

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
REVIEW APPLICATION NO. 22 OF 2018
IN
ORIGINAL APPLICATION NO 518 OF 2018

DISTRICT :

Dr Ashwini Sayajirao Patil,)
Occ : Government servant,)
Transferred in place of the Petitioner,)
From the post of A.C.P, Nagpur City,)...**Applicant**
(Ori Respondent no. 3)

Versus

1. Shri Vikas Shankarrao Totawar)
Transferred from the post of Sub)
Divisional Police Officer, Vasai,)
Tal-Vasai, Dist-Palghar,)
R/o : Sun City, Mirchandani)
Garden, Block No. 102,)
Vasai [W], Palghar.)... **Opponent/Ori Applicant**
2. The State of Maharashtra,)
Thorugh Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Superintendent of Police,)
Dist-Palghar, having office at)
Palghar.)...**Respondents**
(Ori. Res. nos 1 & 2)

Shri Sudhir C. Halli, learned advocate for the Applicant, (Ori Res.no.3)

Shri A.V Bandiwadekar, learned advocate for Opponent /Ori. Applicant.

Ms Swati Manchekar, learned C.P.O for Respondents No 2 & 3
Presenting Officer for the Respondents.

CORAM : **Shri Justice A.H Joshi (Chairman)**

RESERVED ON : **27.11.2018**

PRONOUNCED ON : **28.11.2018**

J U D G E M E N T

1. Heard Shri Sudhir C. Halli, learned advocate for the Applicant, (Ori Res. No. 3), Shri A.V Bandiwadekar, learned advocate for Opponent /Ori. Applicant and Ms Swati Manchekar, learned C.P.O for Respondents No 2 & 3 Presenting Officer for the Respondents

2. This is an application for review by the Applicant (Ori. Respondent No. 3). Present R. A. was heard on 19.11.2018. Respective parties waived service of notice.

3. Original Applicant is the contesting party, and he has filed affidavit in reply. The State Government, who was contesting Respondents in the Original Application along with present applicant (Original Respondent no. 3) elects to be fait accompli.

4. This Tribunal had heard and decided the Original Application 518/2018. The State had contested the Original Application by filing affidavit in reply. The Original Application was also contested by the Respondent no. 3 therein, who is present applicant and her affidavit in reply is on record of Original Application at page 139 onwards.

5. The point on which the transfer was challenged was the inherent defect in the constitution of the Police Establishment Board (P.E.B-I), which had mooted the transfer. The vitiation of decision was alleged on the ground that the PEB was constituted in violation of mandatory provisions contained in Explanation to Section 22C(1) of the Maharashtra Police Act, 2015.

6. The fact that the constitution of PEB was done in violation of Explanation to S.22C(1) of the BP Act is an admitted fact.

7. The present applicant, who had filed the affidavit in reply in the Original Application had failed to touch the aspect of violation of S.22C(1), mostly because it was beyond reach of the Respondent no. 3 and she had to be a fait accompli of whatever actions were taken by the Government.

8. Original Application No. 518/2018 was heard on 19.10.2018. Learned advocate for Respondent no. 3 was absent. This Tribunal has allowed the Original Application by recording the reasons and upholding the applicant's plea that the P.E.B-I was not constituted in due compliance with law, and was constituted in defiance of mandatory provision contained in Explanation to Sec. 22(1) of Maharashtra Police Act, 2015. In the result this Tribunal has set aside the order impugned therein.

9. The applicant herein, who is Respondent no. 3 in said Original Application, got the advise to approach Hon'ble High Court against the order passed by this Tribunal in O.A 518/2018, and did it by filing W.P 12396/2018. It is a common ground that at the end of admission hearing of Writ Petition, the learned advocate for present applicant withdrew the Writ Petition with liberty to approach this Tribunal. Hence the present Review Application has been filed.

10. The memo of review application runs at great length and narrative. The grounds on which the applicant has placed reliance can be summarized in nutshell as follows:-

- (a) The applicant has trusted and relied upon the advocate whom she had engaged. However, her Advocate has neglected towards the case and in the result the Original Application was heard in absence of present applicant's advocate and hence it was decided ex-parte.
- (b) The Hon'ble Chief Minister has inherent powers being the transferring authority to order the transfer irrespective of the

recommendations of the P.E.B-I, and therefore, deficiency or defect if any in the constitution of P.E.B was not to vitiate the transfer.

- (c) The affidavit in reply filed by the applicant in the Original Application, was a short affidavit and applicant could have contested the Original Application by filing additional affidavit, which facility the applicant (Original Respondent no. 3) could not avail, because of the failure and/or negligence on the part of the advocate engaged by her.

11. The present application is strongly opposed by the Original Applicant interalia on the pleas which are summarized as follows:-

- (a) The failure of the advocate appearing for the present applicant (Original Respondent no. 3) to appear on the day of the final hearing would not entitle the party to pray for rehearing, because Advocate's failure to appear at the time of final hearing, after filing of affidavit by contesting party, does not concur with "ex-parte hearing".
- (b) "Ex-parte hearing" would mean hearing without notice, or hearing in the event of failure to appear despite service of notice, for good and sufficient cause.
- (c) No cause, much less good and sufficient cause is shown by the present applicant herein towards grounds of absence of learned Advocate engaged by the applicant.
- (d) Application for review is not supported by affidavit of applicant's earlier Advocate by filing his affidavit offering explanation towards his failure to appear at the time of final hearing.
- (e) An application for Review may be maintainable on the ground that an error apparent on the face of record has crept in a judgement, however an error whatsoever, which could be recognized as an error constituting good ground for review of the order passed by this Tribunal is not shown/made out by the applicant.
- (f) Review cannot be entertained as if for asking for seeking to alter a judicial pronouncement, in absence of legitimate grounds available in law. No such ground is made out.

12. The record of the Original Application shows that notice for final disposal was issued by this Tribunal by order dated 13.6.2018.

13. The notice issued by this tribunal clearly notifies that the Original Application would be taken up for final disposal at the stage of admission-hearing.

14. After few adjournments, affidavits were filed by the contesting Respondents.

15. Affidavit in reply of present Applicant (Ori. Respondent no. 3) was affirmed by her on 17.7.2018 and is on record of OA.

16. The aspect of the transfer order being in violation of Sections 22C(1) & (2) of the Maharashtra Police Act, 2015 is duly agitated in para no. 6.19 of the O.A.

17. Present applicant had failed to touch the aspect of absence of compliance of S. 22C(1), of the M.P. Act., while dealing with the points of contest.

18. This Tribunal had framed specific question in the order passed on 4.10.2018 and brought to the notice of the Respondents, the deficiency in the constitution of P.E.B, and on the next date, i.e. on 19.10.2018, the Original Application was heard and decided on the same point.

19. In the aforesaid premises, it is evident that the decision dated 19.10.2018, rendered in O.A 518/2018 cannot be termed as ex-parte.

20. Even on minute examination of the grounds raised by the present applicant, it is extremely hard to perceive as to what error apparent on the face of record is made out by the applicant.

21. The applicant's grievance that her advocate did not appear at the time of hearing of O.A is factual. However, that fact itself does not constitute to be a ground on which the order can be reviewed on account of an 'error apparent on the face of record'. Moreover, applicant's fate was dependent upon defence by the Government and said defence has

been considered by this Tribunal while considering the Original Application.

22. Hence the Review Application has no merit and, deserves to be dismissed and is dismissed.

23. Parties are directed to bear their own costs.

24. Ad-interim relief dated 19.11.2018, granted by this Tribunal is hereby vacated.

(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 28.11.2018
Dictation taken by : A.K. Nair.

28.11.2018

1. After pronouncement of the order, learned advocate for the applicant has made oral request for continuing the interim relief which was granted by this Tribunal on 19.11.2018 for two weeks.

2. Learned advocate for the applicant states that in order to enable the applicant to take appropriate steps by way of suitable legal proceedings, it is necessary that the applicant should be permitted to continue on the basis of the interim order on the post where she is working.

3. Learned advocate Shri Bandiwadekar, for present Respondent no. 1, who is applicant in the Original Application has strongly objected and opposed continuation of interim relief on the following grounds:-

- (a) On 19.11.2018, interim relief was granted during the motion hearing, and present Respondent no. 1 did not have reasonable and fair opportunity to counter the facts asserted by the applicant.
- (b) Now detailed affidavit is already filed and Respondent no. 1, (Original Applicant) and he has duly demonstrated that he has not only taken charge, but has also actually started working.
- (c) In the light of the fact that Review is found to be without merit and is dismissed, all the more, there is no ground to continue the interim relief.

4. It is recollected that when the case was heard on 19.11.2018, what has impressed this Tribunal was the statement of learned advocate for the applicant that the applicant had even appeared before the Hon'ble High Court in one of the bail matters as Investigation Officer and this fact was shown that applicant continued to hold the charge.

5. Interim relief was granted by this Tribunal on 19.11.2018, particularly in the background that this Tribunal has arrived at a prima facie conclusion that the applicant is holding the charge.

6. Now in view of the record produced by the Respondents, it is evident that the Respondent no. 1, Original Applicant had reported for duty, not only made an entry in the Station Diary, but also produced his

fitness certificate from J.J Hospital and also remained in touch with Head Office for which he has produced material on record demonstrating that applicant in Original Application had actually worked after the order passed by this Tribunal.

7. What emerges is an obvious fact that after original applicant reported furtherance to the order passed by this Tribunal, the present applicant, (who was Respondent no. 3 in the Original Application), had remained busy in approaching the Hon'ble High Court and now before this Tribunal in Review Application, and had actually absented from the office of S.D.P.O, Vasai.

8. In this situation, though the formal taking and giving of charge has not occurred, as is evident from the documents placed by the original applicant on record of this Tribunal, that the applicant in this Review Application was not present in the office of S.D.P.O and the original applicant had actually taken one sided charge.

9. All that has to be inferred from the record is that after the applicant reported for duty pursuant to the order dated 19.10.2018 passed by this Tribunal in O.A 518/2018, and unilaterally assumed the charge, the present applicant, who is Respondent no. 3 in the Original Application, absented from the office and was busy in pursuing the Writ Petition and now this Review Application.

10. Therefore, it is hard to believe that the present applicant continued to hold the charge and is actually working. The present applicant seems to be a misguided soul, who unwilling joined at Vasai Sub-Division, Dist-Palghar, and is worried about her new posting, which she is bound to get but for the fact that she has lost her time by filing Writ Petition and present application for Review.

11. There is no pint in present applicant's denying that since she had ceased to hold and exercise the charge, having voluntarily remained absent from duty after the applicant in the Original Application reported

for duty, now there is no point in granting or continuing the ad-interim relief in her favour.

12. It is duly demonstrated that after the judgment of this Tribunal, the original applicant has reported for duty, took charge and had actually performed the duty.

13. In the peculiar facts and circumstances of the case, this Tribunal found no ground to continue the interim relief.

14. Hence oral request of learned advocate for the applicant for continuation of interim relief for a period of two weeks is rejected.

15. Steno copy and Hamdast is granted. Learned C.P.O is directed to communicate this order to the Respondents.

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 28.11.2018
Dictation taken by : A.K. Nair.