the whims of executive. Shockingly, the executive continues to trample upon the mandatory requirement of law by passing such totally unsustainable order. The order has been passed very casually and it is nothing but arbitrary and gross misuse of office. Suffice to say, order is *ex-facie* illegal and deserves to be set aside.

12. The necessary corollary of the aforesaid discussion leads me to sum up that the impugned transfer order deserves to be set aside. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 10.12.2018 is quashed and set aside.

- (C) The Respondents are directed to reinstate the Applicant on his original post within two weeks from today.
- (D) No order as to costs.

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

Mumbai

Date : 18.03.2019

Dictation taken by :

S.K. Wamanse.

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