

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1330/2023 (S.B.)**

Dr. Asmita Nivrutti Jagzape,  
@ Asmita Sandeep Ramteke,  
Aged about 49 years,  
Occ. Service, R/o Pratap Nagar, Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through it's Secretary,  
Animal Husbandry,  
Dairy & Fisheries Department,  
Mantralaya, Mumbai- 400 032.
- 2) Commissioner of Animal Husbandry,  
Maharashtra State, Central Building,  
Opposite Spicer College,  
Aundh, Pune - 411 007.
- 3) Regional Joint Commissioner,  
Animal Husbandry, Civil Lines,  
Nagpur- 440 001.
- 4) District Deputy Commissioner,  
Animal Husbandry, Naginabag,  
Chorkhidki, Chandrapur.

**Respondents**

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**Shri G.G.Bade, Id. Advocate for the applicant.**

**Shri A.M.Khadatkar, Id. P.O. for the respondents.**

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

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**JUDGMENT**

**Judgment is reserved on 15<sup>th</sup> Feb., 2024.**

**Judgment is pronounced on 21<sup>st</sup> Feb., 2024.**

Heard Shri G.G.Bade, ld. counsel for the applicant and Shri A.M.Khadatkar, ld. P.O. for the Respondents.

2. The applicant holds the post of Assistant Commissioner, Animal Husbandry. By the impugned order dated 12.05.2023 (A-1) she is transferred from Nagbhid, District Chandrapur to Mul, District Chandrapur. She made various representations for reconsidering the impugned order primarily on the ground that her daughter is suffering from Cerebral Palsy. She filed O.A. No. 975/2023 before this Bench which was disposed of by order dated 23.08.2023 (A-6) by directing respondent no. 1 to decide her representation dated 10.08.2023 within 15 days, and not to take any coercive action against her pursuant to notices dated 07.08.2023 and 17.08.2023 till the representation was decided. By communication dated 20.11.2023 (A-7) the applicant was informed that Civil Services Board, in its meeting dated 21.08.2023 had taken a decision not to modify the impugned order of transfer. On 24.11.2023 the applicant again made a representation (A-13) that

considering the fact that her daughter was suffering from Cerebral Palsy, and considering her previous postings she be posted at Nagpur. In her rejoinder the applicant has stated that she can be accommodated on the vacant post at Taluka Mini Veterinary Polyclinic, Kalmeshwar, Dist. Nagpur. By communication dated 14.02.2024 this Tribunal was informed that post at Kalmeshwar (on which the applicant can be accomodated) is vacant.

3. Stand of respondents 1 & 2 is as follows:-

अ) डॉ. अस्मिता निवृत्ती जगझापे, सहायक आयुक्त पशुसंवर्धन यांच्या दि. १०/०८/२०२३ रोजीच्या निवेदनाच्या अनुषंगाने मा. न्यायाधिकरणाचे उक्त आदेश प्राप्त होण्यापूर्वी दि. २१/०८/२०२३ रोजी आयोजित नागरी सेवा मंडळाच्या बैठकीमध्ये विचार विनिमय करण्यात आला असून, पशुसंवर्धन विभागातील सहायक आयुक्त पशुसंवर्धन व पशुधन विकास अधिकाऱ्यांच्या विनंती बदली अर्जावर सध्यस्थितीत राज्यात उद्भवलेल्या लम्पी चर्मरोग प्रादुर्भावाच्या पार्श्वभूमीवर त्यांच्या पदस्थापनेत बदल करण्याची आवश्यकता नसल्याची शिफारस करण्यात आलेली आहे.

ब) डॉ. जगझापे यांनी दि. १०/०८/२०२३ रोजीच्या निवेदनाद्वारे दि. १२/०९/२०२३ रोजीच्या बदली आदेशामध्ये सुधारणा करून, विभागीय रोग अन्वेषण प्रयोगशाळा, नागपूर अथवा तालपसचि कळमेश्वर, जिल्हा नागपूर येथे पदस्थापना करण्याची विनंती केलेली आहे. वरील पदांपैकी विभागीय रोग अन्वेषण प्रयोगशाळा येथील पदाकरिता विशेष शैक्षणिक अर्हतान्वये पदस्थापना करणेबाबत शासन निर्णय दि. ०९/०२/२०२३ नूसार (MVSc. in microbiology/ parasitology pathology) अशी शैक्षणिक अर्हता निश्चित केलेली आहे. डॉ. जगझापे यांची शैक्षणिक अर्हता (MVSc. in Dairy Cattle Production) अशी असल्याने त्या विभागीय रोग अन्वेषण प्रयोगशाळा येथील पदाकरिता पात्र ठरत नाहीत.

क) अर्जदार डॉ. जगझापे यांच्या मुलीच्या सेरेब्रल पाल्सी आजाराबाबत साप्रवि, शासन निर्णय दि. ०९/०४/२०१८ मधील तरतुदीनुसार प्राधान्याने (विकल्पानुसार) बदली करण्याची अट नमूद केलेली

आहे. या अनुषंगाने निदर्शनास आणण्यात येते की, शासन निर्णय दि. ०९/०४/२०१८ मधील मुद्दा क्र. १ अन्वये सदर धोरण हे राज्य शासनातील गट-अ संवर्गातील राजपत्रित संवर्गातील अधिकारी यांना वगळून लागू करण्यात आल्याने सदर धोरणातील तरतुदी अर्जदाराच्या प्रकरणी लागू होत नाहीत.

ड) तसेच अर्जदाराने नक्षलग्रस्त भागात काम केल्यामुळे शासन निर्णय दि. ०६/०८/२००२ च्याआधारे बिगर आदिवासी/नक्षलग्रस्त भागात पदस्थापना मिळण्याची विनंती केलेली आहे. या अनुषंगाने नमूद करण्यात येते की, डॉ जगझापे यांनी त्यांच्या सेवा कालावधीमध्ये गडचिरोली जिल्ह्यामध्ये सन २०१२ ते २०१६ मध्ये काम केले आहे. मात्र त्यानंतर त्यांची पदस्थापना दि. १३/०२/२०१६ ते दि. १५/०६/२०१९ दरम्यान त्यांचे विनंतीच्या अनुषंगाने तालपसचि कळमेश्वर जि. नागपुर येथे करण्यात आली होती.

4. The applicant has relied on judgment dated 15.12.2023 passed by Principal Bench of this Tribunal in O.A. No. 868/2023. In this judgment it is held:-

*2. 'The Rights of Persons with Disabilities Act, 2016' contains various provisions relating to 'Service Conditions' of Government Servants which have to be implemented by the 'Appropriate Government'. So, in the case of Central Government it is done by Department of Personnel and Training while in the case of State Government it has to be done by G.A.D. However, G.A.D. thus far has displayed indolent attitude towards implementation of many provisions relating to 'Service Conditions' of Government Servants under 'The Rights of Person with Disabilities Act, 2016' especially about framing of policy guidelines relating to (i) 'Section 2(h) - 'Discrimination', (ii) 'Section 2(y) - 'Reasonable Accommodation'. Additionally, in respect of 'Section 20(3)' which requires every establishment of 'Appropriate Government' to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to the employees with disability; and in respect of 'Section 20(5)' which specifically directs 'Appropriate Government' to frame policies for posting and transfer of employees with disability, appreciable initiatives are yet to be taken by G.A.D..*

*4. The G.A.D. by now was expected to have atleast adopted policy guidelines similar to those framed by 'Government Of India's,*

*Department of Personnel and Training vide Memorandum F.No.42011/3/2014-Estt (Res) dated 08.10.2018' as they are appreciably progressive; having exempted Government Servants of the Central Government who are 'Care-givers' of their dependent Daughter/ Son/ Parents/Spouse/Brother/ Sister with 'Specified Disability' under 'Section 2' of 'Right of Person with Disabilities Act, 2016' from the routine exercise of 'Transfer & Rotational Transfer' subject to 'Administrative Constraints'.*

*5. The G.A.D. therefore needs to move with alacrity to provide similar exemptions to Government Servants of the State Government who are 'Care Givers' under 'Section 2(d)' from routine exercise of 'Transfer' & 'Deputation' etc. subject to 'Administrative Constants'. The G.A.D. G.R. dated 09.04.2018 under its 'Annexure-2' of 'Schedule-1' mentions the order of precedence be given to Government Servant at the time of transfers and 'Care Givers' are placed at Sr. No.2. However, Government Servants who are 'Care Givers' under 'Section 2(d)' are not yet exempted from annual rounds of 'Transfer and Deputations'. Further even 'Maharashtra Government Allotment of Revenue Divisions for appoint by nomination and promotion to the posts in Group A and Group B (Gazetted and Non-Gazetted) Rules, 2021', it has been stated that exemption would be granted to only those Government Servants whose child was 'Mentally Retarded'. Inaction, thus far on the part of State Government to frame policy guidelines which are more progressive has left such Government Servants who are 'Care Givers' with little option but to seek legal redressal of their grievances under of 'Section 19' of 'The Administrative Tribunal Act of 1985'.*

In the judgment dated 15.12.2023 the parent department of the applicant was inclined to redress grievance of the applicant but G.A.D. was not so inclined. In the instant case the parent department has resisted the O.A. on the grounds which cannot be discarded at the threshold. Therefore, it would be proper that the employer of the applicant takes a decision afresh in respect of modification of impugned order of transfer.

5. In view of facts of the case and aforequoted observations in O.A. No. 868/2023 respondent no. 1 is directed to reconsider, within three weeks from today, posting the applicant on the vacant post at Kalmeshwar. Respondent no. 1 shall take into account *inter alia* provisions of **The Rights of Persons with Disabilities Act, 2016** and observations made by **Principal Bench of this Tribunal in judgment dated 15.12.2023**. The decision shall be communicated to the applicant forthwith. With these directions, **O.A. is disposed of with no order as to costs.**

**Member (J)**

**Dated :- 21/02/2024**  
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 : 21/02/2024  
and pronounced on

Uploaded on : 22/02/2024