

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1354 OF 2024

**DISTRICT : Solapur
SUB : Transfer**

Prabhavati Muralidhar Kolekar,)
Age 49 years, Education Officer (Secondary))
Z.P., Satara, Dist. Satara and R/at. Natepute,)
Tal. Malshiras, Dist. Solapur.)....**Applicant**

Versus

- 1) Government of Maharashtra Through the)
Principal Secretary School Education and)
Sports Department Mantralaya,)
Mumbai - 400 032.)
- 2) The Commissioner (Education),)
Maharashtra State, Pune 1st Floor,)
Central Building Dr Annie Besant Rd,)
Pune 411001.)
- 3) Shri Dhananjay Laxman Chopade)
R/at. Koregaon, Sadar Bazar)
Satara 415 001.)
(under Promotion to the post of Education)
Officer) ...**Respondents.**

Shri M. D. Lonkar, learned Advocate for the Applicant.

Shri D. R. Patil, learned Presenting Officer for the Respondent No.2.

Shri S. S. Dere, learned Advocate for the Respondent No.3.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman

Reserved on : 24.03.2025

Pronounced on : 25.03.2025

JUDGEMENT

Heard Shri M. D. Lonkar, learned Advocate for the Applicant. Shri D. R. Patil, learned Presenting Officer for the Respondent No.2 and Shri S. S. Dere, learned Advocate for the Respondent No.3.

2. By order dated 30.08.2021 the Applicant was transferred from the post of 'Education Officer (Primary), Satara' to the post of 'Education Officer (Secondary), Satara'. By the impugned orders both dated 15.10.2024, the Applicant was transferred to the post of 'Assistant Commissioner, Maharashtra State Examination Council, Pune' and Respondent No.3 was transferred on promotion to the post of 'Education Officer (Secondary), Satara'. The order of transfer of the Applicant was stated to have been passed as per Sub-Sections 4 and 5 of Section 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. According to the Applicant, while passing the impugned orders, Rules of the Maharashtra Government Allotment of Revenue Divisions for Appointment by Nomination and Promotion to the post in Group-A and Group-B (Gazetted and Non-Gazetted) Rules, 2021 were not followed and these orders were secured by the Respondent No.3 by exerting political pressure through MLA Shri Mahesh Shinde.

3. It may be mentioned at the outset that MLA Shri Mahesh Shinde is not impleaded as 'Party Respondent'.

4. According to Respondent No.1, both impugned orders were passed by adhering to the provisions of 'Transfer Act, 2005' and principles of effective governance including objective of preventing stagnation on a single post.

5. Stand of the Respondent No.3 is as follows. The Applicant vide order dated 12.12.2018 and 13.12.2018 came to be posted as Education Officer (Primary) Z.P. Satara, thereafter she preferred representation before the Respondent No. 1 and requested to continue on the same post. Thereafter the Respondent No. 1 vide order dated 30.08.2021 continued the Applicant as Education Officer (Secondary) Z.P. Satara. The Applicant has completed 6 years on the same post and at the same place, hence her transfer order is valid. The guidelines laid down by the Hon'ble Supreme Court in **(T.S.R. Subramanian and Ors. Vs. Union of India & Ors.), (2013) 15 SCC 732** were followed by the Respondents. As per choice of the Respondent No.3 the impugned order of his transfer

to the post previously held by the Applicant, was passed. No political pressure was exerted while passing the impugned orders.

6. In her Rejoinder to Reply of the Respondent No.1, the Applicant has pleaded that there were no special or exceptional circumstances to transfer her.

7. In her Rejoinder to Reply of Respondent No.3, the Applicant has contended as follows. Respondent No.3 has indulged in political pressure and obtained recommendations dated 10.6.2024 from the then Hon'ble M.L.A. Shri Mahesh Shinde, recommending to the then Hon'ble Minister holding portfolio of School Education that Respondent No.3 hails from the constituency of the said M.L.A. and Respondent No.3 be posted on promotion on the specific post of Education Officer (Secondary), Zilla Parishad, Satara. It is only on the strength of the aforesaid political recommendation obtained by Respondent No.3, a proposal came to be routed for effecting transfer of Respondent No.3. Record would clinch the issue beyond any reasonable doubt inasmuch as the noting would reveal the base for initiating proposal is the direction issued by the then Hon'ble Minister holding portfolio of School Education. Respondent No.1 has filed Reply through Deputy Director of Education, in the office of the Deputy Director of Education, Mumbai Region, Mumbai, who was, in fact, in no way concerned with the issues raised in the Original Application. While passing the order of his promotion on 03.10.2024, the posting order of the Respondent No.3 was not passed whereas in respect of others who were promoted with the Respondent No.3 posting orders were passed contemporaneously. Though there were vacant posts in Pune Revenue Division, the posting order of the Respondent No.3 was not passed immediately.

8. The Applicant has placed on record letter dated 10.06.2024 written by MLA Shri Mahesh Shinde to the Hon'ble Education Minister requesting him to post the Respondent No.3 on the post of 'Education Officer (Secondary), Satara'. Such request *per-se*, without anything more, cannot amount to exerting political pressure.

9. In Office Note placed before the Hon'ble Education Minister, it was stated –

“श्रीमती प्रभावती कोळेकर, शिक्षणाधिकारी (माध्य), जि.प. सातारा यांचेविरुद्ध अनियमित कामकाजाबाबत केल्याबाबत मुख्य कार्यकारी अधिकारी, सातारा यांचे कार्यालयाकडून अहवाल सादर करण्यात आला होता. सदर अहवालामध्ये श्रीम कोळेकर यांचे विरुद्ध छत्रपती शिवाजी हायस्कूल, वडूज ता. खटाव, जि. सातारा येथील फी अनियमितता व द्रव्यदंडाच्या वसुलीबाबत, शिक्षण ओळखपत्र (आयकार्ड) खरेदीबाबत, शिक्षक बदल्या आणि कामकाजावर नियंत्रण नसणे इ. अनियमिततेच्या बाबींचा समावेश आहे. सदर अनियमिततेस जबाबदार धरून श्रीम. कोळेकर यांचेविरुद्ध म.ना.से. (वर्तणूक) नियम १९७९ मधील नियम ३ चा भंग केल्या प्रकरणी म.ना.से. (शि.व अ.) नियम १९७९ मधील नियम ८ अन्वये विभागीय चौकशी प्रस्तावित करण्यात आली होती. प्रस्तुत प्रकरणी आयुक्त (शिक्षण) यांनी म.ना.से. (शि.व अ.) नियम १९७९ मधील नियम १० खाली कारवाई करण्याबाबत मुख्य कार्यकारी अधिकारी, सातारा यांना अनुमती देण्यात आली आहे. सदर कार्यवाहीचा अनुपालन अहवाल सद्यःस्थितीत प्राप्त झालेला नाही. तसेच त्यांना सदरच्या ठिकाणी ३ वर्षांचा कालावधी पूर्ण होत आहे. मा. मंत्री (शा.शि.) यांचे निदेश विचारात घेता संबंधित अधिकारी यांची प्रशासकीय बदली करण्यात यावी किंवा कसे याबाबत प्रस्ताव आदेशार्थ सादर करण्यात येत आहे.”

10. Communication dated/06/2024 states that permission was accorded to initiate Departmental Enquiry against the Applicant not under Rule 8 as sought but under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

11. The Minutes of the Meeting of the CSB and its recommendations are at pages 135/136. The recommendations *inter-alia* refer to the fact that the Applicant had served on the post for 5 years 10 months and 7 days. It further states that no report of enquiry was received. It also states that no complaints were received against the Applicant. By relying on these circumstances, it was submitted by Advocate Shri M. D. Lonkar that the impugned orders were passed in colourable exercise of authority. It is a matter of record that permission has been accorded to initiate the Departmental Enquiry against the Applicant under Rule 10 of the Rules of 1979.

12. Relevant part of the Notification dated 14.07.2021 reads as under :-

“(5) **Procedure to be followed for allotment of Revenue Division** - The allotment of Revenue Division shall be made in the following manner after deciding the number of Revenue Division wise posts to be allotted as per rule 6(4).

(a) Allotment of Revenue Division in accordance with preferences - The allotment of Revenue Divisions shall be made by taking into account the preferences given by the officers as per their rank/number in the Merit List/ Select List and within the limit of number of posts decided for allotment in equal proportion of Revenue Division wise vacant posts as specified in rule 6(4)(d)

(b) Revenue Division allotment by rotation-After following the procedure as specified in rule 6(5)(a), if there is no post available in the Revenue Division preferred by the officer, then the allotment of Revenue Division to such officer shall be made by rotation in the remaining Revenue Divisions which are remained for allotment. While allotting Revenue Division by rotation, the order of allotment shall be in the sequence of Nagpur, Amravati, Aurangabad, Kokan-1, Nasik, Kokan-2 and Pune. The concerned officers shall be allotted with one Revenue Division each in accordance with their rank/number in Merit List or Select List.

(6) Postings to be made in concerned Revenue Division - After Revenue Division Allotment, the concerned Administrative Department shall have powers to prioritize the filling of posts by taking into account the number of posts lying vacant in various districts of the concerned Revenue Division. While making posting in the Revenue Division, the concerned Administrative Departments shall ensure that the criteria mentioned in rule 9 is duly considered.”

13. The Applicant has relied on judgment of this Tribunal dated 31.01.2024 in **O.A.No.942/2023 (Rajiv Vishwanath Shinde & 11 Ors. V/s State of Maharashtra & 1 Anr.)**. In this judgment, the Tribunal has observed –

“ The lament is that if Revenue and Forest Department had worked with clear foresight to sincerely implement the provisions of 'Rule 6 (3) of Maharashtra Government Allotment of Revenue Divisions for Appointment by Nomination and Promotion to the posts in and Group-A and Group-B (Gazetted and Non- Gazetted) Rules 2021' and stringently observed directives in Para's (2)' of GAD G.R. dated 01.09.2019 as well as consciously put the parallel exercise of 'General Transfer; 2023' under Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act of 2005) on different non-intersectional alignment; then surely it would not have resulted in any cause of action for Applicants which in turn led them to seek legal redressal of their grievances under 'Section 19' of The Administrative Tribunal Act, 1985'.

The Hands of the Clock' cannot be turned back, therefore it would suffice to direct the Revenue and Forest Department to immediately take remedial action for reallocation of 'Revenue Division' to all Applicants by transferring them on posts of Deputy Collector which are to become available by way of 'Transfers' or 'Promotions' or 'Retirements' after 01.02.2024 in (a) Konkan Division-1 (b) Konkan Division-2 (c) Pune Division and (d) Nasik Division.”

14. The Applicant has further relied on judgment of the Hon'ble Supreme Court dated 08.01.2025 in **Criminal Appeal No.4229/2024, (Om Prakash @ Israel @ Raju @ Raju Das v/s Union of India & Ors.)**. None of the observations made in above referred two decisions has any bearing on merits of the Original Application.

15. The Applicant has also relied on **(State of Punjab & Another V/s Gurdial Singh & Others), (1980) 2 SCC 471**. In this case, it is held –

“The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment.”

16. In the instant case, there is no material to conclude that the impugned orders of transfer of the Applicant and Respondent No.3 were actuated by malafides. The order of transfer of the Applicant was passed as per recommendation of the CSB. The Applicant had served in Satara District for more than five years. The Applicant could not demonstrate that there was non-compliance of Sub-Sections 4 and 5 of Section 4 of the Transfer Act, 2005. In these facts, interference with the impugned orders in exercise of clearly circumscribed powers of judicial review would not be warranted. In the result, the Original Application is dismissed with no order as to costs.

**Sd/-
(M. A. Lovekar)
Vice-Chairman**

