

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.733 OF 2020
WITH
ORIGINAL APPLICATION NO.394 OF 2021**

DISTRICT : SINDHUDURG

Dr. Shrimant Haribhau Chavan.)
Age : 52 Yrs., Working as Civil Surgeon,)
General Hospital, Sindhudurg and)
Residing at Civil Surgeon Bunglow, Civil)
Hospital Campus, District : Sindhudurg.) **...Applicant**

Versus

The State of Maharashtra.)
Through Additional Chief Secretary,)
Public Health Department, Mantralaya,)
Mumbai – 400 032.) **...Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 25.01.2022

JUDGMENT

1. In O.A.733/2020, the Applicant has challenged transfer order dated 01.12.2020 and in O.A.394/2021, the Applicant has challenged suspension order dated 22.04.2021. Since both O.As are filed by same Applicant and to some extent interrelated, those are being decided by common order for convenience.

2. Shortly stated facts giving rise to these O.As are as under :-

While Applicant was serving as Medical Superintendent, Rural Hospital, Kudal, District Sindhudurg by order dated 01.10.2020, he was transferred and posted as Civil Surgeon, District Hospital, Sindhudurg on his request. He made an application on 04.11.2020 requesting Government to transfer him to District Hospital, Beed. However, instead of accepting his request for Beed, the Respondents by order dated 01.12.2020 transferred him as Additional Civil Surgeon, General Hospital, Aurangabad. Being aggrieved by it, the Applicant has filed O.A.No.733/2020 *inter-alia* contending that impugned transfer order dated 01.12.2020 is bad in law, since he did not ask for Aurangabad. He was not due for transfer, and therefore, transfer order posting him at Aurangabad is unsustainable in law. In O.A.733/2020, the Tribunal has granted interim relief in favour of Applicant by order dated 10.12.2020. In view of interim relief, the Applicant continued as Civil Surgeon, District Hospital, Sindhudurg.

3. Thereafter, while Applicant continued as Civil Surgeon, District Hospital, Sindhudurg, one lady Security Guard who was in temporary employment of the Hospital has lodged FIR against the Applicant with Sindhudurg Police Station alleging that on 18.02.2021 in the evening, the Applicant called her in the Cabin and outraged her modesty. The Applicant allegedly threatened her with dire consequences if she discloses the incidence. In view of her report, FIR vide Crime No.12 of 2021 for the offences under Sections 354, 354-A(1)(i), 506 of Indian Penal Code was registered. The Applicant approached Sessions Court for Anticipatory Bail, but did not succeed. He then filed Anticipatory Bail Application before Hon'ble High Court, which also came to be rejected on 23.03.2021. The Applicant thereafter came to be arrested on 07.04.2021. He was produced before learned CJM, Sindhudurg who remanded the Applicant to Police Custody till 12.04.2021. It is on this background, the Government by order dated 22.04.2021 suspended the

Applicant by way of deemed suspension invoking Rule 4(2)(A) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity) since Applicant was in Police Custody exceeding 48 hours.

4. The Applicant has challenged the suspension order dated 22.04.2021 by filing O.A.394/2021 *inter-alia* contending that he was victimized by Government at the instance of some Politicians to protect Dr. Nigudkar against whom the Applicant had initiated action under the provisions of 'Pre-conception and Pre-natal Diagnostic Technics Act, 1994 (hereinafter referred to as 'PCPNDT Act' for brevity) and on ground of prolong suspension. The O.A. was filed on 18.06.2021.

5. Another development which are taken place during the pendency of matter is that the Government by order dated 12.10.2021 revoked suspension of the Applicant and posted him as Medical Officer, Training Centre, Civil Hospital, Nandurbar. Though Applicant is reinstated in service, learned Advocate for the Applicant sought to challenge the legality of suspension, and therefore, this O.A. along with O.A.733/2020 (transfer matter) are heard together.

6. Insofar as O.A.733/2020 is concerned, indisputably, the Applicant has requested for transfer at Beed only, but he was transferred to Aurangabad on the ground that the post of Beed was already filled-in. Since it was mid-term and mid-tenure transfer and there was no such special case as contemplated under Section 4(5) of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity), the Tribunal has granted interim relief in favour of Applicant and accordingly, he continued as Civil Surgeon, Sindhudurg. However, later by order dated 22.04.2021, the Applicant was suspended by way of deemed suspension invoking Rule 4(2)(a) of 'Rules of 1979' and subsequently, by order dated 12.10.2021, he was reinstated in service.

This being the factual position, indeed, the issue of transfer and its legality has become purely academic, since even if O.A.733/2020 is allowed, the Applicant cannot be reposted as Civil Surgeon, Sindhudurg in view of suspension and pendency of criminal case. Be that as it may, indisputably, the Applicant requested to transfer at Beed though he had not completed his normal tenure at Sindhudurg. However, instead of accepting his request for Beed by order dated 01.12.2020, he was transferred to Aurangabad on the ground that the post of Beed was already filled-in. No other contention is raised in Affidavit-in-reply filed by Respondent to justify or legalize the transfer of the Applicant at Aurangabad. All that, in Affidavit-in-reply, it is stated that the post of Aurangabad was vacant, and therefore, with the approval of competent authority, the Applicant was posted at Aurangabad. Suffice to say, in Affidavit-in-reply, it is nowhere the case of Government that there was any such special case for mid-term and mid-tenure transfer of the Applicant, as contemplated under Section 4(5) of 'Transfer Act 2005'.

7. Curiously, the perusal of order dated 10.12.2020 passed by Hon'ble Chairperson whereby interim relief was granted reveals that interim relief was opposed by learned P.O. on the ground that there were several complaints against the Applicant during his tenure at Sindhudurg. Hon'ble Chairperson observed that *prima-facie*, transfer is in the nature of punishment, since transfer order was issued without giving opportunity of Show Cause Notice or enquiry in that behalf. Whereas, interestingly, no such ground of transfer on the basis of complaint is raised in Affidavit-in-reply filed by the Respondent. It is totally silent on the point of alleged complaint. All that, in Affidavit-in-reply, it is stated that since post of Aurangabad was vacant, with the approval of competent authority, Applicant was posted at Aurangabad. Since admittedly, Applicant had not completed normal tenure and his request was only for Beed, in absence of any other special reason, as contemplated under Section 4(5) of 'Transfer Act 2005', the impugned

transfer order dated 01.12.2020 is *ex-facia* unsustainable in law since it is in blatant violation of provisions of 'Transfer Act 2005'.

8. However, as stated above, even if transfer order dated 01.12.2020 is found untenable in law, the Applicant could not be reposted as Civil Surgeon, Sindhudurg in view of subsequent event of his suspension by order dated 22.04.2021.

9. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the legality of suspension order dated 22.04.2021 *inter-alia* contending that his client has been victimized at the instance of Politicians to protect Dr. Nigudkar against whom the Applicant has initiated action under the provisions of 'PCPNDT Act'. In this behalf, in O.A, reference is made of some conversation between Applicant and Shri Uday Samant, Hon'ble Minister for Higher and Technical Education and Guardian Minister of Sindhudurg. The Applicant alleged that Minister wanted to protect Dr. Nigudkar, and therefore, he is made scapegoat and suspended. Insofar as script of conversation (Page Nos.115 to 119 of Paper Book) is concerned, no steps were taken to prove the same, as required in law. When specific query to that effect was raised, the learned Advocate for the Applicant fairly stated that it be excluded from consideration since he could not prove it as required to be proved and legality of suspension be decided on other material.

10. True, as seen from letter dated 02.11.2020 and notice dated 06.11.2020 (Page Nos.34 and 14 of Paper Book), it reveals that Applicant being competent authority has initiated certain steps against Dr. Nigudkar alleging contravention of the provisions of 'PCPNDT Act' and Rules framed thereunder. The learned Advocate for the Applicant much emphasized on this correspondence to contend that Dr. Nigudkar was in the good-books of Guardian Minister which was not liked by the Government, and therefore, Applicant is victimized firstly by transferring him to Aurangabad and thereafter, by suspending him. Thus, according

to him, the suspension is *malafide*. To say the least, his submission is totally fallacious and unacceptable.

11. It may be noted that the Applicant was suspended in view of admitted position of registration of offence under Section 354, 354-A(1)(i) and 506 of IPC. He was in Police Custody for 5 days. That is why Rule 4(2)(a) of 'D & A Rules of 1979' comes in force which *inter-alia* provides for deemed suspension w.e.f. the date of detention where a Government servant is detained in Police or Judicial Custody for criminal charges for a period exceeding 48 hours. There is nothing to indicate even remotely that prosecutrix was related in any manner Dr. Nigudkar or she has axe to grind against the Applicant. This detention in Police Custody is not at all related or connected to his grievances against Guardian Minister. Once there is detention of Government servant in Police Custody or Judicial Custody exceeding 48 hours, there is automatic deemed suspension by operation of law. This being the position, the submission advanced by the learned Advocate for the Applicant that suspension was malicious has to be heard and rejected only.

12. Shri Bandiwadekar, learned Advocate for the Applicant further sought to contend that the period of suspension should be restricted to the actual period of detention and there being no fresh order of extending the period of suspension, the suspension order is illegal. In this behalf, he sought to place reliance on the decision of Hon'ble High Court **2000(4)Mh.L.J. 206 [Madhukar N. Patil Vs. Chairman, Sudhagad Education Society]**. It was a case of suspension of School employee and issue was relating to Rule 33(5) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as 'Private Schools Rules of 1981' for brevity). As such, it was not a case of suspension of a Government servant, but it was a matter of suspension of School employee governed by 'Private Schools Rules of 1981'. It is in that context, while interpreting Rule 33(5) of the 'Private Schools Rules of 1981', the Hon'ble High Court held that the period of suspension under

Sub-rule 5 of Rule 33 necessarily comes to an end, once the period of Judicial or Police Custody is terminated. I really failed to understand how this authority is of any help or assistance to the Applicant in the present case, since the matter in hand pertains to deemed suspension of Government servant contemplated under Rule 4(2)(a) of 'D & A Rules of 1979'. The learned Advocate for the Applicant could not point out any provision from 'D & A Rules of 1979' in support of his contention that suspension is restricted to actual period of detention. On the contrary, law is very much clear that whenever there is detention in Police or Judicial Custody exceeding 48 hours, a Government servant deemed to have been suspended with retrospective effect from the date of detention.

13. Needless to mention, the adequacy of material before the competent authority for issuance of suspension order is not normally subject to judicial review by the Tribunal. Whereas, in the present case, the Applicant is suspended by operation of law in view of admitted position that he was in Police Custody exceeding 48 hours which was enough to revoke Rule 4(2) of 'D & A Rules of 1979'. Suffice to say, the grounds raised to challenge suspension is totally baseless. I see absolutely no illegality in suspension order.

14. Indisputably, by order dated 12.10.2021, the suspension is revoked and Applicant is reinstated as Medical Officer, Training Centre, General Hospital, Nandurbar. However, learned Advocate for the Applicant sought to contend that Applicant being in the cadre of Civil Surgeon, he ought to have been reinstated on the same post. Whereas, it is rightly pointed out by learned P.O. that in view of Civil Surgeon Cadre, Group 'A' and District Health Officer Cadre, Group 'A' in the Maharashtra Health Services Group 'A' (Recruitment) Rules, 2021, the cadre of Civil Surgeon includes Medical Officer and Training Centre as specifically provided in Rule 2-A of the said Rules. Apart, in view of G.R. dated 14th October, 2021 issued by GAD, Government of Maharashtra where a Government servant is reinstated in service, he has to be reposted on

non-executive post. This being the position, the Applicant cannot ask for the same post of Civil Surgeon. He himself invited trouble for creating this situation. Be that as it may, the challenge to the suspension order is devoid of merit.

15. Now turning to the issue of transfer, though transfer order dated 01.12.2020 is unsustainable in law as concluded above, in view of subsequent development of suspension and reinstatement, the Applicant cannot be reposted at his original place as Civil Surgeon, Sindhudurg. In other words, the challenge to the transfer order has become infructuous by subsequent events. Insofar as suspension order is concerned, I see no illegality therein. Hence, the following order.

ORDER

- (A) Original Application No.733/2020 has become infructuous and accordingly disposed of with no order as to costs.
- (B) Original Application No.394/2021 is dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 25.01.2022
Dictation taken by :
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2022\January, 2022\O.As.733.20 with 394.21.w.1.2022.Transfer & Suspension.doc

Uploaded on