

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.133 OF 2019

DISTRICT : NANDED

Balasaheb s/o. Ramrao Kundgir,
Age : 56 years, Occu. : Government Service
as Education Officer (Secondary),
Zilla Parishad Nanded, District Nanded.
R/O. Flat No.10,Arya Heights,
Sharda Nagar, Nanded,
Tq. & Dist. Nanded.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Additional Chief Secretary,
School Education and Sports Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Latur Region, Latur.
- 3) The Zilla Parishad, Nanded,
Dist. Nanded,
Through its Chief Executive Officer **...RESPONDENTS**

APPEARANCE :Shri Vitthal H. Dighe, Advocate for the
Applicant.

:Smt. Priya Bharaswadkar, Presenting
Officer for Respondent No.1 and 2.

:Shri T.S.Londhe Advocate holding for Smt.
Yogita Kshirsagar (Thorat) Advocate for
respondent no.3.

CORAM : **JUSTICE A. H. JOSHI, CHAIRMAN.**

DELIVERED ON : 08.07.2019.

ORDER

1. Heard Shri Vitthal H. Dighe learned Advocate for the Applicant, Smt. Priya Bharaswadkar, Presenting Officer for Respondent No.1 and 2 and Shri T.S.Londhe Advocate holding for Smt. Yogita Kshirsagar (Thorat) Advocate for respondent no.3. Perused the record.
2. Applicant has approached this Tribunal by challenging transfer order dated 8th February, 2019 (Annexure A-4, paper book page 26).
3. Case proceeds in following admitted background:
 - (a) The transfer order is mid-term and mid-tenure.
 - (b) Applicant was brought at present posting from Wardha by order dated 4th September, 2018.
 - (c) Departmental Enquiry was commenced against the applicant (paper book page 73-98).
 - (d) The charges pertain to the misconduct for the period 2013-2014.
 - (e) Allegations subject matter of charges are as regards illegality in approval of non-teaching staff resulting into liability to the State Government to the tune of Rs.2,00,00,000/- (Rs.Two crores only).

- (f) There are no allegations of imputations of tampering evidence or witnesses.
- (g) Transfer is being initiated on account of complaint by a senior citizen addressed to the Government in May, 2018.
- (h) Departmental Enquiry is going on at the hands of Regional Enquiry Officer, Aurangabad.
- (i) It is not alleged that the Departmental Enquiry is belated by the applicant or is belated at his behest.
- (j) There is nothing on record to show that any emergent ground noted or circumstance has cropped due to which mid-term transfer became necessary.
- (k) Affidavit in reply does not accompany documents to show the manner in which special reasons or circumstances were narrated in the office note which has led to approval of transfer. Copies whereof are on record.
- (l) In the background that Sections 4(4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 are not followed, transfer order is ex-facie contrary to law.

(m) Additional ground is of failure to refer the matter to the Civil Services Board and policy decision based thereon are product of judgment of Hon'ble Supreme Court rendered in T.S.R. Subramanian's case and policy decisions rendered by the Government of Maharashtra based on the judgment of Maharashtra based on the said judgment which have been consistently followed by this Tribunal in series of judgments which are obeyed as well as upheld by the Hon'ble High Court from time to time.

4. In the abovesaid background, conscious attempt of the respondent State in openly defying the dictum contained in the case of **T.S.R. Subramanian & Ors. V/s. Union of India & Ors. (Writ Petition (Civil) No.82/2011 with Writ Petition (Civil) No.234/2011 dated 31-10-2013)** case is nothing but open contempt of orders of Hon'ble Supreme Court, Hon'ble High Court as well as order passed by this Tribunal

5. The plea of the State that order is being based on the necessity and facts should not be interfered, is an argument to support the act of open contempt.

6. Nothing precluded the State Government for making out the case of overt acts on the part of the applicant and try to fit

case within the ambit of special reasons and exceptional circumstances.

7. Ground that the misconduct is being enquired into cannot be a ground for initiating mid-term transfer.

8. Moreover, proposal for misconduct in an unqualified way and as a prerogative and by taking exception to have all these matters considered by Civil Services Board is seen to have been pending for years and these facts ought to have been considered while reposting the applicant at Nanded.

9. Moreover, it is not the case of the Government that the applicant is in any manner responsible for suppression of the material which has now led to transfer at the time of giving him posting initially by order dated 4th September, 2018.

10. When the case was heard the Government was called upon to state as to whether it would elect to have transfer stayed till the coming general transfers and let it be acted thereupon.

11. The learned P.O. makes statement in reply to the query that she has received instructions from Shri Sushil Khodwekar, Deputy Secretary, School Education and Sports Department, Mantralaya, Mumbai who has informed her that since the

transfer is approved by Hon'ble the Chief Minister, it would not be open at the level of the department to concede to have transfer orders stayed till the coming general transfers of 31st May, 2020.

12. In the result, O.A. succeeds.

13. Impugned order dated 08-02-2019 is quashed and set aside in view of the fact that the applicant was not relieved and order of status quo was in operation. Same shall continue and no further orders are necessary.

14. In the facts and circumstances of the case, parties are directed to bear their own costs.

(A.H.JOSHI)
CHAIRMAN

Place : Aurangabad
Date : 08.07.2019.