

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.282 OF 2024

**DISTRICT: THANE
SUBJECT: TRANSFER**

Dr. Rupali Shankar Satpute)
Age: 46 yrs, Occ: Additional Chief)
Executive Officer, Zilla Parishad, Thane)
R/o. 1101, A-Wing, Atelier, Rustomjee)
Urbania Saket, Thane (W).).....**Applicant**

VERSUS

- 1) The State of Maharashtra,)
Through Principal Secretary,)
Rural Development Department, Having)
Office at Mantralaya, Mumbai 400 032.)
- 2) The District Collector and District)
Returning Officer, having office at)
Thane.)
- 3) The Chief Executive Officer, Zilla)
Parishad, Thane, having office at)
Thane.)
- 4) The Chief Electoral Officer, (M.S.))
Mumbai, having office at Mantralaya)
Mumbai 400 032.)
- 5) Dr. Karuna Amait Juikar,)
Aged Adult, Posted as Additional Chief)
Executive Officer, Zilla Parishad,)
Thane in place of the Petitioner from)
her last place of Posting namely)
Project Director, District Rural)
Development Agency, Dist. Palghar.)
...**RESPONDENTS**

Shri Arvind V. Bandiwadekar, learned Advocate for Applicant.

**Shri Ashok J. Chougule, learned Presenting Officer for Respondents
No.1 to 4.**

Shri M. D. Lonkar, learned Advocate for Respondent No.5

CORAM : Shri Debashish Chakrabarty, Member (A)

DATE : 29.10.2024

J U D G M E N T

1. The Applicant who is serving on post of 'Additional CEO ZP Thane' has invoked provisions of 'Section 19' of 'The Administrative Tribunals Act, 1985' to challenge 'Government Order dated 23.02.2024 of Rural Development Department' by which she was transferred to post of 'Project Director DRDA, Jalna'. The Applicant has also challenged another 'Government Order' dated 23.02.2024 of 'Rural Development Department' by which Respondent No.5 came to be posted in her place as 'Additional CEO ZP Thane'.

2. The learned Advocate for Applicant stated that Applicant had joined on post of 'Additional CEO ZP Thane' on 16.09.2020 and thus was due for transfer, but only during 'General Transfers: 2024'. The 'District Collector and District Election Officer, Thane' had on 28.08.2023 designated Applicant as 'Chief Co-ordination Officer' for purposes of inspection and validation of 'Polling Stations' for 'General Elections Lok Sabha : 2024'; although it was for limited period between 22.08.2023 to 29.09.2023. The Applicant subsequently was not assigned any work directly or indirectly related to conduct of 'General Election Lok Sabha : 2024' by 'District Collector and District Election Officer, Thane'.

3 The learned Advocate for Applicant emphasized that Applicant has been transferred to post of 'Project Director DRDA, Jalna' by 'Government Order' dated 23.02.2024 of 'Rural Development Department' purportedly for implementation of directions in Election Commission of India letter dated 21.12.2023; as otherwise she was not due for transfer except during 'General Transfers : 2024' as per provisions of 'Section 4(4)' of The

‘Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005’.

4. The learned Advocate for Applicant thereupon highlighted certain nuances about past directions in Election Commission of India letter dated 09.01.2014 by making specific reference to use of words ‘directly’ or ‘indirectly’ in context of election work and mentioned that as its objectives had undergone substantial ‘Modification/Change’ with passage to time; so reviewed directions in Election Commission of India letter dated 21.02.2014 which were applicable for ‘General Elections Lok Sabha: 2014’ did not include the word “indirectly” although it was used in earlier directions in Election Commission of India letter dated 09.01.2014. Thus in the present context also as per updated directions in Election Commission of India letter dated 27.02.2024 made applicable for ‘General Election Lok Sabha : 2024’; those Government Servants who were serving in other ‘Administrative Departments’ but may have been indirectly assigned some election work were not required to be transferred from their present places of posting. The updated directions in Election Commission of India letter dated 27.02.2024 were made applicable soon after issue of ‘Government Order dated 23.02.2024 of Rural Development Department’; hence in all fairness Applicant should have been allowed to continue on post of ‘Additional CEO ZP Thane’ till ‘General Transfers: 2024’.

5. The learned Advocate for Applicant then went on to mention that Applicant has challenged ‘Government Order dated 23.02.2024 of Rural Development Department’ about her transfer to post of ‘Project Director DRDA Jalna’ on grounds of certain ‘Personal Hardships’ including ‘Children’s Education’ and seeks implementation of ‘Policy Guidelines’ regarding ‘Husband & Wife’ to be posted together; as ‘Husband’ of Applicant is serving as ‘Medical Officer-Group A’ at ‘Sub District Hospital; Panvel; District Raigad’ since 04.01.2022. Further; as Applicant was

considered to be competent officer she even held post of 'CEO ZP Thane' by way of 'Additional Charge' from 01.02.2024 upto 04.03.2024.

6. The learned Advocate for Applicant then contended that belated release of 'Government Order' dated 23.02.2024 of 'Rural Development Department' on 01.03.2024 by which Respondent No.5 came to be transferred in place of Applicant as 'Additional CEO ZP, Thane' was intentional; because otherwise there was no reason for Applicant not to implead Respondent No.5 in this O.A. No. 282/2024.

7. The learned Advocate for Applicant thereupon stressed that it was only after Respondent No.5 came to know about 'Interim Order' passed on 29.02.2024 in favour of Applicant; that she filed M.A. No.154/2024 on 04.03.2024 seeking dismissal of this O.A.No.282/2024

8. The learned Advocate for Applicant mentioned that M.A. No.154/2024 was heard at length and came to be partly allowed directing Applicant in M.A. No.154/2024 to be impleaded as Respondent No.5 in O.A.No.282/2024.

9. The learned Advocate for Applicant then proceeded to mention about service background of Respondent No.5 by stating that she was earlier transferred to 'Deputation Post' of 'Additional Commissioner, Ulhasnagar Municipal Corporation' by 'Government Order' of 'Urban Development Department' dated 11.08.2020. The Respondent No.5 after completion of '2 Years' on this 'Deputation Post' was given extension of '1 Year' by 'Government Order' dated 16.02.2022 of 'Urban Development Department' and thus had served as 'Additional Commissioner Ulhasnagar Municipal Corporation' for more than 3 Years. However; upon completion of more than 3 years on this 'Deputation Post'; she came to be repatriated by 'Government Order' of 'Urban Development Department' dated 05.09.2023.

10. The learned Advocate for Applicant then mentioned that by 'Government Order' dated 8.11.2023 of 'Rural Development Department', the Respondent No.5 was then transferred to 'Vacant Post' of 'Project Director, DRDA, Palghar' but she did not join there and has remained on unauthorized absence as can be inferred from contents of 'CEO, ZP, Palghar' letter dated 29.11.2023 addressed to 'Principal Secretary' 'Rural Development Department'.

11. The learned Advocate for Applicant then referred to findings recorded in 'Order' dated 28.03.2024 in 'MA No.154/2024' to reiterate how 'Government Order' dated 23.02.2024 of 'Rural Development Department' about transfer of Respondent No.5 to post of 'Additional CEO ZP Thane' came to be released surreptitiously; as initially it was not placed in 'Public Domain' along with 'Government Order' dated 23.02.2024 of 'Rural Development Department' about transfer of Applicant to post of 'Project Director DRDA, Jalna'; but actually came to be uploaded on 'Website' of 'Rural Development Department' much later on 01.03.2024.

12. The learned Advocate for Applicant contended that mischievously showing that Respondent No.5 was actually serving on post of 'Project Director, DRDA, Palghar' so as to justify 'Government Order' dated 23.02.2024 of 'Rural Development Department'; was not only an act of conspiracy; against Applicant but it clearly indicates how much 'Political Influence' had been exerted by Respondent No.5 on 'CSB' to somehow get transferred to post of 'Additional CEO ZP, Thane'. The misapplication of directions in Election Commission of India dated 21.12.2023 is also writ large on the face of 'Government Order' dated 23.02.2024 of 'Rural Development Department' about transfer of Respondent No.5; as it was clandestinely issued on 01.03.2024 only to help Respondent No.5 who had been on long unauthorized absence to immediately occupy post of 'Additional CEO ZP, Thane'. The 'CSB' knew rather well that Respondent No.5 had already completed tenure of 3 Years during last 4 years in same

'Revenue District' which is 'Thane District' having served on 'Deputation Post' of 'Additional Commissioner Ulhasnagar Municipal Commissioner'; from 11.08.2020 upto 05.09.2023; yet it was only to due to immense 'Political Influence' brought in by Respondent No.5 that transfer of Applicant from post of 'Additional CEO ZP Thane' came to be recommended by 'CSB'. The Respondent No.5 who committed serious misconduct by not joining on 'Vacant Post' of 'Project Director DRDA, Palghar' has instead been rewarded by 'Government Order dated 23.02.2024 of Rural Development Department' and stands transferred to post of 'Additional CEO, ZP, Thane'.

13. The learned Advocate for Applicant then mentioned that 'CSB' in its meeting held on 16.02.2024 in order to enable Respondent No.5 to immediately join on post of 'Additional CEO, ZP, Thane' had expeditiously recommended 'Modification/Change' to transfer Applicant to 'Vacant Post' of 'Project Director, DRDA, Palghar' instead to post of 'Project Director DRDA Jalna' by 'Government Order dated 23.02.2024 of Rural Development Department'.

14. The learned Advocate for 'Respondent No.5' who had filed M.A.No.154/2024 to be made 'Intervenor' in OA No.282/2024 was heard at length therein and thereupon specific findings have been recorded in 'Order' dated 28.03.2024 in M.A. No. 154/2024.

15. The learned Advocate for Respondent No.5 relied on the 'Affidavit-in-Reply' filed by Respondent No.5 on 07.05.2024 to emphasize that documents placed on record during course of hearing of M.A. No. 154/2024 be treated as part of the 'Affidavit-in-Reply' filed on 07.05.2024 in this O.A. No. 282/2024.

16. The learned Advocate for Respondent No.5 then contended that Applicant has no right whatsoever to challenge the transfer of Respondent No.5 to post of 'Additional CEO ZP Thane' by 'Government

Order' dated 23.02.2024 of 'Rural Development Department' as it amounts to nothing but conducting roaming and roving enquiries and such cause of action was impermissible under 'Judicial Review and amount to converting this 'O.A. No. 282/2024' into 'P.I.L'.

17. The learned Advocate for Respondent No.5 opposed the allegations made by Applicant that tremendous 'Political Influence' was brought upon 'CSB' to recommend transfer of Respondent No.5 to post of 'Additional CEO ZP, Thane' while arguing that it was Applicant who with help from some political personalities had held on to post of Additional CEO ZP, Thane' for more than 3 years and has even managed to stay on in 'Thane District' continuously since 26.07.2017.

18. The learned Advocate for Respondent No.5 emphasized that transfer of Respondent No.5 to post of 'Additional CEO, ZP Thane' came to be recommended by 'CSB' in its meeting held on 16.02.2024 only on 'Compassionate Grounds' as she is 'Cancer Survivor'. Further it was for this reason that Applicant at same was again recommended for transfer to the resulting 'Vacant Post' of 'Project Director DRDA, Palghar'.

19. The learned PO on the other hand relied on 'Short Affidavit' dated 04.03.2024 filed on behalf of 'Principal Secretary Rural Development Department to state that Applicant came to be transferred from post of 'Additional CEO ZP, Thane' because her name was included in information submitted by 'Divisional Commissioner, Kolkata Division' on 02.02.2024 and due to the fact that Applicant has been serving in 'Thane District' since 26.07.2017 initially as 'Project Director DRDA Thane' and thereafter as 'Additional CEO ZP, Thane'.

20. The learned PO then proceeded to explain the backdrop to transfer of Applicant to post of 'Project Director DRDA, Jalna' by 'Government Order' dated 23.02.2024 of 'Rural Development Department' based on recommendation in earlier meeting of 'CSB' held on 06.02.2024 which

had already been approved by the Competent Transferring Authority and next Superior Transferring Authority. However, the Applicant in subsequent meeting of 'CSB' held on 16.02.2024 was proposed to be transferred to 'Vacant Post' of 'Project Director DRDA Palghar' as this post was to fall vacant due to transfer of Respondent No.5 to post of 'Additional CEO ZP Thane'.

21. The learned PO contended that the updated directions in Election Commission of India letter dated 27.02.2024 were thus not applicable to Applicant.

22. The learned PO then relied upon the 'Affidavit-in-Reply' dated 11.06.2024 filed on behalf of 'Principal Secretary Rural Development Department' to mention that the Respondent no.5 had requested for transfer to post of 'Additional CEO ZP Thane' on 04.01.2023 which came to be considered by 'CSB' in its meeting held on 16.02.202 on grounds of she being 'Cancer Survivor'. Further it was necessary to transfer out Applicant as per directions in Election Commission of India letter dated 21.12.2023.

23. The learned PO again relied on 'Affidavit-in-Reply' dated 11.06.2024 filed on behalf of 'Principal Secretary Rural Development Department' to disclose that although the 'Competent Transferring Authority' who is 'Hon'ble Minister-in-Charge' of 'Rural Development Department' had recommended transfer of another officer who was then serving as 'Additional CEO, ZP Parbhani' to post of 'Additional CEO ZP, Thane' in place of Applicant; the next 'Superior Transferring Authority' who is 'Hon'ble chief Minister Maharashtra State' did not consider it but instead approved the recommendation made by 'CSB' in its meeting held on 16.02.2024 and decided to post 'Respondent No.5 to post of 'Additional CEO ZP, Thane'

24. The Applicant has contended that 'Government Order' dated 23.02.2024 of 'Rural Development Department' to transfer her from post of 'Additional CEO ZP, Thane' to post of 'Project Director DRDA Jalna' came to be issued not only due to intense 'Political Influence' brought about by Respondent No.5 but also because of misapplication of directions in Election Commission of India letter dated 21.12.2023; as Applicant had not been assigned any role and responsibility when serving on post of 'Additional CEO ZP Thane' which was directly or indirectly connected with conduct of 'General Election Lok Sabha : 2024'.

25. The Applicant has admitted that she was due for transfer from post of 'Additional CEO ZP Thane' but claimed that it was required to be done during 'General Transfers : 2024' as per provisions of 'Section 4(1)' of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. However, it was only at behest of Respondent No.5 who purposely did not join on post of 'Project Director DRDA Palghar' as per 'Government Order' dated 08.11.2023 of 'Rural Development Department' but instead brought enduring 'Political Influence' on 'CSB' which resulted in 'Government Order' dated 23.02.2024 of 'Rural Development Department' being covertly issued but subsequently placed in 'Public Domain' only on 01.03.2024 to indicate that 'Respondent No.5' has infact been transferred on 23.02.2024 in place of Applicant on post of 'Additional CEO ZP Thane'.

26. The Applicant was transferred from post of 'Additional CEO ZP Thane' to post of 'Project Director DRDA, Jalna' by 'Government Order' dated 23.02.2024 of 'Rural Development Department' apparently for implementation of directions in Election Commission of India letter dated 21.12.2023 against backdrop of 'General Elections Lok Sabha: 2024'. However, as 'General Elections Lok Sabha: 2024' have since concluded;

the validity of transfers of both Applicant and Respondent No.5 in the eyes of law will have to be examined in depth by separating 'Rice from Chaff'; based not only on particular facts & circumstances of their cases but importantly from perspective of law against backdrop of provisions of 'Section 3(1)' read with 'Section 4(1)' and 'Section 4(4)(ii)' read with 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

27. The Applicant had undoubtedly completed 'Normal Tenure' of 3 Years on post of 'Additional CEO ZP Thane' as per provisions of 'Section 3(1)' read with 'Section 4(1)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' when she came to be transferred belatedly to post of 'Project Director DRDA, Jalna' by 'Government Order' dated 23.02.2024 of 'Rural Development Department'. Therefore, it is evident that transfer of Applicant from post of 'Additional CEO ZP, Thane' was any way long overdue irrespective of whether or not directions in Election Commission of India dated 21.12.2023 were applicable to Applicant. Hence, although Applicant was transferred from post of 'Additional CEO ZP, Thane' apparently against backdrop of 'General Election Lok Sabha: 2024'; yet she does not have any case on merit to be permitted to continue any longer on post of 'Additional CEO ZP Thane' much beyond 'Normal Tenure' of 3 Years under provisions of 'Section 3(1)' read with 'Section 4(1)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

28. The 'Respondent No.5' who was concurrently transferred to post of 'Additional CEO ZP, Thane' purportedly while serving on post of 'PD DRDA District Palghar' by 'Government Order' dated 23.02.2024 of Rural Development Department' had never joined on post of 'Project Director DRDA Palghar'. Hence, 'Government Order dated 23.02.2024 of Rural Development Department' by which Respondent No. 5 came to be transferred in place of Applicant to post of 'Additional CEO ZP Thane'

does not manifest ingredients of quintessential 'Mid Term' and 'Mid Tenure' transfers since invocation of 'Section 4(4)(ii)' and 'Section 4(5)' presupposes that Government Servant concerned was serving on some 'Post' as defined in 'Section 2 (g)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' when 'Competent Transferring Authority' with prior approval of next 'Superior Transferring Authority' decided to their exercise expansive 'Statutory Powers' to effect 'Mid Term' and 'Mid Tenure' transfer of that Government Servant by recording some 'Exceptional Circumstances' or 'Special Reasons'; so as to justiciable curtail 'Normal Tenure' of 3 Years. The Respondent No.5 was evidently not serving on any 'Post' as defined in 'Section 2(g)' after being repatriated from 'Deputation Post' of 'Additional Municipal Commissioner Ulhasnagar Municipal Corporation' by 'Government Order' dated 05.09.2023 of 'Urban Development Department' having intently not joined on post of 'Project Director DRDA Palghar'. The stark fact that Respondent No.5 was not serving on post of 'Project Director DRDA, Palghar' appears to have been carefully kept hidden from knowledge of 'CSB' as well as 'Competent Transferring Authority' and next 'Superior Transferring Authority'. The 'Rural Development Department' as 'Cadre Controlling Authority' had completely failed to ascertain even such basic information about 'Respondent No.5'. Hence, all of them remained under erroneous belief that Respondent No.5 was indeed in midst of 'Normal Tenure' of 3 Years on post of 'Project Director, DRDA, Palghar' and it was thus amenable to reduction on grounds of 'Exceptional Circumstances' or 'Special Reasons'. Notwithstanding, the fact that Respondent No.5 had never joined on post of 'Project Director DRDA Palghar'; yet 'CSB' which is expected to always work with high degree of diligence preferred to remain under bonafide belief that as compassionate grounds existed in case of Respondent No.5 being 'Cancer Survivor'; she could be recommended for transfer in place of Applicant to post of 'Additional CEO ZP Thane'.

29. The Government Servants under 'Section 3(1)' read with 'Section 4(1)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' have been given assurance of 'Normal Tenure' of 3 years; but it is subject to reasonable restrictions because it can be curtailed anytime on grounds of justiciable 'Exceptional Circumstances' or 'Special Reasons' under 'Section 4(4)(ii)' read with 'Section 4(5)'. Hence it is this symbiotic but adversarial relationship which exists in law between provisions of 'Section 3(1)' read with 'Section 4(1)' on one hand and 'Section 4(4)(ii)' read with 'Section 4(5)' on the other hand; that makes it imperative to examine during 'Judicial Review' of every 'Mid Term' and 'Mid Tenure' transfer of Government Servants all material fact and circumstances which could have led to truncation of their 'Normal Tenure' of 3 Years and existence of justiciable 'Exceptional Circumstances' or 'Special Reasons' which made the 'Competent Transferring Authority' with prior approval of next 'Superior Transferring Authority' to lean towards 'Section 4(4)(ii)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

30. The principles laid down by several important judgments of 'Hon'ble Bombay High Court' regarding due caution to be observed during exercise of 'Statutory Powers' under 'Section 4(4)(ii)' read with 'Section 4(5)' of 'The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' also throw much light on this tenuous relationship in law and hence are reproduced below :-

(A) The Hon'ble High Court at Bombay in W.P. No.5465 of 2012 decided on March 07, 2013 (Shri Kishor Shridharrao Mhaske V/s. Maharashtra OBC Finance & Development Corporation & Ors.) has observed that:

Notwithstanding anything contained in Section 3, the competent authority may, in special cases, after recording reasons in writing and with the prior permission of the immediately preceding Competent Transferring Authority mentioned in the

table of section 6, transfer a Government Servant before completion of his tenure of post."

Section 4 (5) which begins with the non-obstante clause obligate the Competent authority to seek prior approval of the competent transferring authority as indicated in Section 6 of the Act and also to record reasons in writing in special case of the mid-term or pre-mature transfer of any Government servant who has not completed three years of normal tenure on particular post. Section 6 of the Act lays down the categories of the Government Servants in column no (1) of the table who may be transferred by the competent transferring authorities as mentioned in column (2) of the table.

The mid-term or pre-mature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of the Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or bye-passed. The exceptional reasons for the special mid-term or pre-mature transfer ought to have been stated in writing. Vague, hazy and meager expression such as "on administrative ground" cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements. The impugned order of the transfer in the absence of mention of special and exceptional reasons was passed obviously in breach of the statutory obligations and suffers from the vices as above.

(B) The Hon'ble High Court at Bombay in W.P. (L) No.1940 of 2011 decided on January 24, 2012 (Shri S.B. Bhagwat V/s. State of Maharashtra & Ors.) has observed that:

The manner in which the exercise has been carried out is patently contrary to law and in breach of the mandate of the statute. Ordinarily, a government servant cannot be transferred unless he has completed the tenure of posting. An employee who has not completed his normal tenure of three years may yet be subjected to transfer, as provided in sub-section (5) of section 4. Sub-section (5) of section 4 begins with an overriding non-obstante provision, but requires that reasons have to be recorded in writing in a special case for transferring an employee even prior to the completion of tenure. Merely calling a case a special case does not constitute a sufficient reason. The rationale why the legislature has required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers. Indeed, the matter of transfers has been brought within a regulatory framework laid down in the statute enacted by the State legislature. Section 4(5) permits as an exceptional situation, a transfer to be carried out, notwithstanding anything contained in section 3 or in section 4. The exceptional power must be exercised strictly in accordance with sub-section (5) of section 4. It is a settled position in law that when a statutory power is conferred upon an authority to do a particular thing, that exercise has to be carried out in the manner prescribed by the statute.

In the present case, the third respondent with whom the petitioner was employed, did not even propose to transfer the petitioner who had not completed his

normal tenure. The State Government was requested to grant its approval for transferring six employees. Inexplicably, the State Government granted its approval for transfer of fourteen employees. The petitioner does not figure in one of those fourteen. The fourth respondent was sought to be transferred from Nashik to Sangli at his request. The petitioner is sought to be displaced. The manner in which the power has been exercised leaves no manner of doubt that the exercise was carried out not in public interest, but with a view to accommodate the request of the fourth respondent. The mandatory statutory provision of recording reasons in writing for justifying recourse to the exceptional power conferred by sub-section (5) of section 4 has not been fulfilled.

(C) *The Hon'ble High Court at Bombay in Writ Peition No. 9844 OF 2018 decided on February 4, 2019 (Shri Santos.h Machhindra Thite Vs. The State of Maharashtra & Ors.) has observed that:*

The power of transfer under sub-section (5) of section 4 is to be exercised by the Competent Authority only in special cases, after recording reasons in writing and that also with the prior approval of the immediately superior Transferring Authority (in the present case, the Hon'ble Chief Minister). According to the stand of the State Government, the power was exercised by the Hon'ble Minister as a Competent Transferring Authority within the meaning of section 6.

Therefore, the power purportedly exercised is not in consonance with sub-section (5) of section 4 as the concerned Secretaries were not consulted. The Hon'ble Minister can exercise the powers as a Competent Transferring Authority under section 6 only after consultation with the Secretaries of the concerned Departments. Hence, the Hon'ble Minister had no power to pass orders under sub-section (5) of section 4 of the said Act without consultation with the Secretaries."

31. The transfer of Respondent No.5 to post of 'Additional CEO ZP, Thane' by 'Government Order' dated 23.02.2024 of 'Rural Development Department' against backdrop of peculiar facts & circumstances elaborated above; if is allowed to be implemented when 'Respondent No.5' had intentionally not joined on post of 'Project Director DRDA Palghar' as per 'Government Order' dated 08.11.2023 of 'Rural Development Department' upon repatriation from 'Deputation Post' of 'Additional Commissioner Municipal Corporation, Ulhasnagar' by 'Government Order' dated 05.09.2023 of 'Urban Development Department', then it would amount to rewarding misconduct on the part of such Government Servants and direct affirmation of their acts of insubordination of 'Cadre Controlling Authorities'.

32. The cases such as those of Respondent No.5 where encouragement is given to Government Servants who openly disobey orders of transfer issued by 'Cadre Controlling Authorities' and insidiously attempt to undermine provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' must not to be allowed to form clusters of precedence which can be viewed later as an artifact 'Carved In Stone'. Instead such acts of flagrant contravention of orders of transfer passed by 'Cadre Controlling Authority' must invite prompt reprisal for violation of 'Rule 3(ii)', 'Rule 3(iii)' and 'Rule 3(xviii)' of 'Maharashtra Civil Services (Conduct) Rules 1979'. The brazenness on part of Respondent No.5 to completely disregard 'Government Order' dated 08.11.2023 of 'Rural Development Department' and opportunistically not join on post of 'PD DRDA Palghar' constitutes 'Misbehavior' under provisions of 'Rule 29' of 'Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules 1981', which reads as follows:-

"29. Overstayal. – A Government servant who does not join his post within his joining time is entitled to no pay or leave salary after the end of the joining time. Willful absence from duty after the expiry of joining time may be treated as misbehavior for the purpose of Rule 27 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981."

33. The onerous responsibility of stringently enforcing in letter and spirit provisions of law, rules and regulations applicable to Government Servants is that of 'Cadre Controlling Authorities'. Hence, 'Rural Development Department' as 'Cadre Controlling Authority' of Respondent No. 5 after having been informed by 'CEO ZP Palghar' letter dated 29.11.2023 should have taken immediate action to enforce 'Government Order' dated 08.11.2023 of 'Rural Development Department' by which Respondent No.5 had been transferred to 'Vacant Post' of 'Project Director DRDA, Palghar' before any sympathetic consideration could have been accorded to her being 'Cancer Survivor'. The 'Exceptional Circumstances' or 'Special Reasons' as envisioned under 'Section 4(4)(ii)' and 'Section 4(5)' may include serious 'Medical Conditions'; but yet such cause has to

be upheld only for those Government Servants who obediently serve atleast some period of 'Normal Tenure' of '3 Years' on the designated 'Post' and not when Government Servant concerned is not even occupying any 'Post' as defined under 'Section 2(g)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. The Respondent No.5 should have fulfilled this necessary pre condition to have been deemed as eligible for 'Transfer' as defined under 'Section 2(i)' through instrumentality of 'Section 4(4)(ii)' read with 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

34. The 'Cadre Controlling Authority' which is Rural Development Department on the other hand should have been more vigilant in respect of Applicant as she had been serving in Thane District from 26.07.2017 and long back completed 'Normal Tenure' of 3 Years on 15.09.2023 and transfer her out from post of 'Additional CEO ZP Thane'. However; for reasons unknown transfer of Applicant was effected much belatedly on 23.02.2024 and ostensibly based on directions in Election Commission of India letter dated 21.12.2023. The Rural Development Department as 'Cadre Controlling Authority'; infact was duteous to ensure transfer of Applicant from post of 'Additional CEO ZP Thane' soon after she had completed 'Normal Tenure' of 3 Years as per provision of 'Section 3(1)' read with 'Section 4(1)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

35. The cases of Applicant and Respondent No.5 do have some common elements as both of them did not forthwith join on their respective posts which are 'Project Director, DRDA Jalna' and 'Project Director DRDA Palghar'. So it would be contextual to reproduce extracts from some important 'Judgments' of 'Hon'ble Supreme Court of India' to bring to their knowledge the serious implications of disobedience of 'Transfers Orders' issued by 'Competent Authority'.

36. The **Hon'ble Supreme Court of India in Judgment dated 31.03.1989 Gujrat Electricity Board & Anr. Vs. Atmaram Sungomal Poshani (1989 AIR 1433; 1989 SCC (2) 602; 1989 SCALE (1) 907; 1989 SCR (2) 357; JT 1989 (3) 20)** has recorded following germane observations containing words of caution for such Government Servants.

The Transfer of a Government Servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in Public Interest and efficiency in the Public Administration. Whenever a Public Servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the Competent Authority for stay, modification or cancellation of the Transfer Order. If the order of transfer is not stayed, modified or cancelled the concerned Public Servant must carry out the order of transfer. In the absence of any stay of the transfer order a Public Servant has no justification to avoid or evade the transfer, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the Transfer Order, he would expose himself to Disciplinary Action under the relevant Rules, as has happened in the instant case. The Respondent lost his service as he refused to comply with the order of his transfer from one place to the other.

37. The **Hon'ble Supreme Court of India in S.C. Saxena V. Union of India & Ors., (2006) 9 SCC 583** has recorded following stringently observations about growing tendency to indulge in acts of disobedience by such Government Servants:-

"We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

38. The **Hon'ble Supreme Court of India in 'Judgment' dated 12.02.2009 in Tushar D. Bhatt Vs. State of Gujarat and Anr., Civil Appeal No. 968 of 2009** has made following pertinent observations about need for sense of discipline amongst such Government Servants:-

“In the instant case, in the entire tenure of more than 18 years, the Appellant was only transferred twice. The Appellant’s transfer order cannot be termed as mala fide. The Appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11.10.1999 to 27.04.2000 i.e. more than six months. In the interest of discipline of any institution or organization such an approach and attitude of the employees cannot be countenanced.”

39. The Applicant and Respondent No.5 have both cited ‘Personal Hardships’ which may be appropriately considered but subject to ‘Administrative Exigencies’. However while doing so Rural Development Department as ‘Cadre Controlling Authority’ must strictly observe ‘Policy Guidelines’ in GAD GR dated 09.04.2018 and principles laid down in various landmark judgments of Hon’ble Bombay High Court regarding judicious exercise of ‘Statutory Powers’ under ‘Section 4(4)(ii)’ read with ‘Section 4(5)’ of ‘Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005’.

40. The transfer of Respondent No.5 by ‘Government Order’ dated 23.02.2024 of ‘Rural Development Department’ has been effected by side stepping provisions of law as explained above and thus is quashed and set aside. The ‘Rural Development Department’ as ‘Cadre Controlling Authority’ for reasons recorded above is accordingly directed to expeditiously implement both (a) ‘Government Order dated 23.02.2024 of Rural Development Department’ by which Applicant stands transferred to ‘Project Director DRDA Jalna’, (b) ‘Government Order dated 08.11.2023 of Rural Development Department’ by which Respondent No.5 stands transferred to ‘Project Director DRDA Palghar’. The Rural Development Department as ‘Cadre Controlling Authority’ would concurrently be at liberty to fill up the post of ‘Additional CEO ZP, Thane’ through transfer of any other eligible officer from cadre of ‘Additional CEO’. Hence the following order.

ORDER

- (A) The O.A. No. 282/2024 stands Dismissed.
- (B) The (a) 'Government Order dated 23.02.2024 of Rural Development Department' in respect of transfer Applicant to post of 'Project Director DRDA Jalna' & (b) 'Government Order dated 08.11.2023 of Rural Development Department in respect of transfer Respondent No.5 to post of 'Project Director, DRDA Palghar' are to be implemented within 'One Week'. However, only in an eventuality of these posts to which Applicant and Respondent No.5 had been transferred earlier are filled up during the intervening period since filing of this O.A. No. 282/2024, then Rural Development Department as 'Cadre Controlling Authority' would also be at liberty to re-transfer Applicant and/ or Respondent No. 5 as the case may be; within period of 'Four Weeks' to any other available posts in cadre of 'Additional CEO' but outside 'Thane District'. However considering their 'Personal Hardships' if 'Administrative Exigencies' so permit; then Applicant and/or 'Respondent No.5' may be given re-transfer to any other available posts in cadre of 'Additional CEO' within 'Konkan Division'.
- (C) The post of 'Additional CEO ZP, Thane' to be filled up within 'One Week' by 'Rural Development Department' as 'Cadre Controlling Authority' through transfer of any other eligible officer from cadre of 'Additional CEO'.
- (D) No Order as to Costs.

Sd/-
(Debashish Chakrabarty)
Member (A)