

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.207 & 211 OF 2019

DISTRICT : NASHIK

ORIGINAL APPLICATION NO.207 OF 2019

Shri Pramod Kisan Hile.)
Age : 40 Yrs., Occu. : Government Service)
as Tahasildar, Baglan, District : Nashik)
and residing at Mukhyadhikari Niwas,)
Satana, District : Nashik.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary)
(Revenue), Revenue & Forest Dept.,)
Mantralaya, Mumbai – 400 032.)
2. Shri Jitendra Ingale.)
Occu.: Govt. Service as Assistant)
District Supply Officer, Ahmadnagar.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.211 OF 2019

Shri Shivkumar M. Awalkanthe.)
Age : 50 Yrs., Occu. : Government Service)
as Tahasildar, Nashik, District : Nashik.)
Transferred as Tahasildar, Urban Land)
Ceilig, Nashik, and residing at 204,)
Mokksh Apartment, Patil Lane No.2,)

Off. College Road, Nashik.

)...**Applicant**

Versus

1. The State of Maharashtra.)
Through All. Chief Secretary)
(Revenue), Revenue & Forest Dept.,)
Mantralaya, Mumbai – 400 032.)

2. Shri Anilkumar Daunde.)
Occu.: Govt. Service as Tahasildar,)
Tal. : Rahuri, District : Ahmadnagar.)
Transferred at Nashik, having office)
At Tahasil Office, Nashik.)

)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondent No.1.

Mr. M.D. Lonkar, Advocate for Respondent No.2.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 09.09.2019

JUDGMENT

1. Since both these Original Applications are arising from common facts, those are being decided by common Judgment.

2. In both these O.As, the Applicants have challenged the impugned transfer order dated 20.02.2019 on the common ground. In O.A.207/2019, the Applicant has been transferred from the post of Tahasildar, Baglan to Tahasildar, Sanjay Gandhi Yojana, Malegaon City, District Nashik whereas the Applicant in O.A.211/2019 has been transferred from the post of Tahasildar, Nashik to the post of Tahasildar, Urban Land Ceiling, District Nashik. In both the cases, the Applicants were transferred in pursuance of guidelines issued by

Election Commission of India which *inter-alia* provides for transfer of official against whom a Criminal Case is pending in any Court of law, so that he should not be associated with Election related duty to ensure free and fair Parliamentary Election of 2019 and Respondent No.2 was posted in their place.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicants sought to assail the impugned transfer orders on the following grounds :-

- (a) Only because Election Commission of India had issued guidelines that official against who Criminal Case is pending in any Court of law shall not be associated with Election related duty, that itself is not sufficient for the Government to transfer the Applicants and there is no application of mind or objective decision.
- (b) The constitution of Civil Services Board (CSB) is illegal, and therefore, the recommendation made by such CSB is unsustainable in law.
- (c) The Respondents have adopted pick and choose policy while transferring the Applicants and they are subjected to discrimination, which is violative of Article 14 of the Constitution.
- (d) As Parliamentary Elections for which reason the Applicants were transferred being now over, the Applicants are entitled for repatriation to their original post.

4. Undisputedly, the Applicants have not completed normal tenure of three years and were not due for transfer. It is also not in dispute that the Applicant in O.A.207/2019 is facing Criminal Case for the charges under Prevention of Corruption Act and it is subjudice in the Court of Special Judge, Amalner and Applicant in O.A.No.211/2019 is also facing Criminal trial for the charges under Prevention of

Corruption Act, which is subjudice before the Court of Special Judge, Jalgaon.

5. Furthermore, admittedly, the Election Commission of India by its letter dated 16th January, 2019 issued various directions for free and fair Parliamentary Elections and Clause No.7(ix), which is relevant for these proceedings is as follows :-

“7. Following clarifications/relaxations issued by the Commission, from time to time, are for information / guidance of all the concerned:-

.....

(ix) The Commission further desires that no officer/official, against whom a criminal case is pending in any court of law, be associated with/deployed on election related duty.

6. Before advertng to factual aspect, let us see the legal principles holding the field in the matter of transfers. The following are the guiding principles laid down by the Hon’ble Supreme Court.

“i) The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of malafides. (Mrs. Shilpi Bose & Ors Vs. State of Bihar & Ors. 1991 Supp, (2) SCC 659).

ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. (Shilpi Boses’s case (supra).

iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by malafides and is made in violation of any statutory provisions, the court cannot interfere with it. (Union of India & Ors. Vs. S.L Abbas (1993) 4 SCC 357).

iv) Transfer of an employee is not only an incidence inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. (State of Uttar Pradesh & Ors. Vs. Gobardhan Lal (2004) 11 SCC 402).

v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legality enforceable rights, unless, it is shown to be vitiated by malafides or made in violation of any statutory provision and so long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments (Gobardhan Lal's case supra).

vi) The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of malafides when made must be such as to inspire confidence in the court or based on concrete materials (Gobardhan Lal's case supra).

vii) Allegation of malafides should not be entertained on the mere making of it or on consideration borne out of conjectures of surmises. (Gobardhan Lal's case supra).

viii) Except for strong and convincing reasons no interference could ordinarily be made with an order of transfer (Gobardhan Lal's case supra)."

7. **As to ground (a) :-**

Shri Bandiwadekar, learned Advocate for the Applicants vehemently urged that as per the recommendation issued by Election Commission of India itself, the instructions particularly Clause (ix) referred to above, is directory and not mandatory. He tried to emphasize that the word used "desires" in Clause (ix) goes to show that it is only directory, and therefore, it should not form the foundation of mid-term and mid-tenure transfer of the Government servant.

Per contra, Ms. S.P Manchekar, the learned C.P.O. for Respondent No.1 and Shri M.D. Lonkar, learned Advocate for Respondent No.2 submits that the instructions issued by Election Commission of India were required to be implemented for free and fair Parliamentary Elections and the Government in its wisdom decided to implement the same by adopting relevant provisions of "Maharashtra

Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005' (hereinafter referred to as the Transfer Act). It is pointed out that the impugned transfers were recommended by CSB and the same was approved by the Hon'ble Minister as well as by the Hon'ble Chief Minister, and therefore, the challenge to the impugned transfer orders is devoid of merit.

True, in Clause (ix) of Para 7 of the guidelines, the word used "desires", but if the Government who is responsible for free and fair Parliamentary Elections in peaceful manner decided to implement the same, then such transfer orders cannot be upset unless it is in contravention of express provisions of "Transfer Act 2005". In the present case, admittedly, both the Applicants are facing serious charges under the Prevention of Corruption Act, 1988 and Criminal Trials are subjudice before the learned Special Judge at Amalner and Jalgaon respectively. True, the Applicants were serving as Tahasildar at District Nashik and not at Amalner or Jalgaon, but the place of trial is immaterial. The instructions issued by Election Commission of India are squarely attracted as no official against whom Criminal Case is pending in any Court of law, shall be associated with Election related duty. As such, the place of trial is immaterial, and therefore, the submission advanced by the learned Advocate for the Applicants that the pendency of Criminal Case at different place other than the place of posting cannot be the reason for transfer, holds no water. It cannot be said that there is no application of mind or absence of objective assessment of the situation. Suffice to say that the transfer was necessitated in view of instructions issued by Election Commission of India for free and fair Elections.

Shri Bandiwadekar sought to contend that before transfer, the Applicants were assigned the work of preparation of Voter List, which is related to Election work, and therefore, there was no reason to transfer them. True, it is seen from the letter dated 01.01.2019 (Page No.48 of Paper Book) that some work relating to publication of

Electoral Draft pertaining to Nashik Centre Assembly Constituency was assigned to the Applicants. However, it be noted that, later Election Commission of India by its letter dated 16.01.2019 issued the aforesaid instructions for transfer of officials against whom Criminal Case is pending in Court of law, so that he is not associated with the Election related work. As such, even if some work relating to publication of Electoral Draft was entrusted to the Applicants, that itself will not create any right in their favour to continue the said work, particularly where such work is prohibited by subsequent guidelines dated 16.01.2019. Apart, even if some work relating to Election was assigned to the Applicants inadvertently, that itself will not prevent the Government to transfer the Applicants when it was noticed that such work relating to Election cannot be continued with a person against whom Criminal Case is pending in any Court of law.

8. **As to ground (b) :-**

Now turning to the constitution of CSB, the learned Advocate for the Applicants sought to contend that the constitution of CSB is not in consonance with the G.R. dated 31.01.2014. According to him, the CSB must consist of Chairman and 3 Members. However, in the present case, the CSB was consist of Additional Chief Secretary, Revenue (Chairman), Principal Secretary, Forest (Member) and Member Secretary. He has also pointed out that one of the Member of CSB from Tribal Development Department was absent. On this line of submission, he submits that the decision taken by such CSB is invalid. I find no substance in his submission in this behalf. As per note in G.R. dated 31.01.2014, there should be at least 2 Members other than Chairman. Whereas, in the present case, one of the Member (Secretary) from Tribal Development Department was not present in the meeting. The recommendation was approved by remaining 3 Members viz. Chairman, Principal Secretary (Forest) and Member Secretary. In my considered opinion, the absence of one of the Member of CSB ipso-facto does not render the decision taken by

remaining Members invalid. Needless to mention that the role of CSB is of recommendatory body and final decision or authority rests with the executive. I, therefore, find no substance in the submission advanced by the learned Advocate for the Applicants in this behalf.

Shri Bandiwadekar sought to refer the decision rendered by this Tribunal in ***O.A.102/2015 (Ganesh Shinde Vs. Superintendent of Police) decided on 16.01.2018.*** The said matter relates to appointment to the post of Police Constable. In fact situation, the decision taken by the Committee to decline to recommend Applicants' names on account of pendency of Criminal Case was in issue. In fact situation because of absence of Government Pleader and Special Inspector General of Police, Kolhapur as a Member of Committee, the decision was held vitiated with a finding that there was no objective Judgment as to whether in the facts of the case, the Applicants' case was warranted to be recommended for appointment. As such, it was the matter relating to incomplete forum in the matter of appointment and recommendation to the post of Police Constable. Whereas, in the present case, the matter pertained to the decision by CSB in pursuance of the directions issued by Election Commission of India. Therefore, the decision relied by the learned Advocate for the Applicant is of no assistance to him.

9. ***As to ground (c) :-***

Shri Bandiwadekar, learned Advocate for the Applicants further sought to assail the impugned transfer orders contending that, in the matter of 11 other officials, though they have completed more than 3 years, they are not being transferred though the instructions issued by Election Commission of India *inter-alia* provides for transfer of such officials who have completed 3 years' tenure. He, therefore, submits that the Applicants are subjected to discrimination, which is violative of Article 14 of the Constitution of India.

Whereas, the learned C.P.O. for Respondent No.1 and Shri Lonkar, learned Advocate for Respondent No.2 sought to contend that those 11 officials pointed out by the learned Advocate for the Applicants in his pleading are posted having no relation to Election work, and therefore, it was not necessary to displace them, and therefore, the ground of discrimination holds no water.

In the present matter, the Applicants were transferred from their present post of Tahasildar, which is executive post and admittedly related to Election work and because of pendency of Criminal Case against them, they were transferred. The learned Advocate for the Applicants could not point out a single case or instance where despite the pendency of Criminal Case, the employee is not transferred. Therefore, the ground of discrimination sought to be raised is without any substance. Even assuming for a moment that the Government failed to transfer some of the officials having completed 3 years' tenure in terms of instructions of Election Commission of India, that itself will not create any subsisting right in favour of the Applicants to continue on the same post. In such situation, if the submission advanced by the learned Advocate for the Applicants is accepted, then it would be amounting to perpetuate the wrong which is obviously not permissible in law. In other words, the failure of the Government to take suitable action against others, cannot be raised as a ground of discrimination.

10. **As to ground (d) :-**

Shri Bandiwadekar, learned Advocate for the Applicants vehemently urged that the Applicants were transferred on account of ensuing Parliamentary Elections of 2019 in pursuance of instructions issued by Election Commission of India, but now the Elections being already over, the reason for transfer no more subsist or survive, and therefore, the Applicants are entitled for repatriation on the post held by them before transfer. In this behalf, he sought to refer the decision

of Hon'ble Bombay High Court in **Writ Petition No.6051/2017 (Mahendra E. Mali and Ors. Vs. State of Maharashtra) decided with connected Writ Petitions on 4th April, 2018**. In the said matter, the arguments were advanced before the Hon'ble High Court that where the employees transferred on account of instructions of Election Commission of India, then such transfer should be construed as a deputation for stipulated period and once the Election process is over, the employees are entitled for reposting on the post they are transferred from. In this behalf, before Hon'ble High Court of Bombay, the reliance was placed by the employees on the Judgment of Karnataka High Court in **2013 CJ (KAR) 595 (Election Commission of India and Ors. Vs. State of Karnataka & Ors.)**.

11. At this juncture, it would be apposite to reproduce at Para Nos.24 to 31 of the Judgment of Writ Petition No.6051 of 2017, which are as follows:-

“24. As has been stated above, the orders have been issued having due regard to the procedural safeguards provided under the Act. It also must be noted that the orders of transfer have been acted upon for more than a year. It is the contention of the State that any interference, after lapse of long duration of one year could cause administrative difficulty, which factor also deserves to be considered. It is also to be noticed that apart from petitioners, a large number of employees have been transferred in observance of the instructions issued by the State Election Commission. It cannot be considered that orders of transfer transferring large number of employees within the district on account of special circumstances, i.e. process of election, to the local authorities can be said to be mala fide. The orders of transfer have been issued as a result of administrative reasons and due to special circumstances and in observance of the procedure prescribed under the Act. This Court is not expected to substitute its own reasons for the satisfaction of the transferring authority. It is the contention of the respondents that the orders of transfer are issued as a result of misconstruction of the directions issued by the State Election Commission. The orders issued by the State, though direct transferring an employee, shall have to be construed as a deputation, would amount to misconstruction of record and more specifically the orders issued by the State itself. The State has issued orders in observance of the provisions of law and the orders themselves speak of transfer of an employee. It would, therefore, be difficult to construe those orders as deputation.”

25. *Reliance is placed by the respondents on the judgment in the matter of Election Commission of India and others Vs. State of Karnataka and others, decided by the Division Bench of Karnataka High Court, 2013 CJ (Kar) 595. In paragraphs no.29 and 30 of the judgment, it is observed thus:*

“29. The argument that the Election Commission, even though they chose to requisition the services of these officers from the Government for election work and if they are to be transferred and posted before the expiry of the minimum tenure, they should make a request to the State Government, which in turn should make a request to the Committee to consider their case and make recommendation and then only they can be posted, holds no water. The said rule is not meant to deal with a situation where elections are announced to the Legislative Assembly. It is not a case of transfer. It is a case of deemed deputation. The said rule is silent and therefore under Article 324 of the Constitution, the Commission has the power to issue directions to transfer and post the officials for the proper conduct of the elections.

30. In the instant case, after preliminary preparations are made for conducting elections, before issue of notification calling for the elections, the Election Commission wanted these respondents – 4 to 10 to be posted in place of applicants during the period of election. Once they are so posted, after the issue of notification, they are deemed to be on deputation to the Election Commission, for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of results of such election and accordingly such officers shall, during that period, be subject to control, superintendence and discipline of the Election Commission. Therefore, the order passed by the Election Commission directing the State to post these officers in the place suggested by them would result in deemed deputation to the Election Commission for the aforesaid period. Once declaration of result of such elections is announced, the said deputation comes to an end and at the end of the deputation, the officers are reverted back to their parent organization (previous post held by them).

26. *Relying on the observations as aforesaid, it is contended that the assignment of election duties at a particular place shall be deemed to be a deputation and after the declaration of results, the deputation comes to an end and at the end of the deputation, officers are reverted back to the parent organization.*

27. *In the instant matter, as has been observed by us, that the employees have been transferred in observance of Section 4(iv) and (v) of the Transfer Act. The midterm transfers have been effected on account of special circumstances. The orders of transfers have been issued by the competent authority i.e. Commissioner of Division, who has been delegated with the powers to issue such orders under Section 6 of the Transfer Act. The cases of the petitioners were scrutinized by the Civil Services Board before recommending the transfers. Thus, the procedure prescribed under the Act has been observed in the instant case.*

28. *The petitioners and others were transferred on consideration of guidelines/directives of the State Election Commission and in view of the initiation of process of election for local authorities and since the purpose for which they were shifted before completion of their normal tenure, is already over and the process of election has come to an end long back, it would be open for the State to pass appropriate orders of transfer for reposting them at an appropriate place, in observance of the procedure prescribed under the Transfer Act.*

29. *Apart from this, it also deserves to be considered that the orders of transfer have been given effect more than a year back and any interference, at this stage, would amount to displacement of several employees thereby creating difficulties in the administration. The orders of transfer are expected to be issued considering the administrative exigencies. However, as has been noted above, interference at this stage, would, instead of, protecting interest of the administration, would create difficulties, as has been canvassed by the State.*

30. *In this view of the matter and for the reasons recorded above, according to us, orders passed by the Maharashtra Administrative Tribunal, directing to quash the orders of transfer under the impugned judgment and order dated 24.04.2017, deserves to be quashed and set aside and same is accordingly quashed and set aside. It is, however, made clear that it would be open for the State to pass appropriate orders transferring the employees, if deemed necessary for administrative exigencies while effecting regular process in the months of April-May, 2018.*

31. *Rule is accordingly made absolute. There shall be no order as to costs."*

12. Thus the perusal of the Judgment makes it quite clear that the Hon'ble High Court declined to grant the relief prayed for by the Government servants to treat the transfer as a deputation period for stipulated period. The learned Advocate for the Applicant sought to distinguish the matter contending that, in the said case, the period of more than one year from the date of transfer was over, and therefore, the relief was not granted. He tried to contend that in the present case, the period of hardly 7 months is over from the date of transfer, and therefore, Elections being already over, the Applicants are entitled for declaration of repatriation. Whereas, it is rightly pointed out by the learned CPO that, though the Parliamentary Elections are over, now State Assembly Elections are due in next 2 months, and

therefore, the question of repatriation does not survive, as they cannot be posted on executive post of Tahasildar associated with Election related duty. I find merit in the submission. There is no denying that State Assembly Elections are in offing and can be declared at any point of time, as the period of present legislative Assembly is upto 9th November, 2019. Apart, it is manifest from the impugned transfer orders that the Applicants are transferred from the present post and it is not deputation for stipulated period.

13. True, the Applicants have not completed their normal tenure, but their transfer was necessitated in view of instructions issued by Election Commission of India. Their transfers were recommended by CSB and the same was approved by Hon'ble Minister as well as Hon'ble Chief Minister being imperative for the Government to do so. There is full compliance of Section 4(5) of "Transfer Act 2005" in letter and spirit, as the reasons for the transfer are clearly demonstrated and the same is done with the prior permission of the immediately preceding competent authority, as mandated under Section 4(5) of "Transfer Act 2005". In other words, it was an administrative exigency and was for public interest namely for free and fair Elections of 2019.

14. The submission advanced by the learned Advocate for the Applicants that the impugned transfer order is stigmatic, and therefore, not sustainable in law, is misplaced as well as misconceived. The Applicants were transferred because of pendency of Criminal Case against them in view of directives issued by Election Commission of India. Therefore, such transfer does not carry any stigma, as the same is done in public interest, so as to ensure that the election process are manned by the person who have no such antecedent.

15. Needless to mention that the transfer orders can be interfered only when it is found in contravention of mandatory provisions, arbitrary or *malafide*. In this behalf, it would be appropriate to refer the Judgment of Hon'ble High Court in **2008 (2) Mh.L.J. 640 (Shri V.V. Gadekar, Deputy Engineer Vs. MHADA)**, wherein it has been held as follows :-

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”

16. Indeed, prior to filing of these OAs, the Applicants have challenged the efficacy and legality of instructions issued by Election Commission of India by filing Writ Petition No.5501/2019 before Hon'ble High Court, but withdrew the same. The learned Counsel for the Respondents has tendered the copy of order dated 25.02.2019 to demonstrate that the Petitioners (present Applicants and others) have withdrawn the Petition unconditionally. Be that as it may, having examined the grounds raised by the Applicants to challenge the legality of impugned orders, I see no such illegality in the impugned orders and the O.A. deserves to be dismissed.

17. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned transfer order is devoid of merit. Hence, the following order.

ORDER

Both the Original Applications are dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 09.09.2019

Dictation taken by :

S.K. Wamanse.

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