

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****CIVIL APPLICATION No.448 of 2024****In ORIGINAL APPLICATION No. 994 of 2024 (S.B.)**

Smt. Prieeya D/o Dinkar Pujari,
Aged about 33 years, Occu: Service R/o. Executive Engineer's
Bungalow, PWD Quarters, Pusad, Dist- Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Additional Chief Secretary,
Public Works Department, Mantralaya,
Mumbai: 32.
- 2) The Chief Engineer,
Public Works Department,
Camp Road - Amravati.
- 3) Mahesh S/o. Manoharao Mathurkar,
Aged-major, Occupation: Service,
R/o. C/o. Sub Divisional Office, Public Works Department,
Yavatmal.

Respondents.

**S/Shri S.W. Sambre, K.S. Agrawal, C.S. Tamhane, M.V. Raut,
Advocates for the applicant.**

Shri M.I. Khan, learned P.O. for respondent nos.1 and 2.

Shri S.P. Palshikar, Advocate for respondent no.3.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 16/10/2024.

J U D G M E N T

Heard Shri S.W. Sambre, learned counsel for applicant,
Shri M.I. Khan, learned P.O. for respondent nos.1 and 2 and Shri S.P.
Palshikar, learned counsel for respondent no.3.

2. Interim stay to the transfer order dated 30/09/1994 was granted by this Tribunal on 01/10/2024. Notices were issued and notices were returnable on 23/10/2024. Respondent no.3 appeared and filed C.A. No.448/2024 for vacation of stay order. On 14/10/2024 it was made clear that the O.A. will be disposed of finally. Today parties are heard finally to decide the O.A.

3. The case of the applicant in short is as under –

The applicant was appointed as Executive Engineer by respondent no.1 in Public Works Department on 11/03/2006. The applicant was transferred and posted on 23/07/2021 at Pusad. On 31/07/2024, the Election Commission of India has issued direction that those who are given duties in the election, they are not to be transferred. The applicant is appointed for the election duty. She is given posting as a Zonal Officer in the said election. Therefore, the applicant approached to this Tribunal for grant of stay to the impugned order. The Co-ordinate Bench of this Tribunal has granted stay in various matters, relying on the decision of the Election Commission of India more particularly Clause 6.

4. It is the submission of respondent no.3 that he is promoted and posted in place of applicant. The Chief Engineer directed the applicant to relieve from her post and charge was to be handed over to one Shri Shirbhate.

5. The learned counsel for respondent no.3 has pointed out the promotion order dated 30/09/2024. The endorsement of Chief Engineer shows that the applicant was directed to relieve and charge was to be handed over to one Shri Shirbhate. There is no dispute that the applicant is not transferred. Respondent no.3 is posted on promotion.

6. The applicant is posted in election duty as per order dated 25/09/2024. She is shown reserved in Pusad Constituency. Thereafter, again revised order was passed and she is shown in election duty.

7. The learned counsel for respondent no.3 has pointed out the letter / circular dated 05/08/2024. As per this letter, the employees who are due for transfer or who were having home district are to be transferred before 16/08/2024. This letter is dated 05/08/2024. After this letter also, the applicant is appointed for election duty. The guidelines given by the Election Commission of India in para-6 is reproduced below –

“6. Categories of Officers not covered under transfer policy

*During an election, a large number of employees are drafted for different types of election duty and the Commission has no intention of massive dislocation of state machinery by large scale transfers. Hence, the aforesaid transfer policy is normally **not applicable** to the categories of officers mentioned below:*

- (i) Officers posted in the State headquarters of the department concerned.
- (ii) Officers/Officials who are not directly connected with elections like doctors, engineers, teachers/principals etc. However, if there are specific complaints of political bias or prejudice against any such govt. officer, which on enquiry, are found to be substantiated, then CEO/ECI may order not only the transfer of such official but also appropriate departmental action against the said officer.
- (iii) The officers appointed as Sector Officer/Zonal Magistrate involved in election duties are not covered under these instructions. However, the observers, CEO/DEOS and ROs should keep a close watch on their conduct to ensure that they are fair and non-partisan in the performance of their duties.
- (iv) It is further directed that the officers/officials against whom the Commission had recommended disciplinary action in past and which is pending or which has resulted in a penalty or the officers who have been charged for any lapse in any election or election related work in the past, shall not be assigned any election related duty. However, an officer who was transferred during any past election under the Commission's order without any recommendation of disciplinary actions will not be, just on this ground, considered for transfer, unless specifically so directed by the Commission. A copy of the Commission's instruction number 464/INST/2008-EPS dated 23rd December 2008 regarding tracking of names of tainted officers is enclosed. CEOs must ensure its compliance.
- (v) The Commission further desires that no officer/official, against whom a criminal case related to official functioning is pending in any court of law, be associated with/deployed on election related duty.
- (vi) Any officer, who is due to retire within the coming six months will be exempted from the purview of the Commission's directions mentioned in para-3. The six months period shall be reckoned backwards from 30th September, 2024 for UT of Jammu and Kashmir, 31st October, 2024 for Haryana, 30th November, 2024 for Maharashtra and 31st December, 2024 for Jharkhand. Further, officer falling in the category (home district/3 years+ criteria and due to retire within 6 months) if holding an election related post

mentioned in para 5, shall be relieved of that charge and not be associated with any election related duty. It is however, reiterated that such retiring officer need not be transferred out of the district.

(vii) All the officials of the State (except those posted in the office of the Chief Electoral Officer), who are on extension of service or re-employed in different capacities, will not be associated with any election related work.”

8. On the same ground, the Co-ordinate Bench and this Bench has granted stay in many matters. This is not the only matter in which the interim relief is granted. Respondent no.3 is promoted. He could have been posted anywhere. Why the respondents have chosen to post him in place of applicant is not explained. Moreover the applicant is not transferred. She is given the duty in election. As per the guideline no.6 (iii), the applicant cannot be transferred. Hence, the interim order passed by this Tribunal is perfectly legal and correct. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order is hereby quashed and set aside.
- (iii) The C.A. is also disposed of.
- (iv) No order as to costs.

Dated :- 16/10/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 16/10/2024.