

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.530/2023

DISTRICT:- PARBHANI

Manjusha d/o. Malaiyya Mutha,
Age : 44 years, Occ : Service as Dy. Collector,
R/o. Harsool, Aurangabad. **...APPLICANT**

V E R S U S

The State of Maharashtra,
Through: The Additional Chief Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32. **...RESPONDENTS**

APPEARANCE :Shri Kakasaheb B. Jadhav, Counsel
for Applicant.

:Shri M.S.Mahajan, Chief Presenting
Officer for the respondents.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on: 11-10-2023.

O R A L O R D E R :

1. Heard Shri Kakasaheb B. Jadhav, learned Counsel for the applicant and Shri M.S.Mahajan, learned Chief Presenting Officer appearing for the respondent authorities.

2. Aggrieved by the order dated 04-05-2023 whereby the applicant has been transferred from Parbhani to Hingoli, the applicant has preferred the present O.A. It

is the grievance of the applicant that despite making request and representation seeking posting at Aurangabad or at nearby place in Aurangabad that too only for the present academic year, discarding the said request she has been transferred to Hingoli.

3. Learned Counsel for the applicant submitted that, in fact the applicant was not due for transfer from Parbhani as she had not completed the tenure of 3 years at the said place but the applicant herself prayed for her transfer at Aurangabad for this academic year for the reason that her elder daughter is taking education at Aurangabad in 12th standard. Learned Counsel submitted that prior to issuance of the impugned order of transfer, such request was made by the applicant and after issuance of the impugned order also the applicant has made representation seeking modification in her order of transfer.

4. Learned Counsel submitted that in the representation submitted by the applicant, she has stated the reason for seeking posting at Aurangabad. Learned Counsel submitted that elder daughter of the applicant is appearing for 12th standard examination this year and as

such the applicant intends to be at Aurangabad for the academic year 2023-2024. Learned Counsel pointed out that when the impugned order was issued, 5 to 6 posts were vacant at Aurangabad and the applicant could have been accommodated in any of the said post.

5. Learned Counsel pointed out that in the rejoinder affidavit filed by the applicant she has provided particulars of the modified transfer orders in respect of near about 25 officers who were transferred at the same time. Learned Counsel submitted that respondents have not provided any specific reason for not considering the request of the applicant while requests of all other officers have been considered by the respondents. Learned Counsel submitted that the conduct as is reflected of the respondents amounts to discriminatory treatment to the applicant. Learned Counsel submitted that in such circumstances judicial intervention is sought by the applicant. Learned Counsel submitted that the applicant is ready to give an undertaking to the respondents that after completion of the present academic year, she may be transferred at any other place than Aurangabad and she will not claim retention at Aurangabad. Learned Counsel

submitted that it is the earnest request of the applicant that considering the fact that her daughter is appearing for 12th standard examination which has vital importance in the life of every student that she be given posting on any equivalent vacant post at Aurangabad or at any nearby place.

6. Respondents have filed their affidavit in reply opposing the contentions raised in the O.A. and the prayers made therein. According to the respondents the applicant had completed the ordinary tenure on the post at Parbhani and was due for transfer. Learned CPO has brought to my notice that the Civil Services Board (CSB) has recommended the transfer of the applicant at Hingoli and accordingly the competent authority has issued the transfer order. Learned CPO further submitted that a Government employee cannot insist for posting at a particular place or post when admittedly the post on which the applicant is working is a transferrable post. Learned CPO submitted that while issuing the order of transfer of the applicant powers under section 4(4) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act,

2005 ("Transfer Act" for short) are invoked and thus the respondents have acted within their power and jurisdiction. He has, therefore, prayed for dismissal of the O.A.

7. I have duly considered the submissions made on behalf of the applicant as well as the respondents. In his arguments, learned Counsel appearing for the applicant has explained that the applicant is not opposing for her transfer from Parbhani though the ground has been taken in the O.A. that the period of 3 years was not completed when the order of transfer came to be issued. As has been submitted by the learned Counsel the grievance of the applicant is that when on a very genuine ground the applicant had requested the respondents to give her posting at Aurangabad or nearby Aurangabad on any vacant post on the ground that her daughter is taking education in 12th standard, the respondents must have considered the said request. Though respondents have invoked the powers under section 4(4) of the Transfer Act while issuing the impugned order of transfer, in the affidavit in reply the respondents have not disclosed any special reason or exceptional circumstances for

transferring the applicant at Hingoli. Nothing adverse has come on record against the applicant even through the affidavit in reply filed on behalf of the respondents. As submitted by her learned Counsel, the applicant is ready to submit an undertaking that she wants to be posted at Aurangabad or at nearby place in the Aurangabad district for the present academic year only. The submission, as has been made on behalf of the applicant demonstrates that the applicant is genuinely seeking her transfer at Aurangabad for the reason that her daughter is studying in 12th standard.

8. It has been brought on record by the applicant that, on requests of some officers, at least such 25 officers, their posting orders have been modified and they have been given posting at the places of their choice. In so far as the applicant is concerned, though she is stated to have been transferred by invoking powers under section 4(4) of the Transfer Act, no such special reason or exceptional circumstance has been brought on record by the respondents to justify the transfer of the applicant at Hingoli and for not considering her request for her posting at Aurangabad. It appears to me that, when transfer

guidelines provide that the Government employee whose ward is in 12th Standard can be retained for that academic year on that ground at existing place, unless there is some compelling reason, by applying the same principle, Government should have considered the request of the applicant to transfer her at Aurangabad for the current academic year.

9. In the present matter, admittedly, the applicant had made a request for her transfer at Aurangabad or nearby place on the aforesaid ground but the same has not been considered. As I have noted hereinabove, no special reasons are given for not considering request of the applicant. As pointed out by the learned Counsel for the applicant, presently also posts are available at Aurangabad where the applicant can be accommodated. In view of the fact that applicant is ready to submit an undertaking that she will not claim her retention if she is posted at Aurangabad beyond the academic year 2023-2024, it appears to me that the request so made by the applicant deserves to be considered by the respondents. In the circumstances, I deem it appropriate to dispose of the present O.A. with the following order:

ORDER

[i] Within 10 days from the date of this order, applicant shall furnish an undertaking before the competent authority that if posted at Aurangabad, she will not claim further retention at Aurangabad beyond the present academic year 2023-2024 and within 2 weeks thereafter the respondents shall consider the request and give her posting at any vacant post at Aurangabad or at nearby place in the Aurangabad district for the present academic year i.e. 2023-2024.

[ii] Such exercise is to be completed within 4 weeks from the date of this order.

[iii] O.A. stands disposed of in terms of the aforesaid order.

[iv] No order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 11.10.2023.