

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.276 & 277 OF 2016

DISTRICT : SANGLI

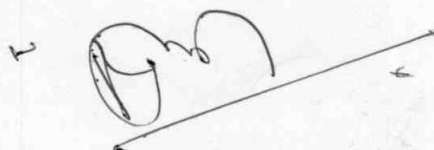
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ORIGINAL APPLICATION NO.276 OF 2016

Komal Ranchandra Dhumal )  
Occu.: Police Shepoy, Residing at Sutar )  
Plot No.14, Behind ST Stand, Babar, )  
Chawl, Sangli 416 416. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Addl. Chief Secretary )  
(Home), Mantralaya, )  
Mumbai - 400 032. )
2. The Director General of Police. )  
Police Mukhyalay, Colaba, Mumbai. )
3. Inspector General of Police, )  
Kolhapur Zone, Kolhapur. )
4. The District Superintendent of Police )  
Sangli. )
5. The Deputy Superintendent of Police )  
Meeraj Area, Meeraj. )...**Respondents**



**AND**  
**ORIGINAL APPLICATION NO.276 OF 2016**

Shahnaj B. Barudwale. )  
Occu.: Police Naik (Driver), Residing at )  
Behind Vasantdada Kushti Kendra, 100 )  
Feet Road, Yeshwant Nagar, Jannat Ice )  
Cream Parlour, Sangli 416 416. )...**Applicant**

**Versus**

1. The State of Maharashtra & 4 Ors. )...**Respondents**

**Ms. Lata Patne, Advocate for Applicant.**

**Ms. Savita Suryawanshi, Presenting Officer for Respondents.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 07.10.2016**

**JUDGMENT**

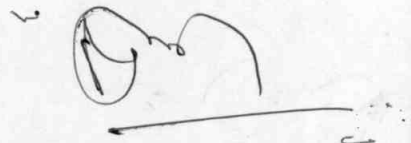
1. These two Original Applications (OAs) are brought by two lady Constables who have been by the impugned order dated 27.1.2016 came to be transferred from Sangli to Satara and Kolhapur respectively. By the order dated

6.4.2016, the Hon'ble Chairman was pleased to observe that the Applicants would be free to join transferred post and such joining will not come in the way of the Applicants getting restitution in case of success herein.

2. I have perused the record and proceedings and heard Ms. Lata Patne, the learned Advocate for the Applicants and Ms. Savita Suryawanshi, the learned Presenting Officer (PO) for the Respondents.

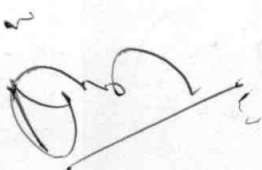
3. The present matter is governed by the provisions of the Maharashtra Police Act, 1951 as amended on 6.4.2015. It is, therefore, a case of statute regulated transfer. The transfer admittedly is a mid-term transfer as would become clear from the fact that it came to be issued in the month of January and not April or May. In a way, it is also a mid-tenure transfer. The validity thereof, therefore, will have to be examined from the stand point of the date of its issuance and not as the state of affairs obtain as of now.

4. The OAs, in my view somewhat erroneously refer to the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act). That



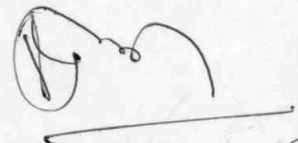
does not appear to be accurate as already mentioned just now. However, in essence, there is not much difference between the two enactments and the Respondents have not been prejudiced at all because they have quite clearly mentioned in their Affidavit-in-reply that the matter is governed by the Police Act and not by the Transfer Act.

5. The perusal of the Affidavit-in-reply filed by Shri Ravindra G. Dongare, Inspector of Police, Special Branch in the Office of Superintendent of Police, Sangli would show that there were enquiries held against these Applicants because they allegedly became conduit to the detriment of the Police Department and conveyed the goings on to an accused Nadaf who is allegedly a hard core criminal and was allegedly absconding for some time. At this stage itself, I must make it very clear that in this order, I am not at all concerned with scrutinizing the material to find as to whether the allegations against the said alleged criminal and his relationship with these two Applicants are true or not. I have to take the case of the Respondents as it is for the purposes strictly germane and limited hereto, and therefore, I shall try my very best to make sure that I do not expend more expressions than strictly necessary for the purposes hereof. The crux of the matter is that the said alleged criminal somehow or the



other has got some relationship with the Applicant Ms. Barudwale according to the Respondents and this fact was not seriously disputed even by the learned Advocate for the Applicants. However, the details of the relationship on which the parties were not *ad-idem* are not required to be examined and found and I can proceed on the basis that there was some relationship but that was only with the Applicant Ms. Shahnaj Barudwale and not with the Applicant Ms. Komal Dhumal. Somewhat regrettably, some police documents showed the name of the said alleged criminal suffixing the name of the Applicant Ms. Komal Dhumal also, but then the things were mended belatedly by an Affidavit, etc. In fact, even if I were to assume and this is only an assumption and not a finding that whatever has been alleged against the Applicants is true still they could not have done what they did, regard being had to the fact that the said Applicant is a lady. But for the reason, just stated, I leave it at that and proceed further.

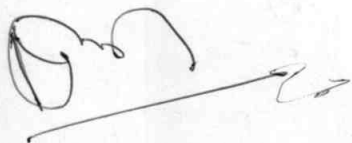
6. The provisions of Section 22 J-3 (proviso) makes it clear that the power to effect the transfer of any Police Personnel prior to the completion of the normal tenure rests with the Government and here, it did not so happen. The impugned order was made by the Superintendent of

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Police, Sangli. It was an inter-district transfer, and therefore, the same suffers from what appears to me to be an incurable illegality because if an act could be performed only by the Government, it could be performed only by them and not by any subordinate authority, and therefore, the impugned order is *non-est*.

7. In a pair of **Original Applications No.466/2016 and 467/2016 (Shri Arun R. Pawar Vs. State of Maharashtra and 2 ors. and one other OA)**, I had an occasion to deal with such mid-tenure transfers of two Police Inspectors by my order dated 12.7.2016 (**A.R. Pawar's OA**). Almost, all the points covered therein are applicable hereto including the history and significance of the legal provisions herein relevant and also the competence of the transferring authority and as a result of a detailed discussion, the transfer orders therein impugned were struck down and the same course of action will have to be followed here also because although, the Applicants herein are from the cadre of Constables, but the same principle will apply because the same enactment applies.

8. In view of the foregoing, therefore, it is very clear that the impugned orders cannot sustain and they will have to be set aside.



9. Ms. Suryawanshi, the learned P.O. referred me extensively to what she considered to be the dubious history of the Applicant duo and as to how they were in telephonic connection with the alleged criminal. Now, in my view, when I am concerned here with the service condition of transfer, any pronouncement hereon is not going to put shackles in the hands of the authorities to invoke other Rules in case they were so minded as to do. In other words, transfer cannot be a panacea of all ills, if it does not answer the requirements of the enacted law. If there is any other action to be taken, the Respondents will be free to do so.

10. With the above observation, the Original Applications are allowed. The impugned orders are quashed and set aside and the Respondents are directed to repost the Applicants to the post they have been transferred from within four weeks from today. No order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**07.10.2016**

07-10-16

Mumbai  
Date : 07.10.2016  
Dictation taken by :  
S.K. Wamanse.