

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 670/ 2023 (S.B.)

Shalikrao S/o Devrao Usendi,
Aged about 54 years,
Occ. Service – Executive Engineer, P.W.D.,
Division No. 2, R/o Potegaon Road,
Ram Nagar, Tahsil & District Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Department of Public Works,
Mantralaya, Mumbai- 32.
- 2) Secretary/ Section Officer,
Public Works Department,
Mantralaya, Mumbai.
- 3) Superintending Engineer,
Public Works Department,
Gadchiroli, District Gadchiroli.
- 4) Mr. S.H.Sakharwarde,
Executive Engineer,
Directorate of Municipal Administration,
New Bombay (Head Quarters),

Presently transferred to Public Works Department,
Division - II, Gadchiroli.

Respondents

Smt. Sirpurkar, Id. Advocate for the applicant.

Shri A.M.Ghogre, Id. P.O. for the respondents 1 to 3.

Shri G.K.Bhusari, Id. counsel for the respondent no. 4.

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

JUDGEMENT**Judgment is reserved on 06th Sep., 2023.****Judgment is pronounced on 08th Sep., 2023.**

Heard Smt. Sirpurkar, ld. counsel for the applicant, Shri A.M.Ghogre, ld. P.O. for the respondents 1 to 3 and Shri G.K.Bhusari, ld. counsel for the respondent no. 4.

2. The applicant was holding the post of Executive Engineer. By order 04.01.2019 (A-2) he was transferred to Division-I, Public Works Department, Gadchiroli. By order dated 12.07.2019 (A-3) respondent no. 4 was promoted as Executive Engineer and posted at Chandrapur. He did not join there. By order dated 01.08.2019 (A-4) respondent no. 4 was transferred to Division-I, Public Works Department, Gadchiroli, on request, on the post held till then by the applicant. By separate order dated 01.08.2019 (which is not annexed) the applicant was transferred to Zilla Parishad (P.W.D.), Gadchiroli on a vacant post where he did not join. Thereafter, by order dated 30.08.2019 (A-5) the applicant was transferred to Special Project (P.W.D.) Sironcha on a vacant post. By order dated 07.08.2020 (A-6) the applicant was transferred from Sironcha to Division-II, P.W.D., Gadchiroli on administrative ground. Thereafter, by order dated 25.05.2023 (A-7) extension of one year was granted to the applicant and respondent no. 4 was transferred from Division-I, P.W.D., Gadchiroli to Navi Mumbai where he did not join.

Thereafter, by the impugned order dated 30.06.2023 (A-1) the applicant was transferred to Division-II, P.W.D., Gondia and respondent no. 4 was transferred from Navi Mumbai to Division-II, P.W.D., Gadchiroli where the applicant was working. In the meantime, by order dated 09.06.2023 (A-8) one Avinash More was transferred to Division-I, P.W.D., Gadchiroli.

3. On the aforesaid facts and the following grounds the applicant has assailed order of his transfer (A-1):-

A. The applicant was working in Division-II, P.W.D., Gadchiroli from 07.08.2020. By order dated 25.05.2023 extension of one year was granted to him. In any case he was not due for transfer.

B. The impugned order dated 30.06.2023 does not spell out either compelling administrative reasons or special reasons as mandated by Section 4 of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter "The Transfer Act, 2005" for short).

C. On previous occasions also, as will be demonstrated by pleading of the applicant, the applicant was transferred so as to accommodate respondent no. 4.

D. Having regard to the sequence of events ulterior motive behind passing of the impugned order can be easily discerned.

4. Respondents 1 to 3 have resisted the O.A. on the following grounds:-

A. In the year 2020 Annual General Transfer's were effected in the month of August. By G.R. dated 30.05.2023 last date to effect transfers was extended to 30.06.2023.

B. By order dated 25.05.2023 extension of one year was granted to the applicant as per his request. Thereafter, Civil Services Board made certain recommendations which were approved by the Competent Authority (Annexures-R-3 & R-4) pursuant to which the impugned order was passed.

5. Respondent no. 4 was resisted the O.A. on the following grounds:-

A. As per order dated 01.08.2019 the applicant did not join at Zilla Parishad, P.W.D., Gadchiroli. By order dated 30.08.2019 he was transferred to Sironcha. By order dated 07.08.2020 he was transferred from Sironcha to Division-II, P.W.D., Gadchiroli.

B. Order dated 25.05.2023 granting extension of one year to the applicant was not in conformity with Section 5 of the Transfer Act which reads as under:-

5. Extension of tenure.

(1) The tenure of posting of a Government servant or employee laid down in section 3 may be extended in exceptional cases as specified below, namely :-

(a) the employee due for transfer after completion of tenure at a station of posting or post has less than one year for retirement;

(b) the employee possesses special technical qualifications or experience for the particular job and a suitable replacement is not immediately available; and

(c) the employee is working on a project that is in the last stage of completion, and his withdrawal will seriously jeopardise its timely completion.

(2) Notwithstanding anything contained in section 3 or any other provisions of this Act, to ensure that the Government work is not adversely affected on account of large scale transfers of Government servants from one single Department or office, not more than thirty percent of the employees shall be transferred from any office or Department at a time, in a year.

C. On 03.07.2023 respondent no. 4 joined at Division-II, P.W.D., Gadchiroli and signed C.T.C. as reflected in Annexures-R-1 & R-2.

D. By order dated 09.06.2023 one Avinash More was transferred to Division-I, P.W.D., Gadchiroli in place of respondent no. 4.

E. The impugned order was passed after complying with Sub Sections (1) (2) & (3) of Section 4 of the Transfer Act.

6. In rejoinder the applicant has raised following grounds:-
- A. Order dated 25.05.2023 granting extension of one year was almost immediately followed by the impugned order dated 30.06.2023. It is inconceivable that within such short time any administrative or special reason had cropped up necessitating transfer of the applicant.
- B. Application for request transfer said to have been made by respondent no. 4 is not placed on record.
- C. Contention of respondent no. 4 that he joined on the transferred post of 03.07.2023 is not supported by record.
7. I have referred to various orders of transfer of the applicant as well as respondent no. 4 and also transfer order of one Avinash More. Sustainability of the impugned order will have to be decided independently without going into the merits of previous orders dated 04.01.2019, 12.07.2019, 01.08.2019, 30.08.2019 and 07.08.2020 (Annexures 2 to 6, respectively) since legality of none of these orders is assailed in the instant O.A..
8. Relevant portion of minutes of meeting of Civil Services Board (1) dated 28.06.2023 reads as under:-

विषय :- कार्यकारी अभियंता (स्था) या संवर्गातील अधिका-यांच्या सर्वसाधारण बदल्या नागरी सेवा मंडळ (१) च्या दिनांक २८.६.२०२३ रोजी झालेल्या बैठकीचे इतिवृत्त.

कार्यकारी अभियंता (स्था) संवर्गातील अधिका-यांच्या सन २०२३ च्या सर्वसाधारण बदलीबाबतचे आदेश दि. २५.५.२०२३ रोजी निर्गमित करण्यात आले आहेत. सदर बदली आदेशास अनुसरून काही अधिकाऱ्यांनी पदस्थापनेत बदल करून अन्यत्र पदस्थापना देण्याची विनंती केली आहे. तसेच उप विभागीय अभियंता संवर्गातून कार्यकारी अभियंता (स्था) संवर्गात पदोन्नतीने दिलेल्या पदस्थापनेत बदल करण्याबाबत संबंधित अधिका-यांकडून विनंती प्राप्त झालेली आहे. यासंदर्भात मा. मंत्री (सा.बां.) यांचेसोबत झालेल्या चर्चेमध्ये दिलेल्या निर्देशानुसार कार्यकारी अभियंता (स्था) संवर्गातील अधिका-यांच्या पदस्थापनेबाबत विचार विनिमय करून सक्षम प्राधिका-यास शिफारशी करण्यासाठी नागरी सेवा मंडळाची बैठक अपर मुख्य सचिव (सा.बां.). सा बां. विभाग, मंत्रालय, मुंबई यांच्या अध्यक्षतेखाली त्यांचे दालनात दिनांक २८.६.२०२३ रोजी झाली.

२. "महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडताना होणा-या विलंबास प्रतिबंध अधिनियम, २००५" हा दिनांक १ जुलै, २००६ पासून अंमलात आला आहे. सदर अधिनियमातील तरतुदीनुसार अखिल भारतीय सेवेतील अधिकारी आणि अ, ब आणि क गटातील राज्य शासनाच्या सर्व सेवकांकरिता एखाद्या पदावर असण्याचा सर्वसाधारण कालावधी तीन वर्षांचा निश्चित करण्यात आला आहे.

सर्वसाधारणपणे तीन वर्षांचा कालावधी पूर्ण झालेल्या बदलीपात्र अधिका-यांची एप्रिल किंवा मे महिन्यात बदली करण्याची तरतूद करण्यात आली आहे. तथापि,

“नव्याने निर्माण केलेल्या पदावर किंवा सेवानिवृत्ती, पदोन्नती, राजीनामा, पदावनती, पुनःस्थापना यामुळे किंवा बदलीच्या परिणामस्वरूप रिक्त झालेल्या पदावर किंवा रजेवरून परत आल्याच्या बाबतीत, तसेच अपवादात्मक परिस्थितीमुळे किंवा विशेष कारणांमुळे बदली करणे आवश्यक असल्याची सक्षम प्राधिका-याची खात्री पटल्यास तसे लेखी नमूद केल्यानंतर आणि लगतनंतरच्या वरिष्ठ प्राधिका-याच्या पूर्व मान्यतेने मध्यावधी बदली करता येते. त्याचबरोबर, ज्या शासकीय कर्मचा-याच्या सेवानिवृत्तीसाठी एक वर्षापेक्षा कमी कालावधी शिल्लक असल्यास अथवा एखाद्या विशिष्ट कामासाठी आवश्यक ती तांत्रिक अर्हता किंवा अनुभव धारण करणारा असेल व त्या पदासाठी योग्य असा बदली कर्मचारी तात्काळ उपलब्ध नसल्यास अथवा प्रकल्प पूर्णत्वाच्या शेवटच्या टप्प्यात असताना कर्मचा-याची बदली केल्याने प्रकल्प वेळेत पूर्ण होणेच धोक्यात येणार

असल्यास, अपवादात्मक परिस्थितीत पदस्थापनेच्या सर्वसाधारण कालावधीत (तीन वर्षे) वाढ करता येते'

सामान्य प्रशासन विभाग, शासन निर्णय दि. ३०.५.२०२३ अन्वये सन २०२३-२४ या चालू आर्थिक वर्षातील दि. ३१.५.२०२३ पर्यंत करावयाच्या सर्वसाधारण बदल्या या दि. ३०.६.२०२३ पर्यंत करण्यास मुदतवाढ देण्यात आली आहे.

३. कार्यकारी अभियंता (स्था) व वरिष्ठ वास्तुशास्त्रज्ञ या संवर्गास सातव्या वेतन आयोगानुसार सुधारित वेतन मॅट्रिक्स नुसार वेतनस्तर (एस-२३ : ६७७००-२०८७००) लागू करण्यात आला असून, सहाव्या वेतन आयोगानुसार सदर पदाची असुधारित वेतन संरचना (पीबी-३ (१५६००-३९१००) ग्रेड वेतन ६६००) अशी आहे. बदली अधिनियमातील कलम ६ मधील तरतुदीनुसार असुधारित वेतनश्रेणी १०६५०-३२५-१५८५० व त्यापेक्षा अधिक वेतनश्रेणी असलेल्या राज्य सेवेतील गट-अ मधील सर्व अधिका-यांची बदली करण्यास मा. मुख्यमंत्री यांना सक्षम प्राधिकारी म्हणून घोषित करण्यात आले आहे. सार्वजनिक बांधकाम विभागाच्या दिनांक १५.१.२०१५ च्या अधिसूचनेनुसार कार्यकारी अभियंता (स्थापत्य) या संवर्गातील अधिका-यांच्या राज्यांतर्गत बदल्या करण्याकरिता मा. मंत्री (सा.बां.) यांच्या सल्ल्याने अपर मुख्य सचिव (सा.बां.) / सचिव (बांधकामे) / सचिव (रस्ते) यांना सक्षम प्राधिकारी म्हणून घोषित करण्यात आले आहे.

४. महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडताना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील तरतुदी तसेच सा. प्र. विभागाच्या दिनांक ११.२.२०१५ च्या परिपत्रकातील मार्गदर्शक सूचना विचारात घेऊन, कार्यकारी अभियंता (स्था) संवर्गातील अधिका-यांनी सर्वसाधारण बदलीमध्ये दिलेल्या पदस्थापनेत बदल करण्याबाबत केलेल्या विनंतीस अनुसरून बैठकीमध्ये सांगोपांग चर्चा झाली. कार्यकारी अभियंता (स्था) संवर्गात असणारी रिक्तता, वैयक्तिक विनंती आदी बाबी विचारात घेता, प्रशासकीय निकडीच्यादृष्टीने नागरी सेवा मंडळाने पुढीलप्रमाणे शिफारस केली आहे.

अ) कार्यकारी अभियंता (स्था) संवर्ग सर्वसाधारण बदली

अ. क्र.	कार्यकारी अभियंता संवर्गातील अधिका-याचे नाव	तपशील/ कारणमीमासा	नागरी सेवा मंडळाची शिफारस
2.	श्रीम. कृष्णा सुरेश घरडे, सार्वजनिक बांधकाम विभाग क्र. २. गोंदीया	श्रीम. घरडे यांना शासन आदेश दि. २५.५.२०२३ अन्वये सार्वजनिक	जागतीक बँक प्रकल्प विभाग नागपूर (रिक्त

	(पदस्थापनेच्या ठिकाणी रुजू झालेल्या नाहीत) (से. नि. दिनांक ३०.११.२०२७)	बांधकाम विभाग क्र. २. गोंदीया येथे पदस्थापना देण्यात आलेली आहे. श्रीम. घरडे यांनी सदरच्या पदस्थापनेत बदल करून जागतीक बँक प्रकल्प विभाग, नागपूर येथे पदस्थापना देण्याबाबत विनंती केली आहे.	पदी)
7.	श्री. सु. ह. साखरवाडे नगरपरिषद प्रशासन संचालनालय, नवी मुंबई (मुख्यालयस्तर) (पदस्थापनेच्या ठिकाणी रुजू संचालनालय, झाले नाहीत) (से.नि.दिनांक ३१.१.२०३१)	श्री. साखरवाडे हे सार्वजनिक बांधकाम विभाग क्र.१, गडचिरोली या पदावर दि. २.८.२०१९ पासून कार्यरत होते त्याची शासन आदेश दि. २५.५.२०२३ अन्वये नगरपरिषद प्रशासन संचालनालय, नवी मुंबई (मुख्यालयस्तर) या ठिकाणी बदली करण्यात आली आहे.	सार्वजनिक बांधकाम विभाग क्र. २, गडचिरोली (श्री. उर्सेडी यांच्या बदलीने रिक्त होणाऱ्या पदी)
8.	श्री. शालीकराव देवराव उर्सेडी सार्वजनिक बांधकाम विभाग क्र.२, गडचिरोली. (से.नि.दिनांक ३०.६.२०२७)	श्री. उर्सेडी हे सध्याच्या पदावर दि. ११.८.२०२० पासून कार्यरत आहेत. त्यांच्या विनंतीनुसार त्यांना शासन आदेश दि. २५.५.२०२३ अन्वये सध्याच्या पदावर पुढील वर्षाच्या नियमतकालीक बदलीपर्यंत मुदतवाढ देण्यात आली आहे. मात्र सार्वजनिक बांधकाम विभाग क्र. २. गडचिरोली येथे श्री.	सार्वजनिक बांधकाम विभाग क्र २, गोंदीया (श्रीम. घरडे यांच्या पदस्थापनेती बदलामुळे रिक्त असलेल्या पदी)

		साखरवाडे यांना पदस्थापना देण्याची शिफारस असल्याने श्री. उसेंडी यांना अन्यत्र पदस्थापना देणे आवश्यक आहे.	
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9. It was submitted by Smt. Sirpurkar, Id. counsel for the applicant that the impugned order is contrary to Sub-Sections (4) & (5) of Section 4 of the Transfer Act and hence it cannot be sustained. These sub-sections read as under:-

(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 or 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.

It may be mentioned that though the impugned order does not refer to these sub-sections, compliance thereof was deemed to be

necessary in view of previous order dated 25.05.2023 whereby extension of one year was granted to the applicant.

10. In support of his contentions the applicant has relied on the following rulings:-

A. S.B.Bhagwat Vs. State of Maharashtra & Ors. (2012) 3 Mah.L.J.197 wherein it is held-

“The matter of transfers has been brought within a regulatory framework laid down in the statute enacted by the State Legislature. Section 4(5) permits as an exceptional situation, a transfer to be carried out, notwithstanding anything contained in Section 3 or in section 4. The exceptional power must be exercised strictly in accordance with sub-section (5) of section (4). The petitioner had not completed three years in the erstwhile post at Sangli District, he was transferred as a special case by the third respondent in terms of the directions of the respondent No. 2. Merely calling a case a special case does not constitute sufficient reason. The rationale why the legislature has required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers. The fourth respondent was sought to be transferred from Nashik to Sangli at his request. The petitioner is sought to be displaced. The manner in which the power has been exercised leaves no manner of doubt that the exercise was carried out not in public interest, but with a view to accommodate the request of the fourth respondent. The mandatory statutory provision of recording reasons in writing for justifying recourse to the exceptional power conferred by sub-section (5) of Section 4 has not been fulfilled. There is a clear breach of the statutory provisions.”

B. Judgement of Hon’ble Bombay High Court (Nagpur Bench) in W.P. No. 2665 of 2011 (Pradeepkumar S/o Kothiram Deshbhratar Vs. State of Maharashtra & 4 Ors.) delivered on 25.07.2011 wherein it is held:-

“Section 4 (5) permits competent authority in special cases to transfer the petitioner after recording reasons in writing and that too with prior

approval of Hon'ble Minister. Thus, Section 4(5) of the 2005 Act, contemplates such premature transfers only in exceptional cases. The facts above show that request made by the President of Zilla Parishad and recommendation of Hon'ble Minister has been the only reason for treating the proposal as special case. This is not contemplated by Section 4(5) of 2005 Act and reasons to be recorded for permitting such transfers must be spelt out and must be found to be in the interest of administration. Those reasons cannot be only the wish or whim of any particular individual and such transfers cannot be ordered as special case to please the particular individual for mere asking.”

C. Sheshrao Nagorao Umap (Dr.) Vs. State of Maharashtra & Ors. 1984 Mah.L.J. 627 wherein it is observed:-

“5. A provision for transfer is intended to check creation of vested interest, nepotism and corruption. It is true that nobody has a right to say that he cannot be transferred without his consent. However, like any other Executive or administrative power, the power of transfer must be exercised in good faith and as per the guidelines laid down in that behalf. The Government is bound by its own policy decision and must enforce it faithfully. While implementing the policy it cannot pick and choose. It is equally true that such executive instructions of a policy decision cannot confer any enforceable legal right nor an order issued in breach of it, will become per se illegal. These instructions could be directory in nature. There could be exceptions to the general rule due to exigencies of service or due to some administrative reasons, but the exception cannot be permitted to become a rule. It is equally well settled that Courts should not interfere with the orders of transfers, which are issued in the exigencies of service and in discharge of administrative or executive power. However, if the order issued is malafide or in colourable exercise of power then the Court is bound to interfere, since the mala fide exercise of power is not considered to be legal exercise of power. Once a policy is laid down by the Government it must apply equally to every employee.”

11. On the other hand, Id. P.O. has relied on Judgment of Bombay High Court (Dadarao S/o Dattaraya Dolharkar Vs. State of Maharashtra & 3 Ors.) delivered on 13.06.2023 wherein it is held:-

“In this regard in paragraph 6 of the affidavit-in-reply filed on behalf of the State Government it has been stated as under :-

“6. It is submitted that the proposal was duly and properly considered by the Civil Services Board on 15.09.2022 and it was recommended to transfer the applicant on the post of Assistant

Commissioner in order to fill up said post on priority basis. That the recommendation of Civil Services Board was put before the immediate superior authority i.e. Hon'ble Chief Minister. It is pertinent to note the Hon'ble Chief Minister has approved the recommendation for transfer of applicant. All these exceptional and special reasons have been recorded in writing for issuing impugned transfer order."

These statements have not been countered by the respondent no.4.

7. The Tribunal has referred to the provisions of Section 4(4) and (5) of the Act of 2005 and has concluded that the said provisions had not been followed while issuing the order of transfer. Sub-section (4) of Section 4 of the Act of 2005 stipulates that though an order of transfer shall be made in the month of April or May, as an exception the transfer could be made at any time of the year if a vacant post has to be filled in. Under sub-Section (5) of Section 4 of the Act of 2005 the Competent Authority can issue an order of transfer in such circumstances with the prior approval of the immediate superior. We find that the requirements of sub-Sections (4) and (5) of Section 4 of the Act of 2005 have been duly satisfied in the present case. The transfer of the respondent no.4 was for filling in a vacant post and the prior approval of the superior authority had been obtained. In these facts therefore there is no basis whatsoever to hold that the aforesaid statutory requirements had not been complied with. The documents placed on record substantiate the said stand taken by the respondent no.1. The finding otherwise recorded by the Tribunal is thus without any legal basis and contrary to the documents on record. The same cannot be sustained.

8. The Tribunal has given undue importance to the recommendation by the Local Member of the Legislative Assembly to the posting of the petitioner at Yavatmal. Admittedly, the respondent no. 4 was serving at Yavatmal and unless she was transferred there could be no occasion to fill in that post. The respondent no.4 was transferred to the vacant post at the office of the Commissioner, Amravati Division, Amravati. This transfer is on the recommendation of the Civil Services Board. 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 that the order of transfer was issued to accommodate the petitioner loses its significance. When the transfer of the respondent no.4 is shown to have been made in accordance with law, the Tribunal ought to have dismissed the Original Application instead of interfering with the order of transfer. It is true that the mandatory requirement of Section 4(5) of the Act of 2005 cannot be ignored or bypassed as held in Kishor Shridharrao Mhaske (supra)."

12. Respondent no. 4 has relied on the following rulings:-

A. National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & Another [(2001) 8 SCC 174]. In this case it is held:-

“On a careful consideration of the submissions of the learned counsel on either side and the relevant rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well-settled and often reiterated by this Court that no Government servant or employee of public Undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned.”

B. Namrata Verma Vs. The State of Uttar Pradesh & Ors.
Petition(s) for Special Leave to Appeal (c) No(s).
36717/2017 of Supreme Court. In this case it is held:-

“It is not for the employee to insist to transfer him/her and/or not to transfer him/her at a particular place. It is for the employer to transfer an employee considering the requirement”

C. Bombay High Court in W.P. (Lodging) Nos. 1429 & 1430 of 2007 (V.B.Gadekar Vs. Maharashtra Housing & Area Development Authority {Mhada}) delivered on 23.08.2007 wherein it is held:-

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter.”

D. Bombay High Court (Aurangabad Bench) in connected W.P. No. 6051 of 2017 & 5 Ors. (Mahendra Vs. The State of Maharashtra & Ors.) delivered on 04.04.2018. In this case aforequoted observations in V.B.Gadekar (supra) were referred to and relied upon.

E. Bombay High Court in W.P. No. 2585 of 2019 (Dr. Soudamini S. Chaudhari Vs. The State of Maharashtra & Ors.) delivered on 16.12.2020 wherein it is held:-

“No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan [(2001) 8 SCC 174].”

“Moreover, the petitioner had completed two years when the impugned transfer order was issued. The terms of the Transfer Act are such that no Government servant can claim that he has a right not to be dislodged before 3 (three) years. In the exigency of administration, an order could indeed be passed transferring a

Government servant even prior to completion of the tenure of 3 (three) years, which is the normal tenure."

13. When guidelines contained in the rulings mentioned above are applied to the facts of the case as spelt out in minutes of meeting dated 28.06.2023, conclusion would be inescapable that the impugned order was necessitated by administrative exigencies and hence it was a special case as contemplated by Sub Section (5) of Section 4 of the Transfer Act.

14. For the reasons discussed hereinabove, **the O.A. is dismissed with no order as to costs.**

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

Dated :- 08/09/2023.
aps

Later on :-

Ld. counsel for the applicant prays for suspending the effect and implementation of this order/extension of interim order which is subsisting till today – for the period of one week so as to enable the applicant to approach the Hon'ble High Court. This prayer is stoutly opposed by respondent no. 4. It is submitted by ld. counsel for the respondent no. 4 that respondent no. 4 joined on the transferred post on 03.07.2023 and hence extension of interim order which was subsisting

during the pendency of this O.A. would cause prejudice to him. An opportunity of approaching the Hon'ble High Court against the order passed by this Tribunal cannot be denied in the facts and circumstances of the case. Hence, prayer made as above by the applicant is granted. Interim order which was subsisting during pendency of the O.A. is extended for a period of one week from today.

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

Dated :- 08/09/2023.
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 : 08/09/2023.
and pronounced on

Uploaded on : 09/09/2023.