

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.928 OF 2018

DISTRICT : KOLHAPUR

Shri Kiran Anant Lohar.)
Age : 44 Yrs., Working as Education Officer)
[Secondary], Zilla Parishad, Kolhapur and)
having Office at Zilla Parishad Building,)
Nagala Park, Kolhapur.)
Residing at Plot No.C/2, Aakansha, Shikshak)
Colony, Pachgaon, Tal.: Karveer,)
District : Kolhapur.) **...Applicant**

Versus

1. The Chief Executive Officer.)
Zilla Parishad, Kolhapur.)
2. Zilla Parishad, Kolhapur.)
Through its President.)
Both having office at Zilla Parishad)
Building, Nagala Park, Kolhapur.)
3. The Commissioner of Education.)
M.S, Pune.)
4. The State of Maharashtra.)
Through Principal Secretary,)
School Education Department,)
Mantralaya, Mumbai – 400 032.) **...Respondents**

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

Mrs. K.S. Gaikwad, Presenting Officer for Respondents 3 & 4.

Mr. Sachin Chavan and Mr. Sameer Tambekar, Advocates for Respondent Nos.1 & 2.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 19.06.2019

JUDGMENT

1. The Applicant has challenged the relieving order dated 05.10.2018 as well as order dated 06.10.2018 whereby his additional charge was withdrawn contending that both the orders are in violation of provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge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. The Applicant was working as Education Officer (Secondary), Z.P, Kolhapur. He was posted on that post by virtue of order passed by Government on 15.07.2017 and had not completed normal tenure of three years on the date of issuance of impugned orders. Abruptly, the Respondent No.1 – Chief Executive Officer, S.P, Kolhapur by impugned order dated 05.10.2018 relieved the Applicant from his post with immediate effect in view of the complaints against him. By another order dated 06.10.2018, his additional charge was also divested. The Applicant has challenged both the orders contending that those are in violation of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' as the Government is the only competent authority to transfer him, but no such order has been passed by the Government, and therefore, the relieving order is ex-facie illegal. The Applicant further contends that the relieving order was passed on the basis of alleged complaints without verifying the authenticity of the allegations made in the complaints.

3. Though the Applicant has challenged two orders i.e. relieving order dated 5th October, 2018 and withdrawal of additional charge dated 06.10.2018, the challenge is confined to the relieving order dated 5th October, 2018 has fairly submitted by the learned Advocate for the Applicant.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submitted that the Applicant being Government servant on deputation with the Zilla Parishad for his transfer or any other matter relating to his service, the Government is the only competent authority and Chief Executive Officer of Zilla Parishad is not at all competent to pass any such order. He further urged that in the facts and circumstances, the relieving order has effect of transferring the Applicant from the post held by him, and therefore, such transfer order was required to be passed by the Government on proper compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005', if mid-term transfer was necessitated and justifiable .

5. Per contra, Shri Chavan, learned Advocate for Respondent Nos.1 & 2 sought to justify the impugned relieving order contending that in view of serious complaints against the Applicant, his immediate relieving from the said post was necessitated, and therefore, the Chief Executive Officer relieved him with immediate effect. He could not point out how Chief Executive Officer is competent to pass such relieving order without referring the matter to the Government. All that, he sought to contend that because of serious complaints about the functioning of the Applicant, he was relieved with immediate effect.

6. Whereas, Smt. K.S. Gaikwad, learned Presenting Officer for Respondent Nos.3 & 4 submitted that the relieving order has been passed by the Chief Executive Officer, Z.P. and the Government was not consulted for the same and the Government had not played any role in relieving the Applicant by Chief Executive Officer, Z.P, Kolhapur.

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7. Having heard the learned Counsels, the present O.A. deserves to be decided on the point of competency of Chief Executive Officer, Z.P, Kolhapur to relieve the Applicant.

8. True, the impugned order dated 05.10.2018 is not the transfer order in strict sense, but it has all the effects and trappings of transfer order because of abrupt relieving of the Applicant from the post he held. Shri Bandiwadekar in this behalf rightly referred to the Judgment passed by this Tribunal in ***O.A.No.431/2008 (Dr. Pandurang Burute Vs. State of Maharashtra) decided on 18th August, 2008*** wherein this Tribunal held that where the employee is relieved from the post held by him has trapping and effect of transfer in all respect. In the said matter, initially, the relieving order was issued and later transfer order was issued. Both the orders were quashed having found in contravention of mandatory provisions of 'Transfer Act 2005'.

9. In the present case, no further order of transfer was issued perhaps because of interim stay granted by this Tribunal by order dated 23.10.2018. While granting interim relief, the Tribunal has recorded that prima-facie, the impugned order is in violation of provisions of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'.

10. Thus, what emerges from the pleadings and submissions advanced by the learned Counsels that the Applicant is the State Government employee and has not completed normal tenure of three years as Education Officer (Secondary), Z.P, Kolhapur. If the transfer of Applicant was necessitated, then it was incumbent to refer the matter to the State Government and in that event, the State Government was also required to follow the provisions of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. Suffice to say, for transfer or such mid-term and mid-tenure transfer of the Applicant, the Government was the only competent authority.

11. However, in the present case, the Chief Executive Officer, Z.P, Kolhapur at his own abruptly relieved the Applicant from the post held by him, which has effect and trapping of transfer, which is in total defiance of the provisions of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. This being the position, the impugned order dated 05.10.2018 is clearly without jurisdiction and indefensible in law. In fact, the Respondent No.3 in his Affidavit in Para No.11 admits that the Respondent No.4 - Government is the only competent authority to transfer or relieve the Applicant on transfer. As such, there is no escape from the conclusion that the Respondent No.1-Chief Executive Officer, Z.P, Kolhapur was not competent to pass impugned order and it is bad in law.

12. The totality of aforesaid discussion leads me to conclude that the impugned order dated 05.10.2018 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 dated 05.10.2018 is hereby quashed and set aside.
- (C) No order as to costs.

Sd/-


(A.P. KURHEKAR)
Member-J

Mumbai

Date : 19.06.2019

Dictation taken by :

S.K. Wamanse.

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