

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.897 OF 2021

DISTRICT : PUNE

Shri Dinkar Mahadeo Patil.)
Age : 57 Yrs., Working as Chairman,)
Maharashtra State Board of Secondary)
and Higher Secondary Education, Pune)
and residing at Directors' Quarters,)
Balbharati Campus, S.B. Road, Pune – 4.)...**Applicant**

Versus

The State of Maharashtra.)
Through Additional Chief Secretary,)
School Education Department, Mantralaya,)
Mumbai – 400 032.)...**Respondent**

Mr. Arvind V. Bandiwadkar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 01.03.2022

JUDGMENT

1. The challenge is to the transfer order dated 28.10.2021 whereby the Applicant is transferred from the post of Chairman, Maharashtra State Board of Secondary and Higher Secondary Education, Pune to the post of Director, Minority and Adult Education Directorate, Pune *inter-alia* contending that it is mid-term and mid-tenure transfer in

contravention 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) and being punitive liable to be quashed.

2. Shortly stated facts giving rise to this O.A. are as under :-

While Applicant was posted as Director, Maharashtra State Bureau of Text Book Production and Curriculum Research (Balbharati), Pune, he was given additional charge of the post of Chairman, Maharashtra State Board of Secondary and Higher Secondary Education, Pune (hereinafter referred to as 'Board' for brevity) by Government letter dated 31.12.2020. Later, Government by order dated 23.08.2021 transferred and posted the Applicant as regular Chairman of the Board by order dated 23.08.2021. The Applicant being Group 'A' Government servant is entitled to 3 years' tenure in the post of Chairman, Board. However, by impugned order dated 28.10.2021, he is transferred mid-term and mid-tenure invoking Section 4(5) of 'Transfer Act 2005' on administrative ground holding him responsible for crash of Board's website on 16.07.2021. Due to it, result was not accessible to thousands of students and other stakeholders across the state. The servers were down till evening. The Government had appointed enquiry committee headed by Shri Vishal Solanki, Commissioner (Education), M.S, Pune. The Committee in its report found lapses on the part of ESDS Software Solution Private Limited, Nashik, who was entrusted with the work of development of Software for publishing result, Electronic Data Processing Department (EDPD) of the Board and also found Applicant responsible being head of the Board. He failed to take necessary precaution and held him too responsible for the said incident of crashing of website. The Government, therefore, with the recommendation of Civil Services Board on approval of Hon'ble Chief Minister transferred the Applicant by order dated 28.10.2021 from the post of Chairman of the Board to the post of Director, Minority and Adult

Education Directorate, Pune, which Applicant has challenged in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned transfer order on the following grounds :-

- (i) Board had assigned the work of development and preparation of Software to ESDS Software Solution Private Limited, Nashik and the said Company was responsible for technical faults. Apart, Board has also its own Department viz. Electronic Data Processing Department [EDP] looking after the development and compatibility of Software developed by ESDS Software Solution Private Limited Company. The said Department was entrusted to supervise the work, and therefore, for such technical fault on the part of ESDS Software Solution Private Limited, Nashik and EDP Department of the Board, the Applicant who is administrative head of the Board cannot be held responsible. However, Applicant is made scapegoat by transferring him mid-term and mid-tenure by order dated 28.10.2021.
- (ii) Respondent has processed the impugned transfer order as if Applicant's transferring authority is Minister of the Department though approval of Hon'ble Chief Minister is obtained as a competent authority. However, basically, the Applicant being Group 'A' Government servant, the Hon'ble Chief Minister is the only authority in terms of Table below Section 6 of 'Transfer Act 2005'. As such, the impugned transfer order is not in consonance of provisions of 'Transfer Act 2005'.
- (iii) No such action is taken by the Government against the officials serving in EDP Department of the Board, but the Applicant is victimized by issuance of transfer order dated 28.10.2021.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer in reference to contentions raised in Affidavit-in-reply contends that

Applicant being administrative head of the Board, he failed to take necessary steps in the matter namely to ensure technical compliances from EDP Department of the Board as well as ESDS Software Solution Private Limited, Nashik as concluded by enquiry committee, and therefore, his transfer was found necessitated. Accordingly, he is transferred with the recommendation of CSB and approval of Hon'ble Chief Minister. Thus, according to him, even if reason for crashing of Website was technical fault but Applicant being administrative head of the Board found responsible for the same and treating it as a special case for transfer, the Hon'ble Chief Minister approved the same as competent transferring authority. On this line of submission, he states that the challenge to the transfer order is devoid of merit.

5. In view of pleadings and submissions advanced at the Bar, the issue posed for consideration is whether in facts and circumstances of the case, the Applicant can be held responsible for crashing of Website which necessitates mid-tenure transfer as contemplated under Section 4(5) of 'Transfer Act 2005'.

6. Undoubtedly, the Applicant being Chairman of Maharashtra State Board of Secondary and Higher Secondary Education being administrative head of the Board was entrusted with the task of smooth declaration of result of SSC Examination. True, Board has also its Department viz. EDPD for coordination and the work of preparation of Software and declaration of result was given to ESDS Software Solution Private Limited, Nashik. The result was to be declared on Board's Website on 16.07.2021, but the Website had crashed and result could not be accessed for long time. The Government received complaints about crashing of Website resulting into chaos due to inept handling of the matter by the Board. The Committee headed by Shri Vishal Solanki, Commissioner (Education), M.S, Pune was constituted to enquire into lapses and to submit report. Accordingly, Committee submitted the report and the conclusions are as under :-

“चौकशी समितीचे निष्कर्ष :

- १) राज्य मंडळाची माध्यमिक आणि उच्च माध्यमिक शालांत परीक्षांचे आयोजन करणे व त्या अनुषंगाने निकाल जाहीर करणे ही प्राथमिक जबाबदारी आहे. मागील काही वर्षांपासून राज्य मंडळांकडून हे निकाल ऑनलाईन पद्धतीने जाहीर केले जातात. याकरिता राज्य मंडळाकडे स्वतंत्र विभाग असून त्यांचेकडून निकाल प्रसिद्ध करण्याची कार्यवाही सुरळीतपणे करून घेणे हे राज्य मंडळाची जबाबदारी आहे. त्यानुसार २०२० मध्ये मंडळाच्या वेबसाईटसह एमकेसीएल, एनआयसी, आयबीएन लोकमत इत्यादी संस्थांशी सामंजस्य करार करण्यात आला होता. तथापि २०२१ साठी मात्र अशा प्रकारचा करार केल्याचे दिसून येत नाही.
- २) राज्य मंडळाने २०१९ च्या इयत्ता १० निकालाबाबत योग्य प्रकारे इएसडीएस कंपनीला पूर्व सूचना देण्यात आलेली नाही. व्हाट्सअप द्वारे एक दिवस अगोदर इएसडीएस ला इ. १० वीचा निकाल आहे. या आशयाचा संदेश देण्यात आला होता. यामध्ये ESDS सोबत बैठक व निकाल करिता आवश्यक क्षमतेचे सर्व्हर लोड चाचणी झालेली नाही. राज्य मंडळातील गणक विभागांचे व सचिवांचे मत अध्यक्षांनी दुर्लक्षित केले असल्याचे दिसून येते.
- ३) राज्य मंडळाचे कार्यादेश दि.६/३/२०२० अन्वये इएसडीएस कंपनीला मॉक टेस्टचे कार्यादेश देण्यात आले होते. त्यामध्ये ८ सर्व्हरचा पुरवठा करण्याबाबतचा उल्लेख करण्यात आला होता. त्यामध्ये ऑनलाईन निकाल प्रसिद्ध करण्याबाबतचा उल्लेख दिसत नाही. सन २०२१ मध्ये मॉक टेस्ट करण्यात आलेली नाही तसेच संकेत स्थळ हे स्वतः राज्य मंडळाने विकसित केलेले आहे. सर्व्हर पुरवठादार कंपनी इएसडीएस ला लेखी किंवा बैठक घेऊन कळवण्यात आलेली नाही. केवळ व्हाट्सअप वरून एक दिवस अगोदर निकाल घोषित केला जाणार आहे असे कळवले आहे.
- ४) वरील मुद्दा क्रमांक ३ मधील वस्तुस्थिती असताना २ सर्व्हर वापर ऑनलाईन निकाल प्रसिद्ध करण्यासाठी करण्यात आला. त्यामुळे निकाल प्रसिद्ध झाल्यावर मोठ्या प्रमाणावर वेबसाईट हिट झाल्यामुळे सर्व्हर डाऊन झाला. यावरून राज्य मंडळाने पुरेसे पूर्व नियोजन केले नसल्याचे दिसते. तसेच ट्रायल रन/ड्राय रन करण्यात आलेला नाही.
- ५) निकाल घोषित करण्यापूर्वी इएसडीएस कंपनीचे प्रतिनिधीसोबत कोणतीही बैठक झालेली असल्याचे दिसून येत नाही. केवळ निकालाचे एक दिवस अगोदर राज्य मंडळाच्या इडीपी मॅनेजर यांचेकडून इएसडीएस च्या प्रतिनिधीस व्हाट्सअप मेसेज द्वारे दुस-या दिवशी रिझल्ट डिस्प्ले करण्याबाबतचा मेसेज देण्यात आला होता. औपचारिक बैठक अथवा लेखी पत्र देण्यात आलेले नव्हते. यावरून राज्य मंडळाकडून ही बाब गांभीर्याने घेतल्याचे दिसून येत नाही. याच वर्षी इ. बारावीचा निकाल सर्व बाबींची पूर्वतयारी उत्तम प्रकारे करून घेतल्यामुळे योग्य पद्धतीने प्रकाशीत झाला.
- ६) सन २०२१ पूर्वीच्या वर्षात राज्य मंडळाच्या वेबसाईटसह अन्य माध्यमातून ऑनलाईन निकाल जाहीर करण्याबाबत राज्य मंडळाची कार्यपद्धती अस्तित्वात होती. या प्रचलित कार्यपद्धतीचा सन २०२१ चे इ. १० चे निकाल जाहीर करताना उपयोग केला गेला नसल्यामुळे तांत्रिक समस्या निर्माण झाल्याचे दिसून येते.
- ७) राज्य मंडळातील टीडीपी इडीपी विभागांमध्ये इडीपी मॅनेजर, इन्वार्ज, कॉर्डिनेटर, प्रोग्रॅमर अशी तांत्रिक विषय हाताळण्यासाठी कर्मचारी नियुक्त असून त्यांच्या कर्तव्य व जबाबदा-याही निश्चित केल्या आहेत. यामध्ये डेव्हलपमेंट, टेस्टिंग, कॅम्पेसिटी प्लॅनिंग यासह सर्विस प्रोव्हायडरस सोबत समन्वय साधून कार्यवाही करणे या बाबींचा समावेश आहे. ही बाब विचारात घेता इडीपी विभागाकडून कर्तव्यात कसूर झाल्याचे दिसून येत असले तरी यास कार्यालय प्रमुख म्हणून अध्यक्ष, राज्य मंडळ जबाबदार आहेत.
- (underline supplied)
- ८) भविष्यात इ. १० वी १२ वी चा निकाल घोषित करताना पुढील दक्षता घेणे आवश्यक राहिल असे समितीचे अभिप्राय आहेत.
- १) वरिष्ठ सॉफ्टवेअर दर्जाच्या तंत्रज्ञाच्या पर्यवेक्षणात निकालाचे संकेत स्थळ विकसित होणे आवश्यक आहे.
- २) वरिष्ठ सॉफ्टवेअर अभियंता यांची निवड ही महा आयटी च्या तरतुदी/शासन निर्णयाप्रमाणे केली जाणे आवश्यक आहे.
- ३) संकेतस्थळाचे योग्य पद्धतीने लोड संतुलन व सिम्युलरिटी ऑडिट/चाचणी करणे आवश्यक आहे.
- ४) एसएसएल प्रमाणपत्र संकेतस्थळाचे करणे आवश्यक आहे.
- ५) निघालाकरिता ऑप्लिकेशन हे तीन स्तरीय आर्किटेक्चर मध्ये असावे. यामध्ये लोड बॅलन्सर प्रस्तावित केलेले असावे.

६) निकाल ऑनलाईन करण्यापूर्वी किमान २० दिवस अगोदर क्लाऊड/ सर्व्हर पुरवठादार कंपनीला सर्व्हर साईज बाबत औपचारिक कळविणे आवश्यक आहे.

७) निकाल घोषित च्या संकेत स्थळ सर्व्हर ऑटोस्केलिंग इ. बाबत एनआयसी, एमकेसीएल व अन्य सॉफ्टवेअर कंपनी/संस्थांकडून निश्चित करणे आवश्यक आहे.

८) संकेत स्थळास भेट देणा-या भेटकर्त्यांची अंदाजीत संख्या लक्षात घेऊन बँडविडथ, फायरवॉल, सर्व्हर इ.च्या क्षमता बाबत योग्य निर्णय घेणे आवश्यक आहे.

९) योग्य क्षमतेचे तांत्रिक मनुष्यबळ महाआयटीकडून घेण्यात यावे.

१०) निकाल घोषित करण्यापूर्वी महाआयटी, एनआयसी, राज्य मंडळ व सॉफ्टवेअर मधील अन्य कंपनी/संस्था सोबत बैठक आयोजित करणे आवश्यक आहे.

११) निकालापूर्वी सर्व्हर पुरवठादार विभागातील तांत्रिक मनुष्यबळ, संकेतस्थळ विकसित करणारे तंत्रज्ञ व एनआयसी यांचे वरिष्ठ वैज्ञानिक यांच्या समवेत दोन बैठका आयोजित करणे.

१२) बदलत्या तंत्रज्ञानाच्या सुविधा पद्धतीबाबत अद्यावत राहण्यासाठी राज्य मंडळाने माहिती तंत्रज्ञान सल्लागार यांची एक एक समिती गठित करावी व त्या समितीने श्वर दोन महिन्यांची बैठक घेऊन योग्य त्या शिफारशी राज्य मंडळ व शासनास करणे आवश्यक आहे.

१३) आवश्यक क्षमतेचे सर्व्हर उपलब्धता करून देणे.

राज्य मंडळांमार्फत इयत्ता १० वीचा निकाल घोषित करताना उद्भवलेल्या त्रुटीसंदर्भात आयुक्त, शिक्षण, महाराष्ट्र राज्य यांच्या अध्यक्षतेखाली गठित समितीने सादर केलेल्या अहवालानुसार इ. १० वीचा निकाल घोषित करतेवेळी झालेल्या त्रुटीसाठी अध्यक्ष, महाराष्ट्र राज्य माध्यमिक व उच्च माध्यमिक शिक्षण मंडळ हे जबाबदार असल्याचे निदर्शनास येते. तसेच, भविष्यात इ. १० वी व इ. १२ वीचा निकाल घोषित करताना या दक्षता घेण्यात घेणे आवश्यक राहिल, याबाबत समितीने दिलेले अभिप्राय स्वीकारण्यात यावेत, असे प्रस्तावित करण्यात येत आहे.”

7. In report, the Committee found various lapses, lack of coordination, lack of requisite care, non-compliance of technical aspects and held EDP Department of the Board as well as Applicant responsible for crashing the Website as a head of Board. The report was accordingly placed before the Hon'ble Chief Minister along with the recommendation of CSB for immediate transfer of the Applicant. The Department recommended for immediate transfer and also proposed regular departmental enquiry against the Applicant. It is on this background, the Applicant was transferred from the post of Chairman of the Board and was posted as Director, Minority and Adult Education Directorate, Pune.

8. True, as per the Enquiry Committee report, the lapses were noted on the part of EDP Department of the Board. The Committee has also called upon for explanation of Shri Rajput, Manager of EDP Department. In his explanation, he stated as under :-

“श्री.हेमंतकुमार राजपुत, गणकयंत्र विभाग, राज्य मंडळ यांनी पुढील प्रमाणे लेखी खुलासा सादर केला. (परिशिष्ट - ग)

मंडळामार्फत दरवर्षी ऑनलाईन निकाल जाहीर होत असताना प्रामुख्याने एनआयसी पुणे या संस्थेमार्फत जाहीर केला जातो. त्याचप्रमाणे मंडळ स्वामीत्वधन घेउन एमकेसीएल, न्यूज १८ तसेच मंडळाशी संपर्क साधणा-या तत्सम संस्थांसोबत करारनामा करून व निकालाची अचुकता तपासून निकाल जाहीर करत असते. या पध्दतीने निकाल जाहीर करताना मागील अनेक वर्षांमध्ये कोणत्याही अडचणी आलेल्या नाहीत.

सन २०२१ मधील इ. १० वी परीक्षेचा निकाल जाहीर करतानादेखील वरील प्रमाणेच कार्यपध्दती अवलंबणे आवश्यक होते. परंतु, मा. अध्यक्ष, राज्यमंडळ, पुणे यांचेशी मंडळ कामकाजबाबत तसेच निकालाबाबत चर्चा केला असता त्यांनी वारंवार तुम्ही एनआयसी व अन्य यंत्रणांवर का अवलंबून राहता ? निकाल हा आपल्या यंत्रणेमार्फतच जाहीर झाला पाहिजे असे आदेशित केले. तसेच निकालापूर्वी ३ दिवस अगोदर मा.अध्यक्ष, राज्यमंडळ यांच्या दालनात मा.सचिव हे उपस्थित असतानादेखील मंडळाच्या वेबसाईटवर निकाल जाहीर करण्यामध्ये येणा-या अडचणी नमूद करून मा.अध्यक्ष यांना पुन्हा विचारणा केली असता त्यांनी मंडळामार्फतच इ.१० वी १२ वीचे अंतर्गत मूल्यमापनाचे गुण भरून घेण्याचे काम झाले असल्यामुळे मंडळामार्फतच त्याच यंत्रणेद्वारे निकाल जाहीर करावा असे स्पष्ट निर्देश दिले.

वास्तविक इडीपी विभागात मी स्वतः गणतंत्र उपव्यवस्थापक या पदावर कार्यरत असून या विभागात एकच असिस्टंट प्रोग्रामर आहे. मुळात इतके कमी तांत्रिक मनुष्यबळ असल्यामुळे ऑनलाईन समन्वयकाची तसेच कॉन्ट्रॅक्ट बेसीस वरील कर्मचा-यांची नेमणूक करून ऑनलाईन कामकाज केले जाते. परंतु मंडळाच्या मान्य यंत्रणेमार्फतच निकाल जाहीर करण्याचे मा. अध्यक्षाने वारंवार असल्यामुळे त्याचे पालन करणे इडीपी विभागास भाग पडले.

त्याचप्रमाणे निकालाच्या अगोदरच्या दिवशी म्हणजे दि.१५/७/२०१९ रोजी एमकेसीएल तसेच न्यूज १८ च्या प्रतिनिधींनी संपर्क साधला होता व निकाल प्रसारित करण्याची तयारी देखील दर्शवली होती. याबाबतही मी मा. अध्यक्ष यांना पुन्हा विचारणा केली असता त्यांनी त्यास स्पष्ट नकार दिला. मा. अध्यक्ष यांच्या उपरोक्त आदेशामुळे नाईलाजाने फक्त एकाच वेबसाईटवर निकाल प्रसारित करावा लागला व त्यामध्ये तांत्रिक अडचणी निर्माण झाल्या.

मंडळाने मागील १० ते १२ वर्षांत कायम एकापेक्षा अधिक संस्थेद्वारे निकाल जाहीर केले असून त्यामध्ये कधीही अडचण आलेली नाही. मंडळाने निकालाची जबाबदारी दिल्यानंतर निकालाबाबत तांत्रिक गोष्टींची तपासणी करणे ही बाब मंडळाने यासाठी नियुक्त केलेल्या संबंधित संस्थेचीच होती. इडीपी विभाग निकाल अंतिम करण्याच्या प्रक्रियेत व्यस्त असताना अचानक निकालाची तारीख निश्चित केल्याने तसेच प्रचलित कार्य पद्धती बदलून घेतलेल्या उपरोक्त निर्णयामुळे अतिरिक्त ताण निर्माण होऊन निकाल जाहीर होण्यासाठी होण्यामध्ये अडचणी निर्माण झाल्या.”

9. It is thus explicit from the explanation of Shri Rajput and finding of Enquiry Committee that there was lack of coordination as well as lack of requisite care which ought to have been taken before publishing of result on Website. It is further obvious from the record that Applicant was insisting for declaration of result from the Board's Website only and deviated from earlier practice of declaration of result through NIC, Pune. If the result was to be declared from the Board's Website as desired and insisted by the Applicant, he ought to have ensured proper requisite compliances of technical aspects. He must have anticipated that thousands of students and stakeholders would hit the Website, and therefore, he ought to have ensured proper bandwidth, high-end server, etc. The result was declared without taking dry run which was required

to be undertaken to test the capacity and efficiency of the software prepared by ESDS Software Solution Private Limited, Nashik and server which resulted into crashing of Website.

10. Undoubtedly, EDP Department of the Board was also equally responsible for the crashing of Website as noted by Enquiry Committee. However, the Applicant cannot abdicate his responsibility as a Head of the Board. It was for him to give necessary instructions well in advance and to ensure proper compliances of all technical aspects. As such, the Applicant's responsibility is akin to principle of vicarious liability. Usually, the person is not liable for the acts of another person. However, in certain situation, where person hold responsible position and was entrusted with the administration and responsibility of smooth declaration of result, in that event, the liability of such person as well as the persons working under him is joint and several. The maxim '*Qui facit per alium facit per se*' means "he who does not act through another is deem in law to do it himself" would attract. Consequently, he is answerable for the wrong or negligence of another person. As such, the submission advanced by the learned Advocate for the Applicant that EDP Department of the Board and ESDS Software Solution Company are only liable and responsible for the lapses and Applicant is victimized or made scapegoat holds no water. The liability is joint and several. Higher the post, higher are the responsibilities. Therefore, the Applicant cannot pass a buck to others since he is also equally blameworthy for the crashing of Website.

11. Shri Bandiwadekar, learned Advocate for the Applicant tried to make such capital on the fact that incident occurred on 16.07.2021 when the Applicant was in temporary charge of the post of Chairman of the Board and thereafter, he was given regular posting on 23.08.2021. Adverting to this aspect, he tried to contend that if there was any such lapse on the part of Applicant, the Government would not have given him regular posting by order dated 23.08.2021. Here, material to note that it

is only after receipt of Enquiry Committee, necessary steps were required to be taken in the matter. The Enquiry Committee submitted its report on 05.10.2021. Therefore, only because Applicant was given regular posting subsequent to the incident that does not wipe-out the liability.

12. In Additional Rejoinder, the Applicant had placed on record certain information collected by him under RTI Act to show that in initial meetings of Committee through Video Conferencing, the Commissioner had opined that ESDS Software Solution Company was liable for crashing of Website (Page No.129 of P.B.). It was not final conclusion since enquiry was in process, and therefore, it is final report of Enquiry Committee which needs consideration.

13. The submission advanced by the learned Advocate for the Applicant that Shri Vishal Solanki acted in dual capacity as Head of the Committee as well as Head of CSB, and therefore, the recommendations of CSB are biased holds no water. Only because he acted in dual capacity that *ipso facto* does not mean he nurtured any bias against the Applicant. Shri Vishal Solanki was Commissioner (Education) under whose Chairmanship Committee was constituted by the Government by G.R. dated 17.07.2021. He was also designate Chairman of CSB in terms of G.R. dated 22.04.2015 (Page No.115 of Paper Book). Apart, from Shri Vishal Solanki, the Committee was comprising 4 other members. I, therefore, see no element of bias or prejudice in the matter.

14. Needless to mention, an order of transfer is an administrative order and ordinarily is an incidence of service. No Government servant has vested right to claim a particular post, since it is for the administration how to run its affairs. The transfer orders are ordinarily made in exercise of administrative exigencies of service and in public interest. Unless the order of transfer is in conflict with Rules or malicious or in patent arbitrary exercise of powers, the Court would decline to interfere in the transfer matters. At this stage, what is required to be seen *prima-*

facie satisfaction of the authority concerned about the necessity of transfer of Applicant and requirement of holding an elaborate enquiry if insisted upon the very purpose of transferring an employee in public interest or in exigency of administrative would be defeated. In this behalf, reference may be made to decision of Hon'ble Supreme Court in **(2004) 4 SCC 245 [Union of India Vs. Janardhan Debanath & Ors.]**.

In Para No.14 of the Judgment, Hon'ble Supreme Court held as under :-

“14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The Writ Petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”

15. The submission advanced by the learned Advocate for the Applicant that Applicant being Group 'A' Officer, his competent transferring authority was directly Hon'ble Chief Minister, but in the present case, file was routed through Minister Incharge of the Department who had no role to play and on this ground impugned transfer order is vulnerable is totally misconceived and unpalatable. True, the perusal of record reveals that Secretary of the Department routed the file through Minister of the Department who also signed the proposal and then ultimately, it was placed before Hon'ble Chief Minister who accorded approval for the transfer. Undoubtedly, as per Table below Section 6 of 'Transfer Act 2005', the Chief Minister is directly competent transferring authority. However, only because file is routed through Minister Incharge of the Department, that hardly matters since final

approval is of Hon'ble Chief Minister who is admittedly competent transferring authority of the Department. Suffice to say, the submission advanced by the learned Advocate for the Applicant in this behalf holds no water.

16. True, as of now, no action seems to have been taken against EDP Department of the Board which is also equally responsible for crashing of Website. However, that hardly inures for the benefit of the Applicant to say that he is made scapegoat or victimized. Indeed, the concept of negative discrimination is unknown to law. As stated above, he being the head of the Board, it was basically for him to ensure all technical and other compliances through EDP Department, but he failed to do so. Suffice to say, he cannot abdicate his responsibility as Head of the Board.

17. The totality of aforesaid discussion leads me to conclude that Applicant's transfer was necessitated on account of lapse on his part and special case was made out for his transfer as contemplated under Section 4(5) of 'Transfer Act 2005'. No *malafide* can be attributed in the impugned action. The challenge to the impugned transfer order is without any merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

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

Mumbai
Date : 01.03.2022
Dictation taken by :
S.K. Wamanse.

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