

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

**ORIGINAL APPLICATION NO. 1276 OF 2024
(Subject:- Transfer)**

DISTRICT:- LATUR

Emam S/o Najir Mirza,)	
Age: 45 years, Occu: Govt. Servant,)	
R/o: At Post-Lamjana,)	
Tq- Ausa, Dist-Latur,)	
Pin-413516.)	...APPLICANT

V E R S U S

- | | | |
|--|---|-----------------------|
| 1. The State of Maharashtra, |) | |
| Through it's Secretary, |) | |
| School Education and Sports Dept. |) | |
| Mantralaya (Extension), Hall No.415 |) | |
| Madam Kama Road, Hutatma |) | |
| Rajguru Chowk, Mumbai-32. |) | |
| 2. The Commissioner of Education, |) | |
| Government of Maharashtra, |) | |
| Central Building, Dr. Annie Besant |) | |
| Road, Pune-411 001. |) | |
| 3. The Director, |) | |
| State Council for Educational |) | |
| Research & Training, Maharashtra, |) | |
| Sadashiv Peth Kumthekar Road, |) | |
| Pune-411 030. |) | |
| 4. The Principal, |) | |
| District Institute of Education & |) | |
| Training Barshi Road Datta-Nagar |) | |
| Murud, Tq & Dist.-Latur -413 510 |) | |
| 5. The Principal, |) | |
| District Institute of Education & |) | |
| Training Chikhali Road, |) | |
| Buldhana-44320 |) | ...RESPONDENTS |

APPEARANCE : Shri I.D. Maniyar, learned counsel for
the applicant.

: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

CORAM : **Justice Shri Vinay Joshi, Member (J)**

RESERVED ON : **09.12.2024.**

PRONOUNCED ON : **13.12.2024.**

ORDER

Heard finally with consent of both the parties at the stage of admission.

2. The applicant has impugned herein the transfer order dated 15.10.2024 by which he was transferred from Murud, Dist. Latur to Buldhana. The transfer is challenged on the ground that it is in violation 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 (in short "Transfer Act, 2005") and in violation with the code of conduct published by the Election Commission of India.

3. The facts in brief are that the applicant was working as a Lecturer in the office of Principal, District

Institution of Education & Training (DIET), Murud, Dist. Latur from 18.09.2020. However, he has been transferred vide impugned order dated 15.10.2024 on the said post at Buldhana. It is the applicant's case that the action of transfer is actuated with mala-fide and is a sort of punishment. The applicant was due for transfer in the year 2023, however, he has not been transferred at the relevant time despite giving options. Though the list published on 04.06.2024 pertaining to employees due for transfer with vacancies shows that other 44 candidates above the applicant were due for transfer, the applicant has been targeted.

4. It is argued that in view of G.R. dated 09.04.2018 the transfer ought to have been effected by the process of counseling by considering the applicant's choice, however, the said procedure was not followed. Moreover, the code of conduct published on 15.10.2024 by the Election Commission of India has imposed total ban on the transfer of the officers except categories falling under clause (6), in which the applicant does not fall. According to the applicant, though the respondents have captioned that it is administrative transfer, however neither there are exceptional circumstances nor special reasons recorded in writing for

carving out an exception. It is submitted that prior approval of the higher authority was not obtained and thus the transfer is in violation of Section 4(4) (ii) of the Transfer Act, 2005. It is canvassed that the reasons assigned by the Civil Services Board (CSB) are wholly unjustifiable. One of the reason assigned by the CSB is that the applicant took admission and completed internal LL.B. Course without obtaining prior permission and thereby cheated the employer. Secondly, the applicant though obtained loan/advance on account of construction of house, however, he did not construct the house and thus deceived the Government authority.

5. According to the applicant these reasons are not sufficient to construe as an administrative exigency. Moreover, it is submitted that so far as the grievance about completing LL.B. course without prior permission is concerned, already the departmental enquiry has been held in which the applicant was imposed with minor penalty and thus for the same reason there cannot be another punishment by way of transfer. As regards to an utilization of the loan/advance is concerned, due to family constraints applicant could not utilize the amount for said purpose.

6. Per contra, the respondents have resisted this application by contending that the applicant has already completed his tenure and thus the provisions of Section 4(5) would not apply. The impugned transfer order has been passed by following due procedure which has been contemplated under Section 4(4) (ii) of the Transfer Act, 2005. The Special Committee namely the CSB has examined the case and being found sufficient reasons and by taking cognizance of complaints, passed the impugned order for valid reasons, which can be termed as special reasons for transfer. It is submitted that the reasons in writing are well reflected in CSB meeting and the transfer was with prior approval of the in-charge Minister.

7. Learned P.O. would submit that merely on the basis of complaint transfer order has not been passed, but the applicant has misappropriated the Government money by not utilizing the same for which money was advanced i.e. for construction of house. It is submitted that without obtaining permission of the employer, that too by furnishing false information to the college i.e he is unemployment and his income is below Rs. 1,00,000/- (One Lakh only) applicant has

secured the admission and thus his conduct itself is improper. Moreover, it is submitted that the CSB in its meeting dated 11.10.2024 has already considered the applicant's case for transfer and it was published prior to the issuances of code of conduct imposing complete ban on transfer. Lastly it is pointed out that though the applicant was relieved on very day i.e. on 15.10.2024 till date he has not joined and thus his conduct is condemnable as observed by the Hon'ble Supreme Court in a case of the **Tamil Nadu Agricultural University & Anr. Etc. Vs. R. Agila Etc.**

8. It is not in dispute that the applicant was serving as a Lecturer at Murud since 18.09.2020 and thus he has already completed his tenure at Murud. Undisputedly his transfer order dated 15.10.2024 was mid-term transfer and thus it should be in consonance with Section 4 (4) (ii) of Transfer Act, 2005. In this regard, I have gone through the recommendation made by the CSB, which spells out the reasons in writing that the applicant took admission and completed internal LL.B. course without seeking prior permission of the employer. As regard to the said contention, there is no denial that without obtaining permission of

employer, the applicant took admission to LL.B. course. Moreover, the documents indicate that the applicant misled the Educational Institute by stating that he is unemployed and his annual income is less than Rs.1,00,000/- (One Lakh Only).

9. The only contention is raised that the applicant is already punished for such lapse and now again he cannot be transferred on the same count as it would amount to double jeopardy. The said submission is not sustainable since the transfer cannot be termed as a punishment since it is an exigency of service. Moreover, the CSB considered the various reasons apart from the said lapse.

10. So far as the other reason for transfer is concerned, that the applicant though obtained housing loan/advance, however, undeniably he has not constructed the house and the money has not been utilized for said purpose. The applicant may have own explanation, but the scope in this Original Application is quite limited. We are not required to test the genuineness of the reasons. It is apparent that since the amount is not utilized, the said reason cannot be termed as an unsustainable or made with

ulterior motive. The CSB report bears reference that it has considered the entire material along with the complaints annexed thereto.

11. Learned counsel for the applicant has relied on the decision of Hon'ble High court of Bombay in a case of **Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance & Development Corporation & Ors. (Writ Petition No. 5465/2012), reported in 2013 (3) Mh.L.J.463** to contend that while effecting the transfer the provisions of Section 4(4) and 4(5) of Transfer Act, 2005 have to be followed. There cannot be any dispute about the said preposition of law. I have scanned the impugned order on these parameters. Secondly, the reliance is placed on the decision of this Bench of the Tribunal in a case of **Suresh S/o Ganpat Kamble Vs. State of Maharashtra (O.A.No. 1277/2024)** decided on 19.11.2024 to contend that in absence of prior approval the transfer vitiates. I have already noted about that the approval of Competent Transferring Authority specified under Section 6 has been obtained. It is evident from the original record that the approval of in-charge Minister has been obtained since there is an endorsement by

the Minister that the proposal about transfer is approved and thus being distinct facts the said decision may not assist to the instant case. Lastly the reliance is placed on the decision of Maharashtra Administrative Tribunal, Bench at Nagpur in a case of **Uttam Mahadeo Phad Vs. the State of Maharashtra (O.A.No. 883/2024)** decided on 07.10.2024 to contend that the transfer made on the basis of complaint is not sustainable. The facts of the said case are quite distinct as in said case, purely on the basis of complaint made by the M.L.A. the transfer was effected, which was disapproved by the Tribunal. I have already noted above that the impugned transfer order is backing with two reasons apart from the complaint and thus distinct from the facts of said case.

12. It is requirement of Sub-Section 4 (4) (ii) of Transfer Act, 2005 that there shall be exceptional circumstances or special reasons which shall be recorded in writing. The CSB has recorded more than two reasons for transfer. It is pertinent to note that there is no dispute about both the grounds but the contention is that it is not sufficient. In fact the order of transfer is an administrative one. Unless the order of transfer is in conflict with rules and is made for ulterior motive or it is an arbitrary exercise of

powers, the court shall not interfere in such matters. There is no material to infer that the transfer has been made for collateral purpose or on account of personal bias. It is an administrative decision of the department subject to compliance of provisions of Transfer Act, 2005. On assessing the entire material it is evident that the applicant's case was considered by the CSB and transfer was effected by recording special reasons in writing with approval of in-charge Minister and therefore, no fault could be found. In the circumstances the application carries no merit and deserves to be dismissed.

13. In view of above, the Original Application stands dismissed. No order as to costs.

14. The original record shall be returned to the concerned respondents.

MEMBER (J)

Place:-Aurangabad

Date : 13.12.2024

SAS O.A. 1276/2024 Transfer