

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 596 OF 2024

(Subject:- Transfer)

DISTRICT:-PARBHANI

Abdul Mushtahid Saudagar,)
Age: 52 years, Occ. Service as Shop Inspector))
R/o. Plot No.8, Saraf Nagar,))
Near Shani Mandir, Old Jalna.))
Email: saudagar2706@gmail.com) **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Principal Secretary,)
Labour Department,)
Hutatma Rajguru chowk,)
Madam Cama Road,)
Mantralaya, Mumbai.)
- 2. The Desk Office (Establishment),**)
Labour Department-8)
Hutatma Rajguru Chowk,)
Madam Cama Road,)
Mantralaya, Mumbai.)
- 3. The Government Labour Officer ,**)
Azam Chowk, Darga Road,)
Parbhani.) **ESPONDENTS**

APPEARANCE : Shri A.S. Bayas, learned counsel
for the applicant.
: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

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

DATE : **20.08.2024.**

ORDER

Heard Shri A.S. Bayas, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities finally with consent at admission stage.

2. By filing this Original Application the applicant is seeking quashing and setting aside the order dated 12.06.2024 (Annexure 'A-1') issued by respondent No.2 thereby transferring the applicant from Parbhani to Nagpur. The applicant is also seeking direction to the respondents to permit the applicant to discharge the duty attached to the post of Shop Inspector Grade -I at Government Labour Office, Parbhani.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The applicant had entered into the service of Government of Maharashtra on 13.08.1997 as Junior Clerk Grade-III in its department of Labour at Jalgaon. The applicant came to be promoted on the post of Shop Inspector Grade-II on 31.07.2014 and thereafter again promoted on the

post of Shop Inspector Grade-I and posted at Parbhani by an order dated 18.05.2023.

(ii) The applicant came to be posted at Parbhani on promotion by order dated 18.05.2023 by transferring him from Bhiwandi. The applicant is presently working as Shop Inspector Grade-I at Parbhani and category of his post is Class-III. It has been specifically provided in the G.R. dated 09.04.2018 that the transfer should not be effected before completion of three years of normal tenure of Class-III category employees.

(iii) It is the further case of the applicant that by impugned order of transfer dated 12.06.2024 the applicant came to be transferred midterm and mid-tenure from Parbhani to Nagpur without there being any administrative exigencies. Hence, this Original Application.

4. Learned counsel for the applicant submits that the applicant has completed 13 months of tenure at Parbhani. As per the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Transfer Act, 2005") and the policy of the State Government,

the applicant ought not have transferred before completion of three years of tenure at Parbhani. Learned counsel for the applicant submits that there is no complaints against the applicant which constrained the respondents to transfer the applicant midterm and mid-tenure. The applicant has learnt that his transfer has been affected and he has been transferred from Parbhani to accommodate another employee who is working as Shop Inspector Grade-I. Learned counsel for the applicant submits that it is not reflected from the transfer order that the applicant's case was placed before the Civil Services Board. Learned counsel for the applicant submits that the impugned action is illegal, arbitrary, irrational and illogical and also result of total non-application of mind and colorable exercise of powers by the respondents. Learned counsel for the applicant submits that the impugned transfer order is liable to be quashed and set aside.

5. Learned counsel for the applicant in order to substantiate his contention placed his reliance on the following case laws:-

(i) Dr. Ravindranath B. Chavan Vs. The State of Maharashtra (O.A.No. 527/2027).

(ii) State of Maharashtra & Ors. Vs. Dr. (MS) Padmashri Shriram Bainade & Ors., reported in 2015 (4) All MR 336.

(iii) Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance and Department Corporation and Ors. W.P.No. 5465/2012.

(iv) S.B. Bhagat Vs. State of Maharashtra, reported in 2012 (3) All MR 845.

(v) Pradeepkumar Vs. Kothiram Deshbharatar WP No. 2665/2011.

(vi) Ramakant Baburao Kendre Vs. the State of Maharashtra (W.P.No. 8177/2011).

(vii) T.S.R. Subramanian & Ors. Vs. Union of India, reported in (2013) 15 SCC.

(viii) Mohinder Singh Gill & Ors. Vs. the Chief Election Commissioner, New Delhi & Ors., reported in 1978 AIR 851.

(ix) Union of India & Ors. Vs. SL. Abbas reported in 1993 AIR 2444.

(x) Balasaheb Vitthalrao Tidke Vs. the State of Maharashtra (W.P.No. 8987/2018).

6. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 submits that the complaint was lodged by the Member of the Legislative Assembly, Jintur, Dist. Parbhani to the Government on 27.02.2024 against the applicant. In connection with the said complaint, the Labor Commissioner was directed to take appropriate action against the applicant. Consequently, the

Labour Commissioner, by order letter dated 13.03.2024 requested the Government to take appropriate action regarding the transfer of the applicant.

7. Learned Presenting Officer submits that in terms of the provisions of Transfer Act, 2005 and with the prior approval of the Competent Authority, the applicant has been transferred midterm and mid-tenure to an equivalent post at the office of the Additional Labour Commissioner, Nagpur for administrative reasons by issuing the order dated 12.06.2024. Therefore, the order impugned is legal, proper and correct. The copy of complaint filed by the member of Legislative Assembly, Jintur, Dist. Parbhani is annexed to the affidavit in reply and marked as Annexure 'R-1'.

8. Learned Presenting Officer submits that transfer of the applicant was on the recommendation of the member of Legislative Assembly. There were complaints against the applicant about his work. The transfer recommended by the MLA cannot be said to be illegal. After the transfer order dated 12.06.2024, the applicant was relieved from the post of Shop Inspector Grade-I at Parbhani on 14.06.2024. The copy

of the said reliving order dated 14.06.2024 is marked as Annexure 'R-3'.

9. Learned P.O. submits that in terms of the provisions of Section 4 (4) and 4 (5) of the Transfer Act, 2005 and more particularly with the approval of the Government, the transfer order dated 12.06.2024 was issued by the respondent No.2. There is no substance in the Original Application and the same is liable to be dismissed.

10. Learned counsel for the applicant in reply to the aforesaid submissions submits that it is clear that the impugned transfer order was passed under the political pressure without any reason more particularly in absence of any administrative exigency. The impugned transfer order is passed in utter violation of the provisions of Transfer Act, 2005 and Government policy in terms of G.R. dated 09.04.2018. It is clear from the submissions of the learned P.O. and also from the affidavit in reply filed on behalf of respondents that the impugned order of transfer is passed under the pressure of local MLA. The local MLA has recommended the name of another officer to be placed on the post occupied by the applicant, against whom several

complaints have already been received to the Competent Authority.

11. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 has fairly accepted that the impugned transfer order came to be passed mainly on the complaint of local MLA. Learned P.O. also pointed out that the complaint dated 27.02.2024 sent by the Local MLA to the concerned Labour Minister, Maharashtra State (Exh. 'R-1'). The allegations made in the complaint are as vague as it could be. It has been simply stated that there are complaints of the beneficiaries received against the applicant and that the applicant is unable to satisfy the beneficiaries. The applicant needs to be transferred to some other place. It is surprising and shocking that the local MLA has himself has suggested the name of one another Shop Inspector namely Shri Anwar Shaikh in the letter itself.

12. On perusal of the annexures of the affidavit in reply filed on behalf of respondent Nos. 1 to 3 it appears that in response to the said complaint filed by the Local MLA, Mr. Satish Deshmukh, IAS, Labour Commissioner, Maharashtra State, Mumbai by communication dated 13.03.2024 has

informed to the Government that the applicant has simply completed nine months of his tenure at Parbhani and he is not due for transfer. The Labour Commissioner has made it clear that except the complaint filed by the Local MLA (Exh. 'R-1'), the department has not received the complaints from any other person. On the other hand, in the said letter the local MLA has recommended the name of one another person to give charge of the post of the applicant on his transfer, against whom several complaints have been received in the various forms and preliminary enquiry has been directed against the said Anwar Shaikh, Shop Inspector Grade-II. However, the Labour Commissioner has left the matter at the discretion of the Government to pass an appropriate order.

13. In the backdrop of these facts it is shocking and surprising that the applicant came to be transferred midterm and mid-tenure without placing his proposed transfer before the Civil Services Board. There is no approval of the Competent Authority for his midterm and mid-tenure transfer.

14. There is utter violation of the directives issued by the Hon'ble Apex Court in a case of **T.S.R. Subramanian &**

Ors. Vs. Union of India, reported in **(2013) 15 SCC. 732** so also the G.R. dated 09.04.2018, which mandates placing of the case of the applicant before the Civil Services Board.

15. The Division Bench of Hon'ble High Court of Bombay in a case of **Balasaheb Vitthalrao Tidke Vs. the State of Maharashtra & Anr. (Writ Petition No. 8987/2018)** decided on 12.12.2018 in the similar set of facts observed that the process of transfers should not be influenced by the recommendations made by the elected representatives of people and the Hon'ble Ministers who are not concerned with the process of transfers. Even the Division Bench of the Hon'ble High Court of Bombay has recorded the assurance of the State in the order itself that it would be ensured that the process of transfers will not be influenced by the recommendations made by elected representatives of people and Ministers who are not concerned with the process of transfers. In paragraph No.2 the Division Bench of Hon'ble High Court of Bombay has made the following observation:-

“2. We accept the statements made in paragraphs -1 and 2 of the said affidavit quoted above as the Undertakings given on behalf of the State of Maharashtra. Now there is a clear assurance that all

transfers will be effected strictly in accordance with the provisions of the said Act of 2005 and none of the transfers will now be influenced by the recommendations of the political leaders including the Hon'ble Ministers (who are not a part of the process of transfers). We direct that the statements made in para-1 of the said Affidavit are brought to the notice of all the concerned who have to exercise powers of transfer under the said Act of 2005 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants."

16. In view of above discussions, the impugned transfer order is liable to be quashed and set aside and this Original Application deserves to be allowed. Hence, the following order:-

ORDER

- (A) The Original Application is hereby allowed.
- (B) The impugned transfer order dated 12.06.2024 (Annexure 'A-1') issued by the respondent No. 2 thereby transferring the applicant from Parbhani to Nagpur is hereby quashed and set aside.
- (C) The respondents are hereby directed to permit the applicant to discharge the duty attached to the post of Shop Inspector Grade-I at Government Labour Officer, Parbhani as per his tenure.

- (D) In the circumstances, there shall be no order as to costs.
- (E) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 20.08.2024

SAS O.A. 596/2024 (S.B.) Transfer.