

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1275/2023 (S.B.)**

Prakash Saundaji Aghavpatil,

Aged about 53 years, Occupation : Service,

R/o Gondia, Tahsil & District Gondia.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Food,  
Civil Supply and Consumer Protection,  
Mantralaya, Mumbai- 400 032.
- 2) The District Collector, Gondia.
- 3) Shri Deorao Krushnarao Wankhede,  
District Supply Officer,  
Office of the Collector,  
Camp Area, Amravati.
- 4) State of Maharashtra,  
Through the Principal Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai.

**Respondents**

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**Shri M.G.Bhangde, Sr. Id. counsel & Shri G.K.Bhusari, Id. counsel for  
the applicant.**

**Shri S.A.Sainis, Id. P.O. for the respondents 1 & 2.**

**Shri V.B.Gawali, Id. counsel for the R-3.**

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**Coram :- Hon'ble Shri M.A.Lovekar, Member (J).**

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**JUDGMENT**

**Judgment is reserved on 19<sup>th</sup> Jan., 2024.**

**Judgment is pronounced on 29<sup>th</sup> Jan., 2024.**

Heard Shri M.G.Bhangde, Sr. Id. counsel & Shri G.K.Bhusari, Id. counsel for the applicant, Shri S.A.Sainis, Id. P.O. for the respondents 1 & 2 and Shri V.B.Gawali, Id. counsel for the R-3.

2. By the impugned order dated 01.12.2023 (A-1) respondent no. 3 who was holding the post of District Supply Officer, was transferred, on request, before completion of his term, from Amravati to Gondia, and the applicant who was holding the latter post, was repatriated to his parent department i.e. Revenue and Forest Department. Before being deputed as District Supply Officer, Gondia by order dated 11.04.2023 (A-2) the applicant was placed under suspension on account of registration of an offence against him, and by order dated 11.04.2023 his suspension was revoked.

3. The applicant has challenged order dated 01.12.2023 on following grounds:-

A. This order was passed only to accommodate respondent no. 3 who is politically well connected.

B. There was no recommendation/approval from Civil Services Board as mandated by G.R. dated 31.12.2014 (A-6).

C. Transfer of respondent no. 3 could have been considered favourably only on the post which was vacant, as per G.R. dated 08.04.2018 (A-7). In this case respondent no. 3 was transferred on the post which was held by the applicant and which was not vacant.

D. The applicant was deputed to hold the post of District Supply Officer, Gondia by order dated 11.04.2023 and he was to join on the post by 13.04.2023. He joined on 13.04.2023. As per G.R. dated 17.12.2016 (A-9) the applicant could not have been repatriated before completion of service of one year on the reputed post.

4. The respondent no. 1 opposed the O.A. on the following grounds:-

A. Respondent no. 3 is employee of Food/Civil Supplies and Consumer Protection Department in the cadre of District

Supply Officer. The applicant is employee of Revenue and Forest Department in the cadre of Deputy Collector. While deputing the applicant to hold the post of District Supply Officer, clause (c) of Recruitment Rules framed by Notification dated 27.03.2023 (at PP. 75 to 78) was not followed. It reads as under:-

*4. Appointment to the post of District Supply Officer or Foodgrain Distribution Officer, Group-A under the Department shall be made either:-*

*(a) XXX*

*(b) XXX*

*(c) by deputation of a suitable officer holding the equivalent post only if the eligible candidate for promotion is not available. The appointment by deputation shall be made in accordance with all the terms and conditions of the deputation policy of the General Administration Department. The appointment by deputation shall not be allowed more than fifteen percent of the sanctioned post.*

B. Case of respondent no. 3 for transfer was placed before Civil Services Board and approval was duly accorded as can be seen from minutes of meeting (A-R-4).

C. The applicant could have been repatriated at any time as per Rule 40 (4) of the Maharashtra Civil Services (Joining

Time, Foreign Service & Payments during Suspension,

Dismissal & Removal) Rules, 1981 which reads as under:-

*(4) Transfer of a Government servant to foreign service should be made on the standard terms and conditions as in Appendix II. No departure from the prescribed terms and conditions shall be permissible.*

Appendix II, while dealing with deputation, lays down:-

*(1) Government/competent authority reserves the right to recall him any time before expiry of the period of deputation, if his services are required by Government in the interest of public service;*

This legal position is reiterated in **State of Maharashtra &**

**Ors. Vs. Ajeet Baburao Pawar 2001 (1) Mh.L.J. 563 which is as follows:-**

*Rule 40(4) of the MCS Rules 1981 states that transfer of a Government Servant to a foreign service should be made on the standard terms & conditions, as in Appendix II and no departure from the prescribed terms and conditions shall be permissible. The standard terms and conditions of transfer of a Government Servant to a foreign service have been set out in Appendix II to the said Rules and Clause I of the said conditions states that the Government/Competent Authority reserves the right to recall him at any time before expiry of period of deputation if his services are required by the Government in the interest of public service.*

5. According to the applicant there was no recommendation from Civil Services Board, as mandated by G.R. dated 31.01.2014 (A-6) for transfer of respondent no. 3. Relevant clause of the G.R. i.e. Clause 3.7 reads thus:-

पदस्थापनेसाठीच्या प्रस्तावावर नागरी सेवा मंडळाकडून शिफारस झाल्यावर, शिफारशीनुसार प्रस्ताव प्रशासकीय विभागाने सक्षम प्राधिका-यास आणि प्रादेशिक विभागप्रमुखांनी विभागप्रमुख यांना मान्यतेसाठी सादर करावा. त्यावर अंतिम निर्णय सक्षम प्राधिकार्याकडून घेण्यात येईल.

This contention of the applicant is sought to be refuted by respondent no. 1 by relying on contents of A-R-4 paras 4 & 5 of which read as under:-

४. मा. श्री विनोद अग्रवाल, वि.स.स. गोंदिया यांची विनंती तरोच मा. मुख्यमंत्री महोदय व मा. मंत्री अनापु व ग्रासं यांचे निर्देश विचारात घेता, श्री देवराव कृष्णराव वानखेडे, जिल्हा पुरवठा अधिकारी, अमरावती यांची जिल्हा पुरवठा अधिकारी, गोंदिया या रिक्त पदी विनंती बदली करण्याकरिता प्रथम शासन सेवेतील गट-अ व गट-ब (राजपत्रित) च्या अधिका-यांच्या पदस्थापना, बदली यासंदर्भात शासन निर्णय दि.११.०५.२०१५ अन्वये स्थापन केलेल्या नागरी सेवा मंडळ (१) ची बैठक आयोजित करणे आवश्यक आहे. जिल्हा पुरवठा अधिकारी, गोंदिया हे पद सद्यस्थिती रिक्त आहे. यास्तव, नागरी सेवा मंडळाची बैठक आयोजित करण्याऐवजी चक्रीय पद्धतीने मान्यता घेऊन शासनाच्या मान्यतेसाठी प्रस्ताव सादर करणे उचित राहिल.

५. वरील परिच्छेद क्र.३ व ४ मध्ये नमुद केलेली वस्तुस्थिती विचारात घेता, नागरी सेवा मंडळाची चक्रीय पद्धतीने मान्यता घेऊन श्री देवराव कृष्णराव वानखेडे, जिल्हा पुरवठा अधिकारी, अमरावती यांची जिल्हा पुरवठा अधिकारी, गोंदिया या रिक्त पदी विनंती बदलीने पदस्थापना करण्याबाबतचा प्रस्ताव शासनाच्या मान्यतेस्तव सादर. मान्य झाल्यास त्याप्रमाणे आदेश निर्गमित करण्यात येतील.

Last sentence of para 4 quoted above falsifies stand of respondent no. 1 that for transfer of respondent no. 3 recommendation was made by Civil Services Board. This was clearly in breach of G.R. dated 31.01.2014. There is one more aspect which may be adverted to. Proposal to transfer respondent no. 3 was signed on 20.03.2023 and

28.03.2023. This proposal expressly states that the post on which transfer of respondent no. 3 was recommended was vacant. Correctness of this statement is borne out by record. Thereafter, by order dated 11.04.2023 (A-2) the applicant was deputed to join on the post of District Supply Officer, Gondia by 13.04.2023 and he joined on the post on 13.04.2023 (P. 24). However, as per proposal signed on 20.03.2023 and 28.03.2023 which stated that post of District Supply Officer, Gondia was vacant, approval for transfer of respondent no. 3 was accorded only on 25.04.2023 i.e. after the applicant had already joined on the post of District Supply Officer, Gondia on 13.04.2023 by virtue of order of deputation dated 11.04.2023.

6. One more ground strenuously urged by the applicant is that he could not have been repatriated to his parent department before completion of service of one year on the deputed post. To support this submission reliance was placed on following Clauses of G.R. dated 17.12.2016 (A-9):-

प्रतिनियुक्तीने कार्यरत अधिकारी / कर्मचाऱ्याची सेवा लोकहिताच्या दृष्टीने मूळ प्रशासकीय विभाग / कार्यालयास आवश्यक असल्यास, विहित कालावधी संपण्यापूर्वी परंतु किमान एक वर्षाचा कालावधी पूर्ण झाल्यावरच त्यांच्या / तिच्या सेवा परत घेण्याचा अधिकार नियुक्ती प्राधिकाऱ्यास (प्रशासकीय विभाग / कार्यालयास) राहिल.

To counter this submission, as mentioned above, respondent no. 1 relied on Rule 40 (4) of the Maharashtra Civil Services (Joining Time, Foreign Service & Payments during Suspension, Dismissal & Removal) Rules, 1981 and Appendix II which are quoted above. Undoubtedly, Appointing Authority reserves the right to recall deputed employee before expiry of period of deputation if his services are required by Government in the interest of public service. Therefore, this submission of the applicant cannot be accepted.

7. As to what would be the effect of want of recommendation from Civil Services Board for transfer, reliance may be placed on the following observations made in Judgment dated 20.02.2020 in O.A. No. 668/2019 by Principal Bench of this Tribunal:-

*7. Indeed, in view of the decision of Hon'ble Supreme Court in **T.S.R. Subramanian's case**, it was mandatory on the part of Respondent No.1 to place the matter before CSB which was also under obligation to consider the report of Charity Commissioner and to make appropriate recommendation. It is not mere formality but requires the consideration of the issues involved in the matter, with an application of mind which cannot be bypassed or circumvented in this manner. It is rather really astonishing that the Law & Judiciary Department comes with such a stand of no requirement of placing the matter before CSB. Needless to mention that Law & Judiciary Department is supposed to know niceties of law and indeed it is entrusted with duties to render legal advice to the Government but in this matter acted in a manner which is in defiance of mandate of direction of Hon'ble Supreme Court.*

*9. It would not be out of place to mention here that in deference to law laid down by the Hon'ble Supreme Court, the State of Maharashtra had issued the G.R. dated 31.01.2014 to constitute the CSB at all levels. Despite this position, this Tribunal noticed non observance of the*



directions given by the Hon'ble Supreme Court in **T.S.R. Subramanian's** case (supra) in O.A. No.770/2017 decided on 09.11.2017 expressing serious displeasure. Thereafter, the then Hon'ble Chief Minister had also issued Circular for the observance of mandatory requirement of placing the matter before the CSB.

11. It may be noted here that Chief Secretary, State of Maharashtra had also issued advisory letter dated 01.03.2018 to the secretarial staff of the Hon'ble Chief Minister and other Hon'ble Minister's offices for observance of the mandate contained in the judgment of **T.S.R. Subramanian's** case(supra).

12. Suffice to say, despite the aforesaid position, no meeting of CSB was convened and without placing the issue before CSB, the transfer order has been issued with approval of Hon'ble Chief Minister. Even if the transfer is approved by the highest competent transferring authority as contemplated under Section 4(5) of 'Act 2005', the approval by the Hon'ble Chief Minister does not wipe out material illegality of want of recommendation as the case may be, by the CSB though mandatory in view of dicta of the Hon'ble Supreme Court in **T.S.R. Subramanian's** case (supra) as well as various G.Rs. and the Circulars issued by the Government itself.

14. At this juncture, it would be apposite to note the decision rendered by Hon'ble Chairman in **O.A.614/2017 (Prmod Sawakhande V/s State of Maharashtra, decided on 27.03.2018)** wherein O.A. was allowed on the ground of non placing the matter of transfer before CSB. In Para Nos.42 and 43 of the judgment, it has been held as under:-

"42. In so far as requirement of reference to Civil Services Board is concerned those are reiterated by this Tribunal in the judgment of this Tribunal rendered in O.A.No.770 of 2017 with reference to **T.S.R. Subramanian's case.**

43. The manner in which reply is prepared / drafted / filed by the Under Secretary, Deputy Secretary and Principal Secretary leads to creation of an impression that these officers have divorced themselves from their primary allegiance and loyalty towards law. In the pleadings, the State has failed to explain as to how G.R. क्र. एसआरव्ही-२०१४/ मुस-३४/प्र.क्र.३७९/१२, dated 11.02.2015, which unambiguously states that reference to Civil Services Board shall be mandatory in view of **T.S.R. Subramanian's case (supra)**, can be ignored or neglected without being disrespectful to the dictum laid down by the Hon'ble Supreme Court. It is amazing as to how these officers wield courage to deny the mandatory requirement of placing the matter of transfer before Civil Services Board, by disregarding the judgment of the Hon'ble Supreme

*Court, and judgment of this Tribunal, and prefer to abdicate to wishes of executives higher in hierarchy."*

*15. In this view of the matter, there is no escape from the conclusion that impugned transfer order being in blatant violation of binding precedent of the judgment of Hon'ble Supreme court in **T.S.R. Subramanian'** case(supra) for not referring the matter before CSB renders the impugned transfer order clearly unsustainable in law.*

8. In the instant case order of transfer of respondent no. 3 cannot be sustained in view of legal position discussed above. As a consequence of order of transfer of respondent no. 3 order of repatriation of the applicant was passed. Since the former order is held to be unsustainable, the latter order, too, will have to be quashed and set aside. Hence, the order:-

### **ORDER**

- A. The O.A. is allowed.
- B. The impugned order dated 01.12.2023 (A-1) is quashed and set aside.
- C. Respondent no. 1 shall pass orders necessitated by this judgment, **within three weeks from today.**
- D. No order as to costs.

**Member (J)**

**Dated :-29/01/2024**  
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 29/01/2024  
and pronounced on

Uploaded on : 30/01/2024