

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.805 OF 2023

DISTRICT : PUNE

SUB : TRANSFER

Shri Manoj M. Waghmare)
Age : 40 Yrs, Occ : Head Master at)
Resident School for Girls (SC & Nav-)
Boudha), Chandoli, Tq. Khed, Dist.)
Pune.)...**Applicant**

Versus

1. The State of Maharashtra, through)
The Secretary, Social Justice &)
Special Assistant Department,)
Mantralaya, Mumbai 32.)
(Copy to be served on the P.O. M.A.T.)
Mumbai.)
2. The Commissioner of Social Welfare)
Maharashtra State, 3, Church Road,)
Maharashtra State, Pune 411001.)
3. The Asst. Commissioner Social Welfare)
Pune, Dist. Pune.)
4. Manoj Vitthal Jadhavm, Age : Major,)
Occ. Head Master, Resident School)
For Boys, (Scheduled Caste & Nav-)
Boudha), Jawali, Tq. Mangaon,)
Dist. Raigad.)...**Respondents**

Shri S. D. Johsi holding for Shri A.R. Joshi, learned Advocate for Applicants.

Shri A. J. Chougule, learned Presenting Officer for Respondent Nos.1 to 3. None for Respondent No.4.

CORAM : Shri Debashish Chakrabarty, Member (A)

DATE : 24.01.2024

JUDGMENT

1. The Applicant has invoked the provisions of Section 19 of the 'Administrative Tribunal Act, 1985' to challenge the Transfer Order dated

09.06.2023 to post him as Head Master of Resident School for Girls (SC & Nav Budha), Chadoli, Tahsil Khed, District Pune to post of Head Master of Resident School for Girls (SC & Nav Budha), Masudmale, District Kolhapur.

2. The Applicant was represented by Shri S.D. Joshi, learned Advocate for the Applicant and Shri A. J. Chougule, learned P.O. presented the Respondent Nos.1 to 3. None for Respondent No.4.

3. The learned Advocate for Applicant stated that he was working on post of Head Master at Resident School for Girls (SC & Nav Budha), Chadoli, Tahsil Khed, District Pune since 14.07.2015, and therefore as per provision of Section 3 (1) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' was due for transfer having completed two 'Normal Tenure' of 3 years being in Group C of 'Non Secretarial Service'. However, learned Advocate for Applicant stated further by referring to G.A.D. G.R. of 09.04.2018 that Applicant had requested to be retained for 1 year on the post of Head Master at Resident School for Girls (SC & Nav Budha), Chadoli, Tahsil Khed, District Pune for compelling reasons of pregnancy of his Wife.

4. The learned Advocate of Applicant stated that Applicant was placed at Sr. No.16 in 'Seniority List' which was published by the office of Commissioner, Social Welfare, Pune on 03.04.2023 which also indicated all 'Vacant Posts' of 'Head Masters' classified as per their locations into 'Difficult Areas' and 'Non Difficult Areas'.

5. The learned Advocate for Applicant contended that Respondent No.4 was interested to be posted as Head Master at Resident School for Girls (SC & Nav Boudha), Chandoli, Tahsil Khed, District Pune. Further he stressed that the Transfer Order dated 29.06.2023 was issued by the Commissioner of Social Welfare, Pune without observing the guidelines in G.A.D. G.R., dated 09.04.2018 in letter and spirit as the Applicant was never called for 'Counselling Session'.

6. The learned Advocate for Applicant argued that though Applicant was due for transfer from the post of Head Master at Resident School for Girls (SC & Nav Boudha), Chandoli, Tahsil Khed, District Pune during 'General Transfers 2023'; but there are instances where incumbent 'Head Master' at Sr. Nos.5, 7, 9 and 25 of the 'Seniority List' though having completed longer tenures of more than 8 years, were not transferred by 'Commissioner of Social Welfare, Pune'. The learned Advocate for Applicant then argued that he came to be transferred to Head Master, Masudmale, Resident School for Girls (SC & Nav Budha), District Kolhapur only because these 4 employees at Sr. No.5, 7, 9 and 25 who were placed higher in 'Seniority List' came to be retained on their posts by 'Commissioner of Social Welfare, Pune.'

7. The learned Advocate for Applicant then claimed that though he had given 10 Options for the new posting as he had completed two 'Normal Tenures' of Three years being in Group C of 'Non Secretarial Service' but Applicant had requested to be retained for 1 year on the post

of Head Master at Resident School for Girls (SC & Nav Boudha) Chandoli, Tahsil Khed, District Pune on account of compelling reasons of pregnancy of his Wife. The Applicant's request was however not considered with compassion by 'CSB' which held its meeting on 22.05.2023.

8. The 'Affidavit in Reply' dated 07.08.2023 and 15.09.2023 filed on behalf of 'Commissioner of Social Welfare, Pune' were relied upon by the learned P.O. to justify the transfer of Applicant as he had completed almost 8 years on the post of Head Master at Resident School for Girls (SC & Nav Boudha) Chandoli, Tahsil Khed, District Pune. He emphasized that due consideration was given to 'Option No.3' of Applicant and therefore he was posted as Head Master, Resident School for Girls (SC & Nav Budha), Masudmale, District Kolhapur. Learned PO informed further that the Applicant had earlier done 1 Year tenure in Solapur District and 7 Year tenure in Kolhapur District and infact was required to be transferred out of Pune Division. However, the 'Commissioner of Social Welfare, Pune' considered the Applicant's case compassionately due to pregnancy of his Wife. The request of Applicant had included 3 Options in Pune District and 3 Options in Kolhapur District, The 'Commissioner of Social Welfare, Pune' therefore took right decision to post Applicant as Head Master, Resident School for Girls (SC & Nav Budha), Masudmale, District Kolhapur considering his 'Option No.3'.

9. The learned PO referred to the 'Affidavits in Reply' dated 07.08.2023 and 15.09.2023 filed on behalf of the Commissioner of Social Welfare, Pune' to explain the reasons for transfer of Applicant to Head

Master, Resident School for Girls (SC & Nav Budha), Masudmale, District Kolhapur as 'Administrative Exigency' because it was done by observing the guidelines in G.A.D. G.R. of 09.11.2018 and as per provisions of Section 3 (1) of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

10. The learned PO again relied on 'Affidavit-in-Reply' dated 07.08.2023 and 15.09.2023 filed on behalf of the 'Commissioner of Social, Pune' to justify the reasons why modified 'Transfer Order' dated 07.07.2023 was required to be issued as 'Corrigendum'. Learned PO stated that it was only to remove certain 'Administrative Mistakes' about 'Vacant Posts' that were erroneously distributed because of wrong proposal submitted on 04.07.2023 by 'Assistant Commissioner, Social Welfare Yavatmal'.

11. The Applicant was undoubtedly due for transfer from the post of Head Master at Resident School for Girls (SC & Nav Boudha) Chandoli, Tahsil Khed, District Pune but had sought to be retained for 1 year on the post due to pregnancy of his Wife. Further, he had given 10 Options including 3 Options in Pune District and 3 Options in Kolhapur District but was transferred out of Pune District and posted as Head Master, Resident School for Girls (SC & Nav Budha), Masudmale, District Kolhapur which not only was his Option No.3 but highest of the 3 Options in Kolhapur District. The Applicant's case merits no different consideration from the perspective of law only on grounds of pregnancy of his Wife; which is not so uncommon an occurrence in personal lives of

'Government Servants'. Therefore, it is not included in 'Statement-1' of 'Annexure-2' of GAD G.R. dated 09.04.2018 which lists many other grounds such as 'Health Problems' and 'Medical Conditions' of Government Servants and/or their Family Members. However, the case of the Applicant merits some examination on grounds of 'Arbitrary Exercise' of 'Statutory Powers' if any by 'Commissioner of Social Welfare, Pune' while not transferring the 'Head Masters' at Sr. No.5, 7, 9 and 15 of the 'Seniority List' although they had completed longer tenures of more than 8 years and because it was emphasized that it was their retention that lead to transfer of Applicant from post of Head Master, Resident School for Girls (SC & Nav Boudha) Chandoli, Tahsil Khed, District Pune to post of Head Master, Resident School for Girls (SC & Nav Budha), Masudmale, District Kolhapur.

12. The 'Affidavit in Reply' dated 26.10.2023 on behalf of 'Commissioner of Social Welfare, Pune' merely attaches by way of 'Annexure' all the representations which had been submitted by 'Head Masters' at Sr. No.5, 7, 9 and 15 of 'Seniority List'; but fails to explain convincingly as to what were the 'Compelling Reasons' as to why only their requests were considered by the 'Commissioner of Social Welfare, Pune' and if those were superior to that cited by Applicant which was pregnancy of his Wife. The representations on perusal do reveal some 'Compelling Reasons' which may have been considered adequate by 'Commissioner of Social Welfare, Pune' to grant extension of tenures to Head Masters at Sr. Nos.5,7, 9 and 15 of 'Seniority List' such as Death of Parents; Illness of Parents; and Self-Illness. However, there is no way to

compare these 'Compelling Reasons' with that cited by Applicant and thus it is best left to being an outcome of subjective judgment exercised by 'Commissioner of Social Welfare, Pune'. Further, as period of pregnancy of Wife of Applicant must have naturally come to an end; it has since ceased to be ground for compassionate consideration of the request of Applicant to be retained for 1 year on the post of Head Master, Resident School for Girls (SC & Nav Boudha) Chandoli, Tahsil Khed, District Pune. The Applicant has been posted as Head Master, Resident School for Girls (SC & Nav Budha), Masudmale, District Kolhapur by choice as per his 'Option No.3'. Hence, the following order :-

ORDER

(A) Original Application is Dismissed.

(B) No Order as to Costs.

Sd/-

(DEBASHISH CHAKRABARTY)
Member (A)

Place : Mumbai

Date : 24.01.2024

Dictation taken by : V.S. Mane

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