

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 118 OF 2024
WITH
MISC. APPLICATION ST. NO. 438 OF 2024
(Subject – Transfer)**

DISTRICT : BEED

Utkarsh s/o Sopanrao Gute,)
Age : 40 years, Occu. : Service)
(As Chief Officer, Ambajogai Municipal Council,))
R/o : C.O. Quarter, Near Morewaid Water Tank,))
Karkhana Road, Ambajogai, Dist. Beed.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Urban Development Department,)
M.S., Mantralaya (Main Building),)
4th Floor, Madam Cama Road, Hutatma,))
Rajguru Chowk, Mumbai- 32.)
2. **The Commissioner-cum-Director,**)
Municipal Administration,)
Directorate of Municipal Administration,))
7th Floor, Belapur Bhavan, Municipal)
Building, C.B.D. Belapur,)
Navi Mumbai-400614.)
3. **The Collector,**)
Beed, Collector Office, Nagar Road, Beed.)

... RESPONDENTS

APPEARANCE : Shri Avinash Deshmukh, Counsel for
Applicant.

: Shri A.P. Basarkar, Presenting Officer for
respondent authorities.

: Shri A.N. Irpatgire, counsel for applicant in
M.A./intervenor.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 06.05.2024

O R A L - O R D E R

1. Heard Shri Avinash Deshmukh, learned counsel appearing for the applicant, Shri A.P. Basarkar, learned Presenting Officer appearing for respondent authorities and Shri A.N. Irpatgire, learned counsel for the applicant in M.A./ intervenor.

2. The present Original Application is disposed of finally with the consent of both the parties at the admission stage.

3. The present matter is about the transfer of the applicant in terms of the directives issued by the Election Commission of India by communication dated 21.12.2023.

4. Brief facts as stated by the applicant giving rise to the present Original Application are as follows :-

(i) The applicant is directly recruited Chief Officer, Group-A and since then, he is working in the cadre of Chief Officer, Group-A. By order dated 12.07.2023, the applicant came to be transferred from Parbhani to Ambajogai in Beed District as Chief Officer of the Ambajogai Municipal

Council. The applicant has hardly completed tenure of six months on the post of Chief Officer of Ambajogai Municipal Council and in terms of the directives issued by the Election Commission of India for the ensuing Parliament Election of the year 2024, by impugned order dated 02.02.2024, the applicant came to be transferred mid-term and mid-tenure from the post of Chief Officer, Ambajogai Municipal Council, Dist. Beed to the post of Joint Commissioner (District Administration Officer, Group-A), Collector Officer, Osmanabad. Hence, the present Original Application.

5. Learned counsel for the applicant submits that in terms of para No. 3 of the directives issued by the Election Commission of India by communication dated 21.12.2023, the officer connected directly with the elections shall not be allowed to continue in the same district in the following conditions (i) If she / he is posted in her / his home district and (ii) if she / he has completed three years in that district during last four year or would be completing three years on or before 30.06.2024. Learned counsel submits that in terms of para No. 5.1 read with para No. 5.2, the applicant has not directly deployed for election works. Learned counsel submits that in para No. 6(v) of the

aforesaid directives issued by the Election Commission of India no officer / official, against whom a criminal case related to official functioning is pending in any court of law, be associated with / deployed on election related duty. Learned counsel submits that in terms of the said clause (v) of para No. 6, the case of the applicant is not covered under the transfer policy.

6. Learned counsel for the applicant submits in connection with the incident allegedly occurred on 04.04.2020 a Crime No. 89/2020 for the offences punishable under section 324 of Indian Penal Code came to be registered against the applicant and at present, charge-sheet has been submitted against the applicant, which is now pending before the learned Chief Judicial Magistrate, Beed. Secondly learned counsel submits that while holding the post as Chief Officer of Municipal Council, Beed, the applicant has allegedly committed contempt of Civil Court's order. Even though in the Regular Civil Suit No. 565/2022 by order dated 10.03.2022, the Civil Court has directed parties to maintain status-quo, despite the said order, the applicant along with some other employees of the department have proceeded further in connection with the property, which is subject matter of the said Suit and thus the Government of Maharashtra taken a decision to file FIR against the applicant

and others. Learned counsel submits that in connection with the same, even the Departmental Enquiry has been initiated against the applicant and others, which is now pending. Learned counsel has further pointed out that by order dated 11.10.2023 in Criminal Writ Petition No. 1537 of 2023, the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad has issued notices to the respondents when the applicant has challenged the said order directing registration of crime passed by the State Government and further granted ad-interim relief in terms of prayer clause (C), meaning thereby stay to the communication dated 04.10.2023.

7. Learned counsel for the applicant submits that in para No. 6 of the directives issued by the Commission of India by communication dated 21.12.2023, it has been specifically stated that the Commission has no intention of massive dislocation of state machinery by large scale transfers and further specified categories of the officers not covered under the transfer policy. Learned counsel submits that clause No. (v) of the aforesaid para No. 6 squarely applies to the case of the applicant and as such, the applicant's case is not covered under the transfer policy.

8. Learned counsel for the applicant submits that even though the Collector Beed has informed to the Government that

in view of pendency of W.P. No. 1537/2023 preferred by the applicant and which is now pending, the applicant has not been given any election duty. Learned counsel submits that in above all, the impugned order of transfer of the applicant is unwarranted and uncalled for and the same is liable to be quashed and set aside.

9. Learned Presenting Officer submits that in view of the interim order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P. No. 1537/2023, no crime has been registered against the applicant. So far as the charge-sheet filed against the applicant for the offences punishable under Section 324 of IPC is concerned, it is not connected with his official functioning in any manner and as such, clause No. (v) of para No. 6 of the directives issued by the Election Commission of India by communication dated 21.12.2023 are not applicable to the case of the applicant and therefore, by way of impugned order dated 02.02.2024 the applicant has been rightly transferred because admittedly Beed district is the home district of the applicant.

10. In terms of para No. 5.2 of the directives issued by the Election Commission of India by communication dated 21.12.2023, instructions shall also covers the officers deputed in

Municipal Corporations and Development Authorities etc. Further in terms of para No. 3 of the said directives, if the officer is connected directly with the elections he shall not be allowed to continue in the present district (revenue district) of posting under the following two conditions (i) if she/he is posted in her/his home district and (ii) if she/he has completed three years in that district during last four (4) years or would be completing 3 years on or before 30th June, 2024. The said para No. 3 of the directives issued by the Election Commission of India by communication dated 21.12.2023 is reproduced herein below :-

*“3. Hence, the Commission has decided that **no officer connected directly with elections shall be allowed to continue in the present district (revenue district) of posting:-***

(i) if she/he is posted in her/his home district.

(ii) if she/he has completed three years in that district during last four (4) years or would be completing 3 years on or before 30th June, 2024

While calculating the period of three years, promotion to a post within the district is to be counted.”

11. In terms of para No. 6 particularly clause No. (v), which is relevant for the present discussion is reproduced herein below :-

“(v) The Commission further desires that no officer/official, against whom a criminal case related to official functioning is pending in any court of law, be associated with/deployed on election related duty.”

12. In the instant case, so far as the charge sheet filed against the applicant for the offences punishable under section 324 of IPC is concerned, on perusal of the same, it appears that the applicant allegedly assaulted one Medical shop owner with the help of one weapon, which is dangerous and caused her injury. In my considered opinion, so far as allegations made against the applicant in connection with the said charge-sheet are concerned, the same are not a criminal case related to the official functioning of the applicant. Learned counsel though has vehemently submitted that during the lockdown period of COVID-19 the medical shop found open and when the applicant has directed him to close it, certain allegations have been made against the applicant in that connection and as such, the said crime has been registered in connection with his official functioning. I do not agree with the submissions made on behalf of the applicant for the reason that it is not the job of the Chief Officer to take round in the city and direct to close the shop in view of the directives issued by the State Government because of the outbreak of the Covid-19 in the Region. Further it cannot be his part of official functioning to take round with weapon and assault the shop owner to close the shop.

13. So far as propose contempt by the learned Jr. Civil Judge, Senior Division, Beed in connection with RCS No. 565/2022 is concerned, the applicant has allegedly interfered with the record of the property, which is subject matter of the said suit and in this connection, the Government has taken a decision to register a crime against the applicant. However, in terms of the interim order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in Criminal Writ Petition No. 1537/2023 dated 11.10.2023, the said communication dated 04.10.2023 issued by the Government directing crime to be registered against the applicant has been stayed.

14. In view of the aforesaid conditions, at present or even at the time of passing of interim order, no criminal case related to the official functioning of the applicant is pending in any court of law. In view of the same, if admittedly the Beed district is the home district of the applicant, by way of impugned order dated 02.02.2024, the applicant has been rightly transferred in terms of the directives issued by the Election Commission of India by communication dated 21.12.2023. I do not find any reason to interfere in the said order of transfer. There is no substance in the present Original Application and the same is liable to be dismissed. Moreover, there is no reason to consider the

intervention application, when the intervenor has not locus and he is not a person aggrieved.

15. At this stage, learned counsel for the applicant has requested to defer the effect of this order. However, as informed by learned Presenting Officer, voting at Dharashiv, where the applicant came to be transferred is scheduled on 07.05.2024, whereas the voting in Beed district is scheduled on 13.05.2024. In view of the same, since the transfer policy as declared by the Election Commission of India is squarely applicable to the case of the applicant, I am not inclined to stay the effect of transfer. The applicant is bound to report forthwith his place of transfer. Hence, the following order :-

ORDER

- (i) The Original Application No. 118/2024 is hereby dismissed.
- (ii) So also M.A. St. No. 438/2024 seeking intervention in the O.A. is hereby rejected.
- (iii) Interim relief granted on 08.02.2024 is hereby vacated.
- (iv) In the circumstances there shall be no order as to costs.
- (v) Original Application is accordingly disposed of.

PLACE : Aurangabad.

DATE : 06.05.2024

KPB S.B. O.A. No. 118 of 2024 VKJ Transfer

(Justice V.K. Jadhav)
Member (J)