

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 820 of 2023 (S.B.)

Dr. Deepa Parshuram Jahagirdar,
Aged about 54 years, Occ- Service,
R/o- presently working Government Medical College, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary, Department of Medical Education Drugs,
Mantralaya Mumbai-32.
- 2) Commissioner,
Medical Education and Research, Mumbai.
- 3) Dean, Government Medical College, Nagpur,
- 4) Dr. Ritesh Bodade,
presently working at Department of General Surgery,
Govt. Medical College, Nagpur.

Respondents.

Shri S.N. Gaikwad, Advocate for the applicant.
Shri S.A. Deo, learned C.P.O. for respondent nos.1 to 3.
Shri S.A. Marathe, learned Advocate for respondent no.4.

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

Dated :- 16/04/2024.

J U D G M E N T

Heard Shri S.N. Gaikwad, learned counsel for applicant,
Shri S.A. Deo, learned C.P.O. for respondent nos.1 to 3 and Shri S.A.
Marathe, learned counsel for respondent no.4.

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

The applicant was working as Associate Professor in the department of General Surgery at Government Medical College (GMC), Nagpur. The applicant is transferred by the impugned order dated 13/07/2023 from Government Medical College, Nagpur to Government Medical College, Gondia.

3. It is the case of the applicant that she was not recommended by the Civil Services Board for transfer, even though she is transferred. Therefore, she approached to this Tribunal to quash and set aside the impugned order. It is also the case of the applicant that it is a mid-term transfer and therefore as per the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act,2005") it is not legal and proper. Hence, the applicant approached to this Tribunal for the following reliefs –

“ (9) (i) To quash and set aside impugned order of transfer dated 13.07.2023 issued by respondent No.1, in transferring applicant from Government Medical College, Nagpur to Govt. Medical College, Gondia and order dated 13.07.2023 issued by respondent No. 1 in transferring respondent No. 4 in place of applicant annexed to the O A. at Annexure - A-1 & A-2 respectively.

(ii) Allow the Original Application & direct Respondents to continue services of applicant in the Biochemistry Department of respondent No. 3 Government Medical College, Nagpur.

(10) (iii) Pending disposal of O.A. stay effect and operation impugned order of transferring applicant from Government Medical College, Nagpur to Govt. Medical College, Gondia and order dated 13.07.2023 issued by

respondent No. 1 in transferring respondent No. 4 in place of applicant & direct the respondent No. 3 to continue her in General Surgery Department by joining on present existing post.

4. The O.A. is strongly opposed by the respondents. It is submitted that respondent no.4 was working at Gondia. On promotion, he was transferred to Nagpur. The applicant was due for transfer. She was working at Nagpur since 2009. Therefore, she is transferred to Gondia. The transfer order was signed by the Secretary of Medical Education Department and also signed by the Chief Minister of Government of Maharashtra. It is submitted that the applicant is already relieved from Nagpur. The applicant not joined at Gondia. The respondent no.4 has already joined at GMC, Nagpur. Hence, the O.A. is liable to be dismissed.

5. Today respondent no.4 has filed reply. It is taken on record. As per the reply of respondent no.4, wife of respondent no.4 is working as Associate Professor at Nagpur since 2022. The respondent no.4 made representation to respondent no.1 to transfer him as per the Government policy to post husband and wife together. The post was vacant due to transfer of the applicant and therefore respondent no.4 is posted at GMC, Nagpur. It is submitted that on 09/02/2024, the applicant is promoted to the post of Professor (Group-A) and she is posted at Chandrapur. The applicant accepted the

promotion and joined at GMC, Chandrapur on 06/4/2024. Therefore, O.A. is liable to be dismissed.

6. During the course of submission, the learned CPO has filed the office order of the Dean, GMC, Chandrapur dated 06/04/2024. It is marked Exh-X for identification.

7. During the course of submission the learned counsel for applicant has vehemently argued that there was no any recommendation of the Civil Services Board even though the applicant is transferred. There was no any reason recorded for the transfer. Moreover it is a mid-term transfer, therefore, the impugned order is liable to be quashed and set aside. He has pointed out the Judgment of the M.A.T., Bench at Aurangabad in O.A.No.634/2023. The learned counsel for applicant has submitted that the similarly situated Doctors who approached to the M.A.T., Bench at Aurangabad have been granted relief. It was observed that there was no any reason recorded in the transfer order. The Civil Services Board not recommended for transfer, even though the applicant was transferred.

8. The learned counsel for applicant has pointed out para-20 and 22 of the Judgment which are reproduced below –

“(20) In the present matter neither in the order dated 13.07.2023 pertaining to respondent No. 6 nor in the affidavit in reply filed on behalf of respondent Nos. 1 to 5 the reasons have been recorded

which necessitated or which were found essential for accepting the request of respondent No. 6. It can be understood that in the order of transfer or change in posting, it may not be possible to elaborate the reasons. However, there cannot be an excuse from recording the reasons in the original file or in the proposal moved seeking approval of the competent authority and the said contemporaneous record must be produced before the Tribunal. No such record has been produced in the present matter.

(22) As has been observed in the decision rendered in O.A. No. 703/2014 (Shri Raosaheb Daulatrao Mahale Vs. The Superintending Engineer, Mumbai & Ors.) on 16.9.2014 at the Principal Seat of this Tribunal at Mumbai, "special reason has to be referable to public interest or cognizable and compulsive personal emergency of an employee which satisfies the test of "special reason". It is further observed that, "if the transfer is merely on the request, the fact of such request seen from any angle does not satisfy the test of existence of any special reason or exceptional circumstance."

9. At last submitted that the impugned order is illegal and liable to be quashed and set aside.

10. Heard learned CPO Shri S.A. Deo. He has submitted that the applicant was relieved, after the transfer order, to join at Gondia. Respondent no.4 joined in place of applicant on 18/07/2023. Therefore, the fact in the cited decision is very much different. Hence, the O.A. is liable to be dismissed.

11. The learned CPO has pointed out the transfer order and submits that the reason is recorded in the transfer order. The applicant

was transferred on administrative ground. The learned CPO has submitted that the applicant was working as Associate Professor at GMC, Nagpur from the year 2009. She was overdue for transfer and therefore she was transferred to Gondia. The applicant not joined at Gondia. Now she is promoted on the post of Professor. The applicant has joined at GMC, Chandrapur on promotional post on 06/04/2024.

12. The learned CPO has submitted that the transfer order was signed by the Secretary of Health Education Department and also signed by the Chief Minister of the Government of Maharashtra. The applicant was overdue for transfer and therefore she was transferred from Nagpur to Gondia. The applicant was already relieved when the interim order was passed by this Tribunal on 20/07/2023. The respondent no.4 had already joined. Therefore, the O.A. is liable to be dismissed.

13. Heard Shri S.A. Marathe, learned counsel for respondent no.4. He has submitted that respondent no.4 was requesting to the Government of Maharashtra to post him at Nagpur, because, his wife is working on the post of Associate Professor at GMC, Nagpur. As per the Government G.R. husband and wife are to be posted together and therefore the Government of Maharashtra accepted the request of the respondent no.4 and he is posted at GMC, Nagpur. The respondent no.4 has immediately joined at GMC, Nagpur on 18/07/2023. The

applicant was already relieved. Hence, the O.A. is liable to be dismissed.

14. The learned counsel for applicant submits that the applicant has joined at Chandrapur on the promotional post under protest.

15. There is no dispute that the applicant was working at GMC, Nagpur since 2009. The applicant was overdue for transfer. She has completed near about 15 years service at GMC, Nagpur. There is no dispute that the service of the applicant is transferable. When the transfer is a condition of service, then employee has to accept the transfer. The applicant approached to this Tribunal by challenging the impugned transfer order. On 20/07/2023 relying on the order passed by the M.A.T., Aurangabad Bench dated 06/07/2023 and the order of this Bench dated 14/07/2023, this Tribunal has passed the similar order. The para 6 and 7 of the order dated 20/07/2023 are reproduced below –

“6. Issue notice to the respondents returnable on 08.08.2023. Till the returnable date the respondents shall permit the applicants to discharge their duties on their existing posts.

7. It is clarified that if appointment or transfer has been made in place of any applicant and said person has been relieved from his earlier post prior to passing of this order, the said applicant would be liable to be relieved from his existing post.”

16. Prior to this order respondent no.4 was relieved on 17/07/2023 i.e. prior to 20/07/2023 the respondent no.4 was relieved and therefore interim order was not the protection to the applicant to remain at Nagpur. The conditional interim order was passed by this Tribunal on 20/07/2023. Therefore, the applicant cannot say that she did not join at Gondia because of the interim order. There is also no dispute that the applicant was already relieved, but she has not joined at Gondia. There is no dispute that the applicant is now promoted on the post of Professor at GMC, Chandrapur. The applicant has now joined at GMC, Chandrapur. The learned CPO has placed on record joining letter of the applicant dated 06/04/2024.

17. The O.A. is not maintainable on the ground that when interim order was passed by this Tribunal on 20/07/2023 that time the applicant was already relieved and respondent no.4 was also relieved to join in place of the applicant.

18. The applicant was overdue for transfer. The applicant was working at Nagpur since 2009. Intentionally the applicant has not pleaded her period of posting at Nagpur. She has nowhere pleaded in the O.A. that she was working at GMC, Nagpur since 2009. The applicant was working at GMC, Nagpur since last 15 years. The applicant wanted to continue at Nagpur for the best reason known to her. The applicant accepted the posting order well knowing that her

posting is a transferable posting. Once the transfer is a condition of service is accepted by the employee, then the employee should obey the transfer order. It is a natural principle that the transfer is a condition of service, then it should be followed by the employee.

19. The learned counsel for applicant has pointed out the decision of the M.A.T., Bench at Aurangabad in O.A.No.634/2023. The fact in the cited decision is very much different. The applicant in that O.A. approached to the Tribunal and by way of interim order his transfer order was stayed. During the pendency of the O.A., the applicant was not relieved and therefore the decision is on different footing and not applicable to the present case.

20. The applicant was overdue for transfer. She was working since last 15 years at Nagpur, therefore, the applicant is transferred. Her transfer order is signed by the Secretary of Health Education Department and the Chief Minister of the Government of Maharashtra. Now the applicant has already joined at Chandrapur on the promotional post. The applicant has not refused the promotional order. She was at liberty to refuse the promotion and insist for posting at Nagpur.

21. The learned counsel for applicant orally submitted that the applicant has accepted the promotional order under protest, but nothing is filed on record to show that the applicant has joined at

Chandrapur on the promotional post under protest. The transfer order of the applicant is perfectly legal and correct. She was transferred on administrative ground, because, she was overdue for transfer. The respondent no.4 was posted at GMC, Nagpur, because, his wife is posted at Nagpur and as per the Government G.R., husband and wife are to be posted together. In view of that G.R., the respondent no.4 is posted at Nagpur. The applicant was already relieved when the interim order was passed by this Tribunal on 20/07/2023. The respondent no.4 had also joined on 18/07/2023 i.e. before passing interim order by this Tribunal on 20/07/2023. Therefore, the applicant cannot say that because her name was not recommended by the Civil Services Board, she should not have been transferred. The applicant was transferred, because, she was overdue for transfer. Hence, nothing is illegal in the impugned transfer order. Hence, the following order –

ORDER

The O.A. is dismissed with no order as to costs.

Dated :- 16/04/2024.

(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 P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 16/04/2024.