

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
REVIEW APPLICATION No. 22/2019
IN ORIGINAL APPLICATION NO.165 OF 2019 (S.B.)

Sandhya Deorao Pendor,
Aged 38 years, C/o Vitthal Mandir Ward,
Behind Ravindra Nath Tagore School,
Chandrapur.

Applicant.

Versus

- 1) The Chief Secretary (Labour),
Department of Industries, Power and Labour,
Madam Kama Road,
Mantralaya, Mumbai-32.
- 2) The Commissioner of Labour,
Kamgar Bhawan, E3-Block,
Bandra –Kurla Scheme, Bandra (North),
Mumbai-51.
- 3) The Additional Commissioner of Labour,
Administrative Building No.2,
Civil Lines, Nagpur-01.

Respondents.

Shri S.M. Khan, Advocate for the applicant.

Shri M.I. Khan, P.O. for the respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 3rd July, 2019

Date of Pronouncement of Judgment : 8th July, 2019

JUDGMENT

(Delivered on this 8th day of July,2019)

Heard Shri S.M. Khan, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. This application is filed by the applicant to review the order passed in O.A.165/2019, dated 11/3/2019. It is submission of the applicant that while deciding the application the learned Member was under impression that the applicant was seeking transfer to Chandrapur. It is submitted that the applicant never contended that she should have been posted at Chandrapur. The second submission is that the Member did not consider the law laid down by the Hon'ble Chhatisgarh High Court in Writ Petition No.217/2015 and therefore the impugned order is erroneous. It is also submitted that the applicant was transferred before the completion of the normal tenure, therefore, the order was in violation of law and due to non consideration of these material facts prejudice is caused to the applicant, therefore, the impugned order dated 11/3/2019 passed in O.A.165/2019 be corrected.

3. I have heard submissions on behalf of the applicant and on behalf of learned P.O. I have perused the order dated 11/3/2019. After

reading the order it is not possible to accept that the learned Member was under wrong impression that the applicant was claiming posting at Chandrapur, on the other hand it seems that the learned Member in Para-5 considered the facts in previous O.A.No.846/2018.

4. In the present case it seems that in O.A. No. 846/2018, direction was given to the respondents to take a decision regarding revocation of suspension of the applicant within two weeks. It appears that the respondents revoked the suspension, but not posted the applicant at Nagpur, but posted her at Mumbai instead of Nagpur. It is grievance of the applicant that when she was suspended, she was posted at Chandrapur as Government Labour Officer and by way of punitive transfer order, she was posted at Nagpur during suspension period and after revocation of the suspension she is posted at Mumbai. In this circumstances, it is contention of the applicant that the approach of the respondents was illegal and she should have been posted at Nagpur, not at Mumbai.

5. The impugned order is also attacked on the ground that under Rule 4 (5) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 the respondents cannot exercise authority to transfer the employee while revoking the suspension. It is, therefore, submitted that the impugned order is apparently illegal.

6. After reading the entire application it seems that this is not simpliciter review application, but in the guise of this application it is attempt of the applicant to challenge her posting at Mumbai and she is insisting for her posting at Nagpur. It pertinent to note that when previous application was decided all these contentions were made by the applicant and ultimately it was held that there was no illegality committed in transferring the applicant to Mumbai. After reading Para-9 of the order dated 11/3/2019, it seems that the Judgment in Writ Petition No.217/2015 in case of **Prakash Narayan Tiwari Vs. State of Chhatisgarh** was considered by the learned Member. On the basis of this Judgment it is submitted by the applicant that if the suspension of the Government servant is revoked, then he shall be reinstated at a place from where he was suspended.

7. It is submission of the learned P.O. that the action of the respondents is based on the Government G.R. dated 31/1/2015 in which directions are issued by the Government for review of the matter by the Suspension Review Committee and regarding issuance of sanction to prosecute Government servants involved in crime under the Prevention of Corruption Act. My attention is invited to the Circular 20/4/2013. In Para-2-A of the Circular it is mentioned that where Government servant is suspended because of registration of crime or misconduct, then while

reinstating such Government servant, he should not be given posting in his original Revenue Division. It is admitted that the applicant was serving as District Labour Officer, Chandrapur, she was in State cadre, therefore, the action of the respondents reinstating the applicant out of the Nagput Revenue Division Revenue Division was correct. After reading the order dated 11/3/2019 it seems that while deciding that O.A.No.165/2019 all facts and circumstances were considered.

8. So far as the contention of the applicant that there is no provision to transfer a Government servant under Rule 4(5) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 is concerned, I would like to point that this provision is to be read along with Section 4(4) & (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act,2005") and the Circular dated 20/4/2013. While issuing the Circular dated 20/4/2013, the Government has taken a policy decision not to post a Government servant whose post is at State level in the same Revenue Division while revocation of the suspension. In the present case, it seems that the applicant was involved in serious crime under the Prevention of Corruption Act, therefore, considering the Circular and the provisions under Section 4(5) of the Transfers Act,2005, I do not see any

merit in this application for review. Hence, the application for review stands rejected. No order as to costs.

Dated :- 08/07/2019.

(A.D. Karanjkar)
Member (J).

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