

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 332 OF 2018

DISTRICT: - AURANGABAD.

Smt. Sangita d/o Sudhakarrao Solanke,

Age : - 49 years, Occu: Govt. Service,
Senior Clerk/Statistical Assistant,
O/o Child Development Project Officer,
Nagari Prakalp No. 3, Aurangabad,
R/o House No. 2, Forest Colony,
Opposite S.S.C. Board,
Station Road, Osmanpura,
Aurangabad, Dist. Aurangabad.

.. APPLICANT.

V E R S U S

- 1. The State of Maharashtra,**
Through : its Secretary,
Women & Child Development
Department, Mantralaya,
Mumbai-32.
- 2. The Commissioner,**
Women & Child Development,
Maharashtra State,
28, Ranicha Bag, PUNE-1
- 3. The Child Development Project Officer,**
Nagari Prakalp No. 3, Aurangabad,
District Aurangabad.
- 4. Smt. Sunita A. Pagare,**
Age Major, Occu: Service,
Senior Clerk in the office of
Child Development Project No. 1,
Aurangabad, Dist. Aurangabad.
- 5. Smt. Sushma R. Dhakne,**
Age Major, Occ: Service,
Senior Clerk in the office of

District Women Child Development
Officer, Aurangabad,
Dist. Aurangabad.

- 6. Shri G.I. Sayyad,**
Age Major, Occu: Service,
Senior Clerk in the office of
Child Development Project
Officer Nagari, Latur,
Dist. Latur.

.. RESPONDENTS

APPEARANCE : Shri Vivek G. Pingle – learned
Advocate for the applicant.

: Smt. M.S. Patni – learned Presenting
Officer for respondent Nos. 1 to 3.

: None appears for res. Nos. 4 & 5.

: Shri A.N. Raut - learned Advocate for
respondent No. 6 (**absent**).

CORAM : **HON'BLE SHRI B.P. PATIL,**
MEMBER (JUDICIAL)

DATE : **14TH DECEMBER, 2018**

ORDER

1. By filing the present Original Application, the applicant is challenging the impugned transfer order dated 31st May, 2018 issued by respondent No. 2, the Commissioner, Women & Child Development, M.S., Pune, transferring him from the office of Child Development

Project Officer, Urban Project No. 3, Aurangabad to Child Development Project Officer, Urban Project, Jalna.

2. The applicant was serving as a Senior Clerk in the office of Child Development Project Officer, Urban Project No. 3 at Aurangabad. She has completed her 6 years' tenure on the said post. She was due for transfer at the time of general transfers of the year 2018. As per the Government Resolution dated 9.4.2018 she had submitted her options for the transfer. It is her contention that as per the said G.R. the preference given by the employee has to be considered for the couple arrangement. It is her contention that her husband is a Government servant and he is working as a Clerk in the office of Deputy Conservator of Forest at Aurangabad from 07.06.2017. Therefore, she has requested to the respondents to transfer her at Aurangabad only. It is her contention that as per the guidelines given in the said G.R. the employees, who completed their tenure have to be transferred from the present posting. According to the applicant, the said guidelines have not been followed by the respondent No. 2 while considering the request of respondent Nos. 4 & 5

and they have been illegally retained at Aurangabad on the same post. It is her contention that the respondents had not considered her request and she has been transferred from Aurangabad to Jalna by the impugned order dated 31.5.2018. It is her contention that the impugned order is in contravention of the guidelines given in the G.R. dated 9.4.2018. The impugned order is a colourable exercise of powers and authority vested in respondent No. 1 and, therefore, it is illegal. It is her contention that because of the impugned order inconvenience is caused to her and her family and, therefore, she filed the present O.A. and prayed to quash and set aside the impugned transfer order.

3. The respondent Nos. 1 to 3 resisted the contentions of the applicant by filing their affidavit in reply. It is their contention that the applicant has completed her normal tenure at Aurangabad. It is their contention that as per the G.R. dated 9.4.2018 the Government employee who is due for transfer should submit maximum 10 preferences, but the applicant has failed to submit 10 preferences and she had given only 3 preferences at Aurangabad only. It is

their contention that the post of Senior Clerk was not vacant at Aurangabad. Therefore, she has been transferred to Jalna District, which is adjacent to Aurangabad and 60 Kms away from Aurangabad. They have denied that they have favoured the respondent Nos. 4 to 6 by retaining and giving them posting at Aurangabad. It is their contention that the respondent Nos. 4 & 5 have been retained at Aurangabad as they have not completed their normal tenure of posting. They joined the posting of Senior Clerk at Aurangabad in the year 2013 and they were not due for transfer. It is their contention that the respondent No. 6 has been transferred in place of the applicant at Aurangabad as per the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short 'the Transfer Act of 2005) and there is no illegality. It is their contention that as no post of Senior Clerk was vacant at the time of general transfers of the year 2018, the applicant had not been accommodated. It is their contention that the applicant has been relieved from the

office of respondent No. 3 i.e. Child Development Project Officer, Urban Project No. 3, Aurangabad on 06.06.2018 in view of the impugned order, but she has not joined in the office of Child Development Project Office, Jalna. The respondent No. 6 joined the office of Child Development Project Officer, Urban Project No. 3 at Aurangabad on 06.06.2018. It is their contention that the applicant has filed the present Original Application without joining her new posting and, therefore, they prayed to dismiss the present Original Application. It is their further contention that there is no illegality in the impugned order and hence, no interference in it is called for and, therefore, they prayed to dismiss the present Original Application.

4. I have heard Shri Vivek Pingle, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for respondent Nos. 1 to 3. Shri A.N. Raut, learned Advocate for respondent No. 6 (**absent**). None appears for respondent Nos. 4 & 5. I have perused application, affidavit, affidavit in reply. I have also perused the documents placed on record by both the parties.

5. Admittedly, the applicant was serving as a Senior Clerk in the office of Child Development Project Officer, Urban Project No. 3 at Aurangabad since 19.11.2011. Admittedly, she has completed her tenure of 6 years on the said post and she was due for transfer at the time of general transfers of the year 2018. There is no dispute about the fact that on 9.4.2018 the Government has issued the Government Resolution and issued guidelines to be followed while making general transfers of the employees. Admittedly, the applicant has submitted her preferences of the places where she has to be posted at the time of transfer with the respondents. In the said form she has given 3 preferences at Aurangabad only. Admittedly, the applicant has been transferred and posted at Jalna by the impugned order, as no post of Senior Clerk was vacant at Aurangabad.

6. Learned Advocate for the applicant has submitted that the respondent No. 1 had not followed the guidelines issued in the G.R. dated 9.4.2018 while making transfer of the applicant. He has submitted that husband of the applicant is serving at Aurangabad since the year 2017.

In view of the guidelines issued in the G.R., the Competent Transferring Authority has to consider the cases of the employees whose spouses are in service and to accommodate them at same place or nearby place as far as possible. He has submitted that the respondent Nos. 4 & 5 were also due for transfer and, therefore, their names have been incorporated in the list of the employees due for transfer, but respondent No. 1 has not transferred them and retained them at Aurangabad. The respondent transferred the applicant arbitrarily and, therefore, he prayed to quash and set aside the impugned transfer order.

7. Learned Presenting Officer has submitted that the applicant has completed her tenure at Aurangabad. She was due for transfer and, therefore, options / preferences of the places where she has to be transferred has been called from her. The applicant submitted her options and given 3 places of her choice at Aurangabad only. He has submitted that the respondent Nos. 4 & 5 have not completed their normal tenure at Aurangabad and they were not due for transfer and, therefore, they have not

been transferred by the respondent No. 1. Not only this, but no post of Senior Clerk was vacant and available at Aurangabad and, therefore, it was not possible to the respondent No. 1 to accommodate the applicant at Aurangabad as per the policy of the Government in respect of spouses in the employment. He has submitted that Jalna is adjacent district to Aurangabad district and, therefore, the respondent No. 1 transferred and posted the applicant at Jalna, which is nearest and convenient place to the applicant. He has submitted that the impugned order has been passed by the respondent No. 1 considering the guidelines given in the G.R. dated 9.4.2018 and there is no illegality in issuing the impugned order. Therefore, he justified the impugned order and prayed to reject the O.A.

8. On perusal of the record, it reveals that the applicant was due for transfer as she has completed her normal tenure at Aurangabad. When her options regarding places for transfer has been called, she has given 3 options at Aurangabad, but none of the post where the applicant has given option was vacant. The respondent Nos. 4 & 5 have

not completed their normal tenure at Aurangabad and, therefore, they were not transferred. It was not possible for the respondent No. 1 to accommodate the applicant at Aurangabad. Therefore, respondent No. 1 decided to transfer the applicant at Jalna, which is only 60 Kms away from Aurangabad. The applicant can conveniently visit her place of posting from Aurangabad also. Considering the short distance no inconvenience will be caused to the applicant due to her transfer at Jalna. There is nothing on record to show that the impugned order has been issued with malice and it is an arbitrary order. The impugned order is passed in accordance with the guidelines issued by the Government in G.R. dated 9.4.2018 and there is no illegality in the impugned transfer order. The respondent No. 6 has been transferred and posted in place of the applicant and, therefore, in my view there is no illegality in the said order also.

9. The applicant has been relieved from the office of respondent No. 3 i.e. Child Development Project Officer, Urban Project No. 3, Aurangabad on 06.06.2018 and the respondent No. 6 joined his new posting. The applicant

has not joined her new posting. It is her duty to obey the transfer order and to join her new posting before approaching this Tribunal for redressal of her grievance, but without reporting at the place of her new posting she filed the present O.A. The tendency of the applicant not to join new posting is against the service rules and, therefore, such tendency has to be curbed.

11. In view of the aforesaid discussion I find no illegality in the impugned transfer order as the same has been issued by the respondent No. 1 by following the provisions of Transfer Act of 2005 and, therefore, no interference is called for in the impugned transfer order. There is no merit in the present Original Application. Therefore the same deserves to be dismissed.

12. In view of the discussion in the aforesaid paragraphs, the present Original Application stands dismissed without any order as to costs.

PLACE : AURANGABAD
DATE : 14TH DECEMBER, 2018

(B.P. PATIL)
MEMBER (J)