

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.768 OF 2020

DISTRICT : MUMBAI

Shri Devendra Tukaram Katke.)
Age : 46 years, Occu.: Government Service,)
Deputy Collector [Resettlement and)
Rehabilitation], MMRDA, Bandra (E),)
Mumbai – 400 051.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)

2. Mumbai Metropolitan Region)
Development Authority, Through its)
Metropolitan Commissioner,)
Bandra Kurla Complex, Bandra (E),)
Mumbai – 400 051.)...**Respondents**

Mr. S.B. Talekar, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

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

DATE : 11.06.2021

JUDGMENT

1. The Applicant has challenged the order dated 15.12.2020 issued by Respondent No.1 – Government of Maharashtra, thereby cancelling his deputation on the post of Deputy Collector (Resettlement and Rehabilitation), MMRDA, Mumbai and posting him as Deputy Collector,

Land Acquisition, Road Project, Yeotmal invoking Section 4(5) 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).

2. In nutshell, the facts giving rise to this application are as under:-

The Applicant is serving in the cadre of Deputy Collector. While he was serving as Deputy Collector, Land Acquisition, Jalna, he was transferred as Deputy Collector (EGS), Nanded vide order dated 20.02.2019. However, later, on his representation regarding serious illness of his father, a necessity of continuous follow-up treatment and request for posting at Mumbai or Pune, the Respondent No.1 - Government modified his earlier transfer order dated 20.02.2019 and deputed him as Deputy Collector (Settlement & Rehabilitation), MMRDA, Mumbai stating that deputation will be initially for a period of one year vide order dated 25.02.2019. Accordingly, the Applicant joined MMRDA, Mumbai. He had completed initial period of deputation of one year on 25.02.2020, but he was continued on the same post at MMRDA. Thereafter, suddenly, the Government by order dated 15.12.2020 cancelled his deputation and transferred/posted him as Deputy Collector, Land Acquisition, Yeotmal, which is under challenge in the present O.A.

3. While Applicant was serving at MMRDA, he was designated as Electoral Registration Officer and Returning Officer for 174-Kurla Assembly Constituency and was entrusted with the task of revision of Electoral Rolls which was to be published by 15.01.2021. The Applicant has, therefore, challenged the impugned order dated 15.12.2020 *inter-alia* contending that his transfer is in violation of instructions/directives issued by Election Commission of India vide letter dated 27.10.2020, which *inter-alia* prohibits the Government from transferring Government official assigned with election work without approval of Election Commission, which are delegated to Principal Secretary, GAD, who is by

designation act as Chief Election Officer for State of Maharashtra and in contravention of G.R. dated 16.02.2018 which *inter-alia* provides that deputation should be minimum 3 years extendable upto 5 years amongst other grounds, which will be dealt with a little later.

4. Heard Shri S.B. Talekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondents.

5. Shri S.B. Talekar, learned Advocate for the Applicant sought to assail the impugned order dated 15.12.2020 on the following grounds :-

(i) Since Applicant was designated and working as Electoral Registration Officer and Returning Officer for 174-Kurla Assembly Constituency and assigned with the task of revision of Electoral Rolls by 15.01.2021, his transfer and shifting to Yeotmal is in blatant violation of the directives issued by Election Commission of India, which *inter-alia* prohibits the transfer/shifting of a Government Official assigned with election work without approval of Election Commission.

(ii) In terms of G.R. dated 16.02.2018, the Government of Maharashtra has taken policy decision that deputation to foreign service should be for minimum 3 years extendable upto 5 years, and therefore, cancellation of deputation before completion of period of 3 years is arbitrary and unsustainable in law.

(iii) In absence of any special case or administrative exigency, as contemplated under Section 4(5) of 'Transfer Act 2005', the Applicant is transferred before completion of his normal tenure of 3 years of deputation and on this count also, the impugned transfer order is in violation of law.

(iv) The reason put forward by the Government that the strength of officials on deputation exceed 15% ceiling, and therefore, the

Applicant was repatriated is totally unacceptable, since at the same time, the Government had continued the deputation of so many other Officials, but the Government adopted policy of pick and choose, which is amounting to discrimination and unfair treatment.

6. Shri Talekar, learned Advocate for the Applicant in this behalf sought to place reliance on certain decisions from which followings are material.

- (a) **(1984) 2 LLN 300 [Sheshrao N. Umap (Dr.) Vs. State of Maharashtra & Ors.]** wherein it has been observed as under:-

“The power to transfer must be exercised honestly, bona fide and reasonably. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive, it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, that is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even the administrative actions should be just and fair. The policy of transfer should be reasonable and fair and should apply to everybody equally. A mid-term transfer effected only to accommodate another employee will be wholly mala fide and consequently liable to be quashed.”

- (b) **2012(1) Mah.L.J.951 [Ramakant B. Kendre Vs. State of Mah. & Anr.]** wherein it has been held that where the employee is transferred mid-tenure, it could be done only in exceptional and special reasons to be recorded in writing and mere mention that transfer was in public interest and on account of administrative convenience is not enough.
- (c) **2013 (3) Mah.L.J. [Kishor S. Mhaske Vs. Maharashtra OBC Finance & Development Corporation]** wherein it has been again reiterated that mid-tenure transfer has to be strictly in accordance to law by reasoned order in writing

and mandatory requirement of Section 4(5) of 'Transfer Act 2005' cannot be ignored or bye-passed by mere mentioning that transfer is on account of administrative ground. Vague, hassy and meager expression on administrative ground cannot be a compliance of mandatory requirement contemplated under Section 4(5) of 'Transfer Act 2005'.

7. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer sought to justify the transfer order contending that since the Applicant was deputed for the period of one year only, he was rightly repatriated in parent cadre and there is no violation of Government policy vide G.R. dated 16.02.2018. She has further pointed out that the Applicant was repatriated and posted at Yeotmal with the recommendation of Civil Services Board (CSB) as well as with the approval of Hon'ble Chief Minister, who is competent highest authority as contemplated under Section 4(5) of 'Transfer Act 2005. As regard breach of directives issued by Election Commission of India, she sought to contend that there is approval of Chief Election Officer as per file noting and there is no such violation of directives of Election Commission. As regard other officials continued on deputation, she submits that the Government has initiated steps to recall those Officers who have completed deputation period and remedial measures in this behalf are being taken. She thus submits that the Applicant has no legally vested right to continue at MMRDA, since transfer is an incidence of service and O.A. deserves to be dismissed.

8. Indisputably, the Government by order dated 25.02.2019 posted the Applicant as Deputy Collector (Settlement & Rehabilitation), MMRDA, Mumbai with specific mention that the period of deputation would be initially for one year (Page No.27 of Paper Book). AT the same time, there is no denying that much earlier, the Government of Maharashtra by G.R. dated 16th February, 2018 has taken policy decision by amending its earlier G.R. dated 17.12.2016 and adopted the policy that deputation to foreign service should be initially for 3 years, which could be extended for

further 2 years, but in any case, there should be no extension beyond 5 years. It further provides that, if vacancies in parent cadre of concerned Government servant exceed 15%, they there should not be deputation to another Department. Thus, pertinently, in deputation order dated 25.02.2019, the deputation period was to be said initially for one year. In other words, there is no specific and categorical mention in order dated 25.02.2019 that the deputation would be only for one year. As such, if deputation order dated 25.02.2019 is read with G.R. dated 16.02.2018, the harmonious construction is that Applicant's deputation was extendable. Indeed, it must have been for 3 years in terms of G.R. dated 16.02.2018. This aspect will be dealt with in detail a little later. Presently, suffice to say that in terms of language used in deputation order dated 25.02.2019, the deputation was not restricted to one year. Apart, admittedly, after completion of one year, no such order of cancellation of deputation or repatriation to the parent department was passed and Applicant was continued on the same post till impugned order dated 15.12.2020.

9. The issue of violation of directives of Election Commission of India, is crucial and goes to the root of the matter. Admittedly, by virtue of designation, the Applicant was designated as Electoral Registration Officer and Returning Officer for 174-Kurla Assembly Constituency by Election Commission of India and he was to complete task of revision of electoral rolls by 15.01.2021 as evident from Page No.244 of P.B. whereby electoral rolls after revision were to be published by 15th January, 2021.

10. The Election Commission of India by letter dated 27th October, 2020 had issued various directives to the State and directive No.4 prohibits transfer of Officers and staff engaged with revision of electoral roll till publication of final draft (Page No.246 of P.B.), which is as under:-

“4. Ban on transfers of officers and staff engaged with revision of roll during revision period (i.e. from date of draft publication to final publication):-

Under the provision of the section 13CC of the Representation of the People Act, 1950 any officer or staff employed in connection with the preparation, revision and correction of the electoral rolls shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officer and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission. Transfers of officials engaged in roll-revision work during the period of revision adversely affects the work and the quality of revision process. Hence, the Commission has directed that no officials connected with the exercise of revision of electoral rolls like the District Election Officers, Deputy District Election Officers, the Electoral Registration Officers and the Assistant Electoral Registration Officers, etc. should be transferred from their place of posting without the prior concurrence of the Election Commission during the period of Special Summary Revision in the State. It is to clarify that during the current round of revision of electoral rolls such ban on transfer and posting would be effective from the date of draft publication of electoral roll i.e. on 16th November, 2020 to the date of final publication electoral roll in your state.”

11. Despite this specific ban and non-publication of final draft of electoral roll which was to be published by 15.01.2021, the Applicant is abruptly shifted and transferred by impugned order dated 15.12.2020. Therefore, the question arises whether such shifting/transfer was with the approval of Election Commission/Chief Election Officer, Maharashtra. The Principal Secretary, GAD is designated as Chief Election Officer. At the relevant time, Shri Baldev Singh was Chief Principal Secretary, GAD and Chief Election Officer.

12. The learned CPO sought to contend that there was approval of Chief Election Officer for the transfer of Applicant in the form of noting file which is at Page Nos.157 to 160 of P.B. In this behalf, Affidavit-in-reply filed by Shri Madhav V. Veer, Deputy Secretary, Revenue & Forest Department is material, wherein an attempt was made to show that there is approval of Chief Election Officer, M.S. for the transfer of the Applicant in view of file noting. Here, it would be apposite to reproduce file noting prepared by Revenue & Forest Department at Page Nos.157 and 158 of

P.B. of M.A.No.55 of 2021 to see whether the file noting and purported approval of Chief Election Officer, State of Maharashtra really pertains to the transfer of the Applicant. File noting at Page Nos.157 and 158 is in vernacular and as under :-

“सादर,

२. उप जिल्हाधिकारी व तहसीलदार संवर्गातील अधिका-यांना सन २०२० या कालावधीमध्ये शासन आदेश दि. ०१.१०.२०२० च्या निर्गमित बदली आदेशांच्या अनुषंगाने मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई व इतर खंडपीठ येथे दाखल मूळ अर्जांमध्ये मा. न्यायाधिकरणाने दि.२२.१०.२०२० रोजीच्या आदेशान्वये याचिकाकत्यांना निकालाच्या दिनांकापासून ०३ आठवड्यांच्या आत दि.११.१०.२०२० रोजीच्या आदेशापूर्वीच्या पदावर पदस्थापना देण्याचे आदेश आदेशित केले आहे. मा. न्यायाधिकरणाने दिलेल्या आदेशानुसार पदस्थापना देणे तसेच पदस्थापनेविना राहिलेल्या अधिका-यांना अन्यत्र पदस्थापना देण्याकरिता दि.०४.११.२०२० रोजी नागरी सेवा मंडळाची बैठक घेण्यात आली. सदर नागरी सेवा मंडळाच्या शिफारशीनुसार सक्षम प्राधिकारी यांनी मान्यता दिली आहे.

३. मा. भारत निवडणूक आयोग, नवी दिल्ली यांनी दि. ०२.११.२०२० च्या पत्रान्वये औरंगाबाद, नागपूर, अमरावती, पुणे विभागातील महाराष्ट्र राज्य विधान परिषदेच्या पदवीधर मतदार संघाच्या वार्षिक निवडणुका दि. ११.१२.२०२० रोजी घोषित केलेल्या आहेत. संबंधित विभागांमध्ये निवडणुकीच्या अनुषंगाने आचारसंहिता लागू करण्यात आली आहे. या अनुषंगाने राज्यातील मतदार नोंदणी अधिकारी तथा उप जिल्हाधिकारी (ERO) व सहाय्यक मतदार नोंदणी अधिकारी तथा तहसीलदार (AERO) यांची रिक्त पदे भरणे आवश्यक आहे.

४. मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई व इतर खंडपीठ यांच्या आदेशानुसार पदस्थापना देण्यात येणारे व पदस्थापनेच्या प्रतीक्षेत असणा-या अधिका-यांपैकी उपजिल्हाधिकारी संवर्गातील ३३ पदे व तहसीलदार संवर्गातील ५४ पदे भरण्यास मान्यता प्राप्त झाली आहे. सदर पदांपैकी मतदार नोंदणी अधिकारी तथा उपजिल्हाधिकारी (ERO) यांची ०९ पदे व सहाय्यक मतदार नोंदणी अधिकारी तथा तहसीलदार (AERO) यांची ३५ पदे भरण्यात आली आहेत. सदर पदे भरण्यात आल्यानंतर सद्यस्थितीत मतदार नोंदणी अधिकारी तथा उपजिल्हाधिकारी (ERO) यांची १२ व सहाय्यक मतदार नोंदणी अधिकारी तथा तहसीलदार (AERO) यांची २४ पदे रिक्त आहेत. सदर पदे भरण्याबाबत कार्यवाही करण्यात येत आहे.

५. मा. न्यायाधिकरणाच्या आदेशानुसार व नियुक्तीच्या प्रतीक्षेत असणा-या उपजिल्हाधिकारी व तहसीलदार संवर्गातील अधिकार-यांना पदस्थापना देण्यात करिता दि. ४.११.२०२० च्या बैठकीमध्ये नागरी सेवा मंडळाने केलेल्या शिफारशींना सक्षम प्राधिका-यांनी मान्यता दिलेली आहे. मा. भारत निवडणूक आयोगाने महाराष्ट्र राज्य विधान परिषदेच्या पदवीधर मतदार संघाच्या निवडणुकीच्या अनुषंगाने घोषित केलेल्या आचारसंहितेनुसार राज्यातील महसूल विभागातील मतदार नोंदणी अधिकारी तथा उपजिल्हाधिकारी (ERO) व सहाय्यक मतदार नोंदणी अधिकारी तथा तहसीलदार (AERO) यांची रिक्त पदे भरण्याबाबत कार्यवाही करण्यात येत आहे. सदर वस्तुस्थिती मा. निवडणूक आयोगाच्या निदर्शनास आणण्याची प्रधान सचिव तथा मुख्य निवडणूक अधिकारी, सामान्य प्रशासन विभाग यांना विनंती करण्यात यावी.”

13. The aforesaid note was prepared on 18.11.2020 by Under Secretary. Thereafter, in continuation of it, one more note was prepared by GAD, which is at Page No.160 of P.B, which is as under :-

“पूर्व पृष्ठावरील महसूल व वन विभागाच्या टिप्पणीस अनुसरून याबाबतच्या प्रस्तावाबाबत मुख्य निवडणूक अधिकारी यांच्याशी चर्चा करून सादर.

२. महसूल व वन विभागाने उपरोक्त टिप्पणीमुळे राज्यातील अपर जिल्हाधिकारी यांच्या पदस्थापना मध्ये उपायुक्त सामान्य विभागीय आयुक्त कार्यालय औरंगाबाद हे पद करण्याचे प्रस्तावित आहे. सदर पद सहाय्यक

निवडणूक निर्णय अधिकारी म्हणून अधिसूचित आहे व सदर पदे भरणे आवश्यक आहे. तरी सदर पदे स्थापनेस मान्यता असावी.

३. राज्यात एकूण २१ मतदार नोंदणी अधिकारी यांची पदे रिक्त आहेत. त्यापैकी ०९ पदे भरण्याचे प्रस्तावित आहे. तसेच रिक्त उप जिल्हा निवडणूक अधिकारी, जालना, कोल्हापूर व नंदुरबार ही पदे भरण्याचे प्रस्तावित आहे. तसेच उप जिल्हाधिकारी अधिकारी, नाशिक यांची बदली करण्याबाबत जिल्हा निवडणूक अधिकारी यांनी प्रस्तावित केल्यामुळे सदर बदली करण्याचे प्रस्तावित असून त्या ठिकाणी अन्य अधिकार्याची पदस्थापना करण्याचे प्रस्तावित आहे.

४. राज्यात एकूण ५९ सहाय्यक मतदार नोंदणी अधिकारी यांची पदे रिक्त आहेत त्यापैकी ३५ पदे पदे स्थापनेने भरण्याचे प्रस्तावित आहे.

५. केवळ उप जिल्हा निवडणूक अधिकारी, नाशिक वगळता इतर पदे पदोन्नती/नियुक्तीच्या प्रतीक्षेत असणा-या/न्यायालयाच्या निर्णयानुसार नियुक्तीच्या प्रतीक्षेत असणा-या अधिका-यांच्या पदस्थापनेने भरण्यात येत आहेत. तरी महसूल व वन विभागाच्या पृ.क्र.१/टि.वि. वरील प्रस्तावांना मान्यता देण्यास हरकत नसावी.

६. सदर पदे भरल्यानंतर १२ मतदार नोंदणी अधिकारी व २४ सहाय्यक मतदार नोंदणी अधिकारी ही पदे रिक्त राहणार आहेत. भारत निवडणूक आयोगाने संक्षिप्त प्रकारे विशेष पुनरिक्षण २०२१ चा मतदार याद्यांचा कार्यक्रम घोषित केला असून सर्व मतदार नोंदणीशी संबंधित सर्व रिक्त पदे तात्काळ भरण्याबाबत दिनांक २७ ऑक्टोबर, २०२० च्या पत्रान्वये निर्देश दिलेले आहेत. तरी त्यानुसार उर्वरित सर्व रिक्त पदे भरण्यात येऊन त्याबाबतचा अहवाल या कार्यालयास सादर करण्याबाबत याद्वारे निर्देश देण्यात यावेत.

मान्यतेसाठी सादर.’’

14. The aforesaid note was prepared by Deputy Secretary, Shri Walvi on 18.11.2020 and appears to have been approved by Shri Baldev Singh, Principal Secretary, GAD and Chief Election Officer, State of Maharashtra.

15. On the basis of aforesaid note, an attempt was made by learned C.P.O. to contend that it amounts to approval to the transfer and posting of the Applicant at Yeotmal. Whereas, it has been rightly pointed out by the learned Advocate for the Applicant that the said note pertains to fill-in some other posts as described in the note and it is conspicuously silent about shifting and posting of the Applicant during his assignment as Electoral Registration Officer and Returning Officer for 174-Kurla Assembly Constituency.

16. It is explicit from the above file noting that there is no specific mention therein for seeking approval specifically to the transfer and posting of the Applicant at Yeotmal. All these transfers pertain to some other posts which were required to be filled-in from the point of

administrative exigency as well as in view of decision rendered by MAT, Nagpur Bench in O.A.No.599/2020 decided with connected O.A. on 21/10/2020 whereby mid-tenure transfers of Talathi/SDO were quashed being not in compliance of Section 4(5) of 'Transfer Act 2005'. It is thus manifest that while doing the said exercise, the approval was sought from Chief Election Officer which was restricted to the transfers noted in file and it does not specifically relate to the transfer of the Applicant who was entrusted with election work. The Respondents have not produced the list of names of those officials sought to be transferred as mentioned in file noting to show that the name of the Applicant figured amongst them. It is thus obvious that Chief Election Officer was not made known about the shifting of the Applicant. It appears that he was kept in dark and after taking approval for others under the guise of the said purported approval, the Applicant is transferred to Yeotmal. In any rate, in absence of any such specific reference or mention in file noting about the transfer of the Applicant, the said file noting reproduced above cannot be construed as an approval to the transfer of the Applicant. As the Applicant was admittedly designated as Electoral Registration Officer and Returning Officer and the work of revision of electoral roll was in process, there must be specific approval and conscious decision for his transfer by Chief Election Officer to that effect in view of directives issued by Election Commission by letter dated 27.10.2020. Suffice to say, the contention that Chief Electoral Officer has approved the transfer of the Applicant is nothing but eye-wash.

17. This aspect of non-approval from Chief Election Officer is further evident from the note, which is at Page No.21 of M.A. This note was prepared by GAD and signed by Chief Electoral Officer Shri Baldev Singh in view of letter dated 04.01.2021 submitted by the Applicant as Electoral Registration Officer, Kurla Constituency, which is at Page No.247 of P.B. By this communication, the Applicant had requested to cancel his transfer since he was entrusted with the revision of electoral roll. Interesting to note that, it is on the basis of said letter, the GAD

prepared note on 04.01.2021 and requested Revenue Department to cancel the transfer of the Applicant in view of directives of Election Commission of India. The contents of this note are significant which again exposes the stand taken by the Respondents that the transfer of the Applicant was approved by Chief Election Officer, State of Maharashtra. The contents of note is as under :-

“मतदार नोंदणी अधिकारी, १७४ कुर्ला (अ.जा.) विधानसभा मतदारसंघ यांचे दि. ०४.०१.२०१९ रोजीचे पत्र कृपया पहावे.

२. भारत निवडणूक आयोगाने दिनांक १ जानेवारी, २०२१ या अर्हता दिनांकावर आधारित मतदार यादी संक्षिप्त पूर्ण निरीक्षण कार्यक्रम घोषित केला आहे सदर कार्यक्रमानुसार दिनांक १७ नोव्हेंबर, २०२० रोजी मतदार यादीचे प्रारूप प्रसिद्ध करण्यात आली असून दिनांक १५ जानेवारी २०१९ रोजी अंतिम मतदार यादी प्रसिद्ध करण्याचे नियोजित आहे.

३. मुंबई महानगर प्रदेश विकास प्राधिकरण येथील उपजिल्हाधिकारी (पुनर्वसन व पुनर्वसाहत) हे पद मतदार नोंदणी अधिकारी, १७४ कुर्ला (अ.जा.) विधानसभा मतदारसंघाकरिता निवडणूक निर्णय अधिकारी व मतदार नोंदणी अधिकारी म्हणून अधिसूचित असून श्री. देवेंद्र कटके, उप जिल्हाधिकारी हे मतदार नोंदणी अधिकारी म्हणून काम पहात आहेत. सध्या मतदार यादी पुनरिक्षण कार्यक्रम चालू असूनही महसूल विभागात विभागामार्फत दिनांक १५.१२.२०२० च्या आदेशान्वये त्यांची बदली करण्यात आलेली आहे.

४. १ जानेवारी, २०२१ या अर्हता दिनांकावर आधारित मतदार यादी संक्षिप्त पुनरिक्षण कार्यक्रमाच्या अनुषंगाने, लोकप्रतिनिधीत्व अधिनियम, १९५० मधील कलम १३ सी सी अन्वये मतदार यादीशी संबंधित कार्यरत असणारा अधिकारी/कर्मचारी वृंद भारत निवडणूक आयोगाकडे प्रतिनियुक्तीने कार्यरत आहे असे मानण्यात येते. त्यामुळे मतदार यादीच्या पुनरिक्षण कालावधीत मतदार यादीशी संबंधित कार्यरत असणा-या कोणत्याही अधिकारी/कर्मचा-यांची भारत निवडणूक आयोगाच्या संमतीशिवाय बदली करण्यात येऊ नये, अशा सूचना भारत निवडणूक आयोगाने त्यांच्या दिनांक २७ ऑक्टोबर, २०२० च्या पत्रान्वये विहित केल्या आहेत. त्यानुसार, मा. मुख्य सचिव, महाराष्ट्र राज्य यांचे स्तरावरून आयोगाच्या सूचना बाबत तातडीने कार्यवाही करण्याबाबत अपर मुख्य सचिव (महसूल) यांना निर्देशित केले आहे.

५. लोकप्रतिनिधीत्व अधिनियम, १९५० मधील तरतूद व त्या अनुषंगाने भारत निवडणूक आयोगाचे निर्देश व त्यास अनुलक्षून मा. मुख्य सचिव, महाराष्ट्र राज्य यांचे निर्देश विचारात घेता, १ जानेवारी, २०२१ या अर्हता दिनांकावर आधारित मतदार यादी संक्षिप्त पुनरिक्षण कार्यक्रमांची अंमलबजावणी सुरू असल्याने श्री. देवेंद्र कटके, मतदार नोंदणी अधिकारी, १७४ कुर्ला (अ.जा.) विधानसभा मतदारसंघ तथा उप जिल्हाधिकारी यांच्या बदलीचे आदेश रद्द/स्थगित करण्याबाबत महसूल विभागात विनंती करण्यात येत आहे.”

18. In the first place, if there was any such approval to the transfer of the Applicant amidst election process as tried to project by the Respondents, the Chief Election Officer would not have forwarded such note to Revenue Department to cancel the transfer of the Applicant. That time itself, it was open to Chief Election Officer to say that he has already approved the transfer of the Applicant. However, it is not so. Thus, it is explicit that there was no such approval by Chief Election Officer, and therefore, having noticed that Applicant was transferred without his

approval, he had sent note to Revenue Department for cancellation of the transfer of the Applicant. Suffice to say, note dated 04.01.2021 completely exposes the stand of the Respondents.

19. In this connection, subsequent file noting continuation in file note dated 04.01.2021 prepared by Revenue Department is important, which is at Page No.163 of M.A. In Para Nos.4 and 5, what is stated is as under:-

“४. सामान्य प्रशासन विभाग (का-३३) यांनी केलेल्या उक्त विनंतीच्या अनुषंगाने असे नमूद करण्यात येते की, भारत निवडणुक आयोग यांनी दि. २४.०८.२०२० रोजीच्या पत्रान्वये दि. १ जानेवारी, २०२१ या अर्हता दिनांकावर आधारीत मतदार यादी संक्षिप्त पुनरिक्षण कार्यक्रम जाहिर केला आहे. सदर कार्यक्रमातील वेळापत्रकाचे अवलोकन केले असता असे दिसून येते की, सदर कार्यक्रमानुसार अंतिम मतदार यादी प्रसिध्द करण्याची तारीख दि. १५ जानेवारी, २०२१ होती. सदर तारीख उलटून बराच कालावधी झालेला आहे. तसेच, श्री. कटके यांनाही प्रतिनियुक्तीच्या पदावरून कार्यमुक्त करण्यात आलेले आहे.

५. उक्त परीक्षेत क्र. ३ व ४ मधील वस्तुस्थिती विचारात घेता श्री. कटके, उपजिल्हाधिकारी यांच्या दि. १५.१२.२०२० रोज चे बदली आदेश रद्द/स्थगित करण्याची आवश्यकता वाटत नाही”

20. Thus, the reason mentioned for rejecting the proposal noted by Chief Election Officer is that the date i.e. 15.01.2021 for publication of electoral roll which was to be completed by the Applicant is already over, and therefore, there is no necessity to cancel the transfer order dated 15.12.2020. Needless to mention, in law, one need to see the situation and circumstances existed on the date of impugned order and only because the date of publication of electoral roll was already over, that could not be the ground for not cancelling the transfer where it is explicit that on the date of transfer, there was no such approval of Chief Election Officer for the transfer of the Applicant amidst election process in view of directives by Election Commission. By impugned transfer order, the Applicant was transferred on the post of Land Acquisition Officer, Yeotmal and not on any post relating to election work. Suffice to say, the impugned order is in utter disregard and violation of directives issued by Election Commission of India.

21. Suppression of fact that Applicant was entrusted with election work and could not have been transferred without specific approval of

Chief Election Officer is also evident from the minutes of CSB. In this behalf, reference of minutes of CSB, which is at Page No.269 of O.A. is material. Before CSB, all that it was projected that the period of one year deputation of the Applicant is already over and Government has already taken decision to transfer him in parent cadre. It is on this projection, the CSB recommended for transfer of the Applicant at Yeotmal. As such, it was not brought to the notice of CSB that the Applicant was assigned with election work. Therefore, recommendation of CSB without putting all material and relevant facts before the Committee would not render transfer order legal. The recommendation of CSB is mandated by Hon'ble Supreme Court in view of decision in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**.

22. Now reverting back to the contents of impugned transfer order as stated above, the Government itself had invoked Section 4(5) of 'Transfer Act 2005' for transfer of the Applicant. True, there is a reference therein that the deputation is being cancelled. However, one need to see the impugned order in its entirety and not in piecemeal. Since the Government has invoked Section 4(5) of 'Transfer Act 2005', it is obligatory on its part to fulfill its requirement in law.

23. Section 4(5) of 'Transfer Act 2005' is as follows :-

“4(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

24. As such, the Respondents were required to make a special case for shifting and transfer of the Applicant. However, no such special reasons are forthcoming. Indeed, since the Applicant was entrusted with election work, he should not have been transferred without specific approval of Chief Election Officer. Coupled with approval of Chief Election Officer, there has to be some special reason or exigency to transfer the Applicant

which is completely missing in the present case. Indeed, what has been approved by Hon'ble Chief Minister is the note prepared by Revenue Department justifying to fill-in various other vacancies and by no stretch of imagination, such note as reproduced above can be construed disclosing specific reasons for the transfer of the Applicant. As such, while getting approval from Hon'ble Chief Minister also, he was not made aware that Applicant is assigned with election work. The approval was given by Hon'ble Chief Minister to fill-in other posts as directed in the note and there is no such specific approval for the transfer of the Applicant shifting him amidst election process, particularly when, his shifting amidst election process was specifically prohibited by Election Commission of India.

25. The submission advanced by the learned CPO that this is a case of simple cessation or cancellation of deputation and requires no such special reason is untenable.

26. True, the Applicant was deputed in MMRDA for one year, but there is specific reference that initially it would be for one year, meaning thereby it was extendable. After the expiration of period of one year on 25.02.2020, he was not immediately repatriated. He was continued on the same post and in addition to his original duties, the election work was also assigned to him. At this juncture, reference of G.R. dated 16.02.2018 is relevant whereby the Government has taken policy decision that deputation should be for 3 years' minimum and extendable upto 5 years. However, knowing this well, the Applicant was given extension initially for one year. Thus, when the Government has taken policy decision, then it cannot be allowed to deviate from the same and to act in unfair and arbitrary manner. The deputation, therefore, ought to have been for 3 years and where cancellation of deputation is necessitated, it must be for some good reasons. It is nowhere the case of Respondents that MMRDA at any point of time recommended Revenue Department for recalling the Applicant. On the contrary, the MMRDA

had requested the Government for extension of his deputation by letter dated 12.03.2020.

27. The terms and conditions of transfer to foreign service (deputation) are governed by Rule 40 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity). As per Rule 40(4) of 'Rules of 1981' the transfer of a Government servant to foreign service should be made on the standard terms and conditions as in Appendix-II and no departure from the prescribed terms and conditions shall be permissible. True, as per Appendix-II, the competent authority reserved the right to recall the servant before expiry of period of deputation, if his services are required in the interest of public service. It is on this background, a reference of G.R. dated 16.02.2018 is material. The said decision was taken in view of recommendation made by Committee and it was decided that the deputation should be initially for minimum 3 years which could be extended upto 5 years for reasons to be recorded by the competent authority. As such, the deputation of the Applicant ought to have been for minimum 3 years. In the present case, the Applicant's deputation was withdrawn before expiration of period of 3 years without making of any case of public interest. Indeed, when the Applicant was assigned with election work, there was no question of any public interest for his transfer. Suffice to say, the Respondents cannot be allowed to deviate from its own policy decision as reflected in G.R. dated 16.02.2018 to the detriment of the Applicant. Indeed, his tenure was protected in view of ban of Election Commission of India till 15.01.2021 i.e. the date of publication of electoral roll, but he was transferred and shifted before publication of electoral roll by impugned order dated 15.12.2020.

28. As regard period of deputation, significantly, MMRDA by its letter dated 12th March, 2020 had requested the Government for one year extension of the Applicant highlighting incomplete project undertaken by

MMRDA and necessity of Applicant for continuation. However, the request made by MMRDA has been turned down by the Government by letter dated 25.09.2020 solely on the ground that vacancies in the parent cadre of the Applicant exceed 15%, and therefore, extension could not be given [Page No.341 of O.A.]. Thus, the only reason for non-extension was vacancies in the parent cadre are exceeding 15%. However, strangely, the Government by its letter dated 01.01.2021 had invited willingness of the officials in the cadre of Deputy Collector for deputation of six posts in different Departments. This letter dated 01.01.2021 is thus in contrast of the stand taken by the Government that vacancies in parent cadre of the Departments exceed 15%. If it was really so, then the Government should not have called further willingness for deputation from parent cadre of the Applicant. Furthermore, curiously, on the date on which Applicant has been shifted from MMRDA, on the same day, the Government by order dated 15.12.2020 deputed one Shri Ajit Deshmukh, Resident Deputy Collector, Solapur on deputation in Pune Municipal Corporation for three years. Suffice to say, the ground taken by the Government that vacancies in parent cadre exceed 15%, and therefore, repatriation was essential is nothing but misleading and eyewash.

29. In this connection, it would be further apposite to mention here some of the orders passed by the Government in past whereby officials were deputed for 3 years but even after expiry of period of 3 years, they were continued on deputation without sending them back to their parent Department. In this respect, Page Nos.164 to 168 of M.A. reveals that Shri Vitthal Sonawane was deputed for 3 years by order dated 09.08.2016, Shri Prakash Thavil was deputed for 3 years by order dated 22.08.2017, Shri Sanjeev Deshmukh was deputed for 3 years by order dated 07.06.2017, Shri Satish Bagal was deputed for 3 years by order dated 22.12.2017 and Shri Sunil Mali was deputed for 3 years by order dated 20.08.2016. Though their period of deputation was over long back, they were continued. As such, it was the practice and policy

adopted by the Government to depute the Officials for minimum 3 years. However, in case of Applicant, different treatment was given to him. The Government being model employer is expected to treat their employees equally and fair manner.

30. True, as pointed out by the learned C.P.O. subsequently, the Government had issued orders on 15th March, 2021 for recalling their services and repatriation to parent Department. However, according to learned Advocate for the Applicant still they are continued on the same post. The Respondents in rebuttal have not produced further record to substantiate that they are actually repatriated. As such, it is only after filing of this O.A, the Government has taken certain steps half-heartedly for cancellation of deputation of some Officials after expiration of their 3 years' term. This is nothing but damage control exercise. Be that as it may, there is no denying that these Officials were also deputed for 3 years and though the period of 3 years had expired long ago, they are not actually repatriated to the parent Department.

31. Even assuming for a moment that it is a case of simple repatriation to the parent Department after the expiration of period of one year of deputation, in that even also, the impugned transfer order is unsustainable in law, since it is in blatant violation of the directives issued by Election Commission of India. The Applicant should not have been transferred or shifted amidst election process. The communication made by none other than Shri Baldev Singh, Chief Election Officer, State of Maharashtra for cancellation of transfer of Applicant as referred to above [Page No.21 of O.A.] has been turned down by the Government stating that in the meantime, the election process was over by 15.01.2021, and therefore, there is no necessity of cancellation of transfer order. This is totally unacceptable in law. The Rule of law must prevail and Government cannot be allowed to circumvent the direction given by Election Commission of India resorting to subsequent event that process is already over, else it would amount to permit the Government

to trample upon the directives given by Election Commission of India with impunity and secondly, it is also in breach of its own policy for deputation of minimum 3 years as reflected in G.R. dated 16.02.2018.

32. The totality of aforesaid discussion leads me to sum-up that the impugned transfer order is arbitrary and unsustainable in law and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 15.12.2020 is quashed and set aside.
- (C) The Respondent No.1 is directed to repost the Applicant on the post he was shifted from within three weeks from today.
- (D) No order as to costs.

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

Mumbai
Date : 11.06.2021
Dictation taken by :
S.K. Wamanse.

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