

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.954 OF 2017

DISTRICT : SOLAPUR

Smt. Manisha Anandrao Desai.)
Lecturer, Gram Sevak Training Centre,)
Kolhapur (on deputation), R/o. 15/A, Jawan)
Nagar, Bijapur Road, Solapur.)...Applicant

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Rural Development Department,)
Having office at Bandhkam Bhawan,)
25, Marzban Road, Mumbai – 1.)
2. Shri P.M. Raut.)
Deputy Chief Executive Officer,)
(General Administration), Z.P, Solapur.)...Respondents

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondent No.1.

Respondent No.2 absent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 17.07.2019

JUDGMENT

1. In the present Original Application, the challenge is to the transfer order dated 26.05.2017 whereby the Applicant was transferred from the post

Dr. M. M. M.

of Deputy Chief Executive Officer, Z.P, Solapur to Lecturer, Gram Sevak Training Centre, Kolhapur.

2. Shortly stated facts giving rise to this application are as follows :-

At the time of impugned transfer dated 26.05.2017, the Applicant was serving as Deputy Chief Executive Officer (Gram Panchayat), Zilla Parishad, Solapur and was due for transfer having completed normal tenure. Before transfer, the Applicant submitted options vide his letter dated 12.04.2017 for transfer at Deputy C.E.O. (Water and Sanitation), Z.P, Solapur, Deputy C.E.O. (Water and Sanitation), Z.P, Kolhapur and Deputy C.E.O. (VP), Z.P, Ratnagiri. However, by impugned transfer, she was transferred on the post of Lecturer, Gram Sevak Training Centre, Kolhapur. Thereafter, on 07.06.2017, the Applicant had made representation addressed to Additional Chief Secretary, Office of Hon'ble Chief Minister and sought retention at Solapur in the post of Deputy Chief Executive Officer (General Administration), Z.P, Solapur. The Applicant contends that she came to know that the Hon'ble Chief Minister had accepted her representation and ordered to post her on the post of Deputy C.E.O. (G.A.), Z.P, Solapur. However, no such transfer order was issued officially. Instead Respondent No.1 posted Respondent No.2, who was serving at Aurangabad on the post of Deputy C.E.O. (G.A.), Z.P, Solapur i.e. the post where the Applicant was ordered to be posted by the Hon'ble Chief Minister. The Applicant has, therefore, challenged the impugned orders dated 26.05.2017 as well as 20.07.2017 pertaining to posting of Respondent No.2.

3. The Applicant sought to contend that once her representation dated 07.06.2017 was accepted by the Hon'ble Chief Minister, he ought to have been posted and transferred on the post of Deputy C.E.O. (G.A.), Z.P, Solapur but the Respondent No.1 ignored the recommendation / order made by

Hon'ble Chief Minister and posted Respondent No.2 who was not due for transfer. The Applicant further contends that the Respondent No.2 was caught red-handed by Anti-Corruption Bureau twice, but by order dated 20.07.2017, he was posted on executive post viz. Deputy C.E.O. (G.A.), Z.P, Solapur, though in fact he ought to have been kept under suspension in view of offence registered against him by A.C.B. The Applicant, therefore, prayed to set aside the order dated 26.05.2017 as well as 20.07.2017.

4. The Respondent No.1 resisted the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondent sought to justify the impugned orders contending that the Applicant was serving in Solapur District since 2004 though on various posts and was overdue at the time of general transfers of 2017. Accordingly, the note was placed before the Civil Services Board (CSB) wherein it was recommended to transfer the Applicant on the post of Block Development Officer (BDO), Panchayat Samiti Chopada, District Jalgaon. However, the Government had given approval to post him on the post of Lecturer, Gram Sevak Training Centre, Kolhapur in view of options given by the Applicant for posting at Kolhapur. Accordingly, the order dated 26.05.2017 was issued. Later, the Applicant made representation dated 07.06.2017 directly to the Hon'ble Chief Minister which was processed separately by the Office of Hon'ble Chief Minister thereby giving approval to the post of Applicant as Deputy C.E.O. (G.A.), Z.P, Solapur. Having noticed the same, the Hon'ble Minister, Rural Development issued directions to the Office to re-submit the file as earlier by order dated 26.05.2017, the Applicant was already transferred to the post of Lecturer, Gram Sevak Training Centre, Kolhapur. When the file was re-submitted, it was brought to the notice of Hon'ble Chief Minister that there were complaints against the Applicant from Gram Sevak Union to the Government and there were several irregularities in his functioning. The departmental enquiry (D.E.) was also recommended. The

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file was again placed before the Hon'ble Chief Minister with recommendation that the transfer of the Applicant on the post of Lecturer, Gram Sevak Training Centre, Kolhapur be confirmed and approved in view of complaints against the Applicant during her tenure at Solapur as well as having regard to the fact that she was at Solapur for 13 years and overdue for transfer. The Hon'ble Chief Minister approved the note of the Department. As such, the Respondent denied that her posting has been changed without the approval of Hon'ble Chief Minister. As regard posting of Respondent No.2, admittedly, he was not due for transfer but by order dated 20.07.2017, he was transferred from Aurangabad and posted on the post of Deputy C.E.O. (G.A.), Z.P, Solapur. In this respect, the Respondent contends that after registration of crime against Respondent No.2, he had filed Writ Petition No.1517/2015 before Hon'ble High Court, Aurangabad for quashing F.I.R. wherein stay was granted for issuance of charge-sheet against the Respondent No.2. Therefore, the Respondent No.2 was not suspended. The Respondent further contends that in Maharashtra Development Service cadre, no posts are identified or ear-marked on executive and non-executive post, and therefore, the Respondent No.2 was posted on executive post i.e. Deputy C.E.O. (G.A.), Z.P, Solapur. The Respondent thus sought to justify the impugned orders contending that there is no violation 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) much less to render the impugned orders illegal. Both the impugned transfer orders are legal and valid. With this pleading, the Respondent prayed to dismiss the O.A.

5. In view of submissions advanced at the Bar and on going through the pleadings, the following factors emerges as uncontroverted.

- (a) The Applicant was due for transfer in general transfers of 2017. Rather he was overdue being in Solapur District for 13 years though on different posts.
- (b) Before general transfer, the Applicant had given options for transfer on the post of Deputy C.E.O. (Water and Sanitation), Z.P, Solapur, Deputy C.E.O. (Water and Sanitation), Z.P, Kolhapur and Deputy C.E.O. (VP), Z.P, Ratnagiri.
- (c) On receipt of impugned transfer order dated 26.05.2017, the Applicant made representation dated 07.06.2017 directly to Hon'ble Chief Minister and Hon'ble Chief Minister ordered to post him as Deputy C.E.O. (G.A.), Z.P, Solapur (Page No.55 of Paper Book).
- (d) The Department again resubmitted file to Hon'ble Chief Minister with clarification that the Applicant is already transferred and posted on the post of Lecturer, Gram Sevak Training Centre, Kolhapur and secondly, there were complaints about the functioning of the Applicant in Solapur District and D.E. is already initiated against her. Therefore, the Department recommended that the Applicant's posting given by order dated 20.05.2017 on the post of Lecturer, Gram Sevak Training Centre, Kolhapur be maintained (Page No.59 of P.B.) and the same was approved by Hon'ble Chief Minister.
- (e) During the pendency of O.A, the Applicant was again transferred from the post of Lecturer, Gram Sevak Training Centre, Kolhapur to the post of Deputy C.E.O. (V.P.), Z.P, Ratnagiri on her representation.

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to refer the note made by the Department while submitting file to the Hon'ble

Ms. Kishor

Chief Minister for reconsideration wherein there is a reference of complaints against the Applicant. Adverting to this aspect, the learned Advocate for the Applicant sought to paint a picture that because of alleged complaints, the Applicant is subjected to punitive action of transfer at different place i.e. on the post of Lecturer, Gram Sevak Training Centre, Kolhapur. On this line of submission, he made feeble attempt to contend that the impugned transfer order is punitive and liable to be set aside.

7. Shri A.V. Bandiwadekar, learned Advocate for the Applicant in this behalf referred the decision of Hon'ble Supreme Court in **(2009) 1 SCC (L & S) 411 (Somesh Tiwari Vs. Union of India)** where in fact situation, the Hon'ble Supreme Court held that the transfer of the employee on the basis of non-existent fact amounts to malice in law and transfer order was quashed. In that case, there was anonymous complaint against the Applicant which was investigated but nothing adverse was found against him yet he was transferred from Bhopal to Shilong. It is in that context, the Hon'ble Supreme Court held that the transfer order is passed in lieu of punishment on non-existent material, and therefore, quashed the transfer order. The learned Advocate for the Applicant further referred to the decision rendered by this Tribunal in **O.A.2990/2014 (Shri Suryakant Katkar Vs. Government of Maharashtra) decided on 09.05.2014** where in the matter of mid-term transfer based on unsubstantiated complaint, the transfer order was held punitive and quashed. A reference was also made to the decision passed by this Tribunal in **O.A.No.839/2014 (Dr. Padmashri S. Bainade Vs. State of Maharashtra) decided on 13th October, 2014** which was also a case of mid-term transfer on the ground of misconduct without taking legitimate course of action of disciplinary proceeding and in fact situation, the transfer was quashed. Lastly, he made reference to the decision passed by this Tribunal in **O.A.536/2016 (Vikas K. Biyani Vs. The State of Maharashtra) decided on 7th July, 2016** which was again a case of mid-term transfer on the ground of

complaint. The complaints were sent for enquiry but even before completion of enquiry, the Applicant therein was transferred. As such, that transfer was found in violation of Circular dated 11.02.2015 which mandates enquiry of complaint before transferring the employee.

8. So far as the decision relied by the learned Advocate for the Applicant is concerned, obviously those have no application to the present facts. In the present case, the Applicant was admittedly due for transfer rather overdue and was transferred by impugned order dated 20.05.2017 on compliance of the approval of CSB. She was recommended as BDO, Panchayat Samiti Chopada, District Jalgaon. However, the Government had given approval for posting him as Lecturer, Gram Sevak Training Centre, Kolhapur in view of option submitted by him. As such, this is not a case where the Applicant is transferred mid-term or mid-tenure on complaint. Therefore, the reference of complaint made in the proposal resubmitted by the Department to the Hon'ble Chief Minister is insignificant. It was only to show that the Applicant was overdue and there were complaints against her functioning which were being enquired into. This being the factual aspect, the transfer has nothing to do with the alleged complaint or enquiry and the same was routine transfer on completion of normal tenure.

9. The submission advanced by the learned Advocate for the Applicant that there is no approval of Hon'ble Chief Minister to the file resubmitted by the Department is misplaced, as the file shown by the Department during the course of hearing clearly shows that the Hon'ble Chief Minister approved the note dated 22.06.2017. Indeed, the Applicant herself has produced the copy of note along with the approval of Hon'ble Chief Minister at Page Nos.59 & 60 of P.B. Thus, it is explicit that the Hon'ble Chief Minister reconsidered his earlier recommendation of retaining the Applicant at Kolhapur and

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maintained the earlier order whereby the Applicant was transferred on the post of Lecturer, Gram Sevak Training Centre, Kolhapur.

10. The learned Advocate for the Applicant tried to make much capital about the entitlement of Respondent No.2 to function as Deputy CEO (GA), Z.P, Solapur on the ground that he was caught red-handed in Anti-Corruption trap twice but the Department favoured him by giving posting on such executive post. According to learned Advocate for the Applicant, the Respondent No.2 ought to have suspended and posted on non-executive post in terms of Government policy. Whereas, it was rightly pointed out by the learned P.O. that the Respondent No.2 had filed Writ Petition No.15.07.2015 before Hon'ble High Court, Aurangabad for quashing FIR wherein stay was granted for issuance of charge-sheet against the Respondent No.2. As such, because of judicial order, no further action of suspension, etc. was taken by the Department. Be that as it may, merely because Respondent No.2 was not due for transfer and posted on the place sought by the Applicant, that *ipso-facto* would not render her transfer order on the post of Lecturer, Gram Sevak Training Centre, Kolhapur illegal, as she had completed more than normal tenure at Solapur. Suffice to say, the Applicant cannot take advantage of posting of Respondent No.2 to question her transfer which is done with the observance of the provisions of 'Transfer Act 2005'. The Applicant in fact has no locus to challenge the posting and transfer of Respondent No.2 in the present situation.

11. It is trite law that the Government servant holding a transferable post has no vested right to remain posted at one place and Courts or Tribunals should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the ground of *malafides*. It is also well settled that it is for the appropriate authority to decide who should be

transferred at particular place and unless the transfer order is vitiated by *malafides* or is made in violation of any statutory provisions, the Court or Tribunal should not interfere with it.

12. In view of above, I see no irregularity much less illegality in the impugned transfer orders. The Applicant has served for 13 years in Solapur District and was overdue. He has been transferred in general transfers and complaint has nothing to do with the said transfer. Here, it may be noted that in 2016 while the Applicant was transferred, he had challenged the said transfer order in O.A.894/2016 and again succeeded in continuing at Solapur. Thereafter, in general transfer order dated 26.05.2017, he was again transferred on observance of the provisions of 'Transfer Act 2005' and the challenge is without any substance. In fact, before transfer, he had given options including Kolhapur. True, in option, he sought the post of Deputy CEO (Water and Sanitation), Z.P, Kolhapur. However, he has been posted on the post of Lecturer, Gram Sevak Training Centre, Kolhapur. This being so, there was no justiciable reason or any kind of grievance to challenge the impugned transfer order. The Government servant has no vested right to claim for any particular post. Despite this position, he was accommodated at Kolhapur though on different post. This being the position, the filing of such proceedings is nothing but abuse of process of law. Even during the pendency of O.A, on his request, he is transferred to Ratnagiri and is continued on that post. Still, he was harping upon for cancellation of the impugned transfer order. Suffice to say, the filing of O.A. is nothing but abuse of law, and therefore, the O.A. deserves to be dismissed with costs. Hence, the following order.



ORDER

The Original Application stands dismissed with cost of Rs.10,000/-.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 17.07.2019

Dictation taken by :

S.K. Wamanse.

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