



**J U D G E M E N T**

(Per : Justice A.H. Joshi, Chairman)

Heard Shri V.B. Wagh, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for respondents.

2. The O.A. is taken up for final disposal.
3. The applicant has taken an exception to one provision contained in Govt. Decision dtd. 21.11.1995.
4. It will be convenient to reproduce the entire para 3, part whereof is under challenge, which reads as follows :-

*“३. वरील परिच्छेदात नमूद केल्याप्रमाणे मंडळ अधिकारी व अव्वल कारकून या संवर्गातील पदावर परस्पर संवर्गातील कर्मचा-यांमधून बदलीने करावयाच्या नेमणूका या प्रशासकीय सोयीच्या अधीन राहून सामान्यतः ज्येष्ठतेनुसार करण्यात याव्यात व साधारणपणे एका वेळी २ वर्षांपेक्षा अधिक कालावधीसाठी असू नयेत, ज्यायोगे या दोन्ही संवर्गातील जास्तीत जास्त कर्मचा-यांना परस्पर संवर्गातील कामाचा अनुभव मिळू शकेल.”*

(quoted from para 3 page 24 of O.A.)

5. Applicant's grievance is as regards the 2 years duration fixed in para no. 3 quoted in the foregoing paragraph.

6. The ground on which the challenge is raised is as follows :-

**“III. At the outset the respondent no. 1 should have taken considerations that, the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 after its enactment the Government Resolution, Circulars cannot prevail over the Transfer Act.”**

(quoted from page 14 of O.A.)

7. The learned Advocate for the applicant has pointed out that, though the O.A. is opposed, the legal aspect viz. a Government Resolution, which governs the field when taken over by a statute, the Govt. decision gets impliedly repealed. He further states that the aspect of effect of legislative change is not at all dealt with though in para 15 of the affidavit in reply, in which a bare and bald denial is recorded.

8. It will be necessary to refer to para 15 of the affidavit in reply containing denial of claim of the applicant. Said para 15 is reproduced as below :-

**“15. I further say and submit that, considering the policy framed by the State Government regarding the interchangeable transfers of the Circle Officers to the post of Awwal Karkun as the G.R. dtd. 21.11.1995. As such impugned transfer order**

***cannot be termed as violative of the provisions of the Transfer Act., 2005. As such the submissions made by the applicant in grounds no. I to X, being wrong and baseless, has no force and substance.”***

(quoted from page 97 of O.A.)

9. It is necessary to refer to the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005).

10. The Transfer Act, 2005 prescribes a statutory tenure vide Sec. 3 thereof. The post of Awwal Karkoon and the Circle Inspector fall in Group 'C' category and employees in Group 'C' are entitled for statutory tenure of 2 terms of 3 years. For ready reference Sections 3 & 4 of the Transfer Act are quoted as follows :-

***“3. Tenure of posting.***

***(1) For All India Service Officers and all Group A, B and C State Government Servants or employees, the normal tenure in a post shall be three years:***

***Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or Department:***

***Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be***

*continued in the same Department for more than two consecutive tenures.*

- (2) Employees in Group D shall normally not be subjected to fixed tenure. They shall not be transferred out from the station where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them.**

**4. Tenure of transfer.**

- (1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.**
- (2) The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.**
- (3) Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:**

*Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.*

- (4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:**

*Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-*

- (i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on**

**account of transfer or on return from leave;**

**(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority;**

**(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior +[approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.”**

**[[+ The words “permission of the immediately preceding competent” substituted by Mah. Act. 13 of 2007, Sec. 3.]**

(quoted from Maharashtra Government Servants Regulation of Transfers And Prevention of Delay in Discharge of Official Duties Act, 2005 FIFTH Edition as amended by Mah. Act. XIII of 2007)

11. By applying any yardsticks for interpretation, the Government decision does not have an overriding effect over and above the statutory enactment.

12. The executive always have free hand within the periphery of legislative matters, only until a legislation is enacted by the competent legislature. Whenever any legislative Act takes over the field, the executive orders / Regulations cease to operate to the extent of repugnancy.

13. Hence, tenure of 2 years laid down in para 3 of the Govt. decision dtd. 21.11.1995 quoted in foregoing para no. 4, will be deemed to have been impliedly overridden or substituted corresponding to the statutory tenure laid down by the provisions of Transfer Act of 2005.

14. In the event the Government wants the provisions as prescribed in earlier policy decision contained in Govt. decision dated 21.11.1995 to be restored, it would always be possible to do it by amending the law, but not by the executive fiat.

15. In the result, the O.A. partly succeeds.

16. It is declared that, tenure of 2 years prescribed in para 3 of the Government decision dtd. 21.11.1995 (Annex. A-1) stands implied repealed / modified and the tenure of Awwal Karkoons & Circle Officers will be governed by provisions of Transfer Act, 2005.

17. Parties shall bear own costs.

**(ATUL RAJ CHADHA)**  
**MEMBER (A)**

**(A.H. JOSHI)**  
**CHAIRMAN**

**Place : Aurangabad**

**Date : 4.4.2018**