

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1006 OF 2024

DISTRICT : SOLAPUR

Shri Sanjaykumar Sawantarao Mali,)
Working as Superintending Engineer,)
Public Works Circle, Solapur.)
R/o: Chandrabhaga, Gandhinagar,)
Civil Lines, Near Landmark Apartments,)
Solapur 413 003.)...**Applicant**

Versus

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|----|---------------------------------------|-------------------------|
| 1. | The State of Maharashtra |) |
| | Through Principal Secretary, |) |
| | Public Works Department, |) |
| | Office at M.K Road, Mantralaya, |) |
| | Mumbai 400 032. |) |
| 2. | Sambhaji D. Dhotre, |) |
| | Working as Superintending Engineer) | |
| | Public Works Circle, |) |
| | Dist-Yeotmal. |) |
| | Now posted in place of the Applicant) | |
| | as Superintending Engineer, |) |
| | Public Works Circle, Solapur. |) |
| 3. | The Chief Engineer, |) |
| | Public Works Regional Division, |) |
| | Pune, having office at Central Bldg |) |
| | [Extension], Pune – 1. |)... Respondents |

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondent No. 1.

Shri M.D Lonkar, learned counsel for Respondent No. 2

CORAM : Justice Mridula Bhatkar (Chairperson)

DATE : 09.10.2024

J U D G M E N T

1. Admit. The Applicant, Superintending Engineer, Public Works Circle, Solapur, challenges the order dated 14.8.2024 passed by Respondent No. 1 thereby bringing in his place Respondent No. 2 from Yavatmal.

2. Learned Counsel Shri Bandiwadekar submitted that the Applicant was posted from Ratnagiri to Solapur at his present place of posting by order dated 21.10.2021. Thus, the Applicant has not completed 3 years tenure, but 2 years and 10 months on the present post. Thus, it is a mid-tenure transfer violating Section 4(4)(ii) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as ROT Act, 2005 for brevity). No meeting of the Civil Services Board was conducted by the Respondents before bringing Respondent No. 2 in place of the Applicant. The Applicant is not given posting at any place till today. Further Applicant's son is studying in 10th standard which was required to be considered by the Respondents. Learned Counsel has further argued that Respondent No. 2's transfer is on request, though he has put in only one year at Yavatmal. Respondent No. 2 was earlier working at Solapur and on his request, he was sent to Yavatmal. Learned Counsel has submitted

that as per the affidavit in reply of Respondent No. 1 dated 5.9.2024, some complaints from the people in the area were received by Respondent No. 1 and there was a news published in the Paper against the Applicant. Therefore, on this ground the Respondent No. 1 has transferred the Respondent No. 2 in place of the Applicant. Learned counsel for the Applicant has submitted that it is necessary to give special reasons or exceptional circumstances for such mid-tenure transfer. In support of his submissions, learned counsel relied on the judgment of this Tribunal dated 23.11.2023 in O.A 687/2023, Shri Revan Lembhe Vs. The State of Maharashtra & Ors and the said order was challenged in W.P 14743/2023, before the Hon'ble High Court by the Respondent in the said Original Application, Nilima S. Suryawanshi Vs. State of Maharashtra. The said Writ Petition was dismissed by learned Division Bench on 30.11.2023 thereby confirming the order of the Tribunal.

3. Learned P.O appearing for Respondent No. 1, relied on the affidavit in reply dated 5.9.2024 filed by Dattatray V. Kharke, Under Secretary, in the office of Addl. Chief Secretary, P.W.D, and she has submitted that in Paras 12, 14, 23 and 24 of the said affidavit the Respondent No. 1 has mentioned special reasons for bringing Respondent No. 2 in place of the Applicant. She has submitted that many complaints were received against the Applicant to the higher authority by people and the activists of corruption and giving sub quality service. Therefore, Respondent No. 1, found it necessary to remove the Applicant from the said post at the earliest and so Respondent No. 2 was brought in the place of the Applicant.

4. Learned Counsel Mr Lonkar, for Respondent No. 2 per contra has defended the action of the Respondent No. 1, of

bringing Respondent No. 2, in place of the Applicant from Yavatmal to Solapur. Learned counsel has submitted that Respondent No. 2 was brought in place of the Applicant on account of many complaints of bad administration, favoritism received by the Respondents. Learned counsel has pointed out the application of Respondent No. 2 dated 6.2.2024, Exh. E, wherein he has mentioned the difficulties faced by his family members and him due to his posting at Yavatmal. Therefore, he has requested to bring him back to Solapur. Learned counsel pointed out that Respondent No. 2, is at present without any posting and therefore, he is required to be given posting at the earliest.

5. In view of the ratio laid down in the case of **T.S.R Subramanian & Ors Vs Union of India & Ors, (2013) 15 SCC 732**, it is mandatory on the part of the State Government to place the case of each and every Government servant before the Civil Services Board, for transfer. In the present case it is true that many complaints were received from some local persons, leaders and NGOs about the malfunctioning and corruption by the applicant. There are allegations about nepotism, constructing and repairing the roads of substandard quality. If it is so, then all the more it was necessary on the part of the Respondent No. 1 to proceed with the enquiry against the applicant by giving him show cause notice for the same. Whenever there is a complaint against the Government servant, then in most of the cases the Government to adhere to the principles of natural justice and communicate the said complaint by offering him opportunity to explain the same. In very urgent, grave and unavoidable circumstances, transfer without asking the explanation from the Government servant can be justified. The present case does not fall in that. It appears that the complaints against the applicant were received from 2023 and went on till 2024. Thus, the Government had time to communicate

the same and seek explanation from him. Atleast Respondent No. 1, should have kept this material before the Civil Services Board and could have sought the Board's opinion/recommendation on transfer of the Applicant. It is obligatory on the part of the Respondent-State to follow the directions given by the Hon'ble Supreme Court in respect of transfer of the Government servants scrupulously so that the administration can be transparent without favour and wrongful interference and pressure of the Politicians.

6. In the present case, Respondent No. 2 has hurriedly rushed to take charge at Solapur. I rely on the elaborate decision of the Tribunal in the case of Revan Lembhe, (supra). Similarly, in Writ Petition No 14743/2023, Nilima S. Suryawanshi's case, the Hon'ble Division Bench of the High Court has also stated that reasons for transferring a person on his request are required to be recorded specifically when the transfer is mid-term or mid-tenure.

7. In the case of Revan Lembhe on the point of handing over or taking charge, this Bench has considered Rule 29 & 31 of the Maharashtra Civil Service (General Conditions of Service) Rules, 1981, which are reproduced below:-

“29. Relieving Government servant to intimate probable date of joining to the Government servant to be relieved- Every relieving Government servant is responsible for informing the Government servant to be relieved, at the earliest possible moment, of the date when he will be in a position to receive charge, and it is the duty of the Government servant to be relieved to be in readiness to deliver charge on that date.

31. Charge must be handed over at the headquarters, both relieved and relieving Government servants to be present - Except as otherwise provided below, the charge of a post must be made over at the headquarters, both the relieving and relieved Government servants being present—

8. In view of the above, following order is passed:-

ORDER

- (i) The Original Application is allowed.
- (ii) The impugned order dated 14.8.2024 passed by Respondent No. 1, bringing the Respondent No. 2, from Yavatmal in place of the Applicant at Solapur is illegal and hence quashed and set aside.
- (iii) The Applicant to join his original place of posting at Solapur tomorrow, i.e., on 11.10.2024.
- (iv) Respondents are hereby directed to issue the order of giving posting to Respondent No. 2 on or before 16.10.2024.

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 09.10.2024
Dictation taken by : A.K. Nair.