

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 944/2022 (S.B.)

Madhuri Murari Madavi,
aged about 50 years,
Occupation: Service (Chief Officer Group-I),
R/o Chief Officer Bungalow,
Arni road, Yavatmal,
Tah. & Dist. Yavatmal.

Applicant

VERSUS

- 1) The State of Maharashtra,
through it's Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
- 2) The Commissioner and Director,
Directorate of Municipal Administration,
Third Floor, GTS Building,
Sir Pochkhanwala road,
Worli, Mumbai.
- 3) The Collector Yavatmal,
Tah. & Dist Yavatmal.
- 4) Dadarao S/o Dattaraya Dolharkar,
aged about 48 years,
Occupation: Service,
R/o O/o Chief Office, Municipal Council,
Yavatmal, Tah. & Dist. Yavatmal.

Shri S.P.Bhandarkar and Shri M.Shukla, Id. Advocates for the applicant.

Shri M.I.Khan, Id. P.O. for the Respondents 1 to 3.

Shri T.U.Tathod and Shri N.B.Kalwaghe, Id. Counsel for the respondent no. 4/Caveator.

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

JUDGMENT

Judgment is reserved on 12th April, 2023.

Judgment is pronounced on 26th April, 2023.

Heard Shri S.P.Bhandarkar and Shri M.Shukla, ld. counsel for the applicant, Shri M.I.Khan, ld. P.O. for the Respondents 1 to 3 and Shri T.U.Tathod and Shri N.B.Kalwaghe, ld. Counsel for the respondent no. 4/Caveator.

2. Case of the applicant is as follows. By order dated 08.09.2021 (A-1) the applicant was transferred to Yavatmal Municipal Council as Chief Officer. By order dated 18.04.2022 (A-3) she was promoted as Chief Officer, Group-A. By order dated 20.09.2022 (A-5) she was transferred as Assistant Commissioner, Group-A, Office of Divisional Commissioner, Amravati Division, Amravati. While passing this mid-term order neither special nor exceptional reasons were recorded as mandated by Sub-Sections (4) and (5) of Section 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duty Act, 2005 ("The Transfer Act" for short). The order of transfer of the applicant did not state whether Civil Services Board had sought prior approval to transfer the applicant, from respondent no. 1. The order of transfer was not physically served on the applicant nor did she hand over charge to anyone. The order of transfer is malafide. By order dated 20.09.2022 (A-7) respondent no. 4 was

transferred as Chief Officer, Municipal Council, Yavatmal. While transferring respondent no. 4 also neither special nor exceptional reasons were recorded. In fact, said transfer was effected only on the recommendation of M.L.A. Shri Madan Yerawar as can be gathered from perusal of recommendation of Civil Services Board dated 15.09.2022 (A-8). It was not signed by one of the Members of the Board i.e. Commissioner (Director), Municipal Council, Administrative Department, Mumbai. This lacuna would invalidate the recommendation. Respondent no. 1 initially made certain allegations against the applicant and then withdrew the same. This exposes malafides of respondent no. 1. For these reasons orders dated 20.09.2022 (A-5 and A-7) transferring the applicant and respondent no. 4, respectively deserve to be quashed and set aside.

3. Respondent no. 1 has resisted the O.A. on the following grounds. The applicant directly approached this Tribunal without first exhausting the alternate remedy of approaching respondent no. 1. Transfer is an incident of service. The applicant was transferred by scrupulously following the provisions of the Transfer Act. She is a Group-A Officer. She ought to have immediately obeyed the order of transfer. The post of Assistant Commissioner, Group-A, Divisional Commissioner's Office, Amravati Division under whose jurisdiction 57 Municipal Councils and Nagar Panchayats fall was lying vacant because of which various

government schemes could not be implemented. To remedy this situation the applicant was transferred to the post. It had become expedient to do so. Accordingly proposal was submitted to Civil Services Board. The Members duly considered it. It was approved by the immediate superior authority i.e. the Hon'ble Chief Minister. Vacancy created by transfer of the applicant too was filled by adhering to Sub-Sections (4) and (5) of Section 4 of the Transfer Act by transferring respondent no. 4 to the post. G.R. dated 31.01.2014 cannot be allowed to override provisions of the Transfer Act. In transfer of respondent no. 4 there was no element of political influence.

4. So far as stand of respondent no. 1 is concerned, it may be observed that in the reply which was initially filed (at PP. 106 to 113) it was alleged that the applicant used to shirk her duties, misbehave with her superiors and colleagues and a news was published in the newspapers that a body of Sweepers working in the Municipal Council had demanded her transfer. However, by filing additional reply (at PP. 171 to 176) respondent no. 1 withdrew these allegations.

5. Stand of respondent no. 3 is that the orders transferring the applicant as well as respondent no. 4 were passed strictly as per the provisions of the Transfer Act.

6. Replies filed by respondent no. 4 are at PP. 114 to 126 and 177 to 183. His stand is as follows. As per order of his transfer he joined on the transferred post on 21.09.2022. After joining on her transferred post the applicant, actuated by malafides, initiated enquiry against him into discharge of duties when he was holding his previous post. His transfer as well as transfer of the applicant were necessitated by administrative exigencies. Complaints were made against the applicant details of which were published in newspapers. The applicant had unsuccessfully challenged earlier order of her transfer before the Hon'ble High Court.

7. By order dated 21.09.2022 this Tribunal had declined to grant interim relief to the applicant. Being aggrieved thereby the applicant filed W.P. No. 6137/2022. In the writ petition the applicant made certain allegations of unruly behaviour against respondent no. 4. These allegation were incorporated in para no. 12 of the writ petition. The High Court directed respondent no. 3 to enquire into the same and submit the report of this Tribunal. As per this direction respondent no. 3 conducted enquiry. During the enquiry *inter alia* statements of the applicant as well as respondent no. 4 were recorded.

In the report which is submitted to this Tribunal respondent no. 3 concluded :-

- A. The applicant as well as respondent no. 4 were relieved immediately to take charge of their respective posts on transfer.
- B. The applicant admitted having received order of her transfer on 20.09.2022 around 7 p.m..
- C. The applicant was expected to obey the order of transfer and report at her new post. Instead she went to the office of Chief Officer, Yavatmal on 21.09.2022.
- D. On 21.09.2022 when respondent no. 4 went to the office of Chief Officer, Yavatmal to effectively assume charge the applicant was there. They had a conversation.
- E. Respondent no. 4 along with the some persons brought a chair and kept it beside the chair of Chief Officer in the Chamber. Respondent no. 4 occupied this extra chair. Bringing said chair to the chamber was in breach of office discipline. Explanations offered by respondent no. 4 in that behalf were not plausible.
- F. On 21.09.2022 when respondent no. 4 reached office of Chief Officer, Yavatmal the applicant who was very much there ought to have handed over charge to him.

- G. The applicant could not properly explain why she was in the office of Chief Officer, Yavatmal on 21.09.2022 though she was relieved on 20.09.2022 itself.
- H. Had the applicant handed over charge to respondent no. 4 soon after he had come to the office of Chief Officer, Yavatmal, what followed (as narrated in para no. 12 of the writ petition) could have been averted.
- I. Behaviour of the applicant as well as respondent no. 4 both of whom are experienced officers, was anything but mature. They showed lack of discipline and lack of desire to co-operate.

Recommendation of Civil Services Board to transfer the applicant as well as respondent no. 4 is at A-8. It reads as under:-

दिनांक १५.०९.२०२२ रोजीच्या नागरी सेवा मंडळ यांचे इतिवृत्त-

अ. क्र.	अधिका-यांचे नाव	शिफारस	नगरी सेवा मंडळाची शिफारस
१	श्रीमती माधुरी मडावी मुख्याधिकारी, यवतमाळ नगरपरिषद, जि. यवतमाळ. (दि. ०८.०९.२०२१ च्या आदेशान्वये कार्यरत) (दि. १८.०४.२०२० रोजी सदर पदावर पदोन्नती)		<ul style="list-style-type: none"> श्रीमती माधुरी मडावी मुख्याधिकारी यवतमाळ नगरपरिषद यवतमाळ या पदावर कार्यरत आहेत. श्रीमती मडावी ह्यांचा बदली अधिनियम २००५ मधील नियम ४(१) नुसार कार्यरत पदावरील नेमणूकीचा पदावधी पूर्ण होत नाही. तथापि, अमरावती विभागीय आयुक्त कार्यालयातील रिक्त पदे प्राधान्याने भरण्याची निकड विचारात घेऊन, प्रशासकीय कारणास्तव श्रीमती माधुरी मडावी यांची सहायक आयुक्त, गट-अ, विभागीय आयुक्त कार्यालय, अमरावती विभाग, अमरावती या पदावर नियुक्तीची शिफारस आहे.
२.	श्री दादाराव डोल्हारकर, मुख्याधिकारी, कारंजा नगरपरिषद, जि. वाशिम, (दि ०६.०७.२०२० च्या आदेशान्वये कार्यरत) (दि. १८.०४.२०२० रोजी सदर पदावर पदोन्नती)	श्री मदन येरावर, माननीय विधानसभा सदस्य मुख्याधिकारी, यवतमाळ नगरपरिषद, जि. यवतमाळ	<ul style="list-style-type: none"> श्री दादाराव डोल्हारकर, मुख्याधिकारी, कारंजा नगरपरिषद, जि. वाशिम या पदावर कार्यरत आहेत. श्री डोल्हारकर यांचा बदली अधिनियम, २००५ मधील नियम ४ (१) नुसार कार्यरत पदावरील नेमणूकीचा पदावधी पूर्ण होत नाही. सबब, श्रीमती मडावी यांच्या प्रस्तावीत बदलीमुळे रिक्त होणा-या मुख्याधिकारी, यवतमाळ नगरपरिषद, जि. यवतमाळ या पदावर श्री दादाराव डोल्हारकर यांची नियुक्तीची शिफारस आहे.

8. The impugned order of transfer of the applicant is at A-5. In this order, in column no. 4 pertaining to 'remarks' it is stated :-

प्रशासकीय कारणास्तव, रिक्त पदावर.

9. In the order at A-7 relating to transfer of respondent no. 4, in column no. 4 pertaining to 'remarks' it is mentioned:-

श्रीमती माधुरी मडावी यांच्या बदलीमुळे रिक्त होणा-या पदावर

10. The issue to be considered in this matter is whether, while passing the impugned orders of transfer, Sub Sections (4)/(5) of Section 4 of the Transfer Act were followed.

Section 4 of the Transfer Act reads thus:-

Tenure of transfer:-

4. (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.

11. The applicant has relied on **Ramakant Baburao Kendre Vs. State of Maharashtra & Another 2012 (1) Mh.L.J. 951 (Bombay High Court)**. In this case it is observed:-

“It can clearly be seen that the said enactment, particularly Sub-section (1) of Section 4 specifically protects a Government servant from being transferred prior to completion of his ordinary tenure. Sub-section (4) of Section 4 requires such transfers to be done once in a year i.e. in the month of April or May. The proviso thereto, though permits the transfers to be made any time in the year for the eventualities mentioned therein, however, we are of the considered view that the proviso to Sub-section (4) cannot be read in such a manner, which makes the provision of Sub-section (1) of Section 4

redundant or nugatory. Clause (i) of the proviso to Sub-section (4), which permits transfer to be made at any time in a year on the ground of eventualities mentioned therein, will have to be read in a manner that the transfer on the grounds mentioned in clause (i) of proviso to Sub-section (4) would be permissible at any time of the year and not necessarily in April or May when a Government servant has completed his tenure of posting. If it is not read in that manner, the very purpose of the protection, which is granted in Sub-section (1) of Section 4 would become redundant and nugatory. A person, who has not completed even three months in a particular posting, could be transferred to some post, which has become vacant on account of transfer of another Government servant, who was working on the post. As such, the clause (i) of proviso to Sub-section (4) will have to be read in harmony with Sub-section (1) of Section 4 of the said Act. It will have to be interpreted that a Government servant will not be ordinarily transferred prior to completion of his tenure, and the transfers will have to be made only in the month of April or May. However, if transfer is necessitated on account of any of eventualities stated in clause (i) to proviso of Sub-section (4), it can be made at any time of the year and not necessarily in April or May, however, only on

completion of tenure of the Government servant. No doubt, that clause (ii) of proviso to Sub-section (4) would permit transfer to be made at any time of the year and not necessarily in April or May, where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons. However, when this is being done, the reasons and the circumstances will have to be recorded in writing and the same cannot be done without prior approval of the next higher authority. Undisputedly, Sub-section (5) of Section 4 carves out an exception to the general protection granted in Sub-section (1) of Section 4. No doubt, by taking recourse to Sub-section (5), a Government servant can be transferred even prior to completion of his tenure and even at any time of the year and not necessarily in the month of April or May, in special cases. However, while doing so, the competent authority will be required to record the reasons in writing and would also be required to obtain prior approval of the immediately superior Transferring Authority as mentioned in the table of Section 6. As already discussed, the provision of Sub-section (5) of Section 4 carves out an exception to the protection granted in favour of an employee in Sub section (1) of the said section. It is to be noted that for that reason, the

legislature has made an inbuilt safeguard in Sub-section (5) by requiring the reasons to be recorded for making transfer as a special case and obtaining approval of the immediately superior Transferring Authority. It is, thus, clear that the legislative intent is clear that ordinarily an employee should not be transferred prior to completion of his tenure. However, this would be permissible in special cases when the competent authority records the reasons for the same and obtains prior approval of the immediately superior Transferring Authority."

12. The applicant has further relied on **Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance & Development Corporation, Mumbai & Ors. 2013 (3) Mh.L.J. 463 (Bombay High Court)**. In this case it is held:-

"The mid-term or pre-mature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of the Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or by-passed. The exceptional reasons for

the special mid-term or pre- mature transfer ought to have been stated in writing. Vague, hazy and meagre expression such as "on administrative ground" cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements."

13. The applicant has also relied on **S.B.Bhagwat Vs. State of Maharashtra & Ors. 2012 (3) Mh.L.J. 197**. In this case 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)."

14. On the other hand, on behalf of respondents 1 to 3 ld. P.O. has relied on the following rulings:-

A. **State of Punjab & Ors. Vs. Joginder Singh Dhatt AIR 1993 Supreme Court 2486**. In this case it is held:-

"It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his

present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer.”

B. Mohd. Masood Ahmad Vs. State of U.P. & Ors. (2007) 8 Supreme Court Cases 150. In this case it is held:-

“An order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.”

It is further held:-

“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 M.P. or MLA would be vitiated.”

C. Union of India & Ors. Vs. S.L.Abbas (1993) 4 Supreme Court Cases 357. In this case it is held:-

“An order of transfer is an incident of Government service. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of statutory provisions, the Court cannot interfere with it.”

D. Union of India & Ors. Vs. Ganesh Dass Singh 1995 Supp (3) Supreme Court Cases 214. In this case it is held that transfer made by competent authority for administrative reasons is not subject to judicial review.

15. Recommendation of Civil Services Board to transfer the applicant and respondent no. 4 is reproduced above. In this recommendation the Civil Services Board simply stated that considering the urgent need to fill the vacant post in the Office of Divisional Commissioner, Amravati, the applicant was required to be transferred there. This recommendation does not show that the applicant was subjected to mid-term transfer on account of any special/exceptional reason/s. So far as transfer of respondent no. 4 is concerned it was recommended by the M.L.A.. This transfer is shown to have been made so as to fill the vacancy created by transfer of the applicant. It may also be observed that initially respondent no. 1 levelled certain allegations against the applicant but in the subsequently filed additional reply the same were withdrawn.

16. Discussion made so far would show that both the impugned transfers do not satisfy the parameters prescribed in Sub-Sections (4) and (5) of Section 4 of the Transfer Act. These parameters have been elaborately set out in the aforesaid rulings relied upon by the applicant. In the rulings cited by the respondents, too, viz **Mohd. Masood Ahmad (Supra) and S.L.Abbas (Supra)** it is held that order of transfer can be interfered with if the rules prohibit such transfer and if the transfer is made in violation of any statutory provision, the Court/Tribunal may interfere with it. Thus, legality or otherwise of the order of transfer is to be primarily decided on the basis of statutory provisions governing the case. In the instant case, as observed earlier, Sub-Sections (4) and (5) of Section 4 of the Transfer Act have not been followed while effecting the impugned transfers. Hence, the order:-

O R D E R

1. The O.A. is allowed.
2. The impugned orders transferring the applicant and respondent no. 4 dated 20.09.2022 (A-5 & A-7, respectively) are quashed and set aside.

3. No order as to costs.

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

Dated :- 26/04/2023.
aps

Later on:-

Ld. Counsel for the respondent no. 4 submits that the effect and implementation of this order be stayed for a period of two weeks from today so that respondent no. 4 can challenge it by filing a Writ Petition in the Hon'ble High Court.

Ld. Counsel for the applicant objects to passing such an order. However, case is made out to grant the prayer made on behalf of respondent no. 4.

Effect and implementation of the order shall stand stayed for a period of two weeks from today.

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

Dated :- 26/04/2023.
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 : 26/04/2023.
and pronounced on

Uploaded on : 26/04/2023.