

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 519 of 2023 (S.B.)**

Dushan Devaji Bhongale,  
aged about 41 years, Occ. Service  
R/o Govt. Ashram School, Kasansur, Taluka Etapalli,  
District Gadchiroli.

**Applicant.**

**Versus**

- 1) The State of Maharashtra through the Secretary,  
Department of Tribal Development,  
Mantralaya, Mumbai-32.
- 2) Additional Commissioner Tribal Development,  
Near R.T.O. office, Giripeth, Nagpur.
- 3) Ms. U.D. Chunarkar,  
Aged major, Occ. Service,  
R/o Govt. Ashram School, Jiwati, District Chandrapur.
- 4) Shri A.S. Naik,  
Aged major, Occ. Service,  
R/o Govt. Ashram School, Dewada, Taluka Rajura,  
District Chandrapur.

**Respondents.**

---

**S/Shri R.V., N.R. Shiralkar, Advocates for the applicant.**

**Shri V.A. Kulkarni, learned P.O. for respondent nos.1 and 2.**

**Shri R.M. Fating, Advocate for respondent no.3.**

**Shri G.R. Gajbhiye, Advocate for respondent no.4.**

---

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

**Dated :- 14/06/2024.**

---

**J U D G M E N T**

Heard Shri R.V. Shiralkar, learned counsel for the  
applicant, Shri V.A. Kulkarni, learned P.O. for respondent nos.1 and 2,

Shri R.M. Fating, learned counsel for respondent no.3 and none for respondent no.4.

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

The applicant was appointed as a Shikshan Sevak by order dated 18/07/2013 in the Government Ashram School. He was posted in the Government Ashram School, Kasansur, Taluka Etapalli, District Gadchiroli. The applicant completed three years of service as Shikshan Sevak and confirmed by the Authority on 29/11/2016. The applicant was due for transfer. He has made several representations for transferring to the place of his choice as the applicant has worked in the naxal affected area more than five years. The respondent no.2 published list of employees showing who are due for transfer. The applicant has given choices for posting at Devada, Jiwati and Khamencheru. The applicant is not posted at Jiwati or Devada, but he was posted at Khamencheru, Taluka Aheri, District Gadchiroli.

3. It is the contention of the applicant that respondent no.3 is posted at Jiwati where she was working since last more than 9 years. The respondent authority should have posted him at Jiwati or Devada, therefore, the applicant approached to this Tribunal for direction to the respondent authority for the following reliefs –

*“(7) (A) Hold and declare than extension granted to the respondent no. 3 at Jiwati and posting of the respondent no. 4 at Dewada is illegal,*

*arbitrary as same is contrary to Govt. Resolution dated 9.4.2018 and consequently;*

*(B) Quash and set aside the order dated 30.5.2023 to the extent of applicants transfer from Kasansur to Khamanchru, being illegal and arbitrary.*

*(C) Direct the respondent no. 2 to transfer the applicant to place of his choice at Jiwati or Dewada, where posts of History teachers are vacant in view of provisions of Govt. Resolutions dated 9.4.2018, 6.8.2002.*

*(D) During the pendency of this application, stay effect, operation and execution of order dated 30.05.2023 to the extent of the applicant's transfer.*

*(E) Direct the respondent no. 2 to post applicant to his place of choice, which is vacant at Dewada or Jiwati, in the interest of justice.”*

4. The O.A. is opposed by respondent no.2 and submitted that counselling was made and in the counselling the applicant agreed for posting him at Khamencheru. Now, the applicant cannot say that respondent no.3 is posted since last 9 years. It is submitted that the applicant and respondent no.3 are the Teachers in the Ashram School. Their services are required more than the specified period. The husband of respondent no.3 is working as a Teacher at Sindhi, Panchayat Samiti, Rajura, Zilla Parishad, Chandrapur, therefore, she was granted extension at Jiwati and hence, the O.A. is liable to be dismissed.

5. During the course of submission the learned counsel for the applicant has pointed out the G.R. dated 09/04/2018 and

submitted that at the most the services of employee can be continued in the tribal / naxalite area for about five years. After five years, the employee is to be transferred from that place to another place.

6. The learned counsel for applicant has submitted that respondent no.3 is working at Jiwati since last more than 9 years. She is granted extension by the respondent no.2. Hence, the respondent no.2 be directed to post the applicant at Jiwati and transfer the respondent no.3 to any other place.

7. During the course of submission the learned P.O. has submitted that the counselling was given. At the time of counselling, the applicant agreed to get posting him at Khamencheru, Taluka Aheri, District Gadchiroli. The extension was granted to respondent no.3, because her husband is working at Zilla Parishad Primary School at Sindhi, Taluka Rajura, District Chandrapur.

8. The learned counsel for respondent no.3 Shri R.M. Fating has submitted that the transfer is an incidence of service. It is for the respondent authority to decide when, where and at what point of time the employee is to be posted / transferred.

9. The learned counsel for respondent no.3 Shri R.M. Fating has pointed out the Judgment of the Hon'ble Supreme Court in the case of the ***State of Punjab and Others Vs. Joginder Singh Dhatt,***

decided on 12<sup>th</sup> July, 1993. The Hon'ble Supreme Court has recorded its findings in para-3. It is reproduced below –

*“We have heard learned Counsel for the parties. This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused.”*

10. From the perusal of the above cited observations, it is clear that the Judgment is of the year 1993. Thereafter, the State of Maharashtra has enacted the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short “Transfers Act, 2005”).

11. The procedure for transfer is given in the Transfers Act. After the specified period, i.e., after three years, the transfer is to be made. In the cited decision, the Hon'ble Supreme Court has held that it is for the employer to decide when, where and at what point of time, the employee is to be transferred. Now this decision is not applicable in view of the enactment of the Transfers Act, 2005.

12. There is no dispute that respondent no.3 is working at Jiwati since last more than 9 years. As per the G.R. dated 09/04/2018 the specific period is five years for the posting in the tribal area. After five years, the respondent authority should have transferred the employee from one place to another. Respondent no.3 herself made representation to the respondent no.2 on 20/02/2023 to transfer her in Ashram School, Dewada, Taluka Rajura, District Chandrapur. Her husband is working near to Dewada i.e. at Sindhi, Taluka Rajura. The applicant is working at Khamencheru, Taluka Aheri, District Gadchiroli. His father is suffering from heart disease. The applicant is resident of Warud, Taluka Rajura. Hence, the following order –

**ORDER**

(i) The O.A. is partly allowed.

(ii) The applicant is at liberty to make representation to the respondent authority to post at Jiwati or Dewada. The respondent authority shall consider the representation of respondent no.3 to post her at Borda or Dewada in the coming general transfers of current year.

(iii) No order as to costs.

**Dated** :- 14/06/2024.

**(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 : 14/06/2024.