

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.70/2019

DISTRICT: AHMEDNAGAR

Mangal Shamrao Ghodke,
Age : 54 years, Occu. : Service,
R/o. Akkabai Nagar, Taluka Karjat,
Dist. Ahmednagar.

...APPLICANT

V E R S U S

1) The State of Maharashtra,
Through its Secretary,
Public Health Department,
Mantralaya, Mumbai – 400 032.

2) The District Civil Surgeon,
District Hospital (Govt. of Maha.),
Tarakpur, Savedi Road,
Tq. & Dist. Ahmednagar-414 001.

...RESPONDENTS

APPEARANCE :Shri Yogesh H. Jadhav, Advocate for the
Applicant.

:Shri Deepak R. Patil, Presenting Officer
for the respondents.

CORAM : B. P. Patil, Acting Chairman

Delivered on : 08-08-2019

J U D G M E N T

1. The applicant has challenged the order dated
16-10-2018 issued by the respondent no.2 transferring her

from Sub District Rural Hospital, Karjat to Rural Hospital, Puntamba by filing the present O.A.

2. The applicant was serving as Ward Servant (Kaksh Sevak) in Sub District Hospital, Karjat, Dist. Ahmednagar from 23-08-1996. She is a Group-D employee. She was working in Sub District Hospital, Karjat since 23 years and her service record is unblemished. No complaints of serious nature are filed against her. Her husband died on 30-12-2000 and thereafter her married daughter also died. She is suffering from disease of High Blood Plasma. She is residing at Karjat along with her relatives. She has no son, and therefore, she is dependent upon the relatives.

3. It is her contention that on 09-09-2017 she has filed a complaint against In-charge Medical Officer, namely, Dr. Sucheta Yadav with the Police Station, Karjat alleging that the Medical Office is continuously harassing her without any cause. Dr. Sucheta Yadav has been harassing other Doctors also. The Doctors working there also filed complaints against Dr. Sucheta Yadav with the respondent no.2 and stated that they would go on hunger strike in protest of behavior of Dr. Sucheta Yadav towards themselves and employees working in the Hospital.

4. It is her further contention that she has not made any request for transfer and there were no complaints of serious nature against her but the respondent no.2 has issued the impugned order dated 16-10-2018 and transferred her from Karjat to Puntamba. It is her contention that the impugned order is in violation of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("Transfer Act" for short). The transfer order is issued in violation of Section 4(5) of the Transfer Act. Therefore, she has prayed to quash and set aside the impugned order by filing the present O.A.

5. The respondent no.2 has filed affidavit in reply and resisted the contentions of the applicant. He has argued that the applicant was serving as Ward Servant from 1996 at District Hospital Karjat, Dist. Ahmednagar. It is his contention that there were several complaints of serious nature against the applicant. Therefore, she has been transferred by him by the impugned order on administrative ground. It is his contention that there is no illegality in the impugned order. It is his further contention that a show cause notice has been issued to the applicant

on the basis of complaints received against her but there was no improvement in her behavior. Therefore, in the public interest an enquiry has been initiated against her and she has been transferred accordingly. It is his contention that the impugned order has been issued in accordance with the provisions of the Transfer Act. Therefore, he has supported the impugned order and prayed to reject the O.A.

6. I have heard Shri Yogesh H. Jadhav, Advocate for the Applicant and Shri Deepak R. Patil, Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

7. Learned Advocate for the applicant has submitted that the applicant was serving as Ward Servant since the year 1996. He has submitted that there are no complaints of serious nature against her regarding her behavior and duty but the applicant has been transferred illegally by the respondent no.2 by the impugned order. He has submitted that the applicant is a widow and she has no child and she is residing at Karjat, Dist. Ahmednagar along with her relatives. Due to the impugned order of transfer, inconvenience is caused to her. Therefore, he has prayed to

quash and set aside the impugned order and post the applicant at her original place of posting.

8. Learned Advocate for the applicant has further submitted that the impugned order is in contravention of the provisions of the Transfer Act, and in particular, it is in violation of Section 4(5) of the Transfer Act. He has submitted that one Dr. Sucheta Yadav was in charge of the Sub District Hospital, Karjat. She was harassing the applicant and other employees. Therefore, the applicant has filed criminal complaint against her with Karjat Police Station. He has further submitted that other employees and medical officers have also filed complaint against Dr. Sucheta Yadav with the respondent no.2 regarding her behavior and arbitrary nature. It is his submission that at the instance of Dr. Sucheta Yadav, respondent no.2 has transferred her though it is not permissible in view of the provisions of the Transfer Act. He has further submitted that in view of the provisions of Section 3 of the Transfer Act, employee in Group-D shall be transferred on request, on mutual consent or when the substantiated complaint of serious nature is received against the employee. He has submitted that the applicant

never made request for transfer and there is no complaint of serious nature against her. Therefore, the impugned order of transfer is in violation of the provisions of the Transfer Act. Therefore, he has prayed to quash and set aside the impugned order by allowing the present O.A.

9. Learned P.O. has submitted that the applicant used to behave arrogantly with the superior officers as well as public at large. The respondent no.2 received several complaints regarding behavior of the applicant from the Medical Officers working at Sub District Hospital, Karjat and other employees. On the basis of the said complaints, the show cause notice has been issued to the applicant but there was no improvement in the behavior of the applicant. Therefore, enquiry has been initiated against her. The Enquiry Committee has been constituted. The Enquiry Committee found substance in the allegations made against the applicant. As there were complaints of serious nature against the applicant, the respondent no.2 decided to transfer the applicant from Karjat to Puntamba in order to avoid inconvenience to the public and to maintain discipline in the Hospital. He has submitted that the impugned order is in accordance with the provision of

Section 3 of the Transfer Act. There is no illegality in the same. Therefore, he has supported the impugned order and prayed to reject the O.A.

10. On perusal of the record, it reveals that the applicant was appointed as Ward Servant at Sub District Hospital, Karjat in the year 1996 and since then she was working there. Admittedly, the applicant has worked for more than 23 years in the said Hospital. The applicant is a Group-D employee. Section 3 of the Transfer Act provides tenure of posting of Government servants. Sub section 2 of Section 3 deals with the tenure of the Group-D employees. Said provision is relevant and therefore I have reproduced the same:

“3. Tenure of posting. –

(1) -----

(2) Employees in Group D shall normally not be subjected to fixed tenure. They shall not be transferred out from the station where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them.”

11. On going through the same, it reveals that there is no fixed tenure for Group-D employees for transfer. They shall not be transferred out of the station where they are serving except on their request, on mutual transfer or on receiving substantiated complaint of serious nature against them. In the instant case, the applicant has never made request for transfer from Karjat. Not only this but there was no request on the part of the applicant for mutual transfer.

12. The respondent no.2 has come up with a case that the applicant's transfer has been effected on the basis of complaints of serious nature received against her. The respondent no.2 has produced documents on record to show that some complaints regarding behavior of the applicant have been received to him. Therefore, he has appointed Enquiry Committee. The Enquiry Committee submitted report on 21-01-2019 i.e. during the pendency of the O.A. and found that there was some substance in the allegations leveled against the applicant. No further steps are taken by the respondent no.2 on the basis of said Enquiry Report. At the time of issuing the impugned order of transfer there is nothing on record to show that the complaints were substantiated by sufficient proof or

documents. Therefore, it cannot be said that the applicant has been transferred in view of the provisions of Section 3 of the Transfer Act.

13. It is also material to note here that the respondent no.2, who is the appointing authority or competent authority has issued the impugned order of transfer. Even if it is assumed that he has made transfer of the applicant in view of the provisions of Section 3(2) of the Transfer Act on the basis of complaints received against the applicant, he has to follow the provisions of Section 4(4) and 4(5) of the Transfer Act.

14. It is pertinent to note here that the Hon'ble Supreme Court of India in **W.P. (Civil) No. 82/2011** in case of **T.S.R. Subramanian and Ors. Vs. Union of India and Ors.** with **W.P. (Civil) No. 234/2011** decided on **31.10.2013**, directed the Centre, State Government to constitute the Civil Services Board to guide and advice the State Government/Competent Authority on all the service matters, especially on transfers, posting and disciplinary action, etc. The Hon'ble Apex Court has observed in the said judgment as follows:-

“28. CSB, consisting of high ranking in service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level, could be a better alternative (till the Parliament enacts a law), to guide and advise the State Government on all service matters, especially on transfers, postings and disciplinary action, etc., though their views also could be overruled, by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions. Parliament can also under Article 309 of the Constitution enact a Civil Service Act, setting up a CSB, which can guide and advice the political executive transfer and postings, disciplinary action, etc. CSB consisting of experts in various fields like administration, management, science, technology, could bring in more professionalism, expertise and efficiency in governmental functioning.

29. We, therefore, direct the Centre, State Governments and the Union Territories to constitute such Boards with high ranking serving officers, who are specialists in their respective fields, within a period of three months, if not already constituted, till the Parliament brings in a proper legislation in setting up CSB.

15. On the basis of the directions given by the Hon'ble Apex Court, the State Government had issued the G.R.

dated 31.01.2014 and decided to constitute the Civil Services Board to recommend the transfers of the Government employees to the competent authority. As per the said G.R., the proposal regarding transfer of the Government employees has to be placed before the duly constituted Civil Services Board and on the basis of recommendation and after considering the same, the competent authority has to take decision regarding transfers of the Government employees. The said fact is mandatory while effecting the transfers of the Government employees in view of the provisions of the Transfer Act 2005.

16. The Government has issued G.R. dated 31.01.2014 and issued the guidelines for making transfer in order to ensure more transparency in the transfers of the Government employees. But the respondent No.2 has not considered the provisions of the G.R. dated 31.01.2014 while making transfer of the applicant. The respondent no.2 made transfer of the applicant ignoring the guidelines given in the G.R. dated 31.01.2014 and on that ground also, the impugned order is illegal.

17. It is an admitted fact that the matter regarding transfer of the applicant had not been placed before the Civil Services Board and the respondent no.2 has effected the transfer of the applicant without following the directions given in the G.R. dated 31.01.2014. The impugned transfer of the applicant is in contraventions of the provisions of the said G.R. Without taking into consideration the provisions of G.R. dated 31-01-2014, the respondent no.2 has arbitrarily issued the impugned transfer order dated 16.10.2018. The respondent no.2 has issued the impugned transfer order in violation of Sections 3, 4(4) and 4(5) of the Transfer Act. The respondent no.2 has flouted the directions in the G.R. dated 31-01-2014. He had not followed the provision of Sections 3, 4(4) and 4(5) of the Transfer Act. Without recording any reasons the impugned order has been passed. It seems that the respondent no.2 has issued the impugned order arbitrarily with malice. Therefore, the same requires to be quashed and set aside by allowing the present Original Application.

18. In view of the discussion in the foregoing paragraphs, O.A. is allowed. The impugned order dated 16-10-2018 transferring the applicant from Sub District Hospital, Karjat

to Rural Hospital, Puntamba is hereby quashed and set aside. The respondent no.2 is directed to repost the applicant at her earlier posting immediately. There shall be no order as to costs.

(B. P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 08-08-2019.