

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.567/2019

DISTRICT: NANDED

Vinod Kishanrao Dhondge,
Age : 40 years, Occu. : Service,
R/o. Government Ashram School, Ekghari,
Tq. Himayatnagar, Dist. Nanded. ...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through: The Secretary,
General Administration Department,
Madam Kama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai – 400 032.
2. The Secretary,
Ministry of Tribal Development,
Mantralaya, Mumbai – 400032.
3. The Commissioner,
Tribal Development Department,
Old Agra Road, Gadkari Chowk,
Matoshri Nagar, Nashik,
Dist. Nashik – 422002.
4. The Additional Commissioner,
Tribal Development Department,
In front of Office of Superintendent of Police,
At back side of T.B. Hospital, Amravati,
Dist. Amravati – 444 603.
5. The Project Officer,
Integrated Tribal Development Project,
Kinwat, Gokulda Galli, Kinwat,
Tq. Kinwat, Dist. Nanded – 431 804.
6. The Head Master,
Government Ashram School, Ekghari,
Post Ekghari, Tq. Himayatnagar,
Dist. Nanded. ...RESPONDENTS

APPEARANCE :Shri Mohit R. Deshmukh, Advocate for
the Applicant.

:Smt. Deepali Deshpande, Presenting
Officer for the respondents.

CORAM : B. P. Patil, Acting Chairman

Reserved on : 28-11-2019

Pronounced on : 02-12-2019

J U D G M E N T

1. The applicant has challenged the order dated 31-05-2019 transferring him from the Government Ashram School, Ekghari to Government Ashram School, Jamb by filing the present O.A. He has also prayed that the respondents be directed to transfer him on the vacant post at Government Ashram School, Kedarguda or Government Ashram School, Dudhad.

2. The applicant was appointed as Teacher in the Government Ashram School, Taloda on 26-06-2009. Accordingly, he joined at Taloda in Nandurbar District on 20-07-2009. He served at Taloda from 20-07-2009 to 20-12-2011. Thereafter, he has been transferred from Government Ashram School, Taloda to Government Ashram

School, Pimpalgaon, Tq. Kinwat on 21-12-2011. He served at Pimpalgaon from 21-12-2011 to 06-07-2012. Thereafter, he was transferred to Government Ashram School, Ekghari on 07-07-2012. Since then he was serving there till issuance of the impugned order. He completed almost 7 years' tenure at Government Ashram School, Ekghari.

3. Wife of the applicant, namely, Shivganga Sambhaji Pawar was appointed as Child Development Officer on 28-06-2017. Initially, she was posted at Mool in Chandrapur district. She served at Mool during the period from 28-06-2017 to May, 2018. It is contention of the applicant that his mother, namely Kautikabai Dhongde is of 67 years old and she is suffering from heart ailments. She has undergone coronary angiography at Ruby Hall Clinic, Pune on 21-11-2018. Since then she is under continuous medical treatment and supervision. It is his further contention that his father passed away and therefore there is no other fit person to look after his old aged mother except him. He has a daughter and initially she was staying with her mother. It is his contention that his wife filed an application praying for transfer at any place in Nanded District on the ground of couple convenience. Her

request has been favorably considered and accordingly she has been transferred from Chandrapur to Umari in Nanded District vide order dated 14-01-2018 but she was not immediately relieved from Mool, Chandrapur. She was relieved from Mool on 27-05-2019. She joined the service at Umari in Nanded District on 28-05-2019. Since transfer of his wife, his wife, daughter, mother are residing with him. They have admitted their daughter in a school at Nanded. It is contention of the applicant the Government of Maharashtra in its General Administration Department issued Resolution prescribing policy and procedure for counseling before transfer of any Government employee and fixed certain norms therein. As per the said G.R., preference shall be given to the candidates who are praying for couple convenience and also for candidates whose children are dependent.

4. In accordance with the said G.R. dated 09-04-2018, respondent no.4 had published seniority list of the candidates who are due for transfer. The applicant was due for transfer, and therefore, he has submitted the options of places where to be transferred but the respondents have not considered his options and the provisions of the G.R.

dated 09-04-2018 and issued impugned order transferring him from Government Ashram School, Ekghari to Government Ashram School, Jamb. No counseling process was conducted by the respondents before transfer. Therefore, the impugned order is illegal. It is his contention that the distance between Ekghari and Jamb is more than 300 km. Impugned order is causing inconvenience to him and his family, and therefore, he has challenged the said order. It is his contention that the impugned transfer order is in contravention of the policy of couple convenience framed by the Government. Therefore, he has prayed to quash the impugned order by allowing the O.A.

5. Respondent nos.3 to 5 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant is working as Mathematics Teacher in Government Ashram School, Ekghari since 07-07-2012 and he has completed tenure of 6 years and 10 months on the said post. He was due for transfer. Therefore, respondents have followed the procedure for transfer laid down in the G.R. dated 09-04-2018 and issued the impugned transfer order, transferring

the applicant from Government Ashram School, Ekghari to Government Ashram School, Jamb.

6. It is their contention that the Civil Services Board has been established by the respondents by order dated 15-05-2019. The Civil Services Board recommended the transfer of the applicant from Ekghari to Jamb, Dist. Yawatmal considering the administrative exigencies and availability of vacancies. There was no vacancy at the places of choice given by the applicant. Therefore, the impugned order has been passed. It is their contention that there is no illegality in the impugned order, and therefore, they have prayed to dismiss the O.A.

7. The applicant has filed affidavit in rejoinder to the affidavit in reply filed by the respondents and contended that the respondents had not considered various factual aspects including the preference given by him while passing the impugned order. They have not considered the policy of couple convenience framed by the Government. It is his contention that he has given one of places of his choice at Government Ashram School, Dudhad at Kinwat. The post of Mathematics Teacher and English Teacher at Dudhad are still vacant but the respondents had not posted him at

that place. Therefore, he has prayed to quash the impugned order and allow the present O.A.

8. I have heard Shri Mohit R. Deshmukh Advocate for the Applicant and Smt. Deepali Deshpande Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

9. Admittedly, the applicant was initially appointed as Teacher at Government Ashram School, Taloda, on 26-06-2009 and accordingly he joined the said post on 20-07-2009. He served there till 20-12-2011. Thereafter, he was transferred to Government Ashram School, Pimpalgaon, Tq. Kinwat on 21-12-2011. He served at Pimpalgaon during the period from 21-12-2011 to 06-07-2012. Thereafter, he was transferred to Government Ashram School, Ekghari on 07-07-2012. He was serving there till issuance of the impugned order. Admittedly, the applicant completed the tenure of more than 6 years and 10 months on the said post. He was due for transfer at the time of general transfer of 2019. Respondents called the options from the employees who were due for transfer and accordingly the applicant submitted necessary information in the

prescribed format. The applicant has been transferred to Government Ashram School, Jamb by the impugned order.

10. Learned Advocate for the applicant has submitted that the wife of the applicant is serving as Child Development Officer at Umari, District Nanded since 28-05-2019. He has submitted that her transfer has been made at Umari as per the couple convenience policy of the Government. He has submitted that old aged mother and small daughter of the applicant are depending on him. He has argued that the mother of the applicant is suffering from heart disease. Therefore, he has requested the respondents to make his transfer in any Government Ashram School situated in Nanded District by giving option form but the respondents had not considered the same facts and has not considered the procedure prescribed in the G.R. dated 09-04-2018 while making transfer of the applicant. The respondents have not given preference to the applicant as his case is covered under the preference number 5 and 6 as per the G.R. dated 09-04-2018. Therefore, the impugned order is in violation of the procedure laid down by the Government in the said G.R. He has submitted that the vacancies were available at the

places of his choice as per the options given by him but the respondents have not considered the said aspect and posted him at Jamb, Dist. Yawatmal which is at a distance of about 300 km. from Nanded where his family is residing. Therefore, he has prayed to quash the impugned order and to direct the respondents to post him at any vacant post in the Ashram Schools in Nanded District by allowing the O.A.

11. Learned P.O. has submitted that the applicant was due for transfer as he has completed his normal tenure of posting at Ekghari, Dist. Nanded. Respondents had called options for transfer of the applicant. Applicant had given his options but no vacancies were available at those places. Therefore, respondents have decided to transfer him from Ekghari to Jamb on the basis of recommendations of the Civil Services Board. On the basis of the recommendations of the Civil Services Board competent transferring authority issued the impugned order. He has submitted that there is no illegality in the impugned order. Said order is issued in view of the procedure and provisions of the G.R. dated 09-04-2018. Therefore, the respondents have justified the impugned order.

12. He has submitted that the applicant has not raised any ground regarding ill-health of his mother and couple convenience policy in the application submitted by him though there was a specific column in the form prescribed. Therefore, the competent authority has no occasion to consider the said aspect. The competent authority has effected the transfer of the applicant on administrative ground and there is no illegality in the same. Therefore, he has justified the impugned order and prayed to reject the O.A.

13. On perusal of the documents on record, it reveals that the applicant has completed his normal tenure at Government Ashram School, Ekghari, Dist. Nanded. The applicant has completed his tenure of 6 years and 10 months on the said post. He was due for transfer at the time general transfers of 2019. The competent transferring authority called for necessary information from the employees who were due for transfer at the time of general transfers of 2019. The applicant submitted the necessary information in the proforma prescribed by the Government Resolution, which is at paper book page 93 to 95. On going through the same, it reveals that the applicant was serving

in Nanded District since the year 2011. He had given 8 places of his choice in the form. All the places are in Nanded District. The applicant has kept column no.9 blank wherein the concerned employee has to give information regarding the preferences which are applicable to him as per the G.R. dated 09-04-2018. The applicant never contended in his option form regarding ill-health of his mother, service of his wife and couple convenience policy. Therefore, the Civil Services Board as well as the competent authority had no occasion to consider the said aspect. The applicant has not claimed any preference as per the provisions of the G.R. dated 09-04-2018. Therefore, his case was not considered for preferential transfer as provided in the G.R. dated 09-04-2018. None of the posts on which the applicant claimed posting was vacant at the time of general transfers of 2019. Therefore, the Civil Services Board as well as the competent transferring authority decided to transfer the applicant from Ekghari to Jamb on account of administrative exigency.

14. There is no illegality in the impugned order, and therefore, no inference is called for in the said order. There

is no merit in the O.A. Consequently, the O.A. deserves to be dismissed.

15. In view of the discussion in the foregoing paragraphs, O.A. stands dismissed without any order as to costs.

(B. P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 02-12-2019.

\\2019\sb\YUK sb oa 567.2019 transfer bpp