

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 61 OF 2023

(Subject:- Transfer)

DISTRICT:-LATUR

Madhav s/o Deorao Shinde,)	
Age: 48 years, Occu. Service)	
(as Asstt. Registrar, Co-op. Societies Latur),)	
R/o: C-5, Panchawati, Judges' Quarters,)	
Dist. & Sessions Court, Latur,)	
Dist. Latur.)	
Mobile No. : 9823734161)	
Email-id: mdshinde74@gmail.com)	APPLICANT

V E R S U S

- | | | | |
|-----------|--|---|--------------------|
| 1. | The State of Maharashtra, |) | |
| | Through its Secretary, |) | |
| | Department of Co-operation, |) | |
| | Marketing & Textiles, |) | |
| | M.S. Mantralaya, Madam Cama Road, |) | |
| | Hutatma Rajguru Chowk, |) | |
| | Mumbai-32. |) | |
| 2. | The Commissioner of Co-operation &
Registrar of Co-operative Societies, |) | |
| | M.S., New Administrative Building, |) | |
| | 2 nd Floor, 5 B.J. Road, Pune-01. |) | |
| 3. | The Divisional Joint Registrar |) | |
| | of Co-operative Societies, |) | |
| | Central Administrative Building, |) | |
| | Ground Floor, Shivaji chowk, |) | |
| | Latur. |) | |
| 4. | The District Deputy Registrar |) | |
| | of Co-operative Societies, |) | |
| | Central Administrative Building, |) | |
| | 2 nd Floor, Shivaji Chowk, Latur. |) | RESPONDENTS |
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APPEARANCE : Shri Avinash S. Deshmukh, 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 : **08.05.2024.**

O R A L - O R D E R

Heard Shri A.S. Deshmukh, 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 impugned order of transfer of the applicant dated 11.01.2023 issued by respondent No.1 and further seeking direction to the respondents to permit the applicant to continue to discharge duties attached to the post of Assistant Registrar, Co-operative Societies, Latur.

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

(i) The applicant has entered in the service of Government of Maharashtra in its Co-operation Department as a directly

recruited Assistant Registrar of Co-operative Societies in Group -B Gazetted cadre on 18.03.2011 upon his due selection and recommendation by the Maharashtra Public Service Commission (M.P.S.C.).

(ii) It is the case of the applicant that by order dated 05.08.2022, the respondent No.1 has transferred the applicant from the post of Assistant Registrar, Co-operative Societies, Surgana in Nashik district to the post of Assistant Registrar, Co-operative Societies, Latur. In pursuance thereto, the applicant had joined at Latur on the post of Assistant Registrar, Co-operative Societies on 09.08.2021.

(iii) It is the further case of the applicant that even though he had not completed his normal statutory tenure of 3 years on the post of Assistant Registrar of Co-operative Societies at Latur, the respondent No.1 by impugned order dated 11.01.2023 had transferred the applicant from Latur to Nilanga purportedly on administrative grounds. Hence, this Original Application.

4. Learned counsel for the applicant submits that the applicant has hardly completed his tenure of one year and five months on the said post of Assistant Registrar of Co-

operative Societies at Latur and he was not due for transfer out of the said post in terms of provisions of Section 3 (1) and 4 (1) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as “ the Transfer Act, 2005”). Learned counsel for the applicant submits that by issuing the impugned order the respondent No.1 has effected a mid-tenure and midterm transfer of the applicant from the post of Assistant Registrar, Co-operative Societies, Latur to the post at Nilanga.

5. Learned counsel for the applicant submits that in terms of provisions of Section 3 (1) and 4(1) of the Transfer Act, 2005, no Government Servant shall ordinarily be transferred unless he has completed his tenure of posting of three years or six years, as the case may be. Further, in terms of provisions of sub-Section (4) of Section (4) of Transfer Act, 2005, the transfer of Government Servants shall ordinary be made only once in a year in the month of April or May. Learned counsel for the applicant submits that upon consideration of said provisions of Section 3 and 4 of the Transfer Act, 2005 in totality it is explicit that the term of General Transfers of the year is in the month of April or May

and the normal tenure of Group A, B and C Officers in a post is of three years. The impugned order dated 11.01.2023 results in his mid-term as also mid-tenure transfer of the applicant. Learned counsel for the applicant submits that if at all the respondent No.1 desired to transfer the applicant out of his post at Latur then it was statutorily and mandatorily required to comply with the provisions of Section 4(4) and 4 (5) of the Transfer Act, 2005.

6. Learned counsel for the applicant submits that in view of ratio laid down by the Hon'ble Apex Court in a case of **TSR Subramanian** reported in (2013) 15 SCC 732, it is not only essential and incumbent, but obligatory on the part of the respondent No.1 to place the case/s of transfer/s of Government Officers before the competent Civil Services Board (CSB). In the instant case, however, the applicant has got all the reasons to believe that before issuing the impugned order of midterm and mid-tenure transfer, the respondent No.1 did not place the case of the applicant before the CSB.

7. Learned counsel for the applicant submits that in the month of November 2022, the applicant though was required to remain present before the respondent No.4 to give

an explanation in regard to certain allegations made against him by one Sanjay Bhimrao Gaikwad, however, nothing had come out of that and the respondent No.4 had sent a report dated 28.11.2022 to respondent No.3 conveying therein that no substance was found in the allegations against the applicant.

8. Learned counsel for the applicant submits that the impugned order of transfer issued by the respondent No.1 is not due to any 'exceptional circumstances' or 'special reasons' or by making out a 'special case' as contemplated by the provisions of Section 4 (4) (ii) and 4 (5) of the Transfer Act, 2005 respectively, but it has issued only and only due to some extra-departmental and/or political interference.

9. Learned counsel for the applicant submits that due to midterm and mid-tenure transfer of the applicant his family life is also disturbed. His wife is working as a Civil Judge, Junior Division and Judicial Magistrate First Class at Latur and it also resulted in defeating the policy of 'Couple Benefit' introduced by the State Government permitting husband and wife to be posted at one and the same Headquarter Station.

10. Learned counsel for the applicant submits that no one has been transferred and posted in the place of the applicant on the post of Assistant Registrar, co-operative Societies, Latur. On the other hand, the respondent No.4 has issued a memo to the applicant on 13.01.2023 directing to handover the charge of his post at Latur to one Mr. S.S. Kulkarni as an additional charge, because he has substantively posted and working on the post of Assistant Registrar, Co-operative Societies at Shirur Anantpal in Latur district. Learned counsel for the applicant submits that thus the impugned order of transfer is liable to be quashed and set aside.

11. Learned counsel for the applicant on the basis of additional affidavit filed on behalf of applicant submits that on 21.11.2022, the State Cooperative Election Authority was pleased to issue an order in view of the ensuing elections to the three Cooperative Banks in Latur District by appointing Election Returning Officer for those elections. The applicant came to be appointed as Returning Officer for election to the Yashwant Urban Cooperative Bank Ltd. Latur. In paragraph No.12 of the aforesaid order dated 21.11.2022 it has been specifically directed that such an Election Returning Officer is

not to be relieved till the election process is completed. The said process of election was to be continued till 12.02.2023.

12. Learned counsel for the applicant submits that after filing of this Original Application, the respondent No.4 has issued a memo of modification of the earlier order and the said memo of modification is dated 16.01.2023. Mr. S.S. Kulkarni, who was initially directed to take charge of the post of the applicant at Latur had proceeded on leave on 16.01.2023 and because of which the respondent No.4 has directed to one Mr. M.S. Latpate, who has substantively posted and working as Assistant Registrar, Cooperative Societies (Dairy), Latur to take over additional charge of the post of the applicant.

13. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 4 submits that the applicant came to be transferred from Latur to Nilanga on administrative reasons. Learned P.O. submits that on receipt of the letter of Shri Ramesh Kashiram Karad, the Member of Legislative Council regarding transfer of the applicant from the office of ARCS, Latur and also on account of several complaints from the individuals with regard to the method of

the working of the applicant, the respondent No.1 has called the report of respondent No.2. The respondent No.4 has conducted the enquiry in the matter and submitted the report dated 09.11.2022. Thereafter, the respondent No.1 has issued the order which is under challenge.

14. Learned Presenting Officer submits his further explanation that after receiving the interim report from the respondent No.4, the respondent No.2 has forwarded the report to the respondent No.1 and the respondent No.1 had placed the same before the concerned Minister of Co-operation. Thereafter, the Hon'ble Chief Minister has granted approval to the transfer of the applicant from Latur to Nilanga on the post of Assistant Registrar and thereafter, the respondent No.1 has issued the order to respondent No.2 and in turn, the respondent No.2 has issued the transfer order dated 12.01.2023 which is legal, proper and in accordance with rules.

Learned Presenting Officer submits that the respondent No.1 has followed the provisions of Section 4 (4) (ii) and 4 (5) and 6 of the Transfer Act, 2005.

15. Learned Presenting Officer submits that in view of complaints against the applicant, initially the report has been called. Therefore, the case of the applicant is not placed before the Civil Services Board and considering the allegations against the applicant rightly issued the impugned order on administrative reasons. The learned P.O. submits that the impugned order is the outcome of the several complaints against the applicant and not due extra departmental and/or political interference as alleged in the application. The applicant came to be transferred at Nilanga which is a Taluka of Latur District and as such, the policy of couple benefit has not been defeated. Learned Presenting Officer submits that there is no substance in the Original Application and the same is liable to be dismissed.

16. Learned counsel for the applicant on the basis of rejoinder affidavit filed by the applicant submits that the allegations about the several complaints from individuals received against the applicant are baseless and vague. Learned counsel for the applicant submits that even on the bare reading of the letter written by the MLA Shri Karad to the Hon'ble Deputy Chief Minister requesting therein to

transfer the applicant, it is clear that the vague allegations have been made therein.

17. Learned counsel for the applicant submits that so far as the report of the enquiry dated 09.11.2022 conducted by respondent No.4 is concerned, the said report is not against the applicant at all. On the other hand, the respondent No.4 has specifically concluded in his report by referring the Confidential Reports of the applicant that the applicant always endeavor to complete his office work on time and without any mistake. Learned counsel for the applicant submits that by no stretch of imagination said report of respondent No.4 could have been used by the respondent No.1 for effecting his transfer out of Latur. Learned counsel for the applicant submits that it is pertinent that in the concluding portion of the said report the respondent No.4 has referred the letter of the MLA Shri Karad and has specifically conveyed that though in the letter of MLA Shri Karad the reference is made to number of complaints received against the applicant, however, but for the vague complaint of Sanjay Bhimrao Gaikwad, no other complaints were received to the office against the applicant.

18. Learned counsel for the applicant submits that after receiving above referred interim report from the respondent No.4, the respondent No.1 in turn had placed the same before the Hon'ble Minister for Cooperation and thereafter, the Hon'ble Chief Minister had granted approval to the impugned transfer of the applicant from Latur to Nilanga. Learned counsel for the applicant submits that the report of the respondent No.4 is not adverse against the applicant and cannot be basis for processing the file of the applicant for his midterm and mid-tenure transfer.

19. Learned counsel for the applicant vehemently submits that the case of the applicant was not placed before the Civil Services Board and the impugned order of transfer thus cannot be sustained even for a moment, because placing the case before the Civil Services Board was condition preceding in the light of the directives issued by the Hon'ble Apex Court in the case of **TSR Subramania** reported in (2013) 15 SCC 732 (supra).

20. Learned counsel for the applicant submits that in a case of **Balasaheb Vitthalrao Tidke Vs. the State of Maharashtra & Anr. in Writ Petition No. 8987/2018**, the

Hon'ble High Court of Bombay has discouraged the transfer of the Government servants which has been influenced by recommendations and request made by the elected representatives of people and the Hon'ble Ministers who are not concerned with the process of transfers. Learned counsel for the applicant submits that the impugned order of transfer having been issued by the respondent No.1 seems to be only on the basis of the letter of the MLA and as such, the impugned order cannot be sustained in view of the observations made by the Hon'ble Bombay High Court in a case **Balasaheb Vitthalrao Tidke Vs. the State of Maharashtra & Anr.** (referred supra).

21. In a case **T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732** relied upon by learned counsel for the applicant, the Hon'ble Supreme Court in paragraph No. 30 has made the following observations:-

“30. We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government. In fact, we

notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.”

In the light of these observations, the Hon’ble Apex Court has directed the Centre, State Governments and the Union Territories to constitute the Civil Service Board to guide and advise on all service matters especially on transfers, postings and disciplinary action. It is also observed by the Hon’ble Apex Court in the aforesaid case that though the views of Civil Services Board are also could be overruled, by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions.

22. In the instant case, admittedly mid-tenure and midterm transfer proposal of the applicant was never placed before the Civil Services Board. This factor alone is sufficient to quash and set aside the impugned order of transfer.

23. Along with the affidavit in reply filed on behalf of respondent Nos. 1 to 4, all the relevant documents are produced vide Exh. "R-1" collectively. On careful perusal of the letter issued by MLC Shri Ramesh Kashiram Karad it appears that there is vague reference about the various complaints received against the applicant. There are no details mentioned in the aforesaid letter about the complaints. The letter is addressed to the Deputy Chief Minister of the Maharashtra State, Mumbai. The said letter consists only two paragraphs. The first paragraph consisting of two lines regarding the vague reference about the several complaints received from many persons about the working of the applicant and the second paragraph consisting of three lines about the transfer of the applicant.

In addition to this, there is one complaint received from one Sanjay Bhimrao Gaikwad resident of Latur making some specific allegations about the working of the applicant.

24. In view of the aforesaid complaints, the respondent No.4 has conducted the preliminary enquiry and submitted the report. On careful perusal of the said report it appears that there are no adverse remarks against the

applicant. The respondent No.4 has gone through the complaint received from the said Sanjay Bhimrao Gaikwad. The respondent No.4 submitted his report that there is no address, mobile number of the complainant Sanjay Bhimrao Gaikwad in the said complaint. The respondent No.4 has specifically opined that on perusal of the said complaint it appears that general allegations are made about the working of the applicant. It has also mentioned in the report by the respondent No.4 that no supporting documents have been submitted along with the complaint. Further, the respondent No.4 has also referred the letter received from the MLC Shri Ramesh Kashinath Karad. The respondent No.4 has specifically mentioned in the report that though the MLC Shri Ramesh Kashinath Karad has stated in the complaint about the receipt of the several complaints from the citizens about the working of the applicant, however, except the complaint of said Sanjay Bhimrao Gaikwad, no other complaints have been received in the office. Further the respondent No.4 has referred the Confidential Report of the applicant for the period of 09.08.2021 to 31.03.2022 and observed that the applicant has secured 8.78 marks out of 10 marks in his Confidential Report. The respondent No.4 has also referred in the report

that there is specific remarks in the C.R. of the applicant that the applicant is known to complete his official work in time and without any mistake. I fully agree with the submissions made on behalf of learned counsel for the applicant that this report submitted by respondent No.4 could not have been made as basis to transfer the applicant mid-tenure and midterm.

25. On perusal of Exh. "R-2" which is about the so called approval of the Hon'ble Chief Minister about the transfer of the applicant it appears that tenor of the said note put up before the Hon'ble Chief Minister clearly demonstrate that there were no positive recommendations about the mid-tenure and midterm transfer of the applicant, but it has been stated in the said note that the final hearing in respect of complaint received against the applicant which is vague in nature is kept on 21.11.2022 and after receipt of the said report, the appropriate decision may be taken. However, it appears that on 11.11.2022 itself the Hon'ble Chief Minister has approved the mid-tenure and mid-term transfer of the applicant on administrative ground.

26. Furthermore, the provisions of Section 4(4) and 4(5) of Transfer Act, 2005 have not been followed in the present case. In terms of Section 4(4) (ii), if the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority, the transfer of the Government servants may be made any time in the year. In terms of Section 4(5), the competent authority may, in special cases, after recording reasons in writing and with the prior approval of the immediately superior, transfer a Government servant before completion of his tenure of post. It is observed in the foregoing paragraphs that despite the note favoring the applicant, the approval has been granted by the competent authority i.e. the Hon'ble Chief Minister merely on the administrative ground without satisfying that midterm transfer is essential due to exceptional circumstances or special reasons or that the special case is made out for mid-tenure transfer of the applicant.

27. I find much substance in the submissions made on behalf of learned counsel for the applicant that the basis of

transfer of the applicant is nothing but letter received from Shri Ramesh Kashiram Karad, the Member of Legislative Council, who is not concerned with the process of transfer. Further the letter given by Shri Ramesh Kashiram Karad, MLC is as vague as it could be. However, without awaiting for the final report about the enquiry, the impugned order of transfer has been passed. In a **Balasaheb Vitthalrao Tidke Vs. the State of Maharashtra & Anr. in Writ Petition No. 8987/2018,** in the identical facts in paragraph No.2, the Division Bench of Hon'ble Bombay High Court has made the following observations:-

“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 2015 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants.”

28. In view of above discussion, this Original Application deserves to be allowed by quashing and setting aside the impugned order of transfer. Hence, the following order:-

ORDER

The Original Application is hereby allowed in the following terms:-

- (A) The impugned order of transfer of the applicant dated 11.01.2023 issued by the respondent No.1 is hereby quashed and set aside.
- (B) The respondents are hereby directed to permit the applicant to continue to discharge his duties attached to the post of Assistant Registrar, Co-operative Societies, Latur till he is due for transfer or otherwise, strictly in terms of the provisions of Transfer Act, 2005.
- (C) In the circumstances, there shall be no order as to costs.
- (D) The Original Application is accordingly disposed of.

MEMBER (J)