

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.531 of 2020

District : SOLAPUR

Dr. Pradeep M. Dhele,)
Age 52 years, Occ : Civil Surgeon,)
Civil Hospital, Solapur .)
R/at Civil Hospital, Solapur, Dist. Solapur.)...**Applicant**

Versus

1. Government Of Maharashtra, through its)
Secretary, Public Health Department,)
G.T.Hospital Compound, Mantralaya,)
Mumbai 400 001.)
2. Dr. Ashok Bolde, District Civil Surgeon,)
Civil Hospital, Ratnagiri.)...**Respondent**

Shri M. D. Lonkar, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent
No.1.

Shri Nikhil Pawar, learned Counsel for the Respondent No.2.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 18.01.2021

J U D G M E N T

Short issue posed for consideration in the present Original Application is whether the impugned transfer order dated 01.10.2020 displacing the Applicant from the post of Civil Surgeon, Solapur without giving him any further posting and posting the Respondent No.2 in his place is legal and valid on the touch stone of provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005).

2. The facts lie in narrow compass :-

The Applicant is serving as Civil Surgeon and by order dated 21.06.2019 issued by the Government, he was posted as Civil Surgeon, Solapur. He is entitled to three years normal tenure in terms of provisions of 'Act 2005'. However, abruptly by impugned order dated 01.10.2020, the Respondent No.1 posted the Respondent No.2 Dr. Ashok Bolde in place of the Applicant leaving the Applicant without posting. All that it is stated in transfer order dated 01.10.2020 that on request, the Respondent No.2 is transferred and posted in place of the Applicant at Solapur. Admittedly, the Respondent No.2 was not due for transfer in view of his earlier posting at Ratnagiri by order dated 28.04.2019. Thus, neither Applicant was due for transfer nor Respondent No.2 was due for transfer. It is only on request made by the Respondent No.2, the Applicant was displaced by impugned order.

3. Shri M.D. Lonkar, learned Counsel for the Applicant sought to assail the impugned order on the following grounds:-

(a) The transfer of the Applicant being mid-term and mid-tenure in absence of compliance of Section 4(5) of 'Act 2005', it is bad in law.

(b) The issue of transfer of the Applicant was not placed before Civil Services Board (CSB) as mandated by the Hon'ble Supreme Court in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732.***

(c) Only to accommodate and favour the Respondent No.2, the Applicant is shifted without there being any special case or administrative exigency in terms of Section 4(5) of 'Act 2005'.

4. Initially when the matter was taken up for admission and hearing on the point of interim relief, the Hon'ble Chairperson by order dated 06.10.2020 granted interim relief in favour of the Applicant and notices were issued. Thereafter, enough time was availed by the Respondent No.1 but no reply was filed. By order dated 15.12.2020, it was made

clear that if the Respondents failed to file reply on next date, the matter shall proceed for hearing on the basis of record to be produced by the Respondents.

5. Today also no reply is filed. The matter was taken up for hearing at 11.30 am and on request of Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent No.1 it was adjourned for production of record. It is only at 01.00 pm Shri S. V. Dhamal, Asstt. Desk Officer, Public Health Dept. Mantralaya, Mumbai has produced the file. He was not able to tell anything other than production of file.

6. After going through the file, learned P.O. fairly concedes that the issue of transfer of the Applicant was not at all placed before the CSB before issuance of impugned order.

7. Whereas, Shri Nikhil Pawar, learned Counsel for the Respondent No.2 submits that his client is retiring in May 2021, and therefore, his request was accepted by the Government by giving him posting at Solapur. He has further pointed out that in view of interim relief granted by this Tribunal on 06.10.2020, the Applicant is continued at Solapur but the Respondent No.2 is left without posting. Respondent No.2 was at Ratnagiri and his post is already filled in by the Government. Learned Counsel for the Respondent No.2, therefore, submits that his client is unnecessarily suffering without any fault and necessary directions be issued for issuance of his posting order. He further submits that since only four months period is left for retirement, the Respondent No.2 be continued at Solapur till retirement and after his retirement only, the Applicant be reinstated in his place. This submission cannot be conceded in view of patent illegalities in the impugned order.

8. Needless to mention that the transfer of the Government servant is incident of service and unless transfer is in express contravention of provision of law or malafide, it should not be interfered with. Now the

transfers are regulated and governed by the provisions of 'Act 2005' and it is not left to whims and caprice of the executive. Provision of 'Act 2005' ensures fixed normal tenure of a Government servant at one post and transfers are to be effected only once in a year in the months of April or May. In case of mid-tenure transfer, the Competent Authority may transfer a Government servant in special case after recording reasons in writing with a prior approval of immediately preceding competent authority mentioned in table of Section 6 as provided in Section 4(5) of 'Act 2005'

9. Apart, in view of the dicta laid down by the Hon'ble Supreme Court in **T.S. R. Subramanian's** case, transfer should be vetted one way or other by CSB. True, the recommendations of CSB may not be binding upon the executive but law mandates to place the matter before CSB for its recommendations.

10. Now, turning to the fact of the present case, indisputably the Applicant was not due for transfer. It is also not in dispute that the Respondent No.2 was also not due for transfer but he made request for transfer and asked Solapur. Interesting to note that the request of the Respondent No.2 was placed before the CSB which was declined stating that the Applicant was not due for transfer.

11. Perusal of file further reveals that when the file was placed before the Hon'ble Chief Minister, the name of the Applicant was inserted at Sr. No.33 in the list of 38 Medical Officers/ Civil Surgeons and the Applicant was shown transferred as Assistant Director Health Services Family Planning Officer, Pune. Indeed, no such transfer order of the Applicant as Assistant Director, Health Services Family Planning Officer, Pune are issued. All that he is shown transferred from Solapur in view of posting of the Respondent No.2 in his place. As such, what emerges from the file pertains that name of the Applicant was not at all placed before the CSB before issuance of transfer order which is in contravention of the

directions given by the Hon'ble Supreme Court in **T.S.R. Subramanian's** case.

12. Apart, since the Applicant was not due for transfer, he could not have been displaced unless special case or administrative exigency is made out as mandated by Section 4(5) of 'Act 2005. Section 4(5) of 'Act 2005' reads as follows:-

“Section 4(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 immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

13. Suffice to say in mid-tenure transfer, it is permissible only in special case after recording reasons in writing to substantiate what are special reasons or case. In present case, not a single reason even for a namesake is neither recorded in file noting nor it is forthcoming in any of the record produced today. Indeed, Respondent No.1 failed to file reply to meet out the allegations made by the Applicant. Non filing of reply within time granted by the Tribunal also gives rise to adverse inference against the Respondent No.1-Government that they have no case to justify the impugned transfer order. Only approval of the Hon'ble Chief Minister to transfer of the Applicant is not at all enough.

14. Apart, perusal of file clearly spells that there was absolutely no necessity to displace the Applicant mid-term and mid-tenure. It is manifest that only to accommodate the Respondent No.2, the Applicant is shifted. There is absolutely no case for mid-tenure transfer as contemplated under Section 4(5) of 'Act 2005'. The Applicant is shown transferred without assigning any reason. In other words, the Respondent No.1 have flouted provisions of Section 4(5) of 'Act 2005'

and directions given by the Hon'ble Supreme Court in **T.S.R. Subramanian's** case with impunity.

15. The totality of the aforesaid discussion leads me to conclude that the impugned transfer order dated 01.10.2020 is totally indefensible in law and liable to be quashed and set aside. In so far as the Respondent No.2 is concerned, it is for the Respondent No.1 to issue his appropriate posting order without loss of time since he is without posting for more than three months. He is due for retirement in May, 2021, and therefore, his posting order needs to be issued immediately. The Applicant is unnecessarily dragged to litigation, and therefore, Original Application deserves to be allowed with exemplary cost upon the Respondent No.1. Hence the following order :-

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 01.10.2020 qua the Applicant and Respondent No.2 is quashed and set aside.
- (C) Interim relief granted by this Tribunal on 06.10.2020 made absolute.
- (D) The Respondent No.1 is directed to issue appropriate posting order of Respondent No.2 immediately without loss of time latest by 31.01.2021.
- (E) Respondent No.1 shall pay cost of Rs.20,000/- to the Applicant.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Date : 18.01.2021
Place : Mumbai
Dictation taken by :
Vaishali Santosh Mane
Uploaded on :