

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.528/2017

DISTRICT: AHMEDNAGAR

Prakash s/o. Tukaram Vaichal,
Age : 53 years, Occu. : Service,
(as Chairman/Addl. Collector
[Selection Grade], District Caste
Scrutiny, Ahmednagar,
R/o. Laxminagar, Ahmednagar.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Principal Secretary,
Revenue & Forest Department,
M.S. Mantralaya, Mumbai-32.
- 2) The Director General,
Dr. Babasaheb Ambedkar
Research & Training Institute
(DARTI)-cum-Chief Coordinator,
District Caste Scrutiny Committees,
M.S., Pune.
- 3) Mr. T.M.Bagul,
Chairman/Addl. Collector,
[Selection Grade], District Caste
Scrutiny Committee, Jalgaon.

..RESPONDENTS

APPEARANCE : Shri A.S.Deshmukh Advocate for the
Applicant.

: Shri M.S.Mahajan, Chief Presenting
Officer for the respondents.

CORAM : B. P. Patil, Member (J)

DATE : 16th March, 2018

O R D E R

[Delivered on 16th day of March, 2018]

The applicant has challenged transfer order dated
26-07-2017 issued by the respondent no.1, by which he

has been transferred from the post of Chairman, District Caste Scrutiny Committee, Ahmednagar to the post of Chairman, District Caste Scrutiny Committee, Dhule, by filing the present O.A.

2. The applicant was initially appointed as directly recruited Deputy Collector in the Revenue Department of respondent no.1 on 09-03-1984. After serving as Deputy Collector for a period of 9 years, he was conferred with the Selection Grade of Deputy Collectors in the year 2003. Thereafter, he was conferred with the Selection Grade of Additional Collector in the year 2016. Thereafter, he was posted as Chairman/Additional Collector (Selection Grade), District Caste Scrutiny Committee, Ahmednagar vide order dated 05-07-2016. Accordingly, he joined duty on 13-07-2016. By that time, office of Chairman, District Caste Scrutiny Committee, Ahmednagar was not operational. Therefore, respondent no.2 directed the applicant to take over charge of the post of Chairman, District Caste Scrutiny Committee, Nashik until further order by order dated 15-07-2016. Thereafter, office of Chairman, District Caste Scrutiny Committee, Ahmednagar became operational, and he started discharging his duties since then. It is his contention that thereafter he is holding

additional charge of all the posts of Chairman of District Caste Scrutiny Committees of Marathwada region except Nanded and Jalna Districts. He is also holding additional charge of the post of Chairman, District Caste Scrutiny Committee, Nandurbar and Dhule, and thereby, he is holding additional charge of the post of Chairman, District Caste Scrutiny Committee of 8 Districts in addition to his substantial charge of Chairman, District Caste Scrutiny Committee, Ahmednagar. The post of District Caste Scrutiny Committee at Dhule is vacant.

3. It is the further contention of the applicant that he has hardly completed tenure of 12 months on the post of Chairman, District Caste Scrutiny Committee, Ahmednagar and he is not due for transfer in view of the provisions of Section 3(1) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Transfer Act" for short). All of a sudden, respondent no.1 issued order dated 26-07-2017 and transferred the applicant from the post of Chairman, District Caste Scrutiny Committee, Ahmednagar to the post of Chairman, District Caste Scrutiny Committee, Dhule and posted the respondent no.3, who is serving as Chairman, District

Caste Scrutiny Committee, Jalgaon, on his post. It is his contention that the impugned order of transfer is mid-term and provisions of Transfer Act do not permit his transfer before completion of his normal tenure on the ground of vacancy at another place. It is his contention that neither special reason nor exceptional circumstance is mentioned while effecting his transfer u/s. 4(4)(ii) and 4(5) of the Transfer Act. No special case has been made out while making his transfer and no reasons in writing have been recorded. It is his contention that the impugned transfer order is against the provision of the Transfer Act and it is illegal, arbitrary, high-handed and irrational. Therefore, he prayed to allow the O.A. and prayed to quash and set aside the impugned order and direct the respondents to permit him to discharge his duties attached to the post of Chairman, District Caste Scrutiny Committee, Ahmednagar.

4. Respondent nos.1 and 2 have filed their separate affidavits in reply and resisted the contentions of the applicant. They have no dispute about the initial appointment and his present posting. They have admitted the fact that by the order dated 05-07-2016, the applicant has been transferred and posted as Chairman, District

Caste Scrutiny Committee, Ahmednagar and since then he is serving there. It is their contention that the impugned transfer order of the applicant has been issued in view of the provisions of S.4(4)(ii) and 4(5) of the Transfer Act, and there is no illegality in the same. It is the contention of the respondent no.2 that Hon'ble Members of Legislative Assembly had expressed their displeasure about the working of respondent no.3, and therefore, in view of the directions given by the Secretary, Social Justice and Special Assistance Department, Mantralaya, Mumbai, respondent no.2 had requested the Government to repatriate the services of respondent no.3 to his parent department i.e. Revenue & Forest Department by confidential letter dated 14-08-2017 but no action had been taken by the Government in that regard. It is their contention that the applicant has been transferred from Ahmednagar to Dhule and the impugned order of transfer is mid-term and mid-tenure one but it has been issued in compliance with S.4(4)(ii) and S.4(5) of the Transfer Act by obtaining prior approval from the Competent Authority i.e. Hon'ble Chief Minister. The procedure prescribed in the law has been followed by the respondents and there is no illegality in the

order of transfer. Therefore, they have prayed to reject the O.A.

5. I have heard Shri A.S.Deshmukh Advocate for the Applicant and Shri M.S.Mahajan Chief Presenting Officer for the respondents and perused documents placed on record by the parties.

6. Admittedly, the applicant was appointed as directly recruited Deputy Collector on 09-03-1984 in the Revenue & Forest Department of Government of Maharashtra. He was conferred with Selection Grade in the cadre of Deputy Collector in the year 2003. Then he was promoted as Additional Collector and he was conferred with Selection Grade in that cadre in the year 2016. Thereafter, he was transferred and posted as Chairman, District Caste Scrutiny Committee, Ahmednagar. Admittedly, he took charge of the post at Ahmednagar on 13-07-2016 and since then he is working there. When he was posted there, office of Chairman, District Caste Scrutiny Committee, Ahmednagar was not operational, and therefore, he was kept in charge of the post of Chairman, District Caste Scrutiny Committee, Nashik. Not only this but thereafter the applicant is kept in charge of all the posts of Chairman,

District Caste Scrutiny Committees of Marathwada Region except Nanded and Jalna Districts and also as Chairman, of District Caste Scrutiny Committee, Nandurbar and Dhule. Admittedly, he has hardly completed tenure of 12 months on the post of Chairman, District Caste Scrutiny Committee, Ahmednagar. He has not completed his normal tenure of posting on that post. Admittedly, he has been transferred by the impugned order dated 26-07-2017 from the present post to the post of Chairman, District Caste Scrutiny Committee, Dhule and respondent no.3 has been posted on his post, who is presently working at Jalgaon on the post of Chairman, District Caste Scrutiny Committee.

7. Learned Advocate for the applicant has submitted that the applicant has hardly completed one year at his present posting at Ahmednagar but he has been transferred in the mid of the term by the impugned order on a vacant post at Dhule. He has submitted that the impugned transfer order is against the provisions of Sub-section (1) of Section 4 of the Transfer Act. He has submitted that the transfer on vacant post can be made at any time in the year in view of the provisions of sub clause (i) to proviso of Sub-section (4) of Section 4 if the concerned Government servant has completed his tenure of posting. In support of

his submission, he has placed reliance on the judgment in the case of **Purushottam Govindrao Bhagwat V/s. State of Maharashtra & Ors. reported in [2012 (3) Bom. C.R. 442]**.

8. Learned Advocate of the applicant has further submitted that the respondents have contended that the impugned transfer order has been issued in view of the provisions of S. 4(4)(ii) and S. 4(5) of the Transfer Act but no exceptional circumstance or special reason has been recorded in writing while effecting his transfer. He has submitted that there was no proposal of the department to transfer the applicant but the Competent Authority without any proposal made transfer of the applicant that too in the mid of the term without recording special reasons and the exceptional circumstances. Therefore, the impugned order is illegal and in violation of the provisions of S.4(4)(ii) and S.4(5) of the Transfer Act.

9. Learned Advocate for the applicant has further submitted that the transfer of the applicant has been made only on the ground that to create vacancy for the transfer of the respondent no. 3, who has been transferred from his present posting at Jalgaon to Ahmednagar. Therefore, the

impugned transfer order is illegal, arbitrary and against the provisions of Transfer Act. Therefore, he has prayed to allow the O.A. and quash the impugned order of transfer and direct the respondents to retain the applicant on his present post.

10. Learned C.P.O. has submitted that the Competent Authority i.e. Hon'ble Chief Minister has passed the impugned order after following due process of law in view of the provisions of S.4(4)(ii) and S.4(5) of the Transfer Act. He has submitted that the transfer of the applicant has been made on the vacant post, and therefore, there is no illegality in the impugned order. On this ground, he has justified the impugned transfer order.

11. On perusal of record, it reveals that the Revenue department had prepared a proposal regarding the transfer of the officers on the post of Additional Collectors (Selection Grade) on account of their promotion. Said proposal was placed before the Civil Services Board in the meeting held on 01-07-2017. Civil Services Board recommended the transfer of those employees promoted in the cadre of Additional Collector (Selection Grade), and thereafter, the concerned Minister approved recommendations with certain

changes. Thereafter, matter had been placed before Hon'ble Chief Minister, who is Competent Authority and the highest Transferring Authority as provided under S.6 of the Transfer Act as transfers of officers in Group "A" in the pay scale of Rs.10650-15850 and above had to be effected. He has approved the proposal of the Department and recommendations of the Civil Services Board but made certain changes and proposed transfer of the applicant from Ahmednagar to Dhule. On perusal of the said record, it reveals that neither concerned department nor Civil Services Board nor the Minister in charge proposed transfer of the applicant and that too in the mid of the term. But the Competent Authority i.e. Hon'ble Chief Minister has transferred the applicant from Ahmednagar to Dhule without special reason. No exceptional circumstance or special reason has been mentioned therein in the order passed by the Competent Transferring Authority i.e. Hon'ble Chief Minister while transferring the applicant.

12. In fact, the original proposal of the department was for the transfer of the officers, who have been promoted in the cadre of Additional Collector (Selection Grade). In the said proposal as well the recommendations made by the Civil Services Board, name of the applicant had not been

incorporated. Hon'ble Chief Minister also did not recommend the transfer of the applicant but the Hon'ble Chief Minister has transferred the applicant without mentioning reasons. Therefore, the impugned order is in violation of the provisions of S.4(4)(ii) and S.4(5) of the Transfer Act. The mandate of the said provisions has not been followed by the Competent Authority while making transfer of the applicant. Therefore, the impugned order of transfer is not legally sustainable.

13. Learned C.P.O. has argued that the transfer of the applicant has been made on the vacant post at Dhule, and therefore, the said transfer order is legal and in accordance with provisions of Clause (i) of proviso to Sub Section (4) of S. 4 of the Transfer Act.

14. No doubt, on perusal of the impugned order it reveals that the transfer of the applicant has been made on vacant post at Dhule but it has been made before completion of normal tenure of the applicant at present place on the post of Chairman, District Caste Scrutiny Committee, Ahmednagar. He has hardly completed one year on that post. Hon'ble High Court of Judicature of Bombay Bench at Aurangabad has discussed the provisions of Clause (i) to

proviso (4) of S.4 of the Transfer Act in the abovesaid decision in the case of **Purushottam Govindrao Bhagwat V/s. State of Maharashtra & Ors. reported in [2012 (3) Bom. C.R. 442]** relied on by the learned Advocate for the applicant wherein it is observed as follows:

“10] Applying these principles, we will have to consider the provisions of Section 4 of the Act. Sub-section (1) emphatically provides that no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3. Sub-section (2) requires a competent authority to 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. Sub-section (3) requires that the 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. Proviso thereto requires that any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary. Sub-section (4) of Section 4 mandates that the transfers of Government servants shall ordinarily be made

only once in a year in the month of April or May. Proviso to Sub-section (4) permits a transfer to be made any time in the year in the circumstances stated therein. Sub-clause (i) thereof permits such a transfer to be made at any time in a year 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. Sub-clause (ii) thereof permits such a transfer at any time 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. Sub-section (5) of Section 4, which begins with a non obstante clause, permits the competent authority, 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, to transfer a Government servant before completion of his tenure of post.

Thus, the distinction between the two Provisos to Sub-section (4) and Subsection (5) is crystal clear. A transfer due to vacancy of the post is covered by Clause (i) to Proviso of Sub-section (4) while mid-tenure transfer is covered by Sub-section (5). It is thus clear that merely to fill a vacancy, a Government cannot be transferred

mid-tenure unless and until the conditions of Sub-section (5) are satisfied.”

It has been further observed in the said judgment as follows:

“11] It can, thus, be seen that, normal function of a proviso is to except something out of the enactment or to qualify something enacted therein, which, but for the proviso, would be within the purview of the enactment. However, if a proviso destroys altogether the obligation created by the main clause, the later clause is to be rejected as repugnant and the earlier clause prevails. However, if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the legislature as disclosed by the provision as a whole. The purpose of the proviso is to limit the general enactment in certain instances. Proviso to a section cannot be used to import into the enacting part something which is not there. It is only where the enacting part is susceptible to several possible meanings it may be controlled by the proviso. It can, thus, be clearly seen that in the present case, the substantive provision is very clear that no Government servant shall ordinarily be transferred unless he has completed his tenure of posting, as provided in Section 3. We are, therefore, unable to accept the contention that the proviso would govern the

*substantive provision. In this context, we may use a proverb as is quoted by the Apex Court in the case of **Ghaziabad Zilla Sahkari Bank Ltd. V/s Additional Labour Commissioner & others [(2007) 11 SCC, 756]**, “it is the dog that wags the tail and not the tail that wags the dog”. Therefore, the submissions of Shri A.S. Deshpande that the Proviso governs the main provision cannot be accepted.”*

Hon'ble High Court has further observed in paragraph 13 of the said order as under:

“13] It can clearly be seen that the said enactment, particularly Sub-section (1) of Section 4 specifically protects a Government servant from being transferred prior to completion of his ordinary tenure. Sub-section (4) of Section 4 requires such transfers to be done once in a year i.e. in the month of April or May. The proviso thereto, though permits the transfers to be made any time in the year for the eventualities mentioned therein, however, we are of the considered view that the proviso to Sub-section (4) cannot be read in such a manner, which makes the provision of Sub-section (1) of Section 4 redundant or nugatory. Clause (i) of the proviso to Sub-section (4), which permits transfer to be made at any time in a year on the ground of eventualities mentioned therein, will have to be read in a manner that the transfer on the

grounds mentioned in clause (i) of proviso to Sub-section (4) would be permissible at any time of the year and not necessarily in April or May when a Government servant has completed his tenure of posting. If it is not read in that manner, the very purpose of the protection, which is granted in Sub-section (1) of Section 4 would become redundant and nugatory. A person, who has not completed even three months in a particular posting, could be transferred to some post, which has become vacant on account of transfer of another Government servant, who was working on the post. As such, the clause (i) of proviso to Subsection (4) will have to be read in harmony with Sub-section (1) of Section 4 of the said Act. It will have to be interpreted that a Government servant will not be ordinarily transferred prior to completion of his tenure, and the transfers will have to be made only in the month of April or May. However, if transfer is necessitated on account of any of eventualities stated in clause (i) to proviso of Sub-section (4), it can be made at any time of the year and not necessarily in April or May, however, only on completion of tenure of the Government servant. No doubt, that clause (ii) of proviso to Sub-section (4) would permit transfer to be made at any time of the year and not necessarily in April or May, where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons.

However, when this is being done, the reasons and the circumstances will have to be recorded in writing and the same cannot be done without prior approval of the next higher authority. Undisputedly, Sub-section (5) of Section 4 carves out an exception to the general protection granted in Sub-section (1) of Section 4. No doubt, by taking recourse to Sub-section (5), a Government servant can be transferred even prior to completion of his tenure and even at any time of the year and not necessarily in the month of April or May, in special cases. However, while doing so, the competent authority will be required to record the reasons in writing and would also be required to obtain prior approval of the immediately superior Transferring Authority as mentioned in the table of Section 6. As already discussed, the provision of Sub-section (5) of Section 4 carves out an exception to the protection granted in favour of an employee in Sub-section (1) of the said section. It is to be noted that for that reason, the legislature has made an inbuilt safeguard in Sub-section (5) by requiring the reasons to be recorded for making transfer as a special case and obtaining approval of the immediately superior Transferring Authority. It is, thus, clear that the legislative intent is clear that ordinarily an employee should not be transferred prior to completion of his tenure. However, this would be permissible in special

cases when the competent authority records the reasons for the same and obtains prior approval of the immediately superior Transferring Authority.”

15. I have no dispute regarding settled legal provisions laid down in the above cited decision. In the said decision, it has been specifically held that if the transfer of Government servant is necessary on account of any of eventualities stated in clause (i) of the proviso to Sub-section (4) of Section 4 of the Transfer Act, it can be made at any time of the year and not necessarily in April or May, however, only on completion of tenure of Government servant. In the instant case, the applicant has been transferred in the mid of the term before completion of his normal tenure of posting at Ahmednagar on a vacant post at Dhule without following the provisions of Clause (i) to proviso to Sub Section (4) of Section 4 of the Transfer Act. Therefore, the impugned transfer order is not legal and proper. Therefore, on that ground also the impugned transfer order is not sustainable.

16. As discussed above, the impugned transfer has not been made in view of the provision of Clause (i) to proviso of Sub-section (4) of Section 4 of the Transfer Act. Not only

this but the said order is not in accordance with the provisions of clause (ii) of the Sub-section (4) of Section 4 as no exceptional circumstance or special reason in writing has been mentioned while making the transfer. Not only this but no special case has been made out by the respondents for making transfer of the applicant in view of the provisions of S.4(5) of the Act. Therefore, the impugned order issued by the respondent no.1 deserves to be quashed and set aside by allowing the present O.A.

17. In view of the abovesaid discussion O.A. is allowed and the impugned order dated 26-07-2017 is hereby quashed and set aside. Respondents are directed to retain the applicant on his earlier post of Chairman, District Caste Scrutiny Committee, Ahmednagar by issuing necessary order/s in that regard immediately. There shall be no order as to costs.

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad
Date : 16-03-2018.