

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 720 of 2020**  
**WITH CIVIL APPLICATION No. 321 of 2020 (S.B.)**

Dr. Ashok S/o Laxmishankar Upadhyay,  
aged about 54 years,  
Occ. Principal Government Polytechnic College,  
Sakoli.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through Secretary,  
General Administration Department,  
Mantralaya, Mumbai-32.
- 2) State of Maharashtra,  
through Secretary, Higher and Technical Education,  
Mantralaya, Mumbai-32.
- 3) Dr. Chandrashekhar Thorat,  
Principal, Government Polytechnic,  
Jalna.

**Respondents.**

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**S/Shri M.M. & A.M. Sudame, I.A. Fidvi, Advocates for applicant.**

**Shri A.M. Ghogre, P.O. for respondent nos.1&2.**

**Shri S.P. Palshikar, Advocate for respondent no.3.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Member (J).**

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**Date of Reserving for Judgment : 26<sup>th</sup> November,2021.**

**Date of Pronouncement of Judgment : 6<sup>th</sup> December, 2021.**

**JUDGMENT**

**(Delivered on this 6<sup>th</sup> day of December, 2021)**

Heard Shri I.A. Fidvi, learned counsel for the applicant, Shri A.M. Ghogre, learned P.O. for respondent nos.1&2 and Shri S.P. Palshikar, learned counsel for respondent no.3.

2. The applicant is seeking to quash and set aside the impugned transfer order dated 28/10/2020 issued by the respondent no.2. The case of the applicant can be summarised as under –

3. The applicant was appointed for the post of Principal, Government Polytechnic College, Sakoli on 18/9/2018. The applicant joined service as Principal, Government Polytechnic College, Sakoli on 10/10/2018. The respondent no.2 issued transfer order on 28/10/2020. The impugned transfer order being violative of the applicant's fundamental right. It is issued in contravention to the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Transfers Act,2005"). It is illegal, arbitrary and therefore prayed to quash and set aside.

4. It is submitted that the applicant has not completed three years of service, it is mandatory for the Transferring Authority to comply the provisions of Sections 3,4&5 of the Transfers Act,2005.

5. The respondent nos.1&2 have strongly opposed the contention of the applicant. It is submitted that the behaviour of the

applicant was not tolerable. The incharge Joint Director of Technical Education, Nagpur submitted detailed report to the Director of Technical Education, M.S., Mumbai and pointed out about the conduct of the applicant. There were many complaints against the applicant. The applicant was not behaving properly, his administration was not proper, therefore, there was court litigation. He had directed employee Shri Amit Jagdale to proceed on leave compulsorily. The said employee filed O.A. No. 984/2019. Thereafter also he did not stop to harass the employees of the Government Polytechnic College, Shendurwada, Tq. Sakoli, Dist. Bhandara. Again that employee filed O.A.No. 87/2020. The Incharge Joint Director of Technical Education, Nagpur submitted detailed report about the grievance of the employees and suggested / recommended for transfer of the applicant. The Government of Maharashtra with the approval of the Chief Minister, transferred the applicant from Government Polytechnic College, Sakoli, Dist. Bhandara to Government Polytechnic College, Hingoli.

6. Heard learned counsel for the applicant. He has submitted that without any departmental enquiry and without completing tenure of three years, the respondent nos.1&2 cannot transfer the applicant. The transfer of the applicant amounts to

punishment and therefore it is illegal in view of the Section 3,4 &5 of the Transfers Act,2005.

7. Heard learned P.O. He has submitted that the applicant is transferred on the administrative ground. It is permissible under Section 4 (4) & 4 (5) of the Transfers Act,2005. The learned P.O. has pointed out the order passed by this Tribunal in O.A. No. 984/2019 and O.A. No. 87/2020. He has pointed out the detailed report submitted by the Joint Director of Technical Education, Nagpur to the Director of Technical Education, Mumbai. The learned P.O. has submitted that the applicant is transferred after taking due care of the Section 3,4&5 of the Transfers Act,2005. He has submitted that the transfer of applicant was necessary for the smooth administration of the Institution, therefore, there is no illegality in the transfer order. Hence, the O.A. is liable to be dismissed.

8. The learned counsel for the applicant submitted that the applicant has not completed his tenure of three years at Government Polytechnic College, Sakoli, Dist. Bhandara. He is transferred in contravention of the Section 3,4&5 of the Transfers Act,2005 and said transfer amounts to punishment. There was no any departmental enquiry, therefore, punishment of transfer cannot be awarded. He has submitted that the impugned transfer order is illegal and therefore

it is liable to be quashed and set aside. In support of his submission, he has pointed out the following decisions –

- (i) *Somesh Tiwari Vs. Union of India & Ors. (2009) 2 SCC,592.*
- (ii) *Arvind Dattatraya Dhande Vs. State of Maharashtra & Ors., (1997) 6 SCC,169.*
- (iii) *State of Maharashtra & Ors. Vs. Dr. (Mrs.) Padmashri S. Bainade, 2015 (2) Mh.L.J.,679.*
- (iv) *S.B. Bhagwat Vs. State of Maharashtra & Ors., 2012 (3) Mh.L.J.,197.*

9. The learned counsel for the applicant has submitted that the impugned transfer order is illegal, because, it is in contravention of the Section 3,4&5 of the Transfers Act,2005 and view of the cited Judgments, it is liable to be quashed and set aside.

10. The learned P.O. has pointed out the documents filed on record. Copy of order in O.A.No. 984/2019. From the perusal of this order, this Tribunal has observed in para-4 as under –

*“4. After hearing both the parties, Principal was directed that he is acting beyond the power given to him under Maharashtra Civil Services (discipline and appeal) Rules, 1979. There is no provision to send any employee on compulsory leave. However, he is also informed that he is at liberty to take action against any officer working under him under Section 8 or under Section 10 of Maharashtra Civil Services (discipline and appeal) Rules, 1979.”*

11. In O.A. No.712/2019 this Tribunal has observed in paras-3,4&5 as under –

*“3. It appears that the Principal, Government Polytechnic College, Sakoli not relieved both the applicants and therefore grievance is made by the applicants that he is not paying heed to the order issued by the Government and for the same, letters were written by the Joint Director, Technical Education, Nagpur (R/3) to the respondent no.4 that the act of the respondent no.4 not relieving the applicants is unjust and may give rise for the departmental action.*

*4. The respondent nos. 1 to 5 have filed their reply and now it is submitted that though both the applicants are transferred from the establishment of Government Polytechnic College, Sakoli, but no one is posted and consequently the respondent no.4, the Principal of the College is facing difficulties in relieving them. It is submitted that both the applicants are transferred in the mid-term and part of the subjects being taught by the applicants and if the Lecturers are not appointed on their posts, it will cause grave prejudice to the Students in the College. On perusal of the transfer memo, it appears that the transfer orders are issued on 27/6/2019 in view of the personal request. As a matter of fact so far as the educational institutions are concerned, care should be taken not to transfer the teaching staff in the mid-term, but without following this, 74 transfer orders are issued on 27/6/2019. It seems that the difficulties of the respondent no.4 the Principal of the College are genuine. It is responsibility of the Principal of the College to safeguard the academic career of the Students. The learned P.O. submitted that respondent nos.1&2 will take care to relieve both the applicants as soon as it is possible to post some one on their respective posts.*

*5. The learned counsel for the applicants submitted that the applicants are ready to work at Sakoli till the end of the academic session. In view of this, I direct that at the end of the academic session of the year 2019- 2020, both the applicants shall be relieved from their respective posts, so they will join on the transferred posts and in the meantime the respondent nos.1&2 shall make necessary arrangement to post some one. In view of this, the O.As. stand disposed of. No order as to costs.”*

12. In O.A. 218/2020 this Tribunal has observed in para-2&3 as under –

*“2. The impugned order dated 09.04.2020 (Annexure-A-6, P.B., Pg. No. 25) was issued and applicant get suspended; though respondent no.3 was not a competent authority to issue such an order and as pointed out by the Id. counsel for the applicant, Joint Director of Technical Education, Nagpur vide his letter dated 20.05.2020 (Annexure-A-12, P.B., Pg. No. 66) has communicated to the respondent no. 3 that this issuing of suspension order by respondent no. 3 is illegal. The same has been communicated by Regional Joint Director of Technical Education, Nagpur vide his letter dated 21.05.2020 (Annexure-A-13,P.B.,Pg.No.67).*

*3. According to the above situation, respondent no. 3 has no right to continue the order dated 09.04.2020 (Annexure-A-6, P.B., Pg.No. 25) and hence respondent no. 3 is directed to immediate follow the instructions given by Joint Director and Regional Joint Director and revoke the order dated 09.04.2020 with immediate effect. If, he does not do so, the order will get automatically quashed after a week time.i.e.06.07.2020.”*

13. The applicant in spite of the several orders passed by this Tribunal, he has continued his rude behaviour with the employees of the Government Polytechnic College. One of the employees namely Shri Anil Jagdale had approached before this Tribunal in O.A. 87/2020 and the order was passed by this Tribunal observing that as per the report by the Committee (which was constituted to enquire into the complaints against the applicant), it appears that the respondent no.4, i.e., the applicant is not able to perform his duty and by various acts he tried to harass the employee Mr. Amit Jagdale by first sending him compulsorily leave, then suspending him and finally not paying him salary-----.

14. In the present O.A., the applicant concealed the material facts from the Court and obtained the first order on 2/11/2020 by which the impugned transfer order dated 28/10/2020 was stayed till filing reply by the respondents. The para nos.2,3&4 are as under -

*“2. As pointed out by the learned counsel, the applicant was appointed as Principal in the Government Polytechnic College, Sakoli vide order dated 18/9/2018 (A-3,P-22). Again the applicant has been transferred vide order dated 28/10/2020 (A-1,P-14) before completion of normal tenure from the previous posting. In remarks column, it is mentioned that this transfer order has been issued on administrative ground. If any employee is transferred before completion of normal tenure or for any special reasons, it must be followed the provisions of Section 4 (4) & (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short “Transfers Act,2005”). In the impugned transfer order dated 28/10/2020 (A-1,P-14) the provisions of Section 4 (4) & (5) of the Transfers Act,2005 have not been followed.*

*3. The learned counsel for the applicant has also pleaded that the applicant has not been relieved and his successor has not joined till now.*

*4. In view of this situation, the impugned transfer order dated 28/10/2020 (A-1,P-14) is stayed to the extent of applicant only till filing of the reply by the respondents.”*

15. Again the C.A. 321/2020 is filed by the learned counsel of applicant for direction to the respondent no.3 i.e. (newly transferred and joined Principal) to handover charge to the applicant in the interest of justice. He has submitted that the handing over and taking over the charge must be in presence of transferred employee.

16. In the case **Somesh Tiwari Vs. Union of Indian** (cited above). The Hon'ble Supreme Court had held that “ *there was an anonymous complaint against appellant, which was investigated by departmental authorities, but nothing adverse was found against appellant, yet he was transferred from Bhopal to Shillong. He resisted his transfer and did not move out of Bhopal. Subsequently, another order dated 28/12/2005 was passed transferring appellant to Ahmedabad. He contested this order also. The Administrative Tribunal dismissed his application, but the High Court found that transfer order dated 28/12/2005 was not a bonafide exercise of power and therefore declared it invalid, but the High Court taking note of the fact that the appellant had not obeyed the transfer order and continued to stay in Bhopal. The Dept. denied him salary for the period commencing 15 days after 28/12/2005 till he rejoined duty at Bhopal Station. The appellant challenged this direction of the High Court.*”

17. The fact in the cited decision is very much different. The applicant was already relieved on 29/10/2020 i.e. the date on which he has filed the present O.A. before this Tribunal. It is observed in the second order passed by this Tribunal on 10/11/2020 that the applicant himself had given charge to one Shri Wararkar. When the stay was granted by this Court, the applicant was already relieved. The

applicant misled the Court by making wrong statement. Moreover as per the report of the Committee, the transfer of the applicant was recommended by the Joint Director of Technical Education, Nagpur to the Director of Technical Education, (M.S.), Mumbai. The recommendation was put forth before the concerned Minister and with the approval the Chief Minister, the transfer order was passed. Therefore, it is clear that the respondent nos.1&2 have taken all due care of the provisions of the Transfers Act,2005 while transferring the applicant.

18. In that view of the matter, the cited decisions are not applicable to the case in hand.

19. The learned counsel for the applicant relied on Arvind Dattatraya Dhande Vs. State of Maharashtra & Ors. (cited above). It was held that “ *an honest officer was transferred on the complaint of liquor vendors which was found to be false.*”

20. In the present case, the transfer was recommended in view of the conduct of the applicant, the applicant is transferred for the smooth running of the administration and therefore it cannot be said to be malafide transfer. Hence, the cited decision is also not applicable in the case in hand.

21. The learned counsel for the applicant has pointed out the Judgment of Hon'ble Bombay High Court in case of State of Maharashtra & Ors. Vs. Dr. (Mrs.) Padmashri S. Bainade(cited above). The cited decision is not applicable in view of the conduct of the applicant. On the date filing of this O.A. itself, he was relieved. Eventhough he had submitted before this Tribunal that he was not relieved and therefore stay order was granted. On the next date, he again prayed for direction to the respondent no.3 (the Principal) to handover him charge of the post of Principal, but it was revealed by the document filed by the applicant himself that he had given charge to Shri Wararkar on 29/10/2020. The applicant has already taken charge of the post of the Principal, Government Polytechnic College, Hingoli on 01/12/2020.

22. In the case of S.B. Bhagwat Vs. State of Maharashtra & Ors.(cited above). It is held that the transfer was effected only to accommodate one of the employee and petitioner was sought to be displaced. In the present case there is nothing on record to show that the respondent nos.1&2 transferred the applicant to accommodate the respondent no.3.

23. In view of the facts in this O.A., the above cited decisions are not applicable. Now it is well settled principles of law that one who seek equity, must do equity.

24. The person who comes before the Tribunal/ Court must come with clean hands. From the documents filed on record, it is clear that the applicant himself handed over the charge to the respondent no.3 on 29/10/2020 and on the same day he has submitted before this Court that he was not relieved and therefore stay was granted. On the next date, again he prayed for direction to the respondent no.3 to hand over the charge of the post of Principal. Then it was pointed out by the respondent nos.2&3 that the applicant was already relieved on 29/10/2020. The document i.e. the letter issued by the applicant to one Shri Wararkar is on record which shows that he requested Mr. Wararkar to continue as officiating Principal.

25. The applicant has not come before this Tribunal with clean hands. Moreover he misled the Tribunal for obtaining the stay order. The various documents filed on record show that the behaviour of the applicant with the female and other employees were not proper. Therefore, Committee was constituted. The Committee suggested to the authority for taking appropriate action. The respondent nos.1&2 have taken into consideration all these facts and therefore the Joint Director of Technical Education, Nagpur proposed the transfer of applicant for smooth working of the Institution. The Director of Technical Education (M.S.), Mumbai recommended the transfer to the Government of Maharashtra. Looking to the facts, it cannot be said

that the transfer is a punishment. The cited decisions are not applicable to the in case hand. In that view of the matter, the following order is passed –

**ORDER**

- (i) The O.A. is dismissed.
- (ii) The C.A. also stands dismissed.
- (iii) No order as to costs.

**Dated** :- 06/12/2021.

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**(Justice M.G. Giratkar)**  
**Member (J).**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 06/12/2021.

Uploaded on : 06/12/2021.