

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.768 OF 2021

DISTRICT : NASHIK

Shri Jayram Murlidhar Gawali.)
Age : 45 Yrs., Working as Head Master)
(Primary) Government Ashram School,)
Inambari, Tal. Peth, District : Nashik and)
R/at A/P. Karanjali, Tal. Peth,)
District : Nashik.)...**Applicant**

Versus

The Additional Commissioner,)
Tribal Development, Nashik.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent.

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

DATE : 11.10.2021

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Mrs. K.S. Gaikwad, learned Presenting Officer finally at the stage of admission.

2. The issue posed for consideration in the present O.A. is whether the impugned order dated 06.09.2021 is legal and valid and the answer is in emphatic negative for the reasons to follow.

3. The Applicant is serving as Head Master (Primary), Government Ashram School and by order dated 30.05.2019, he was transferred from Government Ashram School, Mohol, Tal.: Peth, District Nashik to Government Ashram School, Inambari, Tal.: Peth, District Nashik. He being Group 'C' employee is entitled to three years' normal tenure in terms of provisions 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, the Respondents transferred the Applicant mid-term and mid-tenure by order dated 06.09.2021 on the ground of complaints against him. The Applicant has, therefore, challenged this transfer order in the present O.A. Admittedly, nobody is posted on the post of Applicant and the post is still vacant.

4. This O.A. has been filed on 04.10.2021 but on request of learned P.O, time was granted to take instructions from the Respondents and to file Affidavit-in-reply, so as to consider the issue of interim relief claimed by the learned Advocate for the Applicant.

5. Today, the learned P.O. has tendered the Affidavit-in-reply along with annexures and submitted that instead of considering interim relief, the O.A. be heard finally.

6. The learned Advocate for the Applicant has challenged the impugned transfer order *inter-alia* contending that it being mid-term and mid-tenure transfer, in absence of compliance of Section 4(5) of 'Transfer Act 2005' as well as in absence of vetting of the proposal of transfer by Civil Services Board (CSB), it is unsustainable in law.

7. Whereas, the learned P.O. tried to contend that there were serious complaints against the Applicant, and therefore, with the approval of Commissioner, Tribal Development, the impugned transfer order is issued. She has invited attention to the complaints made by Villagers

against the Applicant, which are at Page Nos.25 and 28 of P.B. However, as regard recommendation of CSB, the learned P.O. fairly concedes that it was not placed before the said authority.

8. True, the transfer is an incidence of service and a Government servant cannot ask for a particular place or posting as of right for a particular period. However, now the transfer of Government servants are governed the provisions of 'Transfer Act 2005' and it is not left to the whims or caprice of the executives. If transfer order is found in contravention of express provisions of law, then it is liable to be quashed.

9. Thus, admittedly, the Applicant has not completed his normal tenure, and therefore, the impugned transfer order dated 06.09.2021 is mid-term and mid-tenure transfer order which necessitates compliance of Section 4(5) of 'Transfer Act 2005'.

10. Section 4(5) of 'Transfer Act 2005' is as under :-

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.

11. As per Section 6 of 'Transfer Act 2005', the Heads of the Departments are competent transferring authorities for all non-gazetted employees in Group 'B' and 'C' for general transfers. Apart, as per Section 7 of 'Transfer Act 2005', every Administrative Department of Mantralaya shall for the purpose of this Act prepare and publish list of Heads of the Departments and Regional Heads of the Department and notify the competent authority to make transfers within their jurisdiction for the purpose of 'Transfer Act 2005'.

12. Now turning to the reply, true, the villagers seems to have made complaints to Commissioner, Tribal Development, Nashik on 19.07.2021

and 31.08.2021 alleging that Applicant is misusing his authority. He is allegedly indulging in several illegal activities. The allegations made in the complaint dated 19.07.2021 are as under :-

“वरील विषयानुसार विनंतीपूर्वक कळवू इच्छितों की, आम्ही खालील सहया करणारे मौजे इनामबारी व परिसरातील ग्रामस्थ, पदाधिकारी, सरपंच, पोलिस पाटील, ता. पेठ, जि. नाशिक संदर्भिय क्रमांक ०१ नुसार श्री. जे.एम.गौरी हे शासकीय माध्यमिक आश्रमशाळा इनामबारी, ता.पेठ, जि.नाशिक येथे प्राथमिक मुख्याध्यापक पदी सन २०१८ मध्ये हजर झाले. प्राथमिक शिक्षकामधून इतर शिक्षक प्राथमिक मुख्याध्यापक पदासाठी पात्र, सेवाजेष्ठ असूनही सदर इसमाने आर्थिक देवाण-घेवाण करून हे पद मिळवून त्याचा अयोग्य प्रकारे म्हणजेच शाळेतील महिला कर्मचा-यांची, विद्यार्थीनींशी अशिलल वर्तन त्याचबरोबर शाळेतील कर्मचा-यांना करंजाळी या त्यांच्या मुळगावी घरकाम, शेतकामासाठी वापर करून घेतात. जे कर्मचारी त्यांचे ऐकत नाही त्यांना प्रशासनाचा धाक, दमदाटी करतात. तसेच सदर इसम हा यापूर्वी आपल्या कार्यालयाकडून निलंबित सुध्दा झालेला असून, सावकारीचा धंदा करतो. त्याचे शालेय कामकाजात लक्ष नसते. शालेय वेळेत पोलिस स्टेशन व कोर्टकचेरीचे कामे करीत असून. सदरस्थितीत फक्त शाळेत सही करण्यासाठीच येत असतो, ग्रामस्थांशी व पदाधिका-यांशी असभ्य वर्तन करतो.

जेष्ठ रोजंदारी कर्मचारी यांना डावलून त्यांच्या मर्जीतील गायकवाड यांना रोजंदारीने कर्मचारी म्हणून कामावर घेतले असून, जेष्ठ रोजंदारी कर्मचा-यांचे वेतन बील काढण्यासाठी २०,०००/- रुपयांची मागणी केली होती. रक्कम दिली नाही म्हणून मर्जीतील लोकांना कामावर घेतलेले आहे.”

13. It appears that, in view of complaints, the Commissioner had taken cognizance but the transfer order is bad in law since admittedly, it is not placed before the CSB as mandated by Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**. As such, non-placing the matter before CSB is fatal for sustainability of transfer order.

14. Apart, there is no approval for such mid-term and mid-tenure transfer from higher competent transferring authority, as mandated under Section 6 read with Section 4(5) of 'Transfer Act 2005'. Interestingly, in Affidavit-in-reply, in Para No.21, it is stated that the Commissioner, Tribal Development is the Head of Department and as Head of the Department, he has given approval to the transfer. As such, the Head of the Department who is competent for general transfer has issued the impugned mid-term and mid-tenure transfer without approval of next competent transferring authority as required in law as mentioned in Table below Section 6 of 'Transfer Act 2005'. It is nowhere the case of Respondents that powers of highest competent authority as contemplated under Section 6 are delegated to Commissioner, Tribal

Development, Nashik. Indeed, as per Affidavit-in-reply, the Commissioner, Tribal Development, Nashik is the Head of Department. It is thus explicit that Commissioner is the only Head of the Department empowered for general transfer orders and he has no authority in law for mid-term and mid-tenure transfer.

15. The totality of aforesaid discussion leads me to sum-up that the impugned transfer order is in blatant contravention of provisions of 'Transfer Act 2005' as well as bad in law for want of approval of Civil Services Board. The impugned transfer order is, therefore, liable to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 06.09.2021 is hereby quashed and set aside.
- (C) The Respondents are directed to repost the Applicant on the post he is transferred from within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 11.10.2021

Dictation taken by :

S.K. Wamanse.

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