

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

**ORIGINAL APPLICATION NO. 799 OF 2023
(Subject – Transfer)**

DISTRICT : DHULE

Sheetal D/o Namdev Ebitwar,)
Age : 37 years, Occu. : Service as a)
Superintendent (Non Gazette Group B) in)
Public Trust Registration Office, Dhule.)
Resident address : Tulsiram Nagar, Malegaon)
Road, Taroda (Kh) Nanded, Dist. Nanded)
Pin Code 431605.)

.... **APPLICANT**

V E R S U S

1. **State of Maharashtra,**)
Through The Principal Secretary,)
Law and Judiciary Department,)
Maharashtra, Mantralaya 400 032.)
2. **The Charity Commissioner,**)
Maharashtra State Mumbai, Second)
Floor, South Wing, Sasmira Building,)
Sasmira Marg, Worli, Mumbai 400030)
3. **The Joint Charity Commissioner,**)
Public Trust Registration Office, Nashik)
Region, Janki Plaza, Nashik Pune road,)
Near Dwaraka Circle, Nashik 422011.)
4. **The Assistant Charity Commissioner,**)
Public Trust Registration Office Dhule)
Pimpalek complex, near mogalai school)
No. 14, Sakri Road, Dhule.)

... **RESPONDENTS**

APPEARANCE : Shri M.R. Kulkarni, Counsel for the Applicant.

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

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

RESERVED ON : 22.08.2024

PRONOUNCED ON : 15.10.2024

O R D E R

1. Heard Shri M.R. Kulkarni, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for respondent authorities.

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

3. By filing the present Original Application, the applicant is seeking quashment of order dated 19.05.2023 to the extent of applicant and also seeking directions to respondent No. 2 to accommodate and consider her by modifying the impugned transfer order and the applicant be given posting at Parbhani.

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

- (i) The applicant is working as Superintendent (Non Gazetted Group-B) in Public Trust Registration Office, Dhule. Her husband is working in Ashram Secondary and

Higher Secondary School, Dudhad, Tq. Himatnagar, Dist. Nanded. The applicant has completed near about 06 years at the present station and thus completed her tenure as per the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as "The Transfer Act 2005"). Consequently, the department has prepared the list of employees on 31.03.2023, who are due for transfer in the year 2023 and called options till 13.04.2023. Accordingly, the applicant has given three options on 12.04.2023. Those are (i) Nanded, (ii) Parbhani and (iii) Hingoli.

(ii) The applicant further contends that she has also submitted request application to respondent No. 2 on 12.04.2023 stating therein that her husband viz. Prakash Kishanrao Bhurewar is the Government servant working as Teacher in Government Ashram School at Jam Gavan, Tq. Kalamnuri, Dist. Hingoli. She has two sons, who are studying in 5th and 3rd Std. respectively at Nanded. Thus considering the policy of Government for couple convenience, she may be given posting at Parbhani. Further one Smt. Asmita Haribhau Sarode, who was

working at Parbhani has also given mutual request that she is willing to work at Nanded. However, by impugned order dated 19.05.2023, the applicant came to be transferred from Nanded to Dhule. Hence, the present Original Application.

5. Learned counsel for the applicant submits that it is the Government policy in terms of the guidelines prescribed in G.R. dated 09.04.2018 to call upon the employees for counseling. However, in the present case, the counseling was not done. Further in the impugned transfer order, which consisting of the employees holding the post of Superintendent, some of them are transferred within the same Region but discriminatory treatment has been given to the applicant by transferring her to another Region. Learned counsel submits that the distance between Nanded to Dhule is 600 Kms. Learned counsel submits that the applicant is woman and it is difficult for her to work at Dhule due to responsibility of her sons, who are studying in 5th and 3rd Std. respectively and also her old aged parents suffering from old age related health issues. Furthermore father-in-law of the applicant is also suffering Myopathy disease. Learned counsel submits that husband of the applicant is Government servant working as Teacher in Government Ashram School Jam Gavan,

Tq. Kalamnuri, Dist. Hingoli since 08.12.2021 and now transferred to Government Ashram School Dudhad, Tq. Himatnagar, Dist. Nanded. Even though the applicant has exercised option about Nanded, however the respondents have not followed the Government policy for couple convenience. Learned counsel submits that though the applicant has joined the place of transferred station at Dhule on 29.05.2023, however, it is not possible for her to work at such a long distance. Learned counsel submits that one post of Superintendent is vacant at Public Trust Registration Office, Parbhani and the applicant has also exercised the option for the same. However, the respondent authorities are not ready to consider the transfer of the applicant at Parbhani by modifying the impugned transfer order. Learned counsel thus submits that present Original Application deserves to be allowed.

6. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No. 2 submits that at Dhule office two sanctioned posts of Superintendent and out of it one is going to be vacant due to retirement and another one was due for transfer. The Civil Services Board-II has recommended the transfer of the applicant at Dhule office on administrative exigencies. Learned P.O. submits that the said post at Dhule

could not be kept vacant. Further the request transfer application of the applicant was considered by the respondent office twice in the past and the applicant came to be transferred from Nanded to Hingoli on 30.05.2014 by office order No. 357 and Hingoli to Nanded on 12.05.2017 by office order No. 332.

7. Learned Presenting Officer submits that the applicant had given only three preferences for transfer i.e. Nanded, Parbhani and Hingoli. She had already worked at Nanded. Thus she had given only two preferences for proposed transfer. Learned P.O. submits that though the applicant has mentioned that she falls under preference No. 5 but did not provide documents to show that her husband is working in the Government Ashram School. In terms of G.R. dated 09.04.2018, the employee due for transfer has to give ten preferences of his /her choice, otherwise it would be presumed that he / she is ready to work at any place where he / she would be transferred. Learned P.O. submits that it is not correct that the respondent authorities have not followed the provisions of G.R. dated 09.04.2018.

8. Learned Presenting Officer submits that the applicant is misinterpreting the transfer order. It is not stated in the

transfer order or minutes of meeting of the Civil Services Board-II that the said orders are regional transfer orders or issued by the regional head of the department such as Joint Charity Commissioner, who is the head of said Region. However, the said orders are issued by the Charity Commissioner, Maharashtra State, Mumbai. Though the offices of the Charity organization are at District level, the seniority is kept at the State level. Hence, the question of transfer of employees within region does not arise. Learned P.O. submits that the vacant post at Parbhani has been filled by promotion and as such, there is no vacant post of Superintendent at Parbhani. Learned P.O. thus submits that there is no substance in the present Original Application and the same is liable to be dismissed.

9. In the instant case, I am of the considered opinion that the guidelines prescribed in the G.R. dated 09.04.2018 have not been followed scrupulously. The applicant was never called upon for counseling. Further even though the applicant has requested to follow the Government policy prescribed for couple convenience, however, the same has not been considered by the respondent authorities. The applicant has specifically mentioned on Appendix-1 along with Statement-1 about her choice of places so also couple convenience. The husband of the applicant is

working at a distance of 25 kms. from Nanded as Teacher in the Government Secondary and Higher Secondary Ashram School, Jamgavhan, Hingoli. The applicant has got two small children studying in 5th and 3rd Std. respectively. Even though the post at Parbhani is fallen vacant due to a resignation submitted by one of the Superintendents by communication dated 30.07.2024 to the Presenting Officer in this regard, the respondent Charity Commissioner, Mumbai has informed that the applicant cannot be accommodated on the post fallen vacant, as the process of Annual General Transfers of the year 2024 has already been completed in terms of the provisions of Transfer Act, 2005. Even assuming that the applicant came to be transferred not in the Annual General Transfers of the year 2024 but due to administrative exigencies, however, the entire process prescribed for Annual General Transfers in terms of G.R. dated 09.04.2018 was undertaken and completed except counseling. Even the employees including the applicant were called upon to submit choice of posting.

10. Thus considering the entire aspect of the case, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) The Original Application is hereby allowed.
- (ii) The impugned order dated 19.05.2023 to the extent of applicant is hereby quashed and set aside.
- (iii) The respondent No. 2 is hereby directed to accommodate and consider the applicant on the post of Superintendent, Public Trust Registration Office, Parbhani by issuing appropriate order within a period of four weeks from the date of receipt of the present order.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application is accordingly disposed of.

PLACE : Aurangabad.
DATE : 15.10.2024

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