THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.783 OF 2015

DISTRICT : PUNE

Smt. Sunanda Baban Bhorkar,)
R/o. 1075/2, Sadashiv Peth,)
Pune 30.)...**APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through Principal Secretary,)
Women and Child Development)
Department, Mantralaya,)
Mumbai 32.)

2. The Divisional Commissioner,)
Women and Child Development)
Department, Pune Division, Pune,)
Having office at 3, Charch Road,)
Pune 411 001.)

3. The Chief Executive Officer,)
Zilla Parishad, Pune, having office at,)
Welasli Road, Camp Area, Pune 1.)

4. The Deputy Chief Executive Officer,)
(Women and Child Development))
Zilla Parishad, Pune, having office at,)
Welasli Road, Camp Area, Pune 1.)

....RESPONDENTS

Shri P.S. Bhavake, learned Counsel for the Applicant.

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

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 03.05.2016.

J U D G M E N T

1. Heard Shri P.S. Bhavake, learned Counsel for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 04.09.2015 transferring her as Superintendent, Government Certified School for Girls, Shirur, District Pune.

3. Learned Counsel for the Applicant argued that this order has been issued in the month of May, and it is a mid-term transfer order and such an order could have been passed only in exceptional circumstances or for special reasons under Section 4(4)(ii) of the Maharashtra Government Servants

Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (the Transfer Act). The Applicant was posted as Child Development Project Officer, (C.D.P.O.) Shirur, by order dated 16.03.2012. Though she completed her tenure on 16.03.2015, she was not considered for transfer during general transfers of 2015, as she is retiring on 31.08.2016. Under Section 5(1)(a) of the Transfer Act, tenure of an employee due for transfer after completion of tenure, who has less than one year of retirement, can be extended till retirement. Learned Counsel for the Applicant contended that once Government has decided to extend the tenure of the Applicant under Section 5(1)(a), there was no reason to issue the impugned order, less than one year before her retirement. Learned Counsel for the Applicant, argued that the Applicant has to take care of her old father, who resides at Pune and the present transfer is causing hardships to her.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that there were exceptional circumstances for the transfer of the Applicant by order dated 04.09.2015. Hon'ble Bombay High Court in P.L.I. No.28 of 2014 has directed the Government to fill the posts of Superintendents of Female Institutions, Women Hostels, etc. by Female Officers. It therefore, became necessary to transfer the Applicant as Superintendent of Government Certified School for Girls, Shirur, District Pune. This was done with the approval of Hon'ble Chief Minister under Section 4(4)(ii) of the Transfer

Act. As the Applicant has already completed her tenure in the post of C.D.P.O., no approval under Section 4(5) of the Act was necessary. Learned P.O. argued that there has been no change in the Head Quarters of the Applicant, which remained unchanged at Shirur. Learned P.O. cited judgment of Hon'ble Bombay High Court in **Writ Petition No.3301 of 2010 Shri R.P. Shivdas Vs. The State of Maharashtra Others, and in Writ Petition No.8898 of 2010, Shri R.S. Kalal Vs. State of Maharashtra & Others,** where it is held that provisions of the Transfer Act are not attracted when there is no change of Headquarters. In the present case, though there was no change of Head Quarters, approval under Section 4(4)(ii) citing exceptional circumstances was taken from the Hon'ble Chief Minister. Learned P.O. argued that there is no change of Head Quarters so provision of Section 4(5)(1) are not relevant.

5. Learned Counsel for the Applicant cited the following judgments :-

(1) **Purushottam Govindrao Bhagwat Vs. State of Maharashtra & Others 2012 (3) Bom CR 442.**

This case is regarding transfer of an employee, who has not completed his tenure. In the present case, the Applicant had completed her tenure. The case is not covered by Section 4(5) but under Section 4(4)(ii) of the transfer Act, which was fully complied with. The case is distinguishable.

(2) **Kishor S. Mhaske Vs. Maharashtra O.B.C. Finance & Development Co-operation and Others : 2013(6) Bom. CR 391.**

It is held that order of transfer in absence of special and exceptional circumstances will be, in breach of statutory requirements. In the present case, in the order it is mentioned that it was done in 'public interest' it is mentioned in the affidavit-in-reply that the order was issued to obey the directions of Hon'ble High Court. Approval of Hon'ble Chief Minister under Section 4(4)(ii) of the Transfer Act was obtained. Another important fact is that there was no change of Head Quarters. This case is distinguishable.

(3) **State of Maharashtra & Others Versus Padmashri Shriram Bainade : 2015 (3) Bom.CR.443.**

The Court upheld the decision of this Tribunal setting aside the mid-term transfer order as special reasons were not there. The order was punitive in nature. There was no application of mind. None of these facts are present in the present case. The case is clearly distinguishable.

6. It is seen that the Applicant was transferred in full compliance of Section 4(4)(ii) of the Transfer Act. It was, in fact, not necessary to do so, as her headquarters remained

unchanged. Even if the impugned order is cancelled, she will remain as C.D.P.O., Shirur, the additional charge of which post, she is still holding. In fact, provisions of the Transfer Act are not attracted at all in her case. The impugned transfer order is passed to comply with the orders of Hon'ble High Court in a P.I.L. There is no need to interfere with the impugned order.

7. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

Sd/-
(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 03.05.2016
Typed by : PRK