

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.660 OF 2020

DISTRICT : SANGLI

Shri Pramod Anandrao Jadhav.)
Age : 35 Yrs., Working as Clerk-cum-)
Typist, Irrigation Department and residing)
at Sandgewadi, Tal.: Palus,)
District : Sangli.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 400 032.)
2. Superintending Engineer.)
Sangli Irrigation Circle, Warnali)
Vasahat, Vishrambag,)
Sangli – 416 415.)
3. Executive Engineer.)
Sangli Irrigation Division, Sangli.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

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

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

DATE : 11.02.2021

JUDGMENT

1. The Applicant has challenged the order dated 05.10.2020 whereby he was deputed/transferred from Sub-Division Office, Ashta, District

Sangli to Sub-Division Office, Jat, District : Sangli, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant is serving in the cadre of Clerk-cum-Typist. By order dated 05.06.2018, he was transferred from Islampur and posted in Sub-Division Office in Irrigation Sub-Division, Ashta. He being Group 'C' employee claims to be entitled for 6 years' tenure at the post in terms of Section 3 of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity). However, by order dated 05.10.2020, the Respondent No.2 - Superintending Engineer, Sangli Irrigation Circle deputed/transferred him at Sub-Division Office, Jat till further order stating that it was necessary from the point of administrative convenience as well as discipline in the Office. The Applicant has challenged this order in the present O.A. contending that it is mid-term as well as mid-tenure transfer without compliance of Section 4(5) 'Transfer Act 2005'. He further contends that he is transferred on complaint without following due process of law under the garb of temporary deputation but it has all trappings of transfer in the eye of law and the same being in total contravention of the provisions of 'Transfer Act 2005', it is liable to be quashed.

3. The Respondents No.2 and 3 in their Affidavit-in-reply sought to contend that the impugned order dated 05.10.2020 is not transfer order but wholly temporary arrangement for smooth administration. The Respondents further contend that there were complaints of Smt. Megha Patil about sexual harassment while Applicant was serving at Islampur, and thereafter, while Applicant was working at Ashta also, there were complaints against him, particularly a complaint of Smt. Aruna Mahapure, and therefore, the Respondent No.2 thought it appropriate to

depute the Applicant at Jat from the point of administrative convenience as well as discipline in the Office.

4. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the order dated 05.10.2020 contending that it is in fact transfer order under the guise of deputation and Applicant having not completed normal tenure, the order dated 05.10.2020 for absence of approval/recommendation of CSB and prior approval of next preceding competent transferring authority, as required under the provisions of 'Transfer Act 2005' is totally unsustainable in law. As regard complaints, she submits that the complaint of Smt. Megha Patil was pertaining to the period while Applicant was serving at Islampur, and therefore, it has no relevance for transferring the Applicant from Ashta to Jat and transferred is stigmatic and punitive.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned order stating that having regard to the conduct of the Applicant *vis-à-vis* complaint of sexual harassment made by Smt. Megha Patil and another complaint of Smt. Aruna Mahapure, the Respondent No.2 thought to it appropriate to depute the Applicant temporarily at Jat from the point of administrative convenience and to maintain discipline and decorum in the Office.

6. Indisputably, the Applicant was posted at Ashta by order dated 05.06.2018 and he had not completed normal tenure at the time of passing impugned order. The fate of O.A. depends upon the interpretation of impugned order dated 05.10.2020 as to whether it is transfer order in eye of law or simple temporary deputation order. In the first place, in impugned order, there is no mention that it is temporary or for a particular period. It is worded as under :-

“यास अनुसरून श्री. जाधव, लिपिक नि. टंकलेखक यांना कामातील गैरशिस्ती बाबत कार्यकारी अभियंता, सांगली पाटबंधारे विभाग, सांगली यांचेकडून ज्ञापन ही देण्यात आलेले होते. तरीसुद्धा श्री. जाधव, लिपिक नि. टंकलेखक यांचेबाबत अन्य सहकारी महिला यांचेकडून अनादर होत असलेबाबत तक्रारी होत आहेत. त्यामुळे श्री. जाधव, लिपिक नि. टंकलेखक यांची महिलाप्रति अनास्था दिसून येत आहे. त्यामुळे कार्यालयीन शिस्स बाधा येत आहे.

वरीलप्रमाणे संदर्भ क्र.१ नुसार वर्ग करण्यात आलेले आदेश रद्द करून आता, या आदेशान्वये त्यांची सेवा कार्यकारी अभियंता, म्हैसाळ पंपगृह विभाग क्र.२ सांगली अंतर्गत उपविभागीय अधिकारी, म्हैसाळ भांडार उपविभाग, जत येथे प्रशासकीय कामकाजाच्या सोयीच्या व शिस्तीच्या दृष्टीने पुढील आदेशापर्यंत वर्ग करणेत येत आहे”

As such, there is nothing in the order to indicate that it is temporary or effective for a particular period. Indeed, as per order, it will remain in force till further orders. The order was passed on 05.10.2020 and till date, the period of more than four months is over. However, no further orders in this behalf are passed to modify or to regularize some by availing the provisions of ‘Transfer Act 2005’. There could be no such indefinite deputation even if there was any such administrative exigency. If there was any such misconduct, then the Respondents ought to have availed the provisions of ‘Transfer Act 2005’, particularly Section 4(5) of ‘Transfer Act 2005’ to transfer the Applicant, but it is not so and the Applicant is displaced under the garb of deputation. As such, the impugned order cannot be termed as temporary deputation order. It has trapping and implications of transfer order in the eye of law.

7. Admittedly, the matter was not placed before CSB nor there is approval of next presiding competent transferring authority as contemplated under Section 4(5) read with Section 6 and Table thereunder of ‘Transfer Act 2005’.

8. Indeed, in view of enquiry committee report set up to enquire into the complaint made b Smt. Megha Patil, the Respondents ought to have taken appropriate action against the Applicant but instead of taking appropriate action in accordance to law, the Applicant is transferred under the garb of temporary deputation or shifting. The incident giving rise to complaint made by Smt. Megha Patil was pertaining to the period when the Applicant was serving at Islampur in view of his retention at Islampur despite his transfer to Ashta. As such, after the Applicant was transferred to Ashta, all that, the Respondents were supposed to take necessary action on the report submitted by internal Committee established under the provisions of “Sexual Harassment of Women at

Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'Act of 2013' for brevity)". As the Applicant was already transferred from Islampur to Ashta, there was no further need to transfer the Applicant from Ashta to Jat on the ground of complaint of Smt. Megha Patil.

9. At this juncture, it would be apposite to see the recommendation made by Committee (Page Nos.38 and 39 of P.B.) which are as under :-

“अ) दि.०१/०६/२०२० रोजी झालेले Whats App संभाषण हा केवळ वादावादीचा प्रकार असून कामाच्या ठिकाणी महिलांचा लैंगिक छळ (प्रतिबंध मनाई व निवारण) अधिनियम २००३ दि.२२/०४/२०१३ या संसदीय कायद्यातील मुद्दा क्र. २(n) लैंगिक शोषण अंतर्गत बाब क्र.(i) ते (v) तसेच “महाराष्ट्र नागरी सेवा वर्तणूक नियम १९७९” मधील पृष्ठ क्र. १८ वरील मुद्दा क्र. २२अ अंतर्गत बाब क्र. १ ते ५ ला अनुसरून “**सदर प्रकरण लैंगिक शोषणा अंतर्गत येत नाही**” असे समितीचे एकमत झाले आहे.

ब) शासकीय कामासाठी बनविलेल्या Whats App ग्रुप वर कामाव्यतिरिक्त संभाषण / वाद घातल्यामुळे व शासकीय कामकाजाचा वेळ वाया घालवल्या प्रकरणी दोन्ही कर्मचार्यांना समज देण्याची शिफारस समिती करत आहे.

क) संभाषणामधील लैंगिकता सूचक शे-यांबद्दल श्री प्रमोद जाधव यांनी दिलगिरी व्यक्त केली असली तरी त्यांनी संबंधित महिलेच्या दिसण्यावरून, दोन अर्थाने बोलणे असे अपमानास्पद शब्द वापरले आहेत. त्यांनी वापरलेल्या शब्दावरून महिलांबद्दलची त्यांची मानसिकता दिसून येते. याची गांभीर्याने दखल घेऊन संबंधित व्यक्तीला ज्ञापन देऊन भविष्यात महिलांबद्दल असे वर्तन केल्यास शिस्तभंगविषयक कार्यवाही करणेत यावी अशी शिफारस समिती करत आहे.

ड) सदर प्रकरण हे लैंगिक शोषण आणि अंतर्गत येत नसले तरीही कामाच्या ठिकाणी महिलांचा लैंगिक छळ (प्रतिबंध मनाई व निवारण) अधिनियम २०१३ दि. २२/४/२०१३ या संसदीय कायद्यामधील प्रकरण १ मधील मुद्दा क्र.३(iv) नुसार महिलांच्या कामात हस्तक्षेप करून तिच्यासाठी असुरक्षित वातावरण निर्माण करणे हे ही एक प्रकारचे शोषण आहे.

इ) घटनेच्या '१९-अ' कलमानुसार प्रत्येक व्यक्तीला कोणताही व्यवसाय व नोकरी आत्मसन्मानपूर्वक करण्याचा अधिकार प्रदान केलेला आहे. संबंधित आस्थापना/प्रशासन यांनी कार्यालयात काम करताना व करून घेताना महिलांना पुरुषांच्या बरोबरीने न्याय देणे क्रमप्राप्त आहे.

य) श्रीमती मेघा पाटील यांनी तीन वर्षांपासून त्यांच्या कामात हस्तक्षेप होत असल्याची तक्रार केली आहे व हा विषय कार्यालयाच्या प्रशासनाशी निगडित असल्याने आवश्यकता वाटल्यास वरिष्ठ स्तरावर सखोल चौकशी होऊन चौकशीअंती तथ्य आढळल्यास योग्य कार्यवाही होणेबाबत महिला तक्रार निवारण समिती शिफारस करत आहे.”

10. As such, though the Committee opined that the matter does not come strictly under the provisions of 'Act of 2013', still Committee observed and noted indecent behavior of the Applicant towards women, and therefore, recommended for appropriate action. However, instead of taking appropriate action in accordance to law, the Respondent No.2 transferred the Applicant without compliance of Section 4(5) of 'Transfer

Act 20056'. It being mid-term and mid-tenure transfer, the Respondent No.2 – Superintending Engineer was not competent to transfer the Applicant in absence of approval of next preceding competent transferring authority in terms of Section 4(5) read with Section 6 of 'Transfer Act 2005'.

11. Insofar as complaint of Smt. Aruna Mahapure dated 25.09.2020 (Page No.42 of P.B.) is concerned, it does not relate to sexual harassment. It pertained to some bickering, non-cooperation between her and Applicant in official work. At the same time, interestingly, there is also complaint of almost entire staff (Page No.80 of P.B.) against Smt. Aruna Mahapure alleging non-cooperation, rude behaviour, obstruction in their work and indulging in groupism. As such, the complaint of Smt. Aruna Mahapure without making preliminary enquiry could not become foundation for such mid-term transfer.

12. Suffice to say, the impugned order dated 05.10.2020 cannot be termed simpliciter order of temporary arrangement or temporary deputation. It has trapping of transfer in eye of law. This being so, it ought to have been with the recommendation of CSB and with prior approval of next presiding competent transferring authority, as mandated under the provisions of Section 4(5) read with Section 6 and Table thereunder of 'Transfer Act 2005'. Admittedly, there is no such compliance of mandatory requirement of law. The impugned order is, therefore, not sustainable in law and deserves to be quashed.

13. The Respondent No.2 is at liberty to take further appropriate action in terms of report of internal Committee dated 06.07.2020 in accordance to law.

14. The totality of aforesaid discussion leads me to conclude that the impugned transfer order is totally unsustainable in law and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 05.10.2020 is hereby quashed and set aside.
- (C) The Applicant be reposted at Ashta within two weeks from today.
- (D) No order as to costs.

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

Mumbai

Date : 11.02.2021

Dictation taken by :

S.K. Wamanse.

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