

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 252 OF 2023

(Subject:- Transfer)

DISTRICT:-AHMEDNAGAR

Balasaheb s/o Yamaji Dhanave,)
Age : 52 years, Occu. Service)
(as Deputy Education Officer)
[Secondary], Z.P. Ahmednagar,))
R/o: Laxmi Colony, Tapovan Rd.,)
Savedi, Ahmednagar.)
Tal. & Dist. Ahmednagar.)
Mobile No.: 9960454547)
Email-Id: balasahebdhanave547@gmail.com)
.....**APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Addl. Chief Secretary,)
School Education & Sports Dept.,)
M.S., Manatralaya,)
Madam Cama Road,)
Hutatma Rajguru Chowk,)
Mumbai-32.)
2. **The Commissioner of Education,**)
M.S., Central Building, Pune-01.)
3. **The Education Officer (Secondary)**)
Zill Parishad,)
Ahmednagar.)
)RESPONDENTS

APPEARANCE : Shri A.S. Deshmukh, learned
counselfor the applicant.
: Smt. Sanjivani K. Deshmukh-Ghate,
learned Presenting Officer for the
respondentauthorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **05.02.2024.**

PRONOUNCED ON : **15.03.2024.**

ORDER

Heard Shri A.S. Deshmukh, learned counsel for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is seeking quashing and setting aside the impugned order of transfer of the applicant dated 21.03.2023 (Annexure 'A-5') issued by respondent No.1 and further seeking direction to respondents to permit the applicant to discharge duties attached to the post of Deputy Education Officer (Secondary) at Ahmednagar.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The applicant is a person from the S.C. category suffering from the disability of 'low vision' which has been diagnosed as -'RE Artificial Eye LE Partial optic atrophy'. Additionally, applicant's wife is also suffering from disability described as "Rheumatoid Arthritis with crippling disability with inability to walk and needs support while walking and standing". The supportive documents are submitted as per

Annexure 'A-1' collectively. It is the case of the applicant that his native place is at Ahmednagar District.

(ii) The applicant had initially entered in service as a Teacher under the Ahmednagar Zilla Parishad on 13.09.1990 and after working as such for about 16 years, he was appointed as an Education Extension Officer (in short "B.E.O.") on 12.05.2006. On 05.07.2012 he was appointed in the Maharashtra Education Service (Administration Branch) Group-B cadre upon his due selection and recommendation by the Maharashtra Public Service Commission (M.P.S.C.). The applicant's first posting in the said cadre was as 'Block Education Officer' (BEO) at Rahuri, where he worked till 2016.

(iii) It is the further case of the applicant that in the month of August, 2021 when he was working as Social Education Officer under the Minorities and Adult Education Directorate at Pune, the respondent No.1 was pleased to issue an order of his transfer dated 30.08.2021 (Annexure 'A-3') on the post of Deputy Education Office (Secondary) under the Ahmednagar Zilla Parishad. Pursuance to the above referred order dated 30.08.2021 (Annexure 'A-3') of his transfer to Ahmednagar,

he was relieved from his post at Pune on 06.09.2021 after office hours and consequently he had reported to the respondent No.3 at Ahmednagar on 07.09.2021 before noon. He had submitted his joining report on the post of Deputy Education Officer (Secondary) (Annexure 'A-4' collectively).

(iv) It is the further case of the applicant that the applicant has been working at Ahmednagar on the post of Deputy Education Officer (Secondary) since last about 1 and ½ years only and he was not liable to be transferred in view of provisions of Section 3 (1) and 4(1) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act, 2005') .

(v) According to the applicant, though he has not completed the normal statutory tenure of three years, respondent No.1 has issued the order dated 21.03.2023 thereby making a transfer of the applicant and posted him from the post of Deputy Education Officer (Secondary), Zilla Parishad Ahmednagar to the post of B.E.O., Panchayat Samiti, Jamkhed, under Zilla Parishad, Ahmednagar. Hence, this Original Application.

4. Learned counsel for the applicant submits that in terms of Circular issued by General Administration Department, State Government dated 15.04.2004, the Government Servants who are suffering from physical disability should be given posting near their native place as far as possible by taking sympathetic view.

5. Learned counsel for the applicant submits that though the place of transfer is at Ahmednagar District itself, however, Jamkhed is at a distance of 75 k.ms. from Ahmednagar. Learned counsel for the applicant submits that in terms of provisions of Section 3(1) and 4(1) of the Transfer Act, 2005, the Government servant shall not ordinarily be transferred unless he has completed his tenure of posting of three years or six years, as the case may be. Further, the provision of Sub-Section (4) of Section (4) mandates that the transfers of the Government Servants shall ordinarily be made only once in a year in the month of April or May. It is therefore explicit that the impugned order dated 21.03.2023 is nothing but mid-term and mid-tenure transfer of the applicant.

6. Learned counsel for the applicant submits that in view of law laid by the Hon'ble Apex Court in the case of **TSR**

Subramanian reported in (2013) 15 SCC 732, it is not only essential and incumbent, but it is obligatory on the part of the respondent No.1 to place the case/s of transfer/s of Government Officers before the competent Civil Services Board (CSB). However, in the present case, there are reasons to believe that before issuing the impugned order dated 21.03.2023, the respondent No.1 did not place the case of the applicant before the Civil Services Board. Thus the order dated 21.03.2023 is untenable and unsustainable.

7. Learned counsel for the applicant submits that there are reasons to believe that impugned order dated 21.03.2023 has been issued by the respondent No. 1 not under any 'exceptional circumstance' or 'special reasons' or by making out a 'special case' as contemplated in the provisions of Section 4 (4) (ii) and 4 (5) of the Transfer Act, 2005 respectively but it has been issued only due to some extraneous circumstance not covered under any of the above-mentioned phrases. There was absolutely no justifiable, palatable and sustainable reason for the respondent No.1 to issue the impugned order dated 21.03.2023.

8. Learned counsel for the applicant submits that in a case of **Balasaheb Vitthalrao Tidke Vs. the State of**

Maharashtra &Anr. in Writ Petition No. 8987/2018 the Hon'ble High Court of Bombay while exercising the Civil Appellate Jurisdiction has held that the process of transfer shall not be influenced by the recommendations made by the elected representatives of people and the Hon'ble Minister who are not concerned with the process of transfer.

9. Learned Presenting Officer for the respondents on the basis of affidavit in reply filed on behalf of respondent No.1 submits that the transfer order dated 21.03.2023 is in accordance with law and Rules in this regard. Learned P.O. submits that the applicant has attached his caste certificate at Annexure 'A-1' which clearly shows that applicant has completed his school education from Jamkhed, District Ahmednagar and Jamkhed Taluka is his native place. By transfer order dated 21.03.2023 the applicant is transferred to Jamkhed which is his native place. Therefore, the contention of the applicant about the circular dated 15.04.2004 is not correct and appropriate.

10. Learned Presenting Officer submits that there are many allegations against the applicant regarding his working and also due to Anti Corruption Bureau case pending against

the applicant, it was necessary to transfer him from his current posting. The respondent No.1 has therefore, transferred the applicant to restrain him from doing any illegal activity on the said post. However, the applicant is transferred to his home town which is not far away from his posting before transfer. Learned P.O. submits that as per the provisions of Rule 4 (4) and 4(5) of the Transfer Act, 2005 after recommendation of the Civil Services Board and approval of the appropriate authority that is Hon'ble Chief Minister of Maharashtra State, the applicant came to be transferred for the reason that the applicant may interfere in his enquiry. Learned P.O. has pointed out the minutes of meeting of Civil Services Board (Annexure 'R-1') to substantiate his contention. Learned P.O. submits that there is no substance in the Original Application and the same is liable to be dismissed with costs.

11. Learned counsel for the applicant on the basis of rejoinder affidavit filed by the applicant submits that no complaints have been lodged against the applicant by any leady teacher since his joining at Ahmednagar pursuant to the order dated 30.08.2021. Furthermore the applicant is not facing any ACB case since 07.09.2021 after joining the post of

Deputy Education Officer (Secondary) under the Zilla Parishad, Ahmednagar. There are no complaints against the applicant and the applicant is not facing any departmental enquiry in this regard nor arraigned as an accused in any ACB case during his tenure on the post of Deputy Education Officer (Secondary) at Ahmednagar.

12. Learned counsel for the applicant submits that there were certain false complaints made against the applicant by some of the women teachers long back during tenure of the applicant as BEO at Rahuri during the period of 05.07.2012 to June 2016, however, it is a matter of record with the offices of concerned authorities that those complaints were enquired into by the Mahila Takrar Nivaran Samiti as per the directions of the Chief Executive Officer of the Ahmednagar Zilla Parishad and the District Mahila Takrar Nivaran Samiti, Ahmednagar has not found any substance in those complaints. The said Enquiry Committee comprising of five members has clearly concluded that the applicant is not guilty of the allegations leveled against him. The said report dated 17.01.2015 of the Enquiry Committee, which is given to the applicant by Chairperson of the District

Mahila Takrar Nivaran Samiti is marked as Annexure 'A-1' collectively.

13. Learned counsel for the applicant submits that on the basis of letter of the Hon'ble Minister of Revenue, Animal Husbandry and Dairy Development dated 02.02.2023, the transfer of the applicant was recommended. Learned counsel for the applicant submits that bare reading of said letter of the Hon'ble Minister dated 02.02.2023 it appears that there was reference to the so-called complaints made against the applicant by women teachers and the ACB matter going on against the applicant. However, there is no record available to that effect and as such, the reference of the same in the said letter is clearly and apparently wrong and incorrect.

14. Learned counsel for the applicant submits that so far as the report submitted by the District Mahila Takrar Nivaran Samiti dated 17.01.2015 (Annexure 'A-1' collectively), the Hon'ble Minister has already taken note of the fact that the competent Enquiry Committee has concluded that there was no substance in the allegations made against the applicant. Instead of accepting the same, the Education Commissionerate had issued a letter to the Ahmednagar Zilla

Parishad on 06.09.2021 to again conduct an enquiry against the applicant. In the background of the same, the Hon'ble Minister himself requested the Additional Chief Secretary of the Government to finally close the complaint against the applicant on the basis of report submitted by the Enquiry Committee. The said letter issued by the Hon'ble Minister is dated 19.01.2022 (Annexure 'A-2'). Learned counsel for the applicant submits that the recent letter dated 02.02.2023 issued by the Hon'ble Minister needs to be understood in the background and context of the above referred letter dated 19.01.2022.

15. Learned counsel for the applicant submits that so far as the reference to the ACB matter pending against the applicant made by the respondent No.1 in his reply affidavit is concerned, the allegations leveled therein not only pertained to the year 2017, but the same are in relation to the tenure of posting of the applicant as Block Education Officer at Panchayat Samiti, Ashti, Dist. Beed. The said allegations have nothing to do with his tenure of posting as Deputy Education Officer (Secondary) at Ahmednagar. Learned counsel for the applicant submits that by no stretch of

imagination the said ACB matter could be made the basis for transfer of the applicant from Ahmednagar to Jamkhed. The said ACB matter is pending against the applicant at Special Court, Beed and the applicant's request for transfer from Pune to Ahmednagar was accepted by transfer order dated 30.08.2021 and posted there without bringing obstacle of said pending case.

16. On perusal of pleadings and annexures of the present case it appears that by order dated 30.08.2021 (Annexure 'A-3') issued by the respondent No.1 the applicant came to be transferred from the post of Social Officer under the Minorities and Adult Education Directorate at Pune on the post of Deputy Education Officer (Secondary) under the Ahmednagar, Zilla Parishad. The applicant has joined his post at Ahmednagar under the respondent No.3 on 07.09.2021. By impugned order dated 21.03.2023, the applicant came to be transferred from the post of Deputy Education Officer (Secondary), Zilla Parishad, Ahmednagar to the post of BEO, Panchayat Samiti, Jamkhed.

17. The Government servant shall ordinarily be transferred only he has completed his tenure of posting and

the transfer of the Government servant shall ordinarily be made only one in a year in the month of April or May in terms of the provisions of Section 3 and 4 of Transfer Act, 2005.

18. In the background of the aforesaid facts as detailed in the foregoing paragraphs, it is clear that the transfer of the applicant by impugned order dated 21.03.2023 is mid-term and mid-tenure also. In terms of Section 4 4(ii), where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority, the transfer may be made any time in the year. Further in terms of Section 4(5), the competent authority may, in special cases, after recording reasons in writing and with the prior approval of the immediate superior Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.

19. In view of the same, it is necessary to reproduced hereinbelow the Section 4 of Transfer Act, 2005:-

“4. Tenure of transfer.— (1) *No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.*

(2) *The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.*

(3) *Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalised by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be :*

Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

(4) *The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May :*

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely :—

- (i) *to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave ;*
- (ii) *where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.”*

20. In the instant case it is further interesting to note as to what are the exceptional circumstances to transfer the applicant mid-term so also what is the special case of the applicant to transfer him mid-tenure. In this regard it is

necessary to look into the copy of minutes of meeting placed on record by the respondent No.1 along with his affidavit in reply marked as (Annexure 'R-1') collectively.

21. On careful perusal of the same, though it is incumbent upon the competent authority to satisfy that due to exceptional circumstances or special reasons the mid-term transfer is necessary, and as the special case is made out, the mid-tenure transfer of the applicant is necessary. The reference has been given merely to the letter dated 02.02.2023 given by the Hon'ble Minister, Revenue to the concerned Minister of School Education that there are complaints against the applicant by several women and that there is a ACB matter pending against the applicant, he be transferred. It is stated in the minutes of meeting that enquiry is required to be conducted in the complaint received against the applicant and thus to avoid any further obstacles in the said enquiry, the applicant is recommended to be transferred.

22. In a case of **Balasaheb Vitthalrao Tidke Vs. the State of Maharashtra & Anr. in Writ Petition No. 8987/2018** relied upon by learned counsel for the applicant,

the Hon'ble High Court of Bombay by order dated 12.12.2018 has disposed of the said Writ Petition. In the identical facts of the case, the Hon'ble High Court has observed as follows:-

2. In the order dated 3rd December, 2018, we have recorded the assurance of the State that it will be ensured that the process of transfers will not be influenced by the recommendations made by elected representatives of people and the Hon'ble Ministers who are not concerned with the process of transfers. In terms of the said statement, Mr. Dinesh Kumar Jain, the Chief Secretary of the Government of Maharashtra has filed an Affidavit. The Affidavit dated 12th December, 2018 is taken on record and marked 'A' for identification. Paras-1 and 2 of the said Affidavit reads thus :

“1. Submit that I am filing the present Affidavit for the limited purpose of stating that the process of transfer at the level of the Government will not be influenced by any recommendations made by any political leaders, members of political parties or any Hon'ble Ministers who are not part of the process of transfers.

2. I submit that all authorities who are competent to effect the transfers will be advised to strictly follow the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 while issuing transfer order.”

2. We accept the statements made in paragraphs-1 and 2 of the said affidavit quoted above as the Undertakings given on behalf of the State of Maharashtra. Now there is a clear assurance that all transfers will be effected strictly in accordance with the provisions of the said Act of 2005 and none of the transfers will now be influenced by the recommendations of the political leaders including the

Hon'ble Ministers (who are not a part of the process of transfers). We direct that the statements made in para-1 of the said Affidavit are brought to the notice of all the concerned who have to exercise powers of transfer under the said Act of 2015 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants.

23. In the instant case, the Hon'ble Minister, Revenue who is not concerned with the process of transfer in the Education Department has issued the said letter dated 02.02.2023 and requested the Minister School Education to transfer the applicant. It further appears from the minutes of meeting of Civil Services Board that without recording any reasons about the exceptional circumstances or special reasons for transfer of the applicant, the Civil Services Board has recommended the transfer of the applicant midterm and mid-tenure.

24. In view of same, the ratio laid down and the observations made in the aforesaid Writ Petition of the Hon'ble High Court of Bombay squarely applies to the facts and circumstances of the present case.

25. On careful perusal of the annexures submitted with the rejoinder affidavit it appears that certain complaints were received against the applicant from the Women teachers

when the applicant was working as BEO, Panchayat Samiti, Rahuri in the year 2015 and by report dated 17.01.2015 the District Mahila Takrar Nivaran Samiti, Ahmednagar who has conducted the enquiry in to the said allegations has given clean chit to the applicant. It is concluded in the said report that the applicant is not guilty in the said complaints and those complaints have been submitted by some women teachers against the applicant out of the grudge.

26. It is further pertinent to note that the same Minister, Revenue by letter dated 19.01.2022 (Annexure 'A-2') to Additional Chief Secretary of the School Education Department requested therein to take final decision on the basis of the report submitted by the Mahila Takrar Nivaran Samiti, Ahmednagar dated 17.01.2015 and close the complaint submitted against the applicant. The Hon'ble Minister, Revenue has also given reference to the Deputy Director (Administration) Education Commissionerate, Pune dated 06.09.2021 wherein Zilla Parishad, Ahmednagar has been directed to make the detailed enquiry in to the allegations made against the applicant and accordingly requested the Additional Chief Secretary of School Education to decide the complaints against the applicant on the basis of

report submitted by District Mahila Takrar Nivaran Samiti, Ahmednagar.

27. On perusal of the Annexure 'A-4' it appears that certain information was collected under the provisions of Right to Information Act on behalf of the applicant and it is informed by the Department that there are no complaints of women teachers from 01.09.2021 for giving the information under the said letter dated 06/17.04.2023. The applicant has also stated in his rejoinder that the said ACB case is pertaining to his tenure of posting at Beed and the said case is pending in the Special Court at Beed.

28. In view of above, it appears that the applicant came to be transferred midterm and mid-tenure by impugned order of transfer dated 21.03.2023 only on the basis of request letter submitted by the Hon'ble Minister, Revenue who has no concern with the transfer process of the Education Department. It is ridiculous that the same Minister, Revenue has recommended to close the cases against the applicant submitted by the women teacher on the basis of report dated 17.01.2015 by District Mahila Takrar Nivaran Samiti, Ahmednagar and further the same Hon'ble

Minister, Revenue by his another letter dated 02.02.2023 has requested Hon'ble Minister, School Education to transfer the applicant on account of the said complaints and ACB case.

29. In view of above, this Original Application deserved to be allowed. Hence, the following order:-

ORDER

- (A) The Original Application is hereby allowed.
- (B) The impugned order of transfer of the applicant dated 21.03.2023 (Annexure 'A-5') issued by respondent No.1 is hereby quashed and set aside,
- (C) The respondents are hereby directed to permit the applicant to discharge his duties attached to the post of Deputy Education Officer (Secondary) at Ahmednagar.
- (D) In the circumstances there shall be no order as to costs.
- (E) The Original Application is accordingly disposed of.

MEMBER (J)