

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 516/ 2023 (S.B.)

Kiran Narayan Sukalwad,
Aged about 33 years,
Chief Officer Municipal Council Pusad,
District Yavatmal,
R/o Near Hindi High School,
Beside Tekdi Garden,
Talov Layout, Pusad, Dist. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Urban Development Department 2,
Mantralaya, Mumbai- 32.
- 2) Abhaijeet Waykos,
Aged about Major,
Chief Officer, Municipal Council Wani,
District Yavatmal.

Respondents

Shri A.Sambre, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the Respondent no. 1.

Shri M.I.Dhatrak, Id. Counsel for the respondent no. 2.

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

JUDGEMENT

Judgment is reserved on 24th July, 2023.

Judgment is pronounced on 28th July, 2023.

Heard Shri A.Sambre, Id. counsel for the applicant, Shri M.I.Khan, Id. P.O. for the Respondent no. 1 and Shri M.I.Dhatrak, Id. Counsel for the respondent no. 2.

2. Case of the applicant is as follows. By order dated 23.07.2020 (A-2) the applicant was transferred from Biloli, District Nanded to Pusad, District Yavatmal as Chief Officer of Municipal Council. By the impugned order dated 31.05.2023 (A-1) respondent no. 2 is transferred as Chief Officer, Municipal Council, Pusad from the post of Chief Officer, Municipal Council, Wani, District Yavatmal. The impugned order is purportedly passed under Sub Sections 4 & 5 of Section 4 of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short "Transfer Act, 2005"). Neither the applicant nor respondent no. 2 was due for transfer when the impugned order was issued. Therefore, there was no question of calling options from either of them. Though the impugned order states that the order of transfer of the applicant would be issued separately, such order is yet to be issued. The applicant has not been relieved so far. Respondent no. 2 could not have taken charge as Chief Officer of Municipal Council, Pusad unilaterally in contravention of Rule 31 of The Maharashtra Civil Services (General Conditions of Services) Rules, 1981. The impugned order is malafide. It was passed only to accommodate respondent no. 2 at Pusad. This conclusion

receives support from order dated 06.06.2023 (at P. 14) whereunder charge of Wani, Municipal Council where respondent no. 2 was working earlier, is kept with him. For all these reasons the impugned order cannot be sustained.

3. Respondent no. 1 has supported the impugned order on the grounds that there was due compliance of Sub Sections 4 & 5 of Section 4 of Transfer Act, and respondent no. 2 has taken charge of his new post at Pusad on 01.06.2023, after the applicant was relieved.

4. Respondent no. 2 has resisted the application on the following grounds:-

A. When the impugned order was issued the applicant had served at Pusad for 2 years and 10 months as against the statutory tenure of 3 years.

B. The impugned order of transfer was passed as per Sub Sections 4 & 5 of Section 4 of the Transfer Act.

C. Order of transfer of the applicant is yet to be passed. Thus, challenge to order of transfer of respondent no. 2 is clearly pre-mature.

D. It would not be open to the applicant to question legality of order of transfer of respondent no. 2 on the

ground that it is mid-tenure when this ground is not raised by respondent no. 2 himself.

E. Only on the ground that charge of Wani is kept with respondent no. 2, it cannot be inferred that the impugned order of transfer is malafide.

5. Admittedly, Pusad Municipal Council where respondent no. 2 is transferred and posted is 'B Level' Municipal Council. As per G.R. dated 28.10.2021 (A-R-2-1) issued by Urban Development Department of Government of Maharashtra, Group-A Officer can be appointed to 'B Level' Municipal Council. In his reply respondent no. 1 has stated that respondent no. 2 is promoted to Group-A and said order of promotion would be issued soon.

6. Though, the impugned order dated 31.05.2023 states that consequential order of transfer of the applicant would be issued separately, such order is yet to be issued. It was submitted by Id. P.O. that proposal for transfer of the applicant has been forwarded to the Hon'ble Chief Minister last week and orders are expected to be passed soon.

7. The applicant has relied on the Judgment of **Hon'ble Bombay High Court, Bench at Aurangabad in the case of Ramakant Baburao Kendre Vs. The State of Maharashtra & Another 2012 (1) Mh.L.J. 951**. In this case it is held:-

“Undisputedly, the petitioner had not completed his tenure after he joined his post at Parbhani. In view of what has been laid down by us, if the petitioner was to be transferred from his post at Parbhani prior to completion of his tenure of three years, it could have been done only for exceptional and special reasons which are required to be recorded in writing.”

8. Respondent no. 2 on the other hand, has relied on the following rulings:-

A. Shilpi Bose (Mrs) & Ors. Vs. State of Bihar & Ors. 1991 Supp (2) SCC 659. In this case it is held:-

“In our opinion, the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other.”

B. State of U.P. & Ors. Vs. Gobardhan Lal (2004) 11 SCC 402. In this case it is held:-

“It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made.”

C. Dadarao S/o Dattaraya Dolharkar Vs. State of Maharashtra 2023 DGLS (Bom.) 2098. In this case it is observed:-

“Once it is found that the transfer of the respondent no. 4 which has been made prior in time to that of the petitioner is after complying with the provisions of Section 4 of the Act of 2005, the contention that the order of transfer was issued to accommodate the petitioner loses its significance.”

9. After the matter was closed for orders on 24.07.2023 respondent no. 2 placed on record his additional affidavit copy of which was supplied to the other side. In this additional affidavit respondent no. 2 has brought on record subsequent developments:-

“1. I say and submit that the present application was finally heard, on 24.07.2023 and it was closed for orders. After the closing of the present matter for orders, on the very next day i.e. on 25.07.2023 I came to be promoted as per Government order dated 25.07.2023 as a Group-A Chief Officer and I have been given the fresh posting at Municipal Council, Pusad as a Chief Officer of Municipal Council, Pusad. The copy of promotion order dated 25.07.2023 is annexed herewith and marked as ANNEXURE-R2/4.

2. I further say and submit that the present post of Chief Officer of Municipal Council, Pusad is upgraded as per Government resolutions dated 28.10.2021 & 22.02.2022 which is already filed on record of this Hon'ble tribunal, in this Original Application. Admittedly, the applicant is Chief Officer from Group-B cadre and now he cannot be given posting as a chief Officer of Municipal Council, Pusad. In addition to this, the post at Wani of Chief Officer Group-A is also filled by posting one Mr. Vijay Lohakare after his promotion as a

Group-A Chief Officer by the same order of government dated 25.07.2023. In view of this, the challenge raised in this Original application does not survive due to the promotion order and due to the fresh posting dated 25.07.2023.”

10. Facts of the case in hand are peculiar. According to the respondent no. 1 the impugned order is passed after complying with sub sections 4 & 5 of Section 4 of The Transfer Act. The applicant, on whose post respondent no. 2 is transferred, has challenged said order. Order of transfer of the applicant is not yet issued. In these facts the O.A. can be said to be pre-mature. On this ground it is liable to be dismissed. **The O.A. is dismissed.** It would, however, be open to the applicant to assail his transfer order if he is aggrieved thereby, as and when it is issued, on all the grounds available on facts and law, including legality of order of transfer of respondent no. 2 which is impugned herein. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

Dated :- 28/07/2023.
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 : 28/07/2023.
and pronounced on

Uploaded on : 31/07/2023.