

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.528 OF 2021**

DISTRICT : PUNE

Shri Dattatray Bhagwan Mundhe,)
52 years, District Program Officer)
(Women and Child Development), Zilla Parishad, Pune)..Applicant

Versus

1. Government of Maharashtra,)
Through Secretary, Women and Child)
Development Department, Mantralaya, Mumbai)
2. Commissioner, Women and Child Development,)
28, Rani Baug, Near Old Circuit House, Pune-1)
3. Chief Executive Officer,)
Zilla Parishad, Pune, District Pune)
4. Shri J.B. Girase,)
Child Development Project Officer,)
Urban Project, Kurla, Mumbai)..Respondents

Shri M.D. Lonkar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for Respondents No.1 to 3

Shri B.A. Bandiwadekar – Advocate for Respondent No.4

CORAM : Smt. Mridula R. Bhatkar, Chairperson
DATE : 27th August, 2021

J U D G M E N T

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant, Smt. K.S. Gaikwad, learned Presenting Officer for Respondents No.1 to 3 and Shri B.A. Bandiwadekar, learned Advocate for Respondent No.4.

2. The applicant working as District Program Officer (Women and Child Development), Zilla Parishad, Pune, challenges the orders dated 30.7.2021 issued by Respondent no.1 and 2.8.2021 issued by Respondent no.2 thereby transferring the applicant mid-term and mid-tenure from the post of District Program Officer (Women & Child Development), Zilla Parishad, Pune to the post of Probationary Superintendent, Women and Child Development Commissionerate, Pune and in his place Respondent no.4 is transferred.

3. Affidavit in reply has been filed by Respondent no.4 on 12.8.2021. Similarly, a short affidavit in reply for the purpose of interim relief is filed by Respondent no.1 through Rajendra Tanaji Bhalwane dated 11.8.2021.

4. Shri M.D. Lonkar, learned Advocate for the applicant has submitted that the transfer orders are arbitrary, malafide and in breach of Section 3 & 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to Transfer Act, 2005). There were no exceptional or special circumstances available before the competent transferring authority to curtail the normal tenure of the applicant. Further proper material was not placed before the Civil Services Board (C.S.B) and

hence not considered. So also the order is passed in breach of G.R dated 29.7.2021.

5. Ld. Advocate for the applicant has submitted that the orders of transfer dated 30.7.2021 and 2.8.2021 are illegal. He raised two important points of law that it is mid-term and mid-tenure transfer as the applicant has completed less than two years on the present post. The compliance is required under the relevant provisions of the Transfer Act. He has submitted that as per Section 4(5) of the Transfer Act in special cases the competent authority is required to record reasons in writing and with prior approval of the immediately superior Transferring Authority a Government servant can be transferred under Section 4(5) of the Transfer Act. However, prior approval of the immediately superior Transferring Authority is not obtained. Secondly, the post of applicant falls in Group-A and therefore, prior permission of the higher authority is not obtained by the Secretary in consultation with the Minister as contemplated under clause (b) of table under Section 6 of the Transfer Act, 2005. Learned Advocate for the applicant further argued that there is no provision of delegation of powers under the Act.

6. Ld. Advocate for the applicant in support of his submissions relied on the judgment and order dated 16.6.2016 passed by this Tribunal in OAs No.889 & 890 of 2015 (Shri Ramchandra Appa Morwadkar Vs. The State of Maharashtra & Anr.).

7. Ld. Advocate for the applicant also relied on the judgment and order dated 28.7.2017 passed by this Tribunal in OA No.444 and 446 of 2017 (Mr. Harishchandra L. Jadhav Vs. The State of Maharashtra & Ors.). The view taken in *R.A. Morwadkar* (supra) is reiterated in H.L. Jadhav's case while discussing the legality of GR datd 23.6.2016 and therefore it was

inconsistent with the statutory provisions incorporated in Section 4(4) and 4(5) of the Transfer Act.

8. Shri Rajendra Tanaji Bhalwane, Under Secretary, Women & Child Development Department, Mantralaya has filed affidavit in reply dated 11.8.2021 on behalf of respondent no.1 and Private respondent no.4 Shri Jamsing Bijesing Girase has also filed affidavit in reply dated 12.8.2021. Both the respondents have supported the impugned orders of transfer mainly on the ground of compliance under Section 4(4) and 4(5) of the Transfer Act. Applicant has filed affidavit in rejoinder dated 13.8.2021 to the reply filed by respondents no.1 and 4.

9. Smt. K.S. Gaikwad, Ld. PO has submitted that the applicant is transferred on the ground of various complaints about the functioning of the applicant as District Program Officer. It was necessary for the Government to transfer him. She submitted that it was in the administrative convenience. Perused the notings of the Civil Services Board (CSB). She relied on the notings of the Civil Services Board which are also produced before this Tribunal. In the meeting the CSB has mainly considered the objectionable functioning of the applicant while working as District Program Officer. The CSB was conducted by circulation by placing proposal dated 14.7.2021 submitted by Under Secretary before the Members of the CSB and the competent transferring authority. It shows that the Members have signed on 28.7.2021 and Minister i.e. the competent authority has signed on 29.7.2021. Ld. PO has pointed out that thus after due consideration of the case of the applicant the CSB has rightly transferred the applicant.

10. Shri B.A. Bandiwadekar, learned Advocate for Respondent No.2 has adopted the submissions of Ld. PO to the extent of compliance. Ld. Advocate for respondent no.4 further argued that the applicant has been

sent to the vacant post. Ld. PO and Ld. Advocate for respondent no.4 relied on the second proviso to Section 6 of the Transfer Act and submitted that the Minister has power to delegate powers in favour of Secretary and it was rightly delegated by the Minister of Women and Child Care.

11. In reply Ld. Advocate for the applicant while meeting the submissions of Ld. PO on the point of delegation of power has argued that the powers cannot be delegated by the competent authority while invoking provisions of Section 4(5) of the Transfer Act and hence these transfer orders needs to be quashed and set aside.

12. Considered submissions. Though under the proviso to Section 6 the power of delegation vests with the competent authority however Section 4(5) is a controlling section in the event of mid-tenure transfer, therefore when such transfer is made then the power vested with the authorities incorporated in table of Section 6, cannot be delegated. I rely on para 10 of the judgment in *R.A. Morwadkar* (supra) which reads as under:

10. The impugned order dated 30.5.2015 is purportedly passed under the provisions of section 4(4)(ii) and 4(5) of the Transfer Act. As the order was passed in the month of May, (i.e. on 30.5.2015), there was no need to invoke section 4(4)(ii). However, invoking section 4(5) clearly shows that the Applicant had not completed their tenures. As per section 4(5) of the Transfer Act, such transfers can be made with the prior approval of the 'immediately superior Transferring Authority' mentioned in the table of Section 6, in special cases. Admittedly, the 'Transferring Authority' as per section 6 of the Transfer Act is

‘Minister-in-charge in consultation with Secretaries of the concerned Departments’. Second proviso to section 6 reads:-

“Provided further that the Competent Transferring Authority specified in the table may be general or special order, delegates its power under this section to any of the subordinate authority.”

Section 6 deals with Transferring Authority and powers to transfer employees of various categories to be exercised by such authorities. This section does not deal with transfer envisaged in section 4 of the Transfer Act, which are so to say extraordinary powers. The terms used in section 4 and ‘next higher authority’ and ‘immediately superior Transferring Authority’. Prior approval of these authorities in writing is required in exceptional circumstances or for special reasons. However, after prior approval is given, the order issued by the Transferring Authority will be valid. Second proviso to section 6 permits delegation of powers under that section only. It cannot be enlarged to include delegation of powers of authorities mentioned in section 4(4)(ii) and 4(5), who are not the Transferring Authorities. Learned Counsel for the Applicant contended that section 4 of the Transfer Act deals with cases, where extraordinary powers are being exercised and if such powers are delegated to lower level functionaries, the very purpose of enacting the Transfer Act would be defeated. I agree with his contention fully. The law does not provide for delegation of powers of the authorities under section 4(4)(ii) and 4(5) of the Act and transfer under these sections will have to be with the approval of original authorities mentioned in Table of Section 6, and not by the authorities to whom powers have been delegated, as was done by circular dated 5.12.2014. The impugned order has not

been issued with the approval of Hon'ble Chief Minister as required under section 4(5) of the Transfer Act and is unsustainable.”

Thus the issue is not res integra on the ground of delegation of powers and approval of immediately superior transferring authority under Section 4(4) and 4(5) of the Transfer Act. Hence, both the orders of transfer will have to be quashed and set aside.

13. Original Application is allowed and both the orders are hereby quashed and set aside. However, this order will not come in way of the Government to take correct steps as per law. No orders as to cost

Sd/-

(Mridula R. Bhatkar, J.)
Chairperson
27.8.2021

Dictation taken by: S.G. Jawalkar.