

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 136/2024 (S.B.)

Dr. Prashant Lalitrao Patil,
Aged about 60 years, Occ. Service,
R/o B1, HIG, MHADA, Sugat Nagar,
Nari Ring Road, Nagpur – 440 014.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Principal Secretary,
Medical Education and Drugs Department,
GT Hospital Campus,
Mumbai- 400 001.
- 2) The Commissioner,
Directorate of Medical Education and Research,
St. George Hospital Campus,
Mumbai – 400 001.
- 3) Dean Government Medical College & Hospital,
Medical Square, Nagpur.
- 4) Maharashtra Public Service Commission,
Through its Chairman,
Trishool Gold Field,
Plot No. 34, In front of Sarovarvihar Sector 11,
CBD Belapur, New Mumbai, Fort – 400 614.
- 5) Dr. Milind Suryakant Vyawahare,
Aged about 52 years, Occ. Service,
R/o Plot No. 28, Suryamala Dattaraya Nagar,
Near Datta Mandir,
Nagpur – 440 024.
(who has joined in place of the applicant)

Respondents

Shri S.Wahane, Id. Advocate for the applicant.

Shri S.A.Deo, Id. C.P.O. for the respondents 1 to 4.

Shri R.Joshi, Id. counsel for the respondent no. 5.

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

JUDGMENT

Judgment is reserved on 08th April, 2024.

Judgment is pronounced on 12th April, 2024.

Heard Shri S.Wahane, Id. counsel for the applicant, Shri S.A.Deo, Id. C.P.O. for the respondents 1 to 4 and Shri R.Joshi, Id. counsel for the respondent no. 5.

2. Case of the applicant, in short, is as follows. The applicant is Professor of Medicine. By order dated 30.09.2020 he was transferred from G.M.C., Gondia to G.M.C.H., Nagpur. By the impugned order dated 09.02.2024 (A-1) he has been transferred to G.M.C., Ratnagiri. It was a mid-term transfer. By another order (A-2) passed on the same day respondent no. 5 was transferred and posted at G.M.C.H., Nagpur. The impugned order was passed mala fide only to accommodate respondent no. 5 who has been working in G.M.C.H., Nagpur since the year 2009 on different posts. Respondent no. 5 is brother-in-law of Shri Sudhir

Mungantiwar, Hon'ble Cabinet Minister in the Government of Maharashtra. The impugned order on the one hand states that it was passed on complaint and on the other hand it states that it was passed on administrative ground. These two grounds cannot be reconciled with each other. Respondent no. 5 belongs to Open Category. His name could not have been recommended for the post of Professor (Medicine) in G.M.C.H., Nagpur which is ear-marked for E.W.S.. Mohan Gopalrao Mate, M.L.A. from South Nagpur who belongs to the B.J.P. had given a letter to respondent no. 1 to accommodate respondent no. 5 in G.M.C.H., Nagpur as can be gathered from contents of letter dated 03/2023 (A-7). The applicant had made a complaint of insubordination (A-13) against respondent no. 5 on 25.01.2022. Respondent no. 5 joined on the post of Professor (Medicine) in G.M.C.H., Nagpur without waiting for the applicant to take over charge from him. For all these reasons the impugned order cannot be sustained.

3. Stand of respondents 1 to 3 is as follows. While passing the impugned order provisions of Section 4 (4) (2) and (4) (5) of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter "Transfer Act, 2005" for short) were scrupulously followed. Regarding

complaint made against the applicant preliminary inquiry was conducted, initiation of departmental inquiry against him was proposed, Civil Services Board considered his case and recommended his transfer to a newly opened G.M.C. at Ratnagiri, to which approval was accorded by the higher authority. The applicant has not assailed order of transfer of respondent no. 5 (A-2). The aforestated complaint against the applicant was about death of a patient. To inquire into the complaint a committee was formed. Preliminary inquiry conducted by the committee indicted the applicant and two other doctors. Vide communication dated 19.08.2018 immediate suspension of the applicant was recommended. By communication dated 10.01.2024 (A-R-1) D.M.E.R. also recommended initiation of departmental inquiry against the applicant. Civil Services Board considered case of the applicant in its meeting dated 18.01.2024 minutes of which are at A-R-2. The Board recommended transfer of the applicant to G.M.C., Ratnagiri to which the higher authority accorded approval. The higher authority also accorded approval to transfer of respondent no. 5 as per recommendation of Civil Services Board (A-R-3). For all these reasons the O.A. is liable to be dismissed.

4. Stand of respondent no. 5 is as follows. The applicant was due for transfer. Out of his service period of 31 years the applicant has

served at Nagpur for more than 24 years. He has been running a Private Clinic at Nagpur. The impugned order was passed as per recommendation of Civil Services Board which considered the fact that in the preliminary inquiry the applicant was indicted and initiation of departmental inquiry against him was proposed. In Legislative Assembly, in December, 2022 members of opposition had raised an issue regarding death of a patient and the Local M.L.A. within whose constituency G.M.C.H., Nagpur situates took the matter further. Thus, allegation of malafides is completely unfounded. These allegations cannot be gone into because the persons against whom they are made are not arrayed as party respondents. Members of Civil Services Board who recommended transfer of the applicant are also not made party respondents. These flaws will go against the applicant. For all these reasons the impugned order cannot be interfered with.

5. Section 4 of the Transfer Act reads as under:-

4. Tenure of Transfer.

(1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.

(2) The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.

(3) Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the

table under section 6 shall be finalised by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be :

Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

(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 ;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.

(5) Notwithstanding anything contained in section 3 of this section, the competent authority may, in special cases, after recording reasons in writing and with the prior [approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.

6. The applicant seeks to rely on letter dated 31.03.2023 (A-8) whereby certain information was furnished by respondent no. 3 to respondent no. 2. As per this information, regarding death of one Vaishnavi Bageshwar inquiry was conducted against the applicant and no charge was laid against him.

7. To counter contents of letter dated 31.03.2023 respondents 1 to 3 have relied on communication dated 10.01.2024 (A-R-1) made by respondent no. 2 to respondent no. 1. This communication states :-

शासनाचे संदर्भकित पत्रान्वये डॉ. प्रशांत पाटील, प्राध्यापक, औषधवैद्यकशास्त्र यांचा शासकीय वैद्यकीय महाविद्यालय, नागपूर येथे कुमारी वैष्णवी बागेश्वर यांच्या दि.१७.०९.२०२२ रोजी झालेल्या मृत्युबाबत सहभाग आहे किंवा कसे याबाबतचे स्वयंस्पष्ट अभिप्राय तसेच फुलाबाई कमल सिक्का या रुग्णाचा औषधवैद्यकशास्त्र विभागातील वॉर्ड क्र.४ येथे झालेल्या मृत्युसंदर्भातचा स्वयंस्पष्ट अभिप्राय सादर करण्याचे निर्देश देण्यात आले आहेत.

त्यानुषंगाने खालीलप्रमाणे सादर करण्यात येत आहे.

१. कुमारी वैष्णवी बागेश्वर यांच्या दि.१७.०९.२०२२ रोजी झालेल्या मृत्युबाबत स्थानिक स्तरावरून डॉ. दिप्ती चाँद प्राध्यापक व विभागप्रमुख यांच्या अध्यक्षतेखालील चौकशी चौकशी समितीच्या अहवालामधील निष्कर्षामध्ये अ.क्र.५ वर पथक प्रमुख व विभाग प्रमुख औषधवैद्यकशास्त्र, शा.वै.म.नागपूर यांनी वेळोवेळी सुचित करूनही कार्यालयामार्फत यंत्र सामुग्रीचा देखभाल व दुरस्ती झालेली दिसत नाही असे उल्लेखित करण्यात आले आहे. तसेच चौकशी समितीने सुचविलेल्या शिफारशीमधील मुद्दा क्र.६ मध्ये पुढील प्रमाणे शिफारस केली आहे. "असे जाणवते की संस्था प्रमुख किंवा विभाग प्रमुख यांचे मार्फत कुठलाही स्वयंस्पष्ट मार्गदर्शक सुचना नसल्याने अशी दुर्दैवी परिस्थिती निर्माण झालेली आहे. भविष्यात अशी परिस्थिती पुनश्चः उदभवू नये याकरिता रुग्ण खाटांचे व व्हेटिलेटरचे योग्य नियोजन करण्यासाठी लिखित स्वरूपात सुचना तथा खाटा व व्हेटिलेटर व्यवस्थापक व त्यांची चमू ही २४x७ उपलब्ध असायला हवी." त्यावेळी औषधवैद्यकशास्त्र विभागाचे प्रमुख म्हणून डॉ. प्रशांत पाटील हे कार्यरत होते. त्यामुळे विभागप्रमुख म्हणून डॉ. प्रशांत पाटील यांनी आपल्या पदाची सक्षमपणे कर्तव्य व जबाबदारी पाड पाडल्याचे दिसून येत नाही. त्यामुळे महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९८९ च्या नियम क्र. ३ (१) (दोन) व (तीन) चा भंग केला आहे. सबब डॉ. प्रशांत पाटील, प्राध्यापक, औषधवैद्यकशास्त्र यांचा शासकीय वैद्यकीय महाविद्यालय, नागपूर येथील कार्यरत कालावधी ३ वर्षांपेक्षा जास्त होत असल्याने त्यांची इतरत्र रिक्त पदावर बदली करण्यात यावी तसेच त्यांचेविरुद्ध विभागीय चौकशी प्रस्तावित करण्याची संचालनालय शिफारस करीत आहे.

२. शासन पत्र दि. ०३.०७.२०२३ मध्ये नमुद मुद्दा क्र. २ नुसार शासकीय वैद्यकीय महाविद्यालय व रुग्णालय, गोंदिया येथे मयत फुलाबाई कमल सिक्का यांचे मृत्यु संदर्भात चौकशी समितीने सादर केलेल्या अहवालाच्या अनुषंगाने संचालनालयाचे पत्र दि. १९.०९.२०१८ व दि. २६.०२.२०१९ अन्वये यापूर्वीच अभिप्राय सादर केलेले

आहेत. सदर पत्रांची प्रत पुनश्च शासनास माहिती व पुढील कार्यवाहीस्तव सादर करण्यात येत आहे.

8. This was followed by meeting of Civil Services Board. It was held on 18.01.2024. The Board recommended as follows:-

उपरोक्त वस्तुस्थिती विचारात घेऊन डॉ. प्रशांत पाटील, प्राध्यापक, औषधवैद्यकशास्त्र, शासकीय वैद्यकीय महाविद्यालय, नागपूर यांची बदली करण्यासाठी खालीलप्रमाणे शिफारस करण्याचा निर्णय नागरी सेवा मंडळाच्या दि.१८.०१.२०२४ रोजीच्या बैठकीत घेण्यात आला आहे.

अ) शासकीय वैद्यकीय महाविद्यालय, नागपूर येथे औषधवैद्यकशास्त्र विभागाचे विभागप्रमुख म्हणून काम पाहताना डॉ. प्रशांत पाटील, प्राध्यापक यांनी आपल्या पदाची सक्षपणे कर्तव्ये व जबाबदारी पार पाडली नाही. तसेच कुंवर तिलकसिंह सामान्य रुग्णालय, गोंदिया येथील औषधवैद्यकशास्त्र विभागातील घटनेबाबत गठीत द्वि-सदस्यीय चौकशी समितीने दोषी अधिकारी डॉ. प्रशांत पाटील, प्राध्यापक यांच्यावर कठोर कार्यवाही करून त्यांना गंभीर शिक्षा देण्याची अभिप्राय दिले आहेत.

ब) शासकीय वैद्यकीय महाविद्यालय, नागपूर येथील औषधवैद्यकशास्त्र विभागातील रुग्णालयीन व शैक्षणिक कामकाज सुरळीत पुर्वपदावर आणण्याकरीता डॉ. प्रशांत पाटील, प्राध्यापक, औषधवैद्यकशास्त्र याची बदली करणे आवश्यक आहे.

राष्ट्रीय आयुर्विज्ञान परिषदेच्या मानकांनुसार नवनिर्मिती शासकीय वैद्यकीय महाविद्यालय, रत्नागिरी येथील प्राध्यापक, औषधवैद्यकशास्त्र हे रिक्त पद भरणेची आवश्यकता तसेच विद्यार्थी व रुग्णहित विचारात घेवून, महाराष्ट्र शासकीय कर्मचाऱ्यांच्या बदल्याचे विनियमन आणि शासकीय कर्तव्य पार पाडताना होणाऱ्या विलंबास प्रतिबंध अधिनियम, २००५ मधील नियम ४ (४) (दोन) व ४(५) मधील तरतूदीनुसार डॉ. प्रशांत पाटील यांची शासकीय वैद्यकीय महाविद्यालय, नागपूर येथून शासकीय वैद्यकीय महाविद्यालय, रत्नागिरी येथील प्राध्यापक, औषधवैद्यकशास्त्र या पदावर बदली करण्यात यावी.

9. It is a matter of record that to this recommendation as well as to the recommendation to transfer respondent no. 5, approval was accorded by the Hon'ble Chief Minister.

10. Thus, the documents attached to their reply by respondents 1 to 3 (Annexures R-1, R-2 & R-3) establish that the impugned order was passed in view of indictment of the applicant who was proposed to be dealt with departmentally, and by scrupulously following Section 4 of the Transfer Act.

11. The applicant has relied on **judgment of this Bench dated 25.03.2022 in O.A. No. 20/2022 (Ashish S/o Murlidhar Raut Vs. State of Maharashtra & One Another)**. In this case, on facts, transfer of the applicant was found to be punitive in nature, no preliminary inquiry was conducted to ascertain whether there was *prima facie* substance in the complaint made against the applicant, and initiation of departmental inquiry against the applicant was not even contemplated. It was further found on facts that the complaint made against the applicant by one M.L.A. and a Minister did not contain any specific allegation against him. On all these grounds the impugned order of transfer was held to be unsustainable.

12. The applicant has further relied on judgment of Principal Bench of this Tribunal dated 04.08.2023 in **O.A. No. 691/2023 (Shri Ajit Vasant Kurhade Vs. State of Maharashtra & one Another)**. In this case, on facts it was found that there was a gross deviation from the provisions of the Transfer Act, as well as the practice and procedure of law. In para 17 of the judgment the Bench referred to these conclusions.

13. The applicant has also relied on judgment of the **Hon'ble Bombay High Court dated 12.12.2018 in W.P. No. 8987/2018 (Balasaheb Vitthalrao Tidke Vs. State of Maharashtra & Another)**. In this case there were more than one recommendation of transfer made by the same Hon'ble Minister. Before the Hon'ble Bombay High Court clear assurance was given by the Government that all transfers (validity of which was questioned) will be effected strictly in accordance with the provisions of the Transfer Act, and none of the transfers will now be influenced by the recommendations of the political leaders including the Hon'ble Minister (who were not a part of the process of transfer).

14. The applicant has further relied on judgment of the **Bombay High Court dated 25.07.2011 in W.P. No. 2665/2011 (Pradip Kumar S/o Kothiram Deshbhratar Vs. State of Maharashtra & 4 Ors.)** wherein the discussion was summed up as follows:-

24. In this situation, we find that the transfer of the petitioner is not in the interest of administration and not by respondent nos. 2 or 3 but because of interference of the President of Zilla Parishad, It is not after obtaining requisite prior approval as contemplated by Section 4 (5) of the above mentioned 2005 Act. In view of this, it is necessary for us to consider the judgment of the Hon'ble Apex Court reported in the case of *E.P. Royappa vrs. State of Tamil Nadu*, AIR 1974 SC 555 relied upon by the learned counsel for respondent nos. 2 and 3 to demonstrate what is legally understood to be mala fide. The Division Bench judgment of this Court reported in the case of *State of Maharashtra vrs. Ashok Ramchandra Kore and another*, 2009 (4) Mh.L.J. 163 takes a view that High Court cannot substitute its opinion for that of the competent authorities of the State Government. It appears that it was the case of midterm transfer treated as special case u/s 4 (5) of 2005 Act and lacunae noticed in the work of first respondent by the Secretary and remarks made by the concerned Hon'ble Minister provided sufficient reasons to Division Bench of this Court to accept it as special case. Here, as we have noticed above, the note put up for consultation and for approval before Hon'ble Minister itself is defective and does not make out any legal ground for treating it as special case.

15. The applicant has also relied on judgment of the **Bombay High Court dated 24.07.2015 in W.P. No. 2212/2015 (Jitendra S/o Mahadeo Kekan Vs. State of Maharashtra & 3 Ors.)** wherein it is held:-

11. We find that the learned Tribunal has totally misdirected itself. The learned Tribunal has held that since the corrigendum and the original transfer orders were issued on the same day, no illegality could be found in the impugned order and it cannot be held that the impugned corrigendum was issued at the instance of the Hon'ble Member of Legislative Assembly. The learned Tribunal has failed to take into consideration the larger legal issue of acting under dictates. Secondly, we find that the impugned judgment and order passed by the learned Tribunal, so also the corrigendum issued by the respondent no.2 at the instance of respondent no.1 are not sustainable in law. In the result, the petition is allowed in terms of prayer clauses (b) (c) and (e).

12. At this stage Shri Wathore prays for stay to our order. Taking into consideration the seriousness of the matter and the manner in which the State Government has abused its power, we refuse the prayer.

16. The applicant has also relied on judgment of the **Hon'ble Supreme Court - Somesh Tiwari Vs. Union of India & Ors. (2009) 2 SCC 592** wherein it is observed:-

An order of transfer is an administrative order. Transfer, which is ordinarily an incident of service should not be interfered with, save in cases where interalia malafides on the part of the authority is proved. Malafides are of two kinds - first, malice in fact and second, malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane to passing of an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in an anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of, or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. No vigilance enquiry was initiated against appellant. Transfer order was passed on material which was non-existent. The order suffers not only from non-application of mind but also suffers from malice in law.

17. All the rulings sought to be relied upon by the applicant are distinguishable on facts. In the instant case complaint was made against the applicant. It was inquired into. The inquiry indicted the applicant. Departmental inquiry against him was proposed. There was no deviation from any of the provisions of the Transfer Act. The applicant was also due for transfer.

18. The applicant has also alleged malafides. According to him, the impugned order was passed primarily to accommodate respondent no. 5 whose brother-in-law is a Cabinet Minister in the Government of

Maharashtra. It was argued by Shri R.Joshi, ld. counsel for the respondent no. 5 that allegation of malafides are required to be satisfactorily proved by the person who makes them. In support of this submission respondent no. 5 has relied on the following observations made in **“Ratnagiri Gas and Power Private Limited Vs. RDS Projects Limited & Ors. (2013) 1 SCC 524”**:-

We may point out that allegations of malafides are more easily made than proved. The law casts a heavy burden on the person alleging malafides to prove the same on the basis of facts that are either admitted or satisfactorily established and/or logical inferences deducible from the same. This is particularly so when the petitioner alleges malice in fact in which event it is obligatory for the person making any such allegation to furnish particulars that would prove malafides on the part of the decision maker.

We may also refer to the decision of this Court in Ajit Kumar Nag Vs. Indian Oil Corpn. Ltd., where the Court declared that allegations of malafides need proof of high degree and that an administrative action is presumed to be bonafide unless the contrary is satisfactorily established. The Court observed: (SCC P. 790, para 56)

56. It is well settled that the burden of proving mala fide is on the person making the allegations and the burden is “very heavy”. (vide E.P. Royappa v. State of T.N.) There is every presumption in favour of the administration that the power has been exercised bonafide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J. stated in Gulam Mustafa v. State of Maharashtra (SCC p. 802, para 2): “It (mala fide) is the last refuge of a losing litigant.”

There is yet another aspect which cannot be ignored. As and when allegations of malafides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned. It is important to remember that a judicial

pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. Courts have, therefore, to be slow in drawing conclusions when it comes to holding allegations of malafides to be proved and only in cases where based on the material placed before the Court or facts that are admitted leading to inevitable inferences supporting the charge of malafides that the Court should record a finding in the process ensuring that while it does so, it also hears the person who was likely to be affected by such a finding.

It is true that in the writ petitions the petitioners used words such as "mala fide", "corruption" and "corrupt practice" but the use of such words is not enough. What is necessary is to give full particulars of such allegations and to set out the material facts specifying the particular person against whom such allegations are made so that he may have an opportunity of controverting such allegations. The requirement of law is not satisfied insofar as the pleadings in the present case are concerned and in the absence of necessary particulars and material facts, we fail to see how the learned Judge could come to a finding that the State Government was guilty of factual malafides, corruption and underhand dealing."

19. Respondent no. 5 has further relied on **Rajneesh Khajuria Vs. Wockhardt Limited & Another (2020) 3 SCC 86** wherein it is observed:-

The allegation in the complaint is that the transfer was actuated for the reason that the employee had raised voice against removal of Shri Khare from the venue of a Conference. The officers present in the said Conference were the Regional Manager or Sales Manager, whereas order of transfer was passed by Mr Suresh Srinivasan, General Manager-HR. It is an admitted fact that there is power of transfer with the employer. The allegations are against the persons present in the Conference but there is no allegation against the person who has passed the order of transfer. None of the named persons including the person present in the Conference have been impleaded as parties to rebut such allegations. Since the order of transfer is in terms of the letter of appointment, therefore, the mere fact that the employee was transferred will per se not make it mala fide. The allegations of malafides are easier to levy than to prove.

20. Respondent no. 5 has also relied on **Mohd. Masood Ahmad Vs. State of U.P. & Ors. (2007) 8 SCC 150** wherein it is held:-

Learned counsel for the appellant submitted that the impugned transfer order of the appellant from Muzaffarnagar to Mawana, District Meerut was made at the instance of an MLA. On the other hand, it has been stated in the counter-affidavit filed on behalf of Respondents 1 and 2 that the appellant has been transferred due to complaints against him. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order.

21. Respondent no. 5 has also relied on **Pubi Lombi Vs. State of Arunachal Pradesh & Ors. 2024 SCC Online SC 279** wherein it is observed:-

15. In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in absence of (i) pleadings regarding malafide, (ii) non-joining the person against whom allegation are made, (iii) violation of any statutory provision (iv) the allegation of the transfer being detrimental to the employee who is holding a transferrable post, judicial interference is not warranted. In the sequel of the said settled norms, the scope of judicial review is not permissible by the Courts in exercising of the jurisdiction under Article 226 of the Constitution of India.

16. On examining the facts of the present case, it is apparent that respondent No. 5 herein was transferred from the Government Higher Secondary School (GHSS) Kanubari, Longding district to Leparada as Deputy Director of School Education (DDSE) vide order dated 15.11.2022 and was directed to join in the last part of April, 2023. The UO Note dated 28.02.2023 has been written by the MLA specifying the administrative exigency and public interest in posting the appellant on the post of DDSE,

Leparada. The said UO Note has been examined and competent authority has exercised its discretion in favour of the appellant, and the respondent No. 5 herein has been retained on the same post in the same district in same status which he was holding prior to order of transfer dated 15.11.2022 un-affecting his salary. Besides, it is also averred by the State that the modified order dated 20.04.2023 was passed prior to effective period during which respondent no. 5 was directed to join i.e., in the last part of April, 2023.

22. Rulings of Mohd Masood & Pubi Lombi (Supra) fully support contention of respondent no. 5 that no exception could have been taken to the local M.L.A. raising the issue of complaint against the applicant and pursuing the matter to ensure that necessary steps were taken against him.

23. The applicant has failed in establishing malafides. The Hon'ble Cabinet Minister and the Local M.L.A. who are alleged to have played a role in transfer of the applicant thereby paving the way for suitable transfer of respondent no. 5, are not made party respondents. Further, there are no allegations of malafides against the members of Civil Services Board who recommended the transfers.

24. Respondents 1 to 3 have relied on **Yogesh Pratap Singh Vs. Government of Maharashtra & Ors. 1997 (3) Mh.L.J. 933**. In this case, on facts, it was found that the impugned transfer had been made in

routine course on account of administrative convenience and for no extraneous reasons.

25. Respondent nos. 1 to 3 have further relied on **Anil S/o Marotrao Khobragade Vs. State of Maharashtra & Ors. 2010 (2) Mh.L.J. 319**. In this case procedure laid down by law for mid-term transfer on administrative ground was noticed to have been followed. It was held that such being the case no interference with the order of transfer was warranted.

26. Respondents 1 to 3 have also relied on **Santosh Nandlal Dalal Vs. State of Maharashtra & Ors. 2016 (1) Mh.L.J. 45**. In this case it is held that Tribunal is not expected to act as an Appellate Authority and if there is nothing to infer favouritism or malafides, Tribunal is not expected to interfere in transfer orders, made after following procedure.

27. The applicant has raised several objections to transfer and posting of respondent no. 5, including his very eligibility to occupy the post, and the procedure adopted therefor. These objections cannot be gone into for the reason that the applicant has not impugned transfer order of respondent no. 5 (A-2). In any case the primary issue in this case was sustainability of order of transfer of the applicant (A-1). It was

assailed on the grounds mentioned hereinabove and none of these grounds is found to be acceptable.

28. On facts, it will have to be held that the impugned order of transfer was passed strictly as per the provisions of the Transfer Act, 2005. The applicant has failed to establish malafides. Legal position shows that to prove malafides requisite degree of proof is required to be given. Aforediscussed factual and legal position shows that under such circumstances the impugned order of transfer cannot be interfered with. In the result, **the O.A. is dismissed with no order as to costs.**

Member (J)

Dated :- 12/04/2024
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 : 12/04/2024
and pronounced on

Uploaded on : 15/04/2024