

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.663 OF 2021  
With  
M.A.NO.407 OF 2021 IN M.A.NO.425 of 2021**

Shri Kailas Sham Adhe )  
Age 32 years, Working as Assistant )  
Commissioner, Social Welfare, Solapur. )  
Office/at Assistant Commissioner, Social )  
Welfare, Sath Rastha, Dr. Babasaheb )  
Ambedkar Samjik Nyay Bhavan, Solapur. )..... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through its Secretary, )  
Social Justice & Special Assistant )  
Department, Mantralaya, )  
Mumbai 400 032. )
- 2) Shri Nagnath Choughule, )  
Working as District Social Welfare )  
Officer, Zilla Parishad, Usmanabad. ) ..**Respondents**

**with**

**M.A.NO.407 OF 2021 in O.A.No.663 of 2021**

- 1) NGO Nursing Association Akluj )  
Malshirars, Solapur, through )  
President Dr. Rahul R. Jawanjali ).....**Intervener**

**AND**

Shri Kailas Sham Adhe )..... **Applicant**

**Versus**

The State of Maharashtra & Anr. ) ..**Respondents**

**WITH**

**M.A.NO.425 OF 2021 in O.A.No.663 of 2021**

- 1) Shri Mahadev S. Wale, Age 76 years,) )  
 Working in Parmarthik Seva Sangh, )  
 as President, R/at Korwali, )  
 Mohol, Dist. Solapur. )...**Intervener**

**AND**

Shri Kailas Sham Adhe )..... **Applicant**

**Versus**

The State of Maharashtra & Anr. ) **..Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.  
 Smt. Kranti Gaikwad., learned Presenting Officer for the Respondent No.1  
 Ms Rekha Musale, learned Advocate for Respondent No.2.  
 Shri A.B. Tajane, learned Counsel for Intervener in M.A.No.407/2021  
 Shri S. S. Dere, learned Counsel for Intervener in M.A.No.425/2021.

CORAM : A.P. KURHEKAR, MEMBER(J)

DATE : 25.02.2022

**JUDGMENT**

1. The Applicant has challenged the transfer order dated 30.08.2021 whereby the Government has posted Respondent No.2 on the post of Assistant Commissioner, Social Welfare, Solapur in place of the Applicant thereby displacing him mid-term and mid-tenure.

2. Shortly stated facts giving rise to the O.A. are as follows:-

The Applicant is serving in the cadre of Assistant Commissioner, on the establishment of Social Justice and Special Assistance Department, Mantralaya, Mumbai (Respondent No.1). The Government by order dated 26.06.2019 transferred him from Pune

and posted him as Assistant Commissioner, Social Welfare, Solapur. Accordingly, the Applicant joined there. In terms of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005) he is entitled to three years tenure. However, before completion of three years normal tenure, he is displaced by order dated 30.08.2021 whereby Government has posted Respondent No.2 Shri Nagnath Chougule in his place. The Respondent No.2 was serving at District Social Welfare office, Zilla Parishad, Usmanabad and by order dated 30.08.2021, he is posted as Assistant Commissioner, Social Welfare, Solapur in place of the Applicant. Aggrieved by this posting and transfer of Respondent No.2 by order dated 30.08.2021, the Applicant has filed this present O.A. *inter-alia* contending that he is being transferred mid-term and mid-tenure in view of posting given to Respondent No.2 in his place.

3. During the pendency of this O.A., M.A.No.407/2021 and M.A. No.425/2021 are filed for intervention in O.A. These Misc. Applications were ordered to be heard along with O.A.

4. M.A. No.407/2021 is filed by NGO namely Nursing Association, Akluj, Malshiras, District Solapur through President Shri Rahul Jawanjali on the ground that the Association had filed several complaints against the Applicant and it is on the said complaints, the Applicant is being transferred, and therefore, intervention in O.A.No.663/2021 is sought.

5. Whereas M.A.No.425/2021 is filed by one Shri Mahadev Shankar Wale, President in Parmarthik Seva Sangha, Korwali, Dist Solapur. This intervention application is filed alleging that the present Applicant has helped one accused namely Jabbar Shaikh against whom offence under Section 197, 199, 200, 409, 420, 467, 468, 471, 477-A, 499 and 500 of IPC has been registered. However,

admittedly Applicant's name is not figured in FIR. The said FIR has been registered on the complaint of present intervener in M.A.No.425/2021. However, perusal of FIR reveals no allegations against the present Applicant. When specific query was raised to Advocate Shri S.S.Dere appearing in M.A.No.425/2021 about the progress of investigation and filing of charge sheet, he fairly stated that he has no knowledge about the steps of investigation or filing of charge sheet. As such, except bald allegations made in intervention application that Applicant has abetted commission of these offences, there is absolutely nothing to establish the same.

6. Insofar as M.A.No.407/2021 is concerned, learned Counsel for intervener sought to contend that the intervener NGO, Nursing Association has lodged various complaints against the Applicant and it is on the basis of the said complaints, now the Respondent No.2 is posted in place of the Applicant. It appears from perusal of intervention application no.407/2021, that the Applicant was given additional charge of Research Officer, Maharashtra State, Backward Class Commission, Pune and during the period of said charge, NGO had made complaints about his functioning and non sanctioning of grant etc.

7. Basically, in O.A. the challenge is to the transfer and posting of Respondent No.2 in place of the Applicant. Needless to mention, in transfer order, it is for the Government to justify the impugned action and third person has no locus. Indeed, in present case, it is revealed from the record that though the Respondent No.2 was not due for transfer, he has been brought in place of the Applicant by order dated 30.08.2021 without passing any other consequential order about transfer and posting of the Applicant. Be that as it may, the fact remains that consequent to posting order of Respondent No.2, the Applicant is aggrieved being displaced mid-term and mid-tenure, and therefore, filed the present O.A.

8. Heard Smt. Punam Mahajan, learned Counsel for the Applicant, Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent No.1, Smt. Rekha Musale, learned Counsel for Respondent No.2 and also hearing Advocate Shri S. S. Dere for intervener in M.A.No.425/2021 and Shri Tajane, learned Counsel for intervener in M.A.No.407/2021.

9. The basic issue arises for consideration is whether the displacement and shifting of the Applicant mid-term and mid-tenure is in consonance with the provisions of 'Act 2005'. Admittedly, the applicant has not completed his normal tenure of three years as Assistant Commissioner, Social Welfare, Solapaur. The transfers of Government servants are regulated and governed by 'Act 2005'. As per Section 3 of 'Act 2005' the normal tenure of Applicant shall be three years. However, Section 4(5) of 'Act 2005' provides mechanism for mid-tenure transfer in special cases after recording reasons in writing and with prior approval of immediately superior transferring authority mentioned in Table of Section 6 of 'Act 2005'. Admittedly, the Applicant is Group 'A' officer and as per Section 6 of 'Act 2005', the competent authority for his transfer is Hon'ble Chief Minister. Suffice to say, for his transfer, the department is required to make out the case as special case and it should be with approval of Chief Minister as mandated under section 4(5) of 'Act 2005'.

10. Now turning to the fact of present case, indeed, there is no transfer order of the Applicant but he is definitely aggrieved in view of the transfer and posting of the Respondent No.2 in his place by order dated 30.08.2021. Legally speaking, the Respondent ought to have first processed the issue of transfer of the Applicant, if permissible in law and after following the procedure under Section 4(5) of 'Act 2005' then only the Government would have posted the Respondent No.2 in place of the Applicant. However, it is not so, here is the reverse situation which is totally unknown to law.

11. Learned P.O. fairly stated that there was no proposal much less approved by the competent authority in so far as transfer of the Applicant is concerned. This is very crucial aspect of the matter since the Applicant is being displaced without transferring him, if permissible in law. As such, the Respondent was under obligation to satisfy the Tribunal that transfer of the Applicant was necessitated for certain reasons. However, in present case, it is explicit from the record that it is only to accommodate and favour the Respondent No.2, the Applicant is displaced illegally. In this behalf, interesting to see the Minutes of CSB which are at page No.44 of PB. It reveals that Respondent No.2 who was serving as District Welfare Officer, ZP Usmanabad and had not completed normal tenure of three years has secured recommendations of certain politicians and it is on the basis of those recommendations, the Respondent No.2 is posted in place of the Applicant. The letters of the politicians are also placed on records which are at page Nos.38 and 40. In the said letters, recommendations are made for giving posting to the Applicant as Assistant Commissioner, Social Welfare, Solapur. The Civil Services Board simply obliged the politicians and recommended the transfer of the Respondent No.2 in place of the Applicant. Perusal of file noting, today tendered by learned P.O. reveals that the Hon'ble Chief Minister then simply accepted the recommendations of CSB without bothering to see whether any such special case was made out for mid-tenure transfer of Applicant. It is thus explicit that though the Respondent No.2 was not due for transfer, his request was mechanically accepted which has resulted in illegal displacement of Applicant from his post.

12. Apart, curiously while the Respondent No.2 was earlier at Solapur on the same post as Assistant Commissioner, Social Welfare, Solapur he was suspended by order dated 05.10.2017. Thereafter, he was transferred to Usmanabad but now by impugned transfer order, he again brought back to Solapur on the same post. When the specific

quarry was raised to learned P.O. about the status of D.E. in contemplation of which Respondent No.2 was suspended, on instructions learned P.O. stated that D.E. is still pending. Thus, in effect though the Respondent NO. 2 was suspended while working as Assistant Commissioner, Social Welfare Solpaur, he was again brought back on the same post due to political interference only which is indeed in contravention of G.R. dated 14.10.2011 which *inter-alia* provides that where a Government servant is suspended and reinstated in service, he should be given non executive post. Here, shockingly the Respondent No.2 is again brought back on executive post for the reason best known to the Government.

13. Indeed, the interference of politicians in the matter of transfer is frowned upon by the Hon'ble High Court and it is depreciated in ***W.P.No.8987/2018 (Balasaheb V. Tidke V/s. State of Maharashtra & Anr.)***, decided on 12.12.2018. In Writ Petition, the issue of interference of politicians or ministers who are not connected with the department was raised before the Hon'ble High Court. In that matter the then Chief Secretary Mr Dinesh Kumar Jain was directed to file an affidavit and in terms of directions he filed affidavit which is as under:-

*"1. I submit that I am filing the present Affidavit for the limited purpose of stating that the process of transfer at the level of the Government will not be influenced by any recommendations made by any political leaders, members of political parties or any Hon'ble Ministers who are not part of the process of transfers.*

*2. I submit that all authorities who are competent to effect the transfers will be advised to strictly follow the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 while issuing transfer order."*

14. Despite the aforesaid affidavit, the interference of politicians and other ministers who were not connected with the department is continued unabatedly which in fact amounts to contempt of the order of the Hon'ble High Court.

15. Be that as it may, the record clearly spells that the Applicant is shifted and displaced illegally in blatant contravention of the provisions of 'Act 2005' only to favour the Respondent No.2.

16. True, as pointed out by learned Counsel for Respondent No.2 transfer is essential incidence of service and a Government servant has no vested right to claim a particular post. However, now the transfers being governed and regulated by provisions of 'Act 2005' where it is found that the transfer is in blatant violation of express provisions of 'Act 2005', the interference is inevitable otherwise arbitrary and totally illegal orders of the Government will be continued which should be amounting to countenance the illegality.

17. The totality of the aforesaid discussion leads me to sum up that the transfer order is 30.08.201 thereby posting the Respondent No.2 in place of the Applicant is totally bad in law and liable to quashed. Insofar as intervention applications are concerned, they have no locus in the matter of transfer and in view of above discussion, both M.As are disposed of being not maintainable. Indeed this is a fit case to saddle exemplary cost upon the Respondent No.1 – Government as well as Respondent No.2 since misuse of power and authority to favour someone is clearly spelt out. However, learned Counsel for the Applicant submitted that no cost should be imposed and she is satisfied with setting aside the impugned order. She apprehends if cost is imposed, her client will be victimized. Hence the following order:-

**ORDER**

- (A) Original Application is allowed.
- (B) Impugned order dated 30.08.2021 is quashed and set aside.



- (C) Interim relief granted by this Tribunal is made absolute.
- (D) No order as to cost.

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

Place : Mumbai  
Date : 25.02.2022  
Dictation taken by : VSM  
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