

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO. 740 OF 2015

DISTRICT :SANGLI

Dr. Prakash Mahadev More,)
(Medical Officer))
R/o. A/p Rethare Harnaksha, Ta: Walva,)
Dist: Sangli, Pin:415 302)
Presently working at:)
Sub-District Hospital, Islampur,)
Tal: Walva, Dist: Sangli, Pin:415 409)...**Applicant**

VERSUS

- 1] The State of Maharashtra)
Through Principal Secretary,)
Medical and Health Service-)
Public Health Department,)
Mantralaya, Mumbai – 400 001.)
- 2] The Deputy Director)
Health Services- Kolhapur Division,)
Centre Administrative Building,)
Kasbabavada Road, Near DSP)
office, Dist: Kolhapur, Pin:416 003.)
- 3] The Medical Superintendent)
Sub District Hospital- Islampur,)
Tal: Walva, Dist: Sangli,)
Pin : 415 409.)....**Respondents**

Shri V.V. Mohite, learned Advocate for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

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CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 29 .02. 2016

ORDER

1. Heard Shri V.V. Mohite, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant, who is challenging order dated 2.9.2015 by which he has been transferred to Sub-District Hospital, Sawantwadi, Dist. Sindhudurg for administrative reasons.
3. Learned Counsel for the Applicant argued that the Applicant was posted to Sub- District Hospital, Islampur, Dist. Sangli in 2004. He was, therefore, due for transfer. However, the Applicant has been transferred by order in the month of September, while general transfers are required to be effected in the month of April or May. A transfer in a month other than April or May, can be made only in exceptional circumstances or for special reasons with the prior approval of the next higher authority as per Section 4(4) (ii) of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (the Transfer Act). Learned Counsel for the

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Applicant argued that the impugned order itself mentions that the Applicant was transferred due to administrative reasons and there were no exceptional circumstances or Special reasons to transfer the Applicant in the month of September. Learned Counsel for the Applicant argued that the transfer order dated 2.9.2015 qua the Applicant has been issued in violation of Section 4(4) (ii) of the Transfer Act, and is therefore, liable to be quashed and set aside.


4. Learned Presenting Officer (C.P.O.) argued on behalf of the Respondents that the order dated 2.9.2015 has been issued with the approval of Hon'ble Chief Minister. As per requirement of the Transfer Act, mid-term transfers can be made with the approval of next higher authority, which in the case is Hon'ble C.M., who has approved the transfers. The Applicant had completed 11 years at Islampur. He is a pathologist and there is no post of pathologist at Sub-District Hospital at Islampur. It was, therefore necessary to transfer the Applicant to a hospital, where such a post is available.

5. Learned P.O. has made available the relevant Mantralaya file for my perusal. The proposal of transfer of a large number of Medical Officers was considered by the Civil Services Board. Against the name of the Applicant, it was mentioned that the Applicant had requested for transfer to Sub-District Hospital, Sawantwadi. However, while submitting the proposal of Hon'ble C.M., it was mentioned

that he was proposed to be transferred on administrative ground.

6. It is clear that the wrong information was placed before the Civil Services Board that the Applicant had sought transfer to the Sub-District Hospital, Sawantwadi. His transfer order could not have been issued on this ground and he had never made any such request. He could not have been transferred on administrative ground in the month of September. Procedure prescribed in Section 4(4) (ii) was required to be followed. Exceptional circumstances or Special Reasons were required to be furnished for such transfer. No such reasons or circumstances were mentioned in the proposal approved by Hon'ble C.M. The transfer order of the Applicant is passed in violation of Section 4(4) (ii) of the Transfer Act.

7. It is stated in the affidavit-in-reply filed on behalf of the Respondents on 23.11.2015 that the Applicant has been posted at Sub-District Hospital, Islampur for last 11 years though he is a pathologist, no post of pathologist exists in that Hospital. If that is the case, the Respondents are responsible for that state of affairs. They could have transferred the Applicant during general transfer in the month of April or May. If they chose to transfer him in September, the procedure as per Section 4(4) (ii) was required to be followed.



8. Having regard to the aforesaid facts and circumstances of the case, the order dated 2.9.2015 qua the Applicant is quashed and set aside.

9. This O.A. is allowed to this extent with no order as to costs.

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 29.02.2016

Place : Mumbai

Dictation taken by : SBA

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