

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 301/2019 (S.B.)

Mohan Dashrath Karnewar,
Aged about 55 years, Occ. Child Development
And Project Officer, Ramtek, R/o 73,
Azad Hind Nagar, Jaitala Road,
Nagpur-440 022.

Applicant.

Versus

- 1) State of Maharashtra,
through the Secretary,
Woman and Child Development Department,
Mantralaya, Mumbai-400 032.
- 2) Commissioner,
Woman and Child Development Department (Administration),
28, Quince Garden, near Old Circuit House,
Pune-411 001.

Respondents.

S/Shri P.S. Wathore, M.V. Joshi, Advs. for the applicant.

Shri H.K. Pande, P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 308/2019 (S.B.)

Prabhakar S/o Mahadev Upare,
Aged 53 years,
Occ. Superintendent Gazetted Government
Juvenile Home for Physically Handicapped Children,
Chandrapur R/o C/o Pushpa Moon,
Surveyor Colony, near Gurudwara Shastri Nagar,
Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra,
through the Secretary,
Woman and Child Development Department,
Mantralaya, Mumbai-400 032.
- 2) Commissioner,
Woman and Child Development Department (Administration),
28, Quince Garden, near Old Circuit House,
Pune-411 001.

Respondents.

**Shri P.S. & Mrs. K.P. Wathore, Shri M.V. Joshi, Advs. for the applicant.
Shri H.K. Pande, P.O. for the respondents.**

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 16th September, 2019.

Date of Pronouncement of Judgment : 16th September, 2019.

COMMON JUDGMENT

(Delivered on this 16th day of September,2019)

Heard Shri M.V. Joshi, learned counsel for the applicants and Shri H.K. Pande, learned P.O. for the respondents.

2. The applicants in both the matters are transferred vide order dated 22/4/2019 and being aggrieved by this order both have filed separate applications to quash the transfer order. As substantial issues involved in both the applications are similar, therefore, both the applications are decided by this common order.

3. It is submission of the learned counsel for the applicants that the transfer order dated 22/4/2019 is in violation of Section 4 (4) & (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short "Transfers Act,2005") and similarly this order is in violation of the G.R. dated 9/4/2018. It is submitted that the options submitted by the applicants for the choice posting were not considered and without considering their previous services in the Naxalite Area, they are unilaterally transferred. It is submitted that the applicant in O.A.No.308/2019 is physically handicapped and though he was ready to work in Chandrapur district (Naxalite Area), his option was not considered and he is posted at Amravati. It is submitted that though it was possible for the respondents to accommodate both the applicants, but it was not done, therefore, the impugned orders are in

violation of Section 4 of the Transfers Act,2005 and violation of the G.R., therefore, cannot be justified.

4. The learned counsel for the respondents have mainly attacked the applications on the ground that the Public Interest Litigation (PIL) No.28/2014 was filed by the Bhartiya Stree Shakti through Organising Secretary, Smt. Harshada Purekar and in this matter the Hon'ble Division Bench of Bombay High Court, Bench at Nagpur issued direction on 6/3/2019 to the respondents in the Petition to take the steps for the recruitment for filling the post of Superintendent and also directions were issued to fill the posts and report the compliance within four weeks. It is submitted by the respondents that for filling the vacant post of the Superintendent, the recruitment process was to be implemented through the MPSC and it was time consuming, therefore, in order to comply the order passed by the Hon'ble High Court, transfer memo dated 22/4/2019 was issued and consequently both the applicants were transferred. The applicant in O.A.No.301/2019 was transferred from Nagpur and posted at Chandrapur and the applicant in O.A.No.308/2019 was transferred from Chandrapur and posted at Amravati. It is submitted that the transfer orders were issued to fill the vacant posts for complying the direction issued by the Hon'ble High Court, therefore, there is no illegality in the transfer orders. On perusal of both the original

application it seems that there is reference of the direction issued by the Hon'ble High Court, therefore, justification for the transfers is shown by the respondents.

5. During the course of the argument, the learned counsel for the applicants submitted that the applicants in O.A.Nos. 301/2019 and 308/2019 are ready for the mutual transfer. In this regard, I would like to point out that the applicants are at liberty to make such representation to the respondents and if suitable the respondents may take decision. In view of this, I am compelled to say that the transfer orders were issued as there was urgency and administrative exigency, therefore, the transfer orders are not in violation in law.

6. So far as the provisions of the G.R. are concerned, the provisions in the G.R. are directory in nature and the respondents were bound to follow the guidelines in the G.R., if possible. It is not possible to accept that out of vengeance or malafides both the applicants are transferred, therefore, I do not see any merit in the both applications. However, considering the fact that the applicant in O.A.No.308/2019 is physically handicapped person, therefore, liberty is given to the applicants to make fresh representation to the respondents for their mutual transfer and if such representation is made, then it shall be decided by the respondents within a period of three months from the date of this order.

7. In view of above, the O.A. stands disposed of. No order as to costs.

Dated :- 16/09/2019.

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(A.D. Karanjkar)
Member (J).

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 16/09/2019.
and pronounced on

Uploaded on : 17/09/2019.