

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No.97 of 2024**

Priyadarshani W/o Upsen Borkar,  
Aged 45 years, Occ. Presently posted in the Office of Tahsildar  
Hingna, Distt. Nagpur.

**Applicant.****Versus**

- 1) The State of Maharashtra,  
Through its Secretary Department of Revenue & Forest,  
Mantralaya, Mumbai 32.
- 2) The Divisional Commissioner, Nagpur Division.
- 3) The Collector, Nagpur.
- 4) Shri. Sachin Kumavat,  
Presently posted in the office of Tahsildar, Hingana,  
District Nagpur.

**Respondents.**


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**Shri N.R. Saboo, Mrs. K.N. Saboo, Advs. for applicant.**  
**Shri S.A. Deo, learned C.P.O. for respondent nos.1 to 3.**  
**S/Shri D.M. Kakani, G.K. Bhusari, Advs. for respondent no.4.**

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**Coram :- Hon'ble Shri M.A. Lovekar,**  
**Member (J).**

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**Date of Reserving for Judgment : 10<sup>th</sup> April,2024.**

**Date of Pronouncement of Judgment : 18<sup>th</sup> April,2024.**

**JUDGMENT**

**(Delivered on this 18<sup>th</sup> day of April,2024)**

Heard Shri N.R. Saboo, learned counsel for the applicant, Shri  
S.A. Deo, learned CPO for respondent nos.1 to 3 and Shri D.M.  
Kakani, learned counsel for respondent no.4.

2. Case of the applicant is as follows –

By order dated 20/02/2019 (Annex-A-1) the applicant was posted in Rehabilitation Centre in the office of Divisional Commissioner, Nagpur. The Divisional Commissioner exercises jurisdiction over six districts including Nagpur. For posting a person as Rehabilitation Officer (Tahsildar Cadre) permission is to be obtained from the State of Maharashtra as per G.R. dated 25/10/2016 (Annex-A-3). Consequently tenure of the applicant in the office of Rehabilitation Centre under the control of Divisional Commissioner cannot be treated as service rendered in Nagpur district alone. By order dated 09/03/2023 the applicant was transferred and posted as Tahsildar, Hingna, District Nagpur. The applicant had made a representation dated 19/01/2024 (Annex-A-6) that her tenure in Rehabilitation Centre be not considered as tenure in Nagpur district alone because the Commissionerate exercises control over six districts including Nagpur. By the impugned order dated 31/01/2024 (Annex-A-7) she was transferred to Ballarpur, District Chandrapur as Tahsildar. This order stated that it was passed in compliance of directives issued by Election Commission of India on 21/12/2023 (Annex-A-4), and Sub Sections (4) and (5) of Section 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Transfers Act,2005"). Initially Shri Manohar

Chavan was posted as Tahsildar, Hingna. On 15/02/2024 order of transfer and posting of Shri Manohar Chavan as Tahsildar, Hingna was modified and Shri Sachin Kumavat, respondent no.4, came to be posted as Tahsildar, Hingna. According to the applicant, the impugned order of her transfer is unsustainable. Hence, this O.A.

3. According to respondent nos.1 and 2 the impugned order was perfectly in conformity with directives of Election Commission of India as well as provisions of Section 4 of the Transfers Act and hence, no interference would be warranted.

4. Stand of respondent no.4, Sachin Kumavat is that as per order dated 31/01/2024 he joined at Narkhed on 06/02/2024 and thereafter he has joined on the post of Tahsildar, Hingna as per order dated 15/02/2024.

5. It may reiterated that by order dated 20/02/2019 the applicant was transferred to Rehabilitation Centre, Nagpur under the Control of Divisional Commissioner, Nagpur and by order dated 09/03/2023 she was transferred to and posted as Tahsildar, Hingna.

6. Relevant para of directives of Election Commission of India issued by letter dated 21/12/2023 reads as under –

*3. Hence, the Commission has decided that no officer connected directly with elections shall be allowed to continue in the present district (revenue district) of posting:-*

*(1) if she/he is posted in her/his home district.*

*(ii) if she/he has completed three years in that district during last four (4) years or would be completing 3 years on or before 30th June, 2024*

*While calculating the period of three years, promotion to a post within the district is to be counted.*

7. According to the applicant (i) She is not connected directly with elections; and (ii) She has not completed three years in Nagpur District during last four years or she would not be completing three years on or before 30/06/2024.

8. In support of her first contention the applicant has relied on letter dated 15/01/2024 (Annex-A-5) written by Divisional Commissioner, Pune to respondent no.1 which states –

“वरील, विषयाचे अनुषंगाने सादर करणेत येते की, विभागीय आयुक्त कार्यालय हे प्रादेशिक स्तरावरील कार्यालय असल्यामुळे ते कोणत्याही जिल्ह्याचे अधिनस्त येत नाही. मा. निवडणूक आयोग, दिल्ली यांच्या संदर्भीय पत्रातील निर्देशामध्ये no officer connected directly with elections shall be allowed to continue in the present district (revenue district) of posting असा उल्लेख असून त्यानुसार विभागीय आयुक्त कार्यालय येथे कार्यरत अधिकाऱ्यांचा निवडणूक कामकाजाशी कोणताही थेट संबंध येत नाही. तसेच विभागीय आयुक्त कार्यालय येथे कार्यरत असलेल्या कोणत्याही अधिकाऱ्यांना लोकसभा सार्वत्रिक निवडणूक-२०२४ च्या कामकाजासाठी नियुक्त केले जाणार नाही. सबब इकडील कार्यालयात कार्यरत असलेल्या अपर जिल्हाधिकारी, उपजिल्हाधिकारी, तहसिलदार व नायब तहसिलदार

संवर्गातील अधिकाऱ्यांच्या निवडणूक निकषानुसार बदल्या करणेत येवू नयेत ही विनंती.”

9. So far as this letter is concerned, it was issued by way of a request made on the basis of interpretation / opinion of the Divisional Commissioner, Pune. There is nothing on record to show that respondent no.1 had concurred with the said view and accepted the request. In fact, Clause (ii) of para-3 of letter dated 21/12/2023 simply refers to service in a district. On plain reading of this Clause contention of the applicant that by excluding period of her service in Rehabilitation Centre, Nagpur, her service in Nagpur District be taken to have started from the point she was posted as Tahsildar, Hingna, cannot be accepted and it will have to be held that since the order dated 20/02/2019 she was serving in Nagpur District and was therefore liable to be transferred as per Clause (ii) of para-3 of letter dated 21/12/2023 provided she was connected directly with elections.

10. By Notification dated 16/09/2019 (Annex-R-2) issued by the Election Commission of India, in consultation with the State Government of Maharashtra, Officers of the Government of Maharashtra were appointed as the Assistant Returning Officer to assist the Returning Officer of the Assembly Constituency in the State of Maharashtra. As per this Notification Tahsildar, Hingna was

appointed as Assistant Returning Officer of Hingna Assembly Constituency.

11. Notification issued on 17/03/2021 (Annex-R-3) by Election Commission of India states –

*“No. 429/MH/2021 (2).-In exercise of the powers conferred by sub-section (1) of Section 13 (c) of the Representation of the People Act, 1950 (43 of 1950) and in supersession of its Notification No. 429/MT/ 2019 (2) dated 17th February, 2020 the Election Commission of India hereby appoints, in consultation with the State Government of Maharashtra, the officers of the Government of Maharashtra as specified in column 2 of the table below as the Assistant Electoral Registration Officer to assist the Electoral Registration Officer of the Assembly Constituency in the State of Maharashtra as specified in column 1 of the table against such officer of Government ”*

As per this Notification Tahsidar, Hingna was appointed as Assistant Electoral Registration Officer.

12. It was submitted by Shri N.R. Saboo, learned counsel for the applicant that in the State of Maharashtra elections to only Lok Sabha are going to be held and hence, aforesaid Notifications which are in respect of elections to Constituent Assembly cannot be pressed into service by respondent nos.1 and 2. There is merit in this submission.

13. The applicant has placed on record Notification dated 24/01/2024 (Annex-II) issued by Election Commission of India which states –

*“No. 434/MH-HP/2024 :- In exercise of the powers conferred by Section 21 and sub- section (1) of Section 22 of the Representation of the People Act, 1951 (43 of 1951) and in supersession of its Notification No. 434/MT-HP/2019 (1) dated 20<sup>th</sup> February, 2019 and Notification No. 434/MT-HP/2019 (2) dated 20<sup>th</sup> February, 2019 and 7<sup>th</sup> March, 2019, the Election Commission of India hereby appoints, in consultation with the State Government of Maharashtra, the officers of the Government of Maharashtra as specified in column '2' of the table below as Returning Officer and column '4' of the table below as Assistant Returning Officer to assist the Returning Officer of the Parliamentary Constituencies in the State of Maharashtra as specified in column 1 of the said table against such officers of the Government.”*

As per this Notification for Hingna Assembly segment of Ramtek Parliamentary Constituency Additional Collector, Nagpur is the Returning Officer and Sub Divisional Officer, Nagpur (Rural) is the Assistant Returning Officer. On the basis of this Notification it was submitted by Advocate Shri Saboo that Tahsildar, Hingna cannot be said to be directly connected with Lok Sabha Elections of 2024 and hence, the applicant could not have been transferred by relying on para-3 of letter dated 21/12/2023. In support of this submission, the applicant has relied on communication dated 27/07/2024 (Annex-I) issued by Election Commission of India which states –

*“I am directed to refer to the Commission's instructions of even number dated 21.12.2023 and 23.02.2024 on the subject cited and to further clarify as under:*

*(i) All the DEOs, Dy. DEOS, RO, AROS, and Range ADGs, IGS, DIGS, SSPS, SPs, Addl. SPs, Dy. SPs, Circle Officers (or equivalent rank police officers) shall be posted out if they are completing 3 years during the last 4 years in the same Parliamentary Constituency or districts. Thus, the Commission's instructions dated 23.02.2024 would be applicable only on the above officers. Moreover, it shall be ensured that ROs and AROS are not posted in the Parliamentary Constituency which is comprised of their Home District.”*

Respondent nos.1 and 2, on the other hand have relied on communication dated 18/01/2024 issued by Election Commission of India which states –

*“ I am directed to refer to your letter No. GEN-2023/C.R. 751/2/33 dated 16<sup>th</sup> January, 2024 on the subject cited and to clarify that the instructions in the transfer policy contained in the Commission's letter of even No. dated 21<sup>st</sup> December, 2023 shall be applicable to all officers including those who are not district officers but are supervisory officers in direct chain of command of the election-related officers/employees.*

*2. With regard to the point raised in your letter No. MIS-2023/CR-751/23/33, dated 1<sup>st</sup> January, 2023, it is clarified that while calculating the period of 3 years, the entire tenure of any officer covered under para 1 above shall be taken into account irrespective of the fact whether he is posted as district officer or in any other capacity in that district.”*

A conjoint consideration of this communication and para-3 of letter dated 21/12/2023 unmistakably leads to be conclusion that the applicant who is holding the post of Tahsidar can be said to be connected directly with elections and since she had completed three years in Nagpur District she was liable to be transferred.



The aforesaid conclusion receives support from –

*“Mahendra vs. State of Maharashtra, (Bombay) (DB) Aurangabad Bench ) : Law Finder Doc ID # 1188033 ” wherein it is held –*

*“20. The transfer orders issued under the instructions of Election Commission can be categorised as transfers for special reasons and midterm transfers within permissible parameters granted under Section 4(4) and 4(5) of the Transfer Act. In this context, reliance can be placed on a judgment in the matter of **Shri Shankarrao Narayanrao Jadhav v. State of Maharashtra & others, 2011 (1) ALLMR 628**. In paragraphs no.10 and 11 of the judgment, it is recorded thus:*

*"10 General transfers are issued between April and May whereas the mid term transfers are issued under the circumstances mentioned in the proviso below Section 4(4) as well as Section 4(5) of the Transfer Act. The orders issued under Section 4(5) are to be issued by recording reasons in writing and in special cases, but with the prior approval of the immediate superior transferring authority as mentioned in the Table to Section 6. The transfer orders to be issued under the instructions of the Election Commission will be the transfers for special reasons and midterm transfers.*

*11. So far as Competent Transferring Authority is concerned, as noted earlier, the same has been defined in Section 6(1) of the Transfer Act and the proviso below the said Section enables the Competent Transferring Authority to delegate its powers by general or special orders to any of its subordinate authority."*

*21. It must be realized that transfer is an incidence of service and the Courts/Tribunals are not ordinarily expected to interfere in such orders.*

*22. Similarly, a proposition has been laid down by the Division Bench of this Court in the matter of **V.B.Gadekar v. Maharashtra Housing and Area Development Authority and another, 2008 (2) MhLJ 640**. It is observed thus:*

*"Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfers could be due to exigencies of service or due to administrative reasons.*

*..... The Rules give protection to an employee to stay at the place of posting for three years but this is subject to the exception that, where in the wisdom of the authority concerned, he should, for administrative and exceptional circumstances, even be transferred during that period.*

*23. In the instant matter, the petitioners have been displaced under special circumstances. The State Election Commission issued directions not to post local officers for performing functions relating to elections to the local authorities. The State Government, considering the special circumstances, in observance of the procedure prescribed under the Act, has issued orders of transfer.*

*24. As has been stated above, the orders have been issued having due regard to the procedural safeguards provided under the Act. It also must be noted that the orders of transfer have been acted upon for more than a year. It is the contention of the State that any interference, after lapse of long duration of one year could cause administrative difficulty, which factor also deserves to be considered. It is also to be noticed that apart from petitioners, a large number of employees have been transferred in observance of the instructions issued by the State Election Commission. It cannot be considered that orders of transfer transferring large number of employees within the district on account of special circumstances, i.e. process of election, to the local authorities can be said to be mala fide. The orders of transfer have been issued as a result of administrative reasons and due to special circumstances and in observance of the procedure prescribed under the Act. This Court is not expected to*

*substitute its own reasons for the satisfaction of the transferring authority. It is the contention of the respondents that the orders of transfer are issued as a result of misconstruction of the directions issued by the State Election Commission. The orders issued by the State, though direct transferring an employee, shall have to be construed as a deputation, would amount to misconstruction of record and more specifically the orders issued by the State itself. The State has issued orders in observance of the provisions of law and the orders themselves speak of transfer of an employee. It would, therefore, be difficult to construe those orders as deputation.”*

The applicant, on the other hand, sought to rely on para-28 of this Judgment which reads as under –

*“(28) The petitioners and others were transferred on consideration of guidelines/directives of the State Election Commission and in view of the initiation of process of election for local authorities and since the purpose for which they were shifted before completion of their normal tenure, is already over and the process of election has come to an end long back, it would be open for the State to pass appropriate orders of transfer for reposting them at an appropriate place, in observance of the procedure prescribed under the Transfer Act.”*

These observations will not help the applicant because in the instant case the process of elections is ongoing.

14. For the reasons discussed hereinabove, the O.A. is dismissed with no order as to costs.

**(M.A.Lovekar)**  
**Member (J).**

**Dated :- 18/04/2024.**

\*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 Member (J).

Judgment signed on : 18/04/2024.