

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.04 OF 2019

DISTRICT : THANE

Shri Gajanan B. Gawale.)
Age : 45 Yrs. Occu. : Service, residing at 102,)
"Sadguru Sadan", Opposite Dev Darshan,)
Mhasa Road, Murbad, Tal.: Murbad,)
District : Thane.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai – 400 032.)
2. The Addl. Commissioner for Tribal)
Development, Vardan Sankul)
(Wagale Estate), 9th Floor, Passport)
Office, Thane (W).)
3. The Project Officer.)
Integrated Tribal Development Project)
Shahapur, Near Gangadevsthan,)
Vafe, Tal.: Shahapur, District : Thane.)
4. Assistant Project Officer.)
Integrated Tribal Development Project)
Shahapur, Near Gangadevsthan,)
Vafe, Tal.: Shahapur, District : Thane.)
5. Head Master (Secondary),)
Government Secondary and Higher)
Secondary Ashram School, Khutal (Ba),)
Tal.: Murbad, District : Thane.)...Respondents

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Mr. L.S. Deshmukh, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.06.2019

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 18.12.2018 on the ground of violations of the provisions of "Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005" (hereinafter referred to as 'Transfer Act 2005' for brevity).

2. Shortly stated facts are as follows :-

The Applicant is serving as Assistant Teacher at Government Ashram School. At the time of transfer, he was working at Government Ashram School, Khutal, Tal.: Murbad, District Thane. He had not completed her normal tenure at Khutal. However, by order dated 18.12.2018, he was transferred to Government Ashram School Aghai, Tal.: Shahapur, District Thane on administrative ground. The Applicant has challenged the transfer order contending that it is in total defiance of the provisions of 'Transfer Act 2005', particularly Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' on the ground of competency of Respondent No.4 to transfer her and for non-compliance of approval by immediate next higher authority contemplated in Table attached to Section 6 of 'Transfer Act 2005'.

3. Per contra, the Respondent No.4 resisted the application by filing Affidavit-in-reply (Page Nos.24 to 27 of Paper Book) *inter-alia* denying that the impugned transfer order suffers from any legal infirmity. The Respondent

contends that due to reduction of strength of students in Government Ashram School, Khutal, the transfer of Applicant was necessitated and accordingly, he was transferred to Government Ashram School, Aghai, Shahapur, District Thane on administrative ground. The Respondent further contends that by G.R. dated 27.06.2013, the Respondent No.3 was empowered to transfer the Teachers and accordingly, with his approval, the Applicant has been transferred to Government Ashram School, Aghai, Shahapur, District Thane in pursuance of directions of Government to adjust surplus Teachers in view of reduction of strength of the students. With these pleadings, the Respondent prayed to dismiss the O.A.

4. Heard Shri L.S. Deshmukh, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

5. In the present O.A, a short question posed for determination is whether the impugned transfer order dated 18.12.2018 is in consonance with the provisions of 'Transfer Act 2005' and the answer is in negative for the reasons to follow.

6. Admittedly, the Applicant has not completed his normal tenure at Government Ashram School, Khutal and he was transferred mid-term and mid-tenure. This being the position, there is no denying that for such mid-term and mid-tenure transfer, there has to be compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' which is completely missing in the present case.

7. Undoubtedly, the reduction in strength of students in School would definitely be the ground for mid-term and mid-tenure transfer, as it falls in administrative exigency. But, it must be done in consonance with the provisions of 'Transfer Act 2005'. In the present matter, the learned P.O. adverted to the letter of Government dated 18.11.2018 addressed to Commissioner, Tribal Development, Nashik sought to contend that, because of reduction in strength of students, the transfer of the Applicant was necessitated. However, the perusal of

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letter dated 18.11.2017 reveals that it pertains to adjustment of Teachers in other Schools on account of reduction of strength of all students in Standards 1st to 4th in Government Ashram Schools. Whereas, in the present case, the Applicant has specifically contended that he is taking classes of the students from 4th Standard to 7th Standard to which there is no denial. This being the position, the general direction given by the Government by letter dated 18.11.2017 are obviously not applicable to the transfer of the Applicant.

8. Furthermore, even assuming for a moment that the said general direction given by the Government by letter dated 18.11.2017 applies to the transfer of the Applicant, in that event also, such transfer it being mid-term and mid-tenure required to be done in consonance of the provisions of 'Transfer Act 2005'. Here, it may be noted that the general direction/approval purportedly given by letter dated 18.11.2017 were effective from academic year 2017-2018. If that be so, then the Respondents ought to have effected transfers in general transfers of 2018, so as to minimize the grievances and inconvenience of the Teachers. However, the Respondents failed to take such suitable/appropriate action in general transfer.

9. Now, turning to the competency of the transferring authority, the perusal of impugned order dated 18.12.2018 reveals that the Applicant has been transferred by Respondent No.4 – Assistant Project Officer. The Applicant is Group 'C' employee. As per Section 6 of 'Transfer Act 2005', for transfer of Group 'C' employees, the Head of the Department is the Competent Authority. Whereas, as per Section 7, every administrative department is of Mantralaya is required to prepare and publish list of the Heads of the Departments and regional Heads of the Departments and to notify the authorities competent to make transfers within their jurisdiction for the purposes of 'Transfer Act 2005'. In the present case, the Commissioner, Tribal Development Department is admittedly the Head of Department. However, nothing is placed on record to

establish publication of list of Competent Authority i.e. Head of the Department as mandated in Section 7 of 'Transfer Act 2005'.

10. The learned P.O. placing reliance on G.R. dated 27.06.2013 issued by Tribal Development Department, Mantralaya sought to contend that the powers of transfers have been delegated to Project Officer. The learned Advocate for the Applicant also placed reliance on the said G.R. to point out that the impugned transfer order being not passed by Project Officer is unsustainable in law. The perusal of G.R. dated 27.06.2013 reveals that the powers of transfer has been delegated by virtue of Section 6 of 'Transfer Act 2005'. No doubt, the proviso to Section 6 provides for delegate of power to subordinate authority. In this respect, it is pertinent to note that by G.R. dated 27.06.2013, the powers of transfer seems to have been delegated to Project Officer and not Assistant Project Officer. Whereas, in the present case, the transfer order has been issued by Assistant Project Officer as seen from the impugned order dated 18.12.2018. The learned P.O. could not point out that the same has been approved by Project Officer.

11. In fact, if one examine the matter in the teeth of provisions of 'Transfer Act 2005', it is crystal clear that the Head of Department is the Competent Authority for the transfer which is required to be notified as per Section 7 of 'Transfer Act 2005'. True, the Head of the Department can delegate the powers to its subordinate authority. However, in case of mid-term and mid-tenure transfer, there has to be compliance of Section 4(5), which provides that the Competent Authority may in special cases after recording reasons in writing with the prior permission of immediately presiding Competent Authority mentioned in Table 6 can transfer Government servant before completion of his tenure or post. As stated above, the reduction in strength of students could be a valid ground for transfer of Teacher, but in case of mid-term and mid-tenure transfer, it should be with prior permission of immediately presiding Competent Authority as

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mentioned in the Table attached below Section 6 of 'Transfer Act 2005'. As per Table below Section 6, the Minister In-charge in consultation with the Secretaries of concerned Department, is the next immediate presiding Competent Authority. This being this position, there has to be approval of immediate presiding Competent Transferring Authority as mentioned in Table 6, which is admittedly missing in the present case.

12. Apart, admittedly, the matter was not placed before the Civil Services Board (CSB) established in pursuance of direction issued by Hon'ble Supreme Court in *Writ Petition (Civil) No.82/2011 (T.S.R. Subramanian & Ors. Vs. Union of India & Ors.) dated 31st October, 2013*. The learned P.O. fairly concedes that the matter was not placed before CSB. This being the position, it renders the impugned transfer order unsustainable in law.

13. True, the transfer is an incidence of service and ordinarily those are made in exercise of administrative function to meet the exigencies of service and in public interest and should not be ordinarily interfered with. However, the order of transfer can be interfered with, whether it is *mala-fide* or in violation of statutory provisions. In the present case, the impugned transfer order has been passed by the authority which is not competent to transfer and the same is not in consonance with the provisions of Section 4(5) and 6 of 'Transfer Act 2005'.

14. In view of aforesaid discussion, the necessary corollary is that the transfer order is not sustainable in law and deserves to be quashed. Hence, the following order.

ORDER

(A) The Original Application is allowed.

- (B) The impugned order of transfer dated 18.12.2018 is hereby quashed and set aside.
- (C) The Applicant be reposted on the post he was transferred from within a month from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 04.06.2019

Dictation taken by :

S.K. Wamanse.

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