

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.423/2018. (S.B.)

Rajendra Vitthalrao Giri,
Aged about 52 years,
Occ-Service,
R/o B-103, Vaishali Apartments,
Tilak Nagar, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Higher & Technical Education,
Mantralaya, Mumbai-32.
2. The Director of Arts,
The Directorate of Arts, Dr. D.N. Road,
Mumbai-1.
3. The Dean,
Govt. College of Arts and Design,
Near Dikshabhoomi, Laxmi Nagar, Nagpur.

Respondents

ORIGINAL APPLICATION NO.386/2018.

Dr. Subhash Shriram Babhulkar,
Aged about 56 years,
Occ-Service,
R/o 162/163, Shastri Layout,
Khamla, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Higher & Technical Education,
Mantralaya, Mumbai-32.
2. The Director of Arts,
The Directorate of Arts, Dr. D.N. Road,
Mumbai-1.
3. The Dean,
Govt. College of Arts and Design,
Near Dikshabhoomi, Laxmi Nagar, Nagpur.

Respondents

Shri R.V. Shiralkar, the Ld. Advocate for the applicants.
Shri M.I. Khan, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J)

JUDGMENT

(Delivered on this 30th day of November 2018.)

Heard Shri R.V. Shiralkar, the Ld. counsel for the applicants and Shri M.I. Khan, the learned P.O. for the respondents.

2. The applicant Rajendra Vitthalrao Giri in O.A. No. 423/2018 has been transferred from the post of Lecturer in the Govt. College of Arts and Design, Nagpur to the Govt. College of Arts and Design, Aurangabad vide order dated 31.5.2018, whereas the applicant Dr. Subhash Shriram Babhulkar in O.A. No. 386/2018 has also been transferred from the Govt. College of Arts and Design, Nagpur to the Govt. College of Arts and Design, Aurangabad on the

same post by respondent No.1 and these orders of transfer have been challenged in these O.As. The respective applicants have preferred representation. A copy of the said representation filed by the applicant Rajendra Vitthalrao Giri in O.A. No. 423/2018 is at page No.23 whereby he has requested that instead of Aurangabad, he may be transferred to Mumbai. He has also stated that his son is studying in 12th standard and has given reason of his parents' illness. It is stated that he has not challenged the order of transfer at Aurangabad, but only requesting for transfer to Mumbai instead of Aurangabad. The said request has been rejected vide order dated 18.7.2018 (Annexure A-6, page Nos. 25-A and 25-B). The said communication is also challenged in the O.A. No. 423/2018 by amending the O.A.

3. In O.A. 386/2018 also, the applicant Dr. Subhash Shriram Babhulkar has filed representation, a copy of which is at page No.35. In his representation, the applicant has stated that he has lost his only son and, therefore, his family is undergoing tremendous mental agony. His wife is serving in a private college and she cannot be transferred at Aurangabad and, therefore, he has requested that his transfer be cancelled. This representation has

been rejected vide communication dated 18.7.2018 as per Annexure A-6, page Nos. 36-A and 36-B.

4. It is clear from the record that, in view of the fact that the representations of both the applicants were pending for consideration. The respondents were directed to maintain *status-quo* and the representations were directed to be considered within a stipulated period. In view thereof, both the applicants are presently working at their respective places prior to their transfer i.e. at Nagpur.

5. The respondents have filed separate affidavits in both the O.As and have stated that the applicants have completed their respective tenures at Nagpur and were due for transfer and have been transferred accordingly and the applicants cannot insist for a particular post of transfer.

6. So far as the applicant Rajendra Vitthalrao Giri in O.A. No. 423/2018 is concerned, it is stated that he was posted at Nagpur in 1986 since he was appointed and he has almost completed 32 years at Nagpur and, therefore, he cannot insist for posting at Mumbai or any other particular place.

7. So far as the applicant in O.A. 386/2018 Dr. Subhash Shriram Babhulkar is concerned, it is stated that he has completed more than 11 years and 4 months at Nagpur. It is stated that the proposals for transfer of the applicants were duly considered by the competent authority and the competent authority have also considered their representations and have rightly rejected the representations. In short, the respondents justified the applicants' transfer.

8. From the admitted facts on record, it is clear that the applicants are Class-I officers and they are overdue for transfer at Nagpur and in fact one of the applicants have completed more than 32 years at Nagpur whereas the other applicant has completed more than 12 years at Nagpur and they are not even challenged their transfers on any legal ground. The applicants being employees, cannot insist that they shall be posted at a particular place.

9. The Ld. counsel for the applicants placed reliance on one G.R. dated 9.4.2018 issued by the Government whereby procedure has been framed so as to reconcile the cases of employees due for transfer. This G.R. is, however, not applicable to the Class-I post. While rejecting the representation, the Govt. has

clearly mentioned this fact. So far as retention of the applicants at Nagpur, it is stated that the employees can claim for retention only in case they are to be retired within one year from the date of transfer. None of the applicants is going to retire within one year. Both of the applicants have completed their tenure at Nagpur and in fact, they were never transferred out of Nagpur and, therefore, in such circumstances, their request for either cancellation of their posting at Aurangabad or any other place cannot be accepted and the same has been rightly rejected by the respondents. I do not find any illegality either in transfer of the applicants or in the communication rejecting their representations and, therefore, I do not find any merit in these O.As.

10. Shri R.V. Shiralkar, the Ld. counsel for the applicants submits that the applicant in O.A. No. 423/2018 is working at Nagpur on account of *status quo* granted by this Tribunal. It is stated that, his son is taking education in 12th standard and, therefore, he may be retained till the end of this session.

11. The Ld. counsel for the applicants further submits that the applicant in O.A. No. 386/2018 has lost his son and his wife is serving in private institution and, therefore, he may be retained till

the end of academic session. In fact, there is no case made out on merits for extension of tenure of the applicants at Nagpur. However, the fact that they were given protection by this Tribunal and considering their personal difficulties, it may not make any difference to the State, if the applicants are allowed to continue to work at Nagpur till academic session of this year or till the Annual General Transfers of 2019, since nobody are posted in place of the applicants. In view thereof, I proceed to pass the following order:-

ORDER

- (i) The O.A. Nos. 423 and 386 of 2018 stand dismissed with no order as to costs.
- (ii) The applicants are, however, given liberty to join at their respective places in view of their transfer orders dated 31.5.2018 on or before 1.6.2019, till that time, they be allowed to continue to work at Nagpur.

(J.D. Kulkarni)
Vice-Chairman (J)

