

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 522 OF 2018

DISTRICT : PUNE

Mrs Pratiksha Sunil Sonawane)
Working as Assistant Superintendent,)
R/o : 425/83, Flat no. 5, T.M.V Colony,)
Mukundnagar, Pune 411 037.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Principal Secretary,)
Food, Civil Supplies and)
Consumer Protection Dept,)
Mantralaya, Mumbai 400 032.)

2. The President,)
State Consumer Disputes)
Redressal Commission,)
M.S, Old Administrative College)
Bldg, Room no. 1, 2, 5 & 6,)
Hajarimal Somani Road,)
Opp C.S.T, Mumbai 400 001.)

3. Smt Bharati Anil Joshi,)
Working as Assistant Superintendent,)
Office of Pune District Consumer)
Forum, New Administrative Bldg,)
Opp. Council Hall, Sadhu Vasvani)
Chowk, Pune 411 001.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents no 1 & 2.

Smt Bharati A. Joshi, Respondent no. 3 in person absent.

CORAM : **Shri Justice A.H Joshi (Chairman)**

RESERVED ON : **15.01.2019**

PRONOUNCED ON : **07.02.2019**

J U D G M E N T

1. Heard Smt Punam Mahajan, learned advocate for the Applicant, Shri A.J Chougule, learned Presenting Officer for the Respondents no 1 & 2 and Smt Bharati A. Joshi, Respondent no. 3 in person absent.

2. Applicant herein is an employee of the Government of Maharashtra appointed under the control of Food, Civil Supplies and Consumer Protection Department.

3. Applicant's services have been drafted or declared under the control of Respondent no.1.

4. Applicant who was serving as Assistant Superintendent under the control of Respondent no. 2 in the District Consumer Disputes Redressal Forum, Pune has been transferred on administrative grounds District Consumer Disputes Redressal Forum, Satara.

5. The impugned order is dated 11.5.2018.

6. Applicant has challenged the transfer order on the grounds averred in paras 6.11.2, 6.11.3, 6.11.5 and on facts that the transfer is made in order to accommodate Respondent no. 3.

7. The Original Application is opposed by the Respondents. It is not in dispute that the procedure as prescribed in Section 4(5) of the ROT Act, 2005 has not been followed.

8. Respondent no. 2 has raised a jurisdictional issue, namely that the State Consumer Disputes Redressal Commission being a Judicial Forum, the matters of transfer of employees under the control of judiciary do not lie within the ambit of the ROT Act, 2005.

9. Learned advocate for the applicant has tried to demonstrate that various transfer orders pertaining to the employees of Respondent no. 2 have been entertained by this Tribunal. Learned advocate for the applicant has placed reliance on certain documents in support of the same.

10. The fact that the employees of Food, Civil Supplies and Consumer Protection Department, who are under the control of the Government of Maharashtra, however, are on deputation with Respondent no. 2 have been transferred by the Government from one Forum to another Forum as well from Commission or Forum on repatriation to some post in the department.

11. Those were the transfers ordered by the State Government and Original Applications challenging such transfers are said to have been entertained by this Tribunal.

12. Whenever the transfers are ordered by a Judicial Forum within its own power and within the establishments under judicial control such exercise is independent of power of the State Government to transfer its employees though serving with Foreign Service – the State Commission or District Consumer Redressal Forum.

13. Scheme of ROT Act, 2005 is to exclude from application thereof the judicial administration which are to be free from Government

interference and indulgence, and to remain under sole control of judicial administration.

14. Ideally, the transfer of employees of Respondent no. 1 who may have been deployed at the disposal of Respondent no. 2, ought not unilaterally and without advice of consultation from Respondent no. 2 be transferred by the Government of Maharashtra. Else the Respondent no. 2 cannot exercise effective administrative authority, discipline and order amongst the staff. Once an employee is placed at the disposal of a Judicial authority, the Judicial authority has to have and ought to exercise total control of such employee, least the purpose of exclusion incorporated in the proviso to Sec 1(3) of ROT Act, 2005 would be rendered nugatory.

15. Therefore eventuality if any of transfers being ordered by the State Government in the past and those being entertained by this Tribunal will not ipso facto operate as a precedent whenever the matter of exclusion from the applicability due to the proviso to Sec 1(3) of the ROT Act, 2005, is brought to the notice of this Tribunal.

16. The question as to whether Transfer Act would apply to employees /Government servants working under the control of Respondents no. 2 was either not raised and/or was not adjudicated in any earlier proceedings.

17. Had the ROT Transfer Act, 2005, to apply to the order of Respondent no. 2, the Pandora box of applicability of all grounds and challenges to scrutinize the legality of transfer shall become open, however, in view of foregoing discussion the clause of exclusion would not permit this Tribunal to entertain the factual issue involved in the present case.

18. Hence present Original Application is considered to be a cause unavailable to the applicant before this Tribunal, to claim an illegality under the provisions of ROT Act, 2005.

19. Hence, Original Application is dismissed. Parties are directed to bear own costs.

(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 07.02.2019
Dictation taken by : A.K. Nair.

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