

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.922 OF 2016

DIST. : PARBHANI

Vijay s/o Pandurang Sable,
Age.46 years, Occu. : Service,
R/o ITI, Parbhani, Tq. & Dist.
Parbhani.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Principal Secretary,
Technical Education and Vocational
Training Department,
Mantralaya, Mumbai - 32.
2. The Joint Director,
Technical Education and Vocational
Training, Aurangabad.
3. The Assistant Director,
Technical Education and Vocational
Training, Aurangabad.
4. Bhimashankar Chandrakant Tachale,
Age. 45 years, Occu. Service,
R/o At present ITI, Latur,
Tq. & Dist. Latur.

-- RESPONDENTS

APPEARANCE : Shri S.S. Dambe, learned Advocate for the
applicant.

: Smt. Sanjivani Deshmukh Ghate, learned
Presenting Officer for the respondent nos. 1
to 3.

: Shri V.G. Pingle, learned Advocate for the
respondent no. 4.

Coram : **Hon'ble Shri B.P. Patil, Member (J)**
Date : **20th September, 2017**

ORDER

1. The applicant has challenged the transfer order bearing no. 11/Est-2/VVB/2016/1328, dated 9.12.2016 issued by the res. no. 2 transferring the res. no. 4 from I.T.I., Hadgaon to I.T.I., Latur by cancelling his earlier transfer order posting him at I.T.I., Latur vide the order bearing no. 11/Est-2/VVB/2016/1111, dated 30.9.2016 and prayed to direct the res. no. 2 to implement the order dated 30.9.2016 to the extent of his transfer, by filing the O.A.

2. The applicant was appointed as a Instructor at I.T.I. at Lonand, Dist. Satara in Pune Region on 5.1.1999. In the year 2007, he was transferred at I.T.I., Akaluj. Thereafter he was transferred to I.T.I., Parbhani in Aurangabad Region on 13.8.2010. He completed 6 years i.e. 2 tenures at Parbhani as per the provisions of the Transfer Act, 2005. He was due for transfer in the general transfers of 2016. Therefore, in view of the Government policy he made application to the res. no. 3 for transferring him at I.T.I., Latur by submitting the application in the prescribed form. By the said application the applicant

requested the res. no. 2 to transfer him at I.T.I., Latur on the ground of ill-health of his wife and also on the ground of taking care of his old aged parents, who are residing at his native place i. e. Murud, Tq. & Dist. Latur. He was called for conciliation in March, 2016 and at that time he explained his difficulties and need of his transfer at I.T.I., Latur. By considering his request, the res. no. 2 issued the transfer order dated 30.9.2016, by which the applicant was transferred to I.T.I., Latur from I.T.I., Parbhani. The applicant was waiting for relieving order from the res. no. 3. But on 9.12.2016, the res. no. 2 had issued another order transferring total 79 employees from Aurangabad Region by cancelling the earlier transfer order dated 30.9.2016, wherein the name of the applicant is not appearing. The res. no. 2 issued another order on 9.12.2016 and transferred the res. no. 4 to I.T.I., Latur. It is the contention of the applicant that the res. no. 2 had cancelled the earlier transfer order dated 30.9.2016 with mala-fide intention to accommodate the res. no. 4 at I.T.I., Latur. It is his contention that, no opportunity of hearing was given to the applicant before cancelling his transfer to I.T.I., Latur from I.T.I., Parbhani. The res. no. 2 has passed the order cancelling the transfer order of the applicant dated 30.9.2016 with mala-fide intention. Therefore, the applicant has filed the present O.A. and prayed to quash the impugned orders bearing no. II/EST-

2/VVB/2016/1327 of 9.12.2016 cancelling earlier transfer order dtd. 30.9.2016 & bearing no. II/Est-2/VVB/2016/1328, dated 9.12.2016 transferring the res. no. 4 at I.T.I., Latur. He has also prayed to direct the res. no. 2 to implement the transfer order dated 30.9.2016 by which he was transferred to I.T.I., Latur.

3. The res. nos. 1 & 2 have filed affidavit in reply. The res. no. 2 has also filed additional affidavit in reply as per the directions of the Tribunal dtd. 9.8.2017. They have resisted the contentions of the applicant. The res. no. 3 has sent the proposal dtd. 30.5.2016 and revised proposal dated 25.8.2016 for special request transfer of the employees to the Principal Secretary, Skill Development & Entrepreneurship Department, Mumbai. On the basis of the said proposal submitted by the res. no. 3, the res. no. 2 issued the orders dtd. 30.9.2017 and 9.12.2016 granting approval to the special request transfers by exercising power U/s 4 (4) (ii) & 4(5) of the Transfer Act, 2005. It is their contention that the said orders are in accordance with the provisions of the Transfer Act, 2005 and there is no illegality therein. It is their further contention that the applicant joined at I.T.I., Parbhani on the post of Craft Instructor in the year 2010. He has not completed 2 tenures at I.T.I., Parbhani. However, he made request for the transfer and, therefore, his name was included in the special request proposal

sent by the res. no. 3 to the res. no. 2. It is their contention that by issuing order dtd. 9.12.2016, the res. no. 2 cancelled its earlier transfer order dated 30.9.2016 due to some unavoidable circumstances. It is their contention that the Government of Maharashtra constituted a Civil Services Board for recommending transfer of the employees in view of G.R. dated 31.1.2014. On the basis of the said G.R. dated 31.1.2014, another G.R. dated 19.1.2015 was issued by the General Administration Department, wherein guidelines were issued regarding constitution of Civil Services Board for transfer of Group A, Group B and Group C employees. On 25.5.2015, the Department of Higher & Technical Education under which control the res. no. 2 is working has issued G.R. on the basis of G.R. dated 31.1.2014 with guidelines to constitute a Civil Services Board. Thereafter, the Principal Secretary, Skill Development & Entrepreneurship Department has issued a letter dated 19.5.2016 giving direction to the res. no. 4 to form a Committee in view of G.R. dated 31.1.2014.

4. On 25.4.2016, the res. no. 2 has issued a Circular regarding transfer of Group C and Group D employees working under his control. In response to the said Circular, the res. no. 3 sent a proposal dated 30.4.2016 and revised proposal dated 30.5.2016 enclosing a list for request transfer of the applicants. On

25.4.2016, the res. no. 2 constituted Civil Services Board. The Civil Services Board held its meeting on 27.9.2016 and on the basis of its recommendation, the res. no. 1 has issued the transfer order dated 30.9.2016. The Civil Services Board decided to meet again 10.11.2016, as till 30.9.2016 no recommendations were received from the Govt. The said Board recommended transfer of the res. no. 4 at I.T.I., Latur and accordingly it has been approved by the res. no. 2. It is their contention that by issuing the order dated 9.12.2016, the res. no. 2 cancelled earlier transfer order dated 30.9.2016. It is their further contention that the case of the res. no. 4 was decided by the Civil Services Board based on the recommendation of the Government, but due to oversight, name of res. no. 4 remained to be added in the first order dated 9.12.2016 and therefore, separate order was issued on 9.12.2016. It is their contention that the case of the applicant was considered while issuing the earlier order dated 30.9.2016, but due to administrative reasons, there was delay in receiving recommendation of the Govt. and, therefore, the said order has been cancelled and fresh order dated 9.12.2016 has been issued. It is their contention that, there is no violation of any provisions of the Transfer Act, 2005.

5. It is their further contention that the transfer of the applicant has been cancelled considering the welfare of the trainees. It is their contention that no inconvenience will be caused to the applicant even if he is retained at Parbhani, as he can take care of his family from that place as distance between Latur and Parbhani is 100 Kms. only. Therefore, they prayed to reject the O.A.

6. The Res. No. 4 has filed affidavit in reply and resisted the contention of the applicant. It is his contention that by the order dated 30.9.2016, 54 employees including the applicant have been transferred and the said order has been cancelled by the res. No. 2 by the order dated 9.12.2016. On the very day, 2 separate orders transferring the res. No. 4 and one Smt. B.D. Lakhmawad had been issued by the res. No. 2 considering their request. It is his contention that he is serving at I.T.I., Hadgaon since 4.2.2011. He has completed 5 years and 2 months at Hadgaon and, therefore, he requested the higher authorities to transfer him at I.T.I., Latur or I.T.I., Ambajogai, Dist. Beed. His request was considered by the res. No. 2 and accordingly he was transferred by the impugned order dated 9.12.2016. It is his contention that there is no illegality in the transfer order dated 9.12.2016. Therefore, he prayed to reject the O.A.

7. I have heard Shri S.S. Dambe, learned Advocate for the applicant, Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the respondent nos. 1 to 3 and Shri V.G. Pingle, learned Advocate for the respondent no. 4. I have also perused the documents placed on record by both the sides.

8. Most of the facts in the matter are admitted to either of the parties. Admittedly, the applicant joined his service as a Instructor at I.T.I. at Lonand, Dist. Satara in Pune Region on 5.1.1999. In the year 2007, he was transferred at I.T.I., Akaluj. On 13.8.2010 he has been transferred at I.T.I., Parbhani in Aurangabad Region. He completed 6 years i.e. 2 tenures at Parbhani as per the provisions of the Transfer Act, 2005. Therefore, in view of the Government policy he made application to the res. no. 3 for transferring him at I.T.I., Latur by submitting the application in the prescribed form. By the said application the applicant requested the res. no. 2 to transfer him at I.T.I., Latur on the ground of ill-health of his wife and also for taking care of his old aged parents, who are residing at his native place i. e. Murud, Tq. & Dist. Latur. In view of his said request, the res. no. 2 issued the transfer order dated 30.9.2016 by which the applicant was transferred to I.T.I., Latur from I.T.I., Parbhani. Admittedly the res. No. 4 is serving at I.T.I., Hadgaon from

4.2.2011. Both the applicant and the res. No. 4 have made request for transfer in the year 2017 on their personal ground and they prayed to post them at I.T.I., Latur. Admittedly, the transfer order dated 30.9.2016 has been cancelled by the res. No. 2 by the order dated 9.12.2016 and made transfers of 79 employees in Aurangabad Region by the order dated 9.12.2016. Admittedly, 2 more orders have been issued on 9.12.2016 and by one of the said order, the res. No. 4 has been transferred to I.T.I., Latur from I.T.I., Hadgaon.

9. Learned Advocate for the applicant has submitted that the applicant has completed 2 full tenures at I.T.I., Parbhani and, therefore, he made application to the res. No. 3 to transfer him at I.T.I., Latur on his personal grounds and family problems. He has submitted that his request has been considered by the res. No. 2 and accordingly he has been transferred to Latur by the transfer order dated 30.9.2016. He has argued that by the said order 54 Govt. servants were transferred. He argued that the applicant was waiting for relieving order from the res. No. 3, but on 9.12.2016 the res. No. 2 has issued fresh transfer order of 79 employees by cancelling earlier transfer order dated 30.9.2016. On the said date the res. No. 2 has issued another order by which the res. No. 4 was transferred from I.T.I., Hadgaon to I.T.I., Latur. He has

argued that except the applicant names of all the employees, who have been transferred by the order dated 30.9.2016 had been maintained in the transfer order dated 9.12.2016 by which transfer of 79 employees had been effected. He argued that the posting of other 53 employees had been maintained. He has submitted that the transfer of the applicant to I.T.I., Latur has been cancelled without recording any reasons and without approval of the Civil Services Board. He has submitted that the said action has been taken by the res. No. 2 with mala-fide intention to accommodate the res. No. 4 and therefore, the impugned order dated 9.12.2016 by which the res. No. 4 has been transferred to I.T.I., Latur is illegal. Likewise the order dated 9.12.2016 by which earlier order dated 30.9.2016 has been cancelled is also illegal. He has submitted that provisions of the Transfer Act, 2005 has not been followed by the res. No. 2 and, therefore, it is just to quash the impugned order dated 9.12.2016 and to restore the earlier transfer order dated 30.9.2016 by which the applicant has been transferred to I.T.I., Latur.

10. Learned P.O. has submitted that, initially the order dated 30.9.2016 has been issued by the res. No. 2 on the basis of the recommendation of the Civil Services Board. He has submitted that as there was no approval of the Govt. to the said order, it has

been cancelled by the res. No. 2 by the order dated 9.12.2016 and the fresh transfer order of 79 employees had been issued. He has submitted that, name of the res. No. 4 remained to be mentioned in the said order due to oversight and therefore separate order regarding transfer of the res. No. 4 has been issued on the very day. He has submitted that, due procedure as prescribed in Transfer Act, 2005 has been followed by the res. No. 2 while effecting transfers of the Government employees and there is no illegality therein. He has submitted that the services of the applicant were needed at I.T.I., Parbhani. Therefore his earlier transfer order dated 30.9.2016 has been cancelled on account of administrative exigencies. Therefore, he supported the impugned order and prayed to reject the O.A.

11. On perusal of the documents placed on record, it reveals that the Civil Services Board has been constituted to make the transfer of the employees in view of the decision taken by the Government from time to time. There is no dispute that on the basis of the recommendations of the Civil Services Board, the transfer order dated 30.9.2016 had been issued by the res. No. 2. The said order is at paper book page 22. By the said order, the applicant has been transferred to I.T.I., Latur from I.T.I., Parbhani. By the said order in all 54 employees have been

transferred. The said order itself shows that it has been issued on the basis of the recommendations of the Civil Services. The opening lines of the said order are material, which are as under :-

“कार्यालयीन आदेश :-

महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्याचे विनियमन आणि शासकीय कर्तव्य पार पाडतांना होणा-या विलंबास प्रतिबंध अधिनियम २००५ अन्वये अधिनियम क्र.२१ मधील पोटकलम ५, दिनांक १२ मे २००६ मधील तरतुदीनुसार तसेच नागरी सेवा मंडळाच्या शिफारशीनुसार संचालनालयाच्या अधिपत्याखालील औरंगाबाद विभागातील गट - क संवर्गातील पदधारकांची सोबत जोडलेल्या सहपत्रातील (अ.क्रं. १ ते ५४) पदधारकांची त्यांच्या नांवासमोर नमुद केलेल्या संस्थेत / कार्यालयात समान पदावर व समान वेतनश्रेणीत विशेष विनंती बदलीने पदस्थापना करण्यांत येत आहे.”

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12. The res. No. 2 then issued the impugned order dated 9.12.2016 and cancelled the transfer order dated 30.9.2016 placing the matter before the Civil Services Board. No recommendations of the Civil Services Board have been obtained while issuing the impugned order bearing no. 11/Est-2/VVB/2016/1327, dated 9.12.2016 (paper book page 25) by which earlier transfer order dated 30.9.2016 has been cancelled. The opening 2 paragraphs of the said paras are material, which reads as under :-

“कार्यालयीन आदेश :-

महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्याचे विनियमन आणि शासकीय कर्तव्य पार पाडतांना होणा-या विलंबास प्रतिबंध अधिनियम २००५ अन्वये अधिनियम क्र.२१ मधील पोटकलम ५, दिनांक १२ मे २००६ मधील तरतुदीनुसार तसेच नागरी सेवा मंडळाच्या शिफारशीनुसार संचालनालयाचे संदर्भ क्रं. ६ चे आदेशानुसार संचालनालयाच्या अधिपत्याखालील औरंगाबाद विभागातील गट-क संवर्गातील पदधारकांची सोबत जोडलेल्या सहपत्रातील (अ.क्रं. १ ते ५४) पदधारकांची त्यांच्या नांवासमोर नमूद केलेल्या संस्थेत / कार्यालयात समान पदावर व समान वेतनश्रेणीत विशेष विनंती बदलीने पदस्थापना करण्यात आलेली होती.

काही अपरिहार्य कारणास्तव वर नमूद करण्यांत आलेले आदेश रद्द करण्यांत येऊन सोबत जोडलेल्या सहपत्रानुसार (अ.क्रं. १ ते ७९) सुधारीत आदेश निर्गमित करण्यांत येत आहेत.

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13. Not only this, but on very day the res. No. 2 has issued another order bearing no. 11/Est-2/VVB/2016/1328, dated 9.12.2016, which is at paper book 32 and transferred the res. No. 4 to I.T.I., Latur from I.T.I., Hadgaon. For this transfer also the recommendation of the Civil Services Board has not been obtained. Both the orders have been issued by the res. No. 2 without obtaining recommendations of the Civil Services Board, which is mandatory for effecting the transfers of the Govt. servants as provided under the G.Rs. dated 31.1.2014, 19.1.2015 and 25.5.2015. No reasons have been recorded by the res. No. 2

while cancelling the earlier order dated 30.9.2016 issued by him on the basis of the recommendations of the Civil Services Board constituted in view of the above said G.Rs. No exceptional circumstances have been mentioned in the transfer order dated 9.12.2016 for effecting transfer of res. No. 4 before completion of two tenures at I.T.I., Hadgaon.

14. On going through the transfer order dated 30.9.2016 (paper book page 22) transferring 54 employees including the applicant and transfer order dated 9.12.2016 (paper book page 25) transferring 79 employees, it reveals that except the applicant all 53 employees, who have been transferred by the transfer order dated 30.9.2016, had been maintained in the order dated 9.12.2016. No special reasons have been recorded for cancelling the transfer of the applicant to I.T.I., Latur from I.T.I., Parbhani dated 30.9.2016. It seems that the res. No. 2 has acted against the provisions of the Transfer Act, 2005. He exceeded his powers by cancelling the earlier transfer order dated 30.9.2016 which was issued on the basis of the recommendations of the Civil Services Board. He had not placed the matter before the Civil Services Board for further recommendations for cancelling the earlier transfer order dated 30.9.2016 and proposing new transfers. Without recommendations of the Civil Services Board, he

cancelled the earlier transfer order dated 30.9.2016 and issued fresh transfer order dated 9.12.2016 as well as transfer order of the res. No. 4 by another separate order on the same day i.e. 9.12.2016. This shows that the res. No. 2 has acted with mala-fide intention to favour the res. No. 4. The record also shows that the res. No. 2 has issued the order dated 9.12.2016 cancelling the earlier transfer order dated 30.9.2016 and transferred the res. No. 4 at I.T.I., Latur in place of the applicant with mala-fide intention to accommodate the res. No. 4, who was not due for transfer. He has not considered the case of the applicant with proper perspective though the applicant was due for transfer as he had completed 2 full tenures at I.T.I., Parbhani.

15. In the above circumstances, in my opinion, the order dated 9.12.2016 cancelling the earlier order dated 30.9.2016 by which the applicant has been transferred to I.T.I., Latur is illegal and not in accordance with the provisions of the Transfer Act, 2005. Not only this, the order dated 9.12.2016 by which the res. No. 4 is transferred to I.T.I., Latur is also illegal and in violation of the provisions of the Transfer Act, 2005. Therefore, the order dated 9.12.2016 by which the earlier transfer order dated 30.9.2016 transferring the applicant to I.T.I., Latur from I.T.I., Parbhani and the order dated 9.12.2016 transferring the res. No. 4 to I.T.I.,

Latur from I.T.I., Hadgaon deserve to be quashed by allowing the O.A. Therefore, I proceed to pass following order, which will meet the ends of justice :-

ORDER

- (i) O.A. is allowed with no order as to costs.
- (ii) The order bearing no. 11/Est-2/VVB/2016/1327, dated 9.12.2016 (paper book page 25), by which earlier transfer order bearing no. 11/Est-2/VVB/2016/1111 dated 30.9.2016 (paper book page 22) has been cancelled, is hereby quashed and set aside so far as the applicant is concerned. So also the order bearing no. 11/Est-2/VVB/2016/1328, dated 9.12.2016 (paper book page 32) transferring the res. No. 4 to I.T.I., Latur from I.T.I., Hadgaon is hereby quashed and set aside.
- (iii) The transfer order bearing no. 11/Est-2/VVB/2016/1111 dated 30.9.2016 (paper book page 22) so far as transferring the applicant to I.T.I., Latur from I.T.I., Parbhani is hereby restored.
- (iv) The res. No. 2 is directed to issue corrective orders accordingly immediately.

MEMBER (J)