

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.624/2022
AND
ORIGINAL APPLICATION NO.625/2022**

DISTRICT:- AHMEDNAGAR

ORIGINAL APPLICATION NO.624/2022

Dhananjay Trimbak Mahajan,
Age : 52 years, Occu. : Head Clerk,
Assistant Registrar for Co-operative Societies,
Newasa, Tq. Newasa, Dist. Ahmednagar.
R/o. Aaroh, Nisarg Colony, Plot No.53,
Near Tagad Vasti, Pipeline Road, Savedi,
Ahmednagar, Tq. & Dist. Ahmednagar. **...APPLICANT**

V E R S U S

- 1) The Divisional Joint Registrar,
Co-operative Societies, Nasik Division,
Nasik, 3rd Floor, Gruha Nirman Bhavan,
Ram Ganesh Gadkari Chowk, Old Agra Highway,
Nasik, Dist. Nasik-422 002.
- 2) The Commissioner for Cooperation and
Registrar for Co-operative Society,
3rd Floor, New Central Building,
Behind Sasoon Hospital, Pune-411 001.
- 3) Assistant Registrar,
Co-operative Societies, Newasa,
Tq. Newasa, Dist. Ahmednagar....**RESPONDENTS**

ORIGINAL APPLICATION NO.625/2022

Anil Namdeo Lokhande,
Age : 50 years, Occu. : Head Clerk,
Assistant Registrar for Co-operative Societies,
Shevgaon, Tq. Shevgaon, Dist. Ahmednagar.
R/o. Lokhande Galli, Newasa,
Tq. Newas, Dist. Ahmednagar. **...APPLICANT**

V E R S U S

- 1) The Divisional Joint Registrar,
Co-operative Societies, Nasik Division,
Nasik, 3rd Floor, Gruha Nirman Bhavan,
Ram Ganesh Gadkari Chowk, Old Agra Highway,
Nasik, Dist. Nasik-422 002.
- 2) The Commissioner for Cooperation and
Registrar for Co-operative Society,
3rd Floor, New Central Building,
Behind Sasoon Hospital, Pune-411 001.
- 3) Assistant Registrar,
Co-operative Societies, Newasa,
Tq. Newasa, Dist. Ahmednagar....**RESPONDENTS**

APPEARANCE :Shri V.B.Wagh, Counsel for
Applicants in both O.As.

:Shri S.K.Shirse, Presenting Officer for
the respondents in O.A.624/2022.

:Shri N.U.Yadav, Presenting Officer for
the respondents in O.A.625/2022.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on : 28-04-2023.

C O M M O N O R D E R :

1. Heard Shri V.B.Wagh, learned Counsel for the
applicants, Shri S.K.Shirse and Shri N.U.Yadav, learned
Presenting Officers for the respondents in respective O.As.

2. Since both the matters are having identical facts, I have heard these matters together and I deem it appropriate to decide these applications by a common order.

3. Applicants have challenged the order dated 06-07-2022 whereby applicant Dhananjay Trimbak Mahajan in O.A.No.624/2022 has been transferred from Newasa to Kopargaon on the post of Shirestedar in the Co-operative Court at Kopargaon and applicant Anil Namdeo Lokhande in O.A.No.625/2022 has been transferred from Shevgaon to Shrirampur as the Shirestedar in the Co-operative Court at Shrirampur. It is the common grievance of both the applicants that both of them have been transferred in utter violation of the provisions under the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("the Transfer Act" for short) and the guidelines time to time issued vide Circulars and Government Resolutions (G.Rs.) in that regard.

4. It is the further contention of the applicants that the list of the candidates due for transfer was published on 05-04-2022 and in the said list names of these applicants

were not included. As further contended in the applications on 20-05-2022, meeting of the Civil Services Board (CSB) took place, however, in the said meeting also the CSB did not recommend the transfer of the applicants. It is the further contention that on 27-05-2022, General Administration Department (GAD) though has passed G.R. imposing band on the transfers of the Government employees till 30-06-2022, the applicants have been transferred. It is further contended that the orders of their transfer issued on 06-07-2022 are violative of the provisions under section 3, 4(4)(ii) and 4(5) of the Transfer Act.

5. It is further contended that the transfers made of the applicants are mid-term and mid-tenure. It has also been alleged by the applicants that there are certain officers in the cadre in which the applicants fall, who are at one station for more period than the applicants, have not been considered for transfer and are retained at their respective places. According to the applicants, discriminative practices are thus adopted by the respondents.

6. Contentions raised in the O.A. are opposed by the respondents in their affidavit in reply. Respondent nos.1

and 2 have jointly filed affidavit in reply. Respondents have denied the objections raised and allegations made by the applicants in their O.A. Respondents have contended that posts of Shirestedar in the Co-operative Court at Shrirampur and Co-operative Court were vacant and were required to be immediately filled having regard to the nature of work and responsibilities of the officers working on the said post. It is further contended that the respondents have duly followed the procedure prescribed for effecting transfer of these applicants.

7. It is contended that in the meeting of the CSB held on 13-04-2022, the issue as about the vacancies in the Co-operative Court at Shrirampur and Kopargaon was discussed and a decision was taken to immediately fill in the said posts and in the circumstances invoking the provisions under section 4(4)(i) of the Transfer Act, the transfer of both the applicants are directed. It is further contended that the competent authorities have approved the transfers of the applicants. On the aforesaid grounds the respondents have prayed for dismissal of both the applications.

8. Shri Wagh, learned Counsel appearing for the applicants in both these matters argued that the present is the case of clear discrimination and he therefore invited my attention to the list of the employees due for transfer filed by the applicants along with their rejoinder at paper book page 41. Learned Counsel submitted that perusal of the said list would reveal that the officers who had spent more years at one place than the applicants, were retained and the applicants have been subjected to transfer. Learned Counsel further argued that the mandatory procedure as has been prescribed under the Transfer Act and the Circulars and G.R. dated 09-04-2018 have not been followed while effecting transfer of the applicants. Learned Counsel submitted that the options were not invited from the applicants, counseling also did not take place and without complying with the aforesaid mandatory requirements, the applicants have been transferred.

9. Learned Counsel further submitted that in so far as the cadre of Senior Clerks in Co-operation Department is concerned falls under the Nasik Region and as such the common seniority list is to be prepared of all the districts falling under the Nasik Revenue Division. Learned

Counsel submitted that in absence of any such list prepared by respondents it cannot be ascertained as to which of the employees in the other districts in the Nashik region are at their respective stations beyond the ordinary tenure and why they are not transferred. Learned Counsel submitted that for violation of all the aforesaid requirements, transfers of both these applicants require to be quashed and set aside.

10. Learned P.Os. appearing for the respondents in respective O.As. submitted that while effecting transfers of these applicants, the procedure prescribed has been scrupulously followed. Learned P.Os. submitted that the transfers of these applicants are made invoking the powers under Section 4(4)(i) of the Transfer Act. Learned Counsel reading out the aforesaid provision submitted that for making such transfers, the norms are bit different and all those norms are also followed. Learned P.Os. submitted that in so far as the general transfers are concerned, respondents are following the procedure in those matters also and for annual general transfers, the practice of inviting options and counseling is being duly followed. Learned P.Os. submitted that in so far as the transfers of

the present applicants under section 4(4)(i) of the Transfer Act is concerned there is no requirement of seeking options from the applicants or for their counseling.

11. Learned P.Os. further submitted that in the meeting of the CSB held on 13-04-2022, issue as about the vacant posts in the Co-operative Court at Shrirampur and Co-operative Court at Kopargaon was thoroughly discussed and decision was taken to transfer applicants on the post of Shirestedar lying vacant at both the said places and accordingly the applicants were transferred at the respective places. Learned Counsel pointed out that in the G.R. dated 09-04-2018 itself it has been mentioned that the transfers which are effected because of the administrative exigency or for filling in any vacant post, the procedure of inviting options from the employees concerned or their counseling is exempted.

12. Learned P.Os. further pointed out that in the minutes of the meeting held of the CSB which are filed on record by the respondents at Exhibit R-3, it has been elaborately discussed as to who can be appointed on the post of Shirestedar in the Co-operative Court and the norms which are fixed for such appointments. Learned P.Os. pointed

out that the guidelines prescribed for filling in the post of Shirestedar in Co-operative Court, envisage that the person to be appointed on the said post shall be as far as possible from the adjoining or nearest taluka. It is also mentioned that the employees who fall in the category of differently abled persons are not to be considered for such appointment. The employees who are at the verge of retirement are also not to be considered for such appointment. Learned P.O. submitted that by applying all such norms the names of the applicants were recommended by the CSB for their transfer at the respective places and accordingly the order dated 06-07-2022 was issued.

13. Learned P.Os. submitted that since the respondents have not violated any provision under the Transfer Act, Circulars or G.Rs. in that regard, the O.A. be dismissed.

14. I have duly considered the submissions advanced on behalf of the applicants and the respondent authorities. I have also gone through the documents filed on record. From the documents it is quite evident that the transfers of both the applicants are effected by invoking the provision under section 4(4)(i) of the Transfer Act. I deem it

appropriate to reproduce the relevant portion of the said provision which reads thus:

“4.(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;”

15. It is not in dispute that at the relevant time the posts of Shirestedar in the Co-operative Court at Shrirampur and Co-operative Court at Kopergaon had become vacant and were required to be filled in having regard to the nature of work to be performed by the Shirestedar in the said Courts. The decision to recommend the names of the present applicants for their transfer on their respective posts was taken in the meeting of the Civil Services Board held on 13-04-2022. Minutes of the said meeting are placed on record by the respondents along with their affidavit in reply at Exhibit R-3 (paper book page 39 to 45). Certain norms were fixed by the Civil Services Board for filling in the posts of Shirestedar in the Co-operative Court

at Kopargaon and Co-operative Court at Shrirampur, which are at paper book page 40. I deem it appropriate to reproduce the said norms hereinbelow which are thus:

“सहकार न्यायालय, कोपरगाव व श्रीरामपुर येथील शिरस्तेदार हा पदे भरणेसाठी खालील बाबी प्रामुख्याने विचारात घेण्याचे नागरा सेवा मंडळाने बैठकात निश्चित केले.

1) अराजपत्रित गट-क संवगातील शिरस्तेदार यांचा एकाच पदावरील सलग कालावधी हा बदला अर्धिनियमातील कलम 3 (1) मधील तरतुदा नुसार सदर कमचा-याने धारण केलेल्या पदावर दोन पूण पदावधी सेवा पूण केल्यानंतर (सामान्य कालावधी 3 वष प्रमाणे) त्यांची त्या कार्यालयातून अन्य तालुक्यात / कार्यालयात बदला करावी. तथापी कलम 5 मधील तरतुदा नुसार कलम 3 मध्ये किंवा या कलमामध्ये काहाहा अंतभुत असले तराहा, विशेष प्रकरणात, सक्षम प्राधिका-याला, कारणे लेखी नमुद करुन कलम 6 च्या तक्त्यामध्ये उल्लेखलेल्या लगतपूव बदला करणा-या सक्षम प्राधिका-यांची पूव परवानगी घेऊन शासकाय कमचा-यांची, त्यांचा पदावधी पूरण होण्यापूवा बदला करता येईल. अशी तरतुद असल्याने दोन पदावधी पूण झाल्याची बाब विचारात न घेता संगणकाचे ज्ञान असणाऱ्या निष्णांत कमचाऱ्यांची बदलासाठी शिफारस करणे.

2) सहकार न्यायालयातील शिरस्तेदार हे पद भरतांना शक्यतो नजिकच्या तालुक्यातील आणि संबधीत कमचा -यांची गैरसोय होणार नाहा, यांचा विचार करणे.

3) ज्या कमचाऱ्यांचे दिव्यांगत्वाचे प्रमाण अधिक आहेत त्यांचा सहकार न्यायालयातील बदलासाठी विचार न करणे तसेच जे कमचारा नजिक काळात सेवानिवृत्त होत आहे त्यांचा देखील सहकार न्यायालयातील बदलासाठी विचार न करणे.

4) अहमदनगर जिल्ह्यातील ज्या कार्यालयात सहकार अधिकारा श्रेणी-2 / मुख्य लिपीक या संवगात 02 पेक्षा जास्त कमचारा

कायरत आहे, त्या कार्यालयातील एक सेवा ज्येष्ठ असलेल्या कमचाऱ्यांचा सहकार न्यायालयातील शिरस्तेदार या पदासाठी विचार करणे.

5) सहकार न्यायालयातील पदे रिक्त राहिल्यास न्यायालयाचे कामकाज ठप्प झाल्यानंतर सदर पदे भरणेसाठी मा. न्यायाधीश यांचे कडून सातत्याने पाठपुरावा करण्यात येतो ही बाब विचारात घेता, नागरी सेवा मंडळाच्या बैठकात शिरस्तेदार ही पदे भरणेसाठी निणय घेऊन मा. सहकार आयुक्त व निबंधक, सहकारी संस्था, महाराष्ट्र राज्य, पुणे यांचे मान्यतेनंतरच सदर बदल्या करणे.”

16. Minutes of the meeting of CSB further reveal that having regard to the norms which were fixed as aforesaid, the names of the officers working in the cadre of Co-operative Officer Grade-II/ Head Clerk/ Shirestedar in the Ahmednagar district were only considered and out of the said officers, present applicants were recommended for their transfers respectively at the Co-operative Courts at Shrirampur and Kopargaon. Having regard to the decision taken by the Civil Services Board and the norms laid down for the said appointments, objection as has been raised by the learned Counsel appearing for the applicants that the officers even from the Nasik District were also liable to be considered for such appointment, loses its significance.

17. It has also been contended on behalf of the applicant that the procedure of inviting options and counseling has

not been followed before making the transfers of the applicants. The objection so raised also cannot be sustained for the reason that in the G.R. dated 09-04-2018 itself the transfers to be made other than the annual general transfers and because of the administrative exigency, are exempted from such procedure.

18. The another objection that the applicants have not completed the ordinary tenure as provided under section 3(i) of the Transfer Act and hence could not have been transferred is concerned, section 4(5) of the Transfer Act authorizes the competent authorities to make transfers of the employees under them before completion of their tenures on the post in special cases after recording reasons in writing and with the prior approval of the superior transferring authority. If the minutes of the meeting held of CSB on 13-04-2022 are concerned, it becomes clear that the transfers of the applicants are made by invoking the provisions under section 4(4)(i) and 4(5) of the Transfer Act. In the circumstances, the objections as about the transfer before completion of the tenure also cannot be sustained. The Government has acted within its limits while making transfers of both the applicants.

19. Another objection which has been raised pertains to favoritism and discrimination. During the course of his arguments learned Counsel for the applicants has alleged that though several officers in the same cadre were available, instead of transferring them the respondents chose the present applicants. In order to buttress his allegation the learned Counsel referred to the list of the officers falling in the cadre of Co-operative Officer Grade-II/ Head Clerk/ Shirestedar/ Accountant/ Quality Supervisor etc. in the district of Ahmednagar, which is filed on record by the respondents along with their affidavit in reply and which forms part of the minutes of the meeting of the CSB held on 13-04-2022. Learned Counsel submitted that perusal of the aforesaid list and the particulars provided of the officers in the said list in the tabular format would show that though there are officers working at one and the same place for more period than the applicants were available, instead of transferring them respondents have chosen the applicants and they have been accordingly transferred.

20. I have carefully perused the said list and the information in the tabular format. Said list contains the

names of 21 officers in the cadre of Head Clerk and Co-operative Officer Grade-II. The name of applicant Anil Lokhande is at Sr. No.3 in the said list whereas the name of applicant Dhananjay Trimbak Mahajan is at Sr.No.7. Though certain officers appear to have spent more period than the applicants on one and the same post in the remark column the reason for not considering the said candidates for their transfer are recorded. It is revealed that names of the said candidates have not been considered for the following reasons:

- [i] some of them have not completed the normal tenure of 3 years;
- [ii] some were on the verge of retirement,
- [iii] some were physically disabled, and
- [iv] some were not considered having regard to the responsibilities held by the said officers at their present respective posts.

21. After having carefully perused the said information, it is difficult to agree with the allegations made by the applicants that they have been given discriminatory treatment and that some candidates have been unduly favoured. The information in the tabular format carries

remark against the name of each of the officer whether he was eligible to be transferred or not. The applicants have failed in making out any case of discrimination from out of the said chart.

22. After having considered the facts as aforesaid, no substance is found in the objections raised and allegations made by the applicants in their respective O.As. After having gone through the documentary information placed on record by the respondents along with their affidavit in reply, I am satisfied that the respondents have not adopted any discriminatory practice. It has to be stated that in the matters of transfers the Courts or Tribunals are not supposed to cause indulgence unless the mala fides are noticed in making such transfers or if the Tribunal or Court reaches to the conclusion that it was an arbitrary exercise of power by the competent authority or transferring authority. Third reason which may permit or require indulgence of the Tribunal or Court if transfers are made in utter violation of the rules made in that regard or norms laid down concerning the said rules vide G.Rs. or Circulars.

23. In the instant matter, it is noticed that the procedure required has been duly followed and only thereafter the transfers have been made of the present applicants. I, therefore, see no reason for causing any interference in the orders impugned in these O.As. In the result, following order is passed:

ORDER

Original Application No.624/2022 & 625/2022 are dismissed, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 28.04.2023.