

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.495 OF 2017**

**DISTRICT : RAIGAD**

Smt. Anita Motiramji Malge, )  
Director, Department of Physical Education, )  
Ismail Yusuf College, Jogeshwari, Mumbai 400060 )  
and on deputation as Director, Physical Education at )  
Sydenham College of Commerce & Economics, Mumbai )  
R/at 803, Basil Tower, Plot No.73/74, Kamothe, )  
Navi Mumbai 410209 )..Applicant

Versus

The State of Maharashtra, )  
Through the Principal Secretary, )  
Higher Education Department, Mantralaya, )  
Mumbai 400001 )..Respondent

Shri A.V. Bandiwadekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondent

CORAM : Shri Justice M.T. Joshi, Vice-Chairman  
AND  
Shri P.N. Dixit, Member (A)

CLOSED ON : 3<sup>rd</sup> April, 2018

PRONOUNCED ON : 17<sup>th</sup> April, 2018

**J U D G M E N T**

PER: Shri P.N. Dixit, Member (A)

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondent.
2. The Applicant in the above OA has challenged the impugned order dated 31.5.2017 (Exhibit A-8 page 23 of the OA) transferring her from the

post of Director, Physical Education, Ismail Yusuf College, Mumbai to the post of Director, Physical Education, Rajaram College, Kolhapur.

Facts of the case:

3. Admitted facts in this case are as under:

- (i) The Applicant was appointed as Lecturer in Physical Education on 7.9.2002 on contract basis. From 2002 till 2006 she worked at Kolhapur. Vide order Dated 15.7.2006 till 20.7.2011 she worked with Elphinston College, Mumbai.
- (ii) Vide order dated 20.7.2011 she was transferred to Ismail Yusuf College in Mumbai by the Respondent.
- (iii) She worked on contract basis as Lecturer in Physical Education from 7.9.2002 to 14.5.2012 and thereafter her services were continued on ad hoc basis from 15.5.2012 to 26.3.2016. The services of the Applicant were regularized vide order dated 23.3.2016 issued by the Respondent with effect from 7.9.2002.
- (iv) Though the posting of the Applicant continued to be at Ismail Yusuf College in Mumbai for administrative reasons and in the light of inspection by NAAC Committee, she remained on deputation in Elphinstone College, Mumbai from 12.8.2014 to 17.6.2016.
- (v) From 20.10.2016, Applicant was on deputation in the Sydenham College, Mumbai.
- (vi) Applicant was transferred to Rajaram College, Kolhapur vide impugned order dated 31.5.2017.

(vii) Applicant joined at Rajaram College, Kolhapur from 27.11.2017; under protest.

4. The Learned Advocate for the Applicant made the following submissions ;

- (i) Impugned order is contrary to the provisions of Section 4(4)(ii) and 4(5) of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the 'Transfer Act'), since the Applicant joined at the Sydenham College, Mumbai on 20.10.2016 and worked for only 7 months and as such not due for transfer.
- (ii) That however the Applicant is transferred to Rajaram College, Kolhapur holding that the Applicant was due for transfer in view of clubbing of her tenure in 4 colleges from 2.7.2011 to 31.5.2017. The CSB and respondent has considered this aspect only.
- (iii) That earlier the Applicant was working at Ismail Yusuf College from 20.7.2011 and thereafter sent on deputation to Elphinstone College from 12<sup>th</sup> of August 2014 to 17<sup>th</sup> of June 2016.
- (iv) That another employees working in different cadres i.e. Smt. Manisha Kulkarni and Ghanshyam Kedar have been working in Mumbai for last 15 years. The Applicant has been discriminated in this regard.

- (v) The Applicant is the widow and alone and requires to take care of her ailing mother in law. She herself is suffering from high blood pressure in addition to her gynecology problems.
- (vi) Post at Sydenham and Ismail College is kept vacant.
- (vii) The Applicant came to be appointed as Director of Physical Education on contract basis with effect from 7<sup>th</sup> of September, 2002. Every year fresh order of appointment with artificial/technical break.
- (viii) The applicant's services were not governed by the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005 ( For short the Transfer Act) as the Applicant worked on contract basis and till her services came to be regularized on 23.3.2016.
- (ix) Not completed 3 years after regularization on 23.3.2016.
- (x) It is wrong on the part of the respondent to consider and club the tenure as Director, Physical Education on contract basis along with tenure subsequent to regularization. The provisions of Transfer Act are not applicable to contract appointees like Applicant till 23.3.2016.
- (xi) It is clear admission on the part of the respondent as reflected in para 10 of reply that the period of deputation at once place of posting is 4 years as per provisions of clause no.1 of schedule 3 appendix II of Rule 4 of MCS (Joining Time, Foreign Service etc.) Rules, 1981.

- (xii) That the post of Director was vacant in Sydenham College since 2015. That however for the benefit of the respondent the Applicant was sent to the said college for NAAC thereby pretending that the post of Director of Physical Education which was lying vacant there is to be filled up.

5. With a view to support his arguments, the learned Advocate for the Applicant has relied on following judgments:

- (i) OA No.781 of 2014 Shri Ravindra Pandurang Shivdas Vs. The State of Maharashtra & Anr. decided by this Tribunal on 10.10.2014:

In this OA No.781 of 2014 the Applicant who was working as Dy. CEO, General Administration, Zilla Parishad, Satara, was transferred to the post of Dy. CEO, Water Supply and Sanitation, ZP, Satara within three months allegedly for extraneous consideration and not on sound administrative grounds. In this particular case the Applicant was transferred to accommodate someone else and to favour posting of certain officers. Hence, the impugned order was quashed and set aside.

- (ii) OA No.190 of 2015 Shri Suresh Anant Magdum Vs. The State of Maharashtra & Anr. decided by this Tribunal on 18.9.2015:

In this OA No.190 of 2015 the Applicant was transferred mid-term, mid-tenure and the posting was not to the newly created post or to the post which became vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave. In this OA the transfer was cancelled as there was

no justification in terms of special reasons to effect mid-term and mid-tenure transfer.

6. Learned Presenting Officer for the Respondent has filed reply on behalf of the Respondent and mentioned in para 16 that the Applicant was working as Lecturer in Physical Education from 7.9.2002 till 2006 at Rajaram College, Kolhapur on contract basis. Subsequently, she was posted to Elphinstone College, Mumbai. The Respondent further mentions vide para 9 in affidavit that appointment of the Applicant was regularized vide order dated 23.3.2016 w.e.f. 7.9.2002. In para 16 of the affidavit it is further mentioned that for administrative reasons, and as per the representation made by the Applicant on 12.9.2016, and on the recommendation made by Principal of Sydenham College on 28.9.2016; the services of the Applicant were shown at Sydenham College. The affidavit states that the Applicant was not shown to Sydenham College for administrative reasons as inspection by NAAC Committee on loan basis. According to the Applicant the Applicant continued to be on the establishment of Ismail Yusuf College. The reasons for transfer namely Applicant has completed the tenure, therefore, were considered by the Civil Services Board and the proposal for transfer and approved.

7. The Respondent in the affidavit mentions at para 15.2 that in future Rajaram College, Kolhapur will be acquiring the autonomous status and therefore there is need to fill up the vacant post in the said college. The Respondent further mentions that the arrangements of sending the Applicant to Sydenham College of Commerce on 28.9.2016 is not a transfer and, therefore, the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act are not attracted. The affidavit further mentions in para 20 that the establishment of the Applicant is at Ismail Yusuf College from 20.7.2011 and, therefore, as per Section 3(i) of Transfer Act Applicant is eligible for transfer as she has completed more than three

years at Ismail Yusuf College. According to the Respondent, as stated in para 21 of the affidavit the services of the Applicant were made available on loan-basis for administrative purpose and it cannot be called transfer and hence provisions of Section 4(4)(ii) and 4(5) of the Transfer Act are not applicable.

8. As far as the contention regarding discrimination with other persons is concerned, the Respondent in para 22 of the affidavit states that the post occupied by the Applicant is that of Director, Physical Education while the names of persons mentioned are in the category of Assistant Professor and, therefore, cannot be compared.

9. The Respondent states in para 24 of the affidavit that the Applicant belongs to Group A services and it is a settled principle under Section 3(i) of the Transfer Act that after completing the tenure period of 3 years transfer should be made. Accordingly since the Applicant has completed 3 years at Ismail Yusuf College she is transferred to Rajaram College, Kolhapur.

10. The Applicant has filed affidavit in rejoinder and stated that since the Applicant was working on contract basis from 7.9.2000 and every year she received fresh order of appointment on contract basis with artificial/technical breaks, the Transfer Act should not be applied to her. According to the Ld. Advocate for the Applicant the services of the Applicant were regularized on 23.3.2016 and thus the provisions of the Transfer Act would be applicable from that date. According to Ld. Advocate the Applicant has not completed 3 years of tenure after becoming regular government servant and, therefore, the impugned transfer order is misconceived, illegal and bad in law. According to the Ld. Advocate the Applicant worked in Ismail Yusuf College from 20.7.2011 and after 3 years she was due for transfer and hence she was transferred to Elphinstone College, Mumbai and on deputation vide order dated

11.8.2014 where she worked from 12.8.2014 to 17.6.2016. From there she was transferred to Sydenham College, Mumbai (on so called deputation) where she worked from 6.12.2016 as per order dated 20.10.2016 till the impugned order was passed on 31.5.2017 and hence she was not due for transfer. According to the Applicant deputation to Elphinstone College was to follow NAAC procedure as a temporary arrangement. According to the Applicant the arrangement of deputation to Sydenham College from 20.10.2016 amounts to transfer and hence it is her contention that she has not completed the tenure of 3 years in the last place of posting.

11. According to the Ld. Advocate for the Applicant, the Applicant could have been transferred only if she had completed the tenure and not for any other reasons such as Rajaram College was likely to be granted 'Autonomous status' in future. In any case the post at Rajaram College was vacant. According to the Applicant many other posts in Rajaram College are yet to be filled in and there was no urgency for filling up the post of Director, Physical Education. The rejoinder further states that the Applicant has joined at Rajaram College, Kolhapur from 27.11.2017 under protest. The Applicant further states that there is no difference between her and the Assistant Professor as all of them are employees of the State and similar rules are applicable to them for transfer.

12. The following issues, therefore, arise for consideration:

- (i) Whether the Transfer Act is applicable to the Applicant from the date of issue i.e. 23.3.20016 or from 7.9.2002 as stated in the order, as regular Group A officer?
- (ii) Whether discriminatory treatment has been given to the Applicant as compared with other Assistant Professors?



- (iii) Whether the transfer is mid-term or after completing the tenure period of 3 years?

In our considered view the case of the applicant is governed by the provisions of the Act since her initial appointment. The issue of discrimination is not relevant and the transfer is not mid-term. The application therefore is dismissed without any orders as to costs, for the following reasons.

**Reasons**

13.

- (i) As admitted by the Applicant, the regularization order clarifies that though issued on 23.3.2016 the Applicant has been given all the benefits of regularization from the date of 7.9.2002 and therefore it will be erroneous to conclude that Transfer Act would be applicable to her only from the date of issuing of the order viz. 23.3.2016. The Applicant is entitled for all service benefits from 7.9.2002 and she is also governed by the terms and conditions of regularization from 7.9.2002.
- (ii) We do not propose to go into the merits of other employees who are in a different cadre as it is not material to the present case and, therefore, the issue of discrimination is not relevant here.
- (iii) The Applicant admits that she is in Mumbai and particularly at Ismail Yusuf College from 20.7.2011. Subsequently as admitted in O.A. some times for administrative purpose she was sent on deputation in Elphinstone College from 12.8.2014 to 17.6.2016, while some times to accommodate her request and for her convenience she was deputed to

Sydenham College from 20.10.2016. However, her salary continued to be drawn from Ismail Yusuf College and she remained on the establishment of Ismail Yusuf College only. Only in rejoinder she terms it as “ so called deputation”. Thus, the contention of the Applicant that she has not completed the tenure in her last assignment is incorrect.

14. The judgments relied on by the learned Advocate for the Applicant are not relevant here as the facts of those cases, mentioned above in para No.5, are different and not relevant in the present case.

15. The facts in the present case confirm that the Applicant has completed the tenure period of her posting at Mumbai and, therefore, the transfer made by the Civil Services Board is legal and there is no illegality in the transfer order.

16. As there is no merit in the OA, the same deserves to be dismissed. Hence, the OA is dismissed with no order as to costs.

**Sd/-**  
**(P.N. Dixit)**  
**Member (A)**  
**17.4.2018**

**Sd/-**  
**(M.T. Joshi, J.)**  
**Vice-Chairman**  
**17.4.2018**

Dictation taken by: S.G. Jawalkar.