

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1475 OF 2023

DISTRICT : THANE

SUB : TRANSFER

Smt. Rupali Ashwin Patil,)
Age : 39 Yrs, working as Executive)
Engineer, Public Works Division,)
Bhimgari Panvel, Dist. Raigad.)
R/at D-Wing, 408 4th floor,)
Guratman, Yogi Dham, Kalyan (W),)
Dist. Thane.)...**Applicant**

Versus

1. The State of Maharashtra, through)
Principal Secretary, Public Health)
Department, M. K. Road, Mantralaya)
Mumbai 400 032.)
2. Nitin Wamanrao Bhoje, Age : Adult)
Working as Executive Engineer,)
Posting awaited, last place of posting)
As Executive Engineer, Zilla Parishad)
(Public Works) Division, Palghar.).....**Respondents**

Shri A. V. Bandiwadekar, learned Advocate for Applicant.

**Smt. Kranti Gaikwad & Shri A. D. Gugale, learned Presenting
Officers for Respondents with Shri M. D. Lonkar, Special Counsel for
Respondent No.1**

Shri U. V. Bhosale, leaned Advocate for Respondent No.2.

CORAM : Shri Debashish Chakrabarty, Member (A)

DATE : 20.12.2024

JUDGMENT

1. The Applicant who belongs to cadre of 'Executive Engineer' in 'PWD' has invoked provisions of 'Section 19' of 'The Administrative Tribunal Act, 1985' to challenge 'Government Order' dated 22.11.2023 of 'PWD' by which she has been transferred 'Mid Term' and 'Mid Tenure' from post of 'Executive Engineer PWD; Panvel, District Raigad' to 'Vacant Post' of 'Executive Engineer PWD; Jawhar, District Palghar'.

2. The learned Advocate for Applicant stated that Applicant was serving on post of 'Executive Engineer PWD; Panvel, District Raigad' since 29.07.2021 and thus had not completed 'Normal Tenure' of 3 Years. However; Applicant came to be transferred 'Mid Term' and 'Mid Tenure' to 'Vacant Post' of 'Executive Engineer PWD; Jawhar, District Palhar' by 'Government Order' dated 22.11.2023 of 'PWD' and Respondent No.2 who was on 'Compulsory Waiting' came to be transferred in place of Applicant as 'Executive Engineer PWD; Panvel, District Raigad.'

3. The learned Advocate for Applicant thereupon stated that Applicant had joined upon promotion on 'Vacant Post' of 'Executive Engineer PWD; Panvel, District Raigad' as per 'Government Order' of 'PWD' dated 29.07.2021 after being allotted to 'Konkan-2 Division' under provisions of Maharashtra Government Allotment of Revenue Divisions (Gazetted and Non-Gazetted) Rules, 2021 which includes 4 Districts of Raigad, Thane, Mumbai Suburban, Mumbai City; whereas Respondent No.2 who was promoted subsequently had joined on 'Vacant Post' of 'Executive Engineer (PW), Zilla Parishad Palghar' as per 'Government Order' of 'PWD' dated 27.04.2022 having been allotted to 'Konkan-1 Division' which includes 3 Districts of Palghar, Ratnagiri and Sindhudurg.

4. The learned Advocate for Applicant then specifically referred to provisions of 'Rule 8' of 'Maharashtra Government Allotment of Revenue Divisions for Appointment by Nomination and Promotion to the posts in Group A and Group B (Gazetted and Non-Gazetted) Rules 2021 which provides that once any 'Government Servant' is allotted to particular 'Revenue Division' subsequent to either 'Promotion' or 'Appointment' in 'Group A' and 'Group B' services; then change of 'Revenue Division' is permissible only after 'Minimum Tenure' of 3 Years in the allotted 'Revenue Division'.

5. The learned Advocate for Applicant further stated that Respondent No.2 was posted on promotion to 'Vacant Post' of 'Executive Engineer (PW), Zilla Parishad Palghar' by 'Government Order' dated 27.04.2022 of PWD. However, after brief period of just over '1 Year', the Respondent No.2 came to be transferred out on 19.07.2023 but was placed on 'Compulsory Waiting'

6. The learned Advocate for Applicant thereupon stated that Applicant has been transferred 'Mid Term' and 'Mid Tenure' from post of 'Executive Engineer PWD; Panvel, District Raigad' without any recommendation of 'CSB'. Further, the 'Mid-Term' and 'Mid-Tenure' transfer of Applicant was in blatant contravention of provisions of 'Section 4(4)(ii)' and 'Section 4(5)' of the 'Maharashtra Government Servant Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

7. The learned Advocate for Applicant contended that the 'Mid Term' and 'Mid Tenure' transfer of Applicant from post of 'Executive Engineer PWD; Panvel, District Raigad' was only due to 'Political Influence' brought about by local 'MLA' in favour of 'Respondent No.2' and argued that 'Government Order' dated 22.11.2023 of 'PWD' by which Applicant had been transferred 'Mid Term' and 'Mid Tenure' from post of 'Executive Engineer, PWD; Panvel, District Raigad' should be quashed and set aside and Applicant permitted to complete 'Normal Tenure' of '3 Years' as per entitlement under 'Section 3(1)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

8. The learned PO relied on 'Affidavit-in-Reply' dated 18.12.2023 filed on behalf of 'Additional Chief Secretary; PWD' to state that 'CSB' had decided in its meeting held on 28.06.2023 to recommend transfer of Respondent No.2 from 'Executive Engineer (P.W.), Zilla Parishad Palghar' to 'Vacant Post' of 'Executive Engineer, PWD, Jawhar, District Palghar'. Meanwhile as Respondent No.2 was placed on 'Compulsory Waiting'. Therefore, it was only on 'Administrative Grounds' that decision was taken to transfer Respondent No.2 to post of 'Executive Engineer PWD; Panvel, District Raigad'. Hence, no 'Political Influence' was brought about by local 'MLA' to transfer Respondent No.2 in place of Applicant.

9. The learned PO further clarified that 'PWD' as 'Cadre Controlling Authority' had received complaint on 07.07.2023 from local 'MLA' against Applicant. The complaint against Applicant were about negligence of important duties and delays in carrying out development works. Therefore, directions were given by 'Additional Chief Secretary, PWD' to conduct fact

finding enquiry by 'Chief Engineer; PWD, Konkan Region'. The 'Chief Engineer; PWD, Konkan Region' accordingly submitted report on 04.12.2023 which was received on 08.12.2023 by 'Additional Chief Secretary, PWD'. In this fact-finding report submitted by 'Chief Engineer PWD; Konkan Region' on 04.12.2023 has been categorically mentioned that in respect of 111 'New Development Works'; the 'Work Orders' of 66 'New Development Works' were not issued by Applicant in spite of completion of 'Tender Procedure'. Therefore; there was substance in complaint made by local 'MLA' against Applicant. The findings reported by 'Chief Engineer, PWD, Konkan Region' on 04.12.2023 was soon after 'Government Order' dated 22.11.2023 of 'PWD' had been issued for 'Mid Term' and 'Mid Tenure Transfer' from post of 'Executive Engineer PWD; Panvel, District Raigad'. The report of 'Chief Engineer PWD; Konkan Region' submitted on 04.12.2023 established beyond doubt that there was gross negligence of responsibilities and unexplained delay in discharge of important duties by Applicant while serving on post of 'Executive Engineer PWD; Panvel, District Raigad'.

10. The learned PO strongly denied that letter dated 07.07.2023 of local 'MLA' was any indication about malice as alleged by Applicant. The fact-finding report of 'Chief Engineer PWD; Konkan Region' submitted on 04.12.2023 had conclusively established that there indeed was much substance in complaint made against Applicant by local MLA on 07.07.2023.

11. The learned PO stressed that Applicant was justifiably transferred immediately on 22.11.2023 to 'Vacant Post' of 'Executive Engineer PWD; Jawhar, District Palghar'. The Applicant cannot have any vested right to remain on any particular post or to be transferred to any particular post; yet she has made baseless allegations about 'Political Influence' brought about by local 'MLA' in favour of 'Respondent No.2'. Even if there was to be any recommendation in favour of Respondent No.2 from local 'MLA'; even then 'Mid Term' and 'Mid Tenure' transfer of Applicant was approved by 'Minister in Charge' of PWD' and 'Hon'ble Chief Minister' Maharashtra. The contention of Applicant that she was transferred only to accommodate Respondent No.2 was thus not true as 'Vacant Post' can be filled up any time as per 'Section

4(4)(i)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

12. The learned PO stated on basis of 'Affidavit in Reply' dated 18.12.2023 filed on behalf of 'Additional Chief Secretary PWD' and 'File Noting' of 'PWD' that transfer of Applicant by 'Government Order' dated 22.11.2023 of 'PWD' was issued as per decision taken by 'Competent Transferring Authority' with prior approval of next 'Superior Transferring Authority'. Hence, 'Mid Term' and 'Mid Tenure' transfer of Applicant to 'Vacant Post' of 'Executive Engineer PWD; Jawhar District, Palghar' was also in accordance with provisions of 'Section 4(4)(ii)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005.'

13. The learned Advocate for Respondent No.2 relied on 'Affidavit-in-Reply' dated 20.12.2023 to emphasize that Respondent No.2 was placed on 'Compulsory Waiting' since 24.07.2023 after having been suddenly transferred from post of 'Executive Engineer (PW) Zilla Parishad Palghar'

14. The learned Advocate for Respondent No.2 drew attention to overall performance of Applicant when serving on post of 'Executive Engineer PWD; Panvel, District Raigad' to contend that it had been established to be much below par by fact finding report submitted by 'Chief Engineer PWD; Konkan Region' on 04.12.2023. The Respondent No.2 therefore should be permitted to join on post of 'Executive Engineer PWD; Panvel, District Raigad'.

15. The 'File Notings' of PWD revealed that Respondent No.2 who was placed on 'Compulsory Waiting' since 24.07.2023 was initially proposed to be transferred to 'Vacant Post' of 'Executive Engineer PWD; Jawhar, District Palghar' based on recommendations made by CSB on 28.06.2023 and it had even been approved by 'Competent Transferring Authority' and next 'Superior Transferring Authority' on 19.07.2023 as per provisions of Section 4(4)(ii) and read with Section 4(5) of the 'Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005'. However, the 'File Notings' of 'PWD' also revealed that no

'Government Order' came to be issued by 'PWD' to transfer Respondent No.2 to 'Vacant Post' of 'Executive Engineer PWD; Jawhar, District Palghar'; because 'Oral Instructions' were received from 'Hon'ble Minister-in-Charge' of 'PWD' who was 'Competent Transferring Authority'. The 'Oral Instructions' of 'Hon'ble Minister-in-Charge' of 'PWD' were diligently recorded in 'File Notings' by both 'Secretary (Roads) PWD' and 'Additional Chief Secretary, PWD' by observing in letter and spirit the tenets of 'Judgment' of 'Hon'ble Supreme Court of India' in ***T.S.R. Subramanian and Ors Vs. Union of INida & Ors.(2013) 15 SCC 732***. Thereupon, an 'Office Note' came to be submitted to 'Hon'ble Minister-in-Charge' of 'PWD' & 'Competent Transferring Authority' by 'Secretary (Roads) PWD' and 'Additional Chief Secretary, PWD' seeking further directions as to whether or not to issue 'Government Order' to transfer Respondent No.2 to 'Vacant Post' of 'Executive Engineer PWD; Jawhar, District Palghar'; as proposal based on recommendation of 'CSB' had already been approved on 19.07.2023 by 'Hon'ble Chief Minister Maharashtra' as next 'Superior Transferring Authority'.

16. The subsequent 'File Notings' of 'PWD' revealed that 'Hon'ble Minister-in-Charge' of 'PWD' as 'Competent Transferring Authority' for reasons not known thereafter 'Suo-Moto' recorded that Respondent No.2 be posted in place of Applicant as 'Executive Engineer PWD; Panvel, District Raigad' and Applicant be posted instead to 'Vacant Post' of 'Executive Engineer PWD; Jawhar, District Palghar' and submitted the file directly for prior approval to 'Hon'ble Chief Minister Maharashtra' as next 'Superior Transferring Authority'. The 'Hon'ble Chief Minister' as next 'Superior Transferring Authority' simply approved this 'Suo Moto' proposal submitted to 'Hon'ble Minister in Charge' of 'PWD' although it had been received without any recommendation about Respondent No.2 from 'CSB' and had been submitted directly by 'Hon'ble Minister-in-Charge' of 'PWD'. The approved 'File Notings' about transfer of Applicant from post of 'Executive Engineer PWD; Panvel, District Raigad' to 'Vacant Post' of 'Executive Engineer PWD; Jawhar, District Palghar' and transfer 'Respondent No.2' to post of 'Executive Engineer PWD; Panvel, District Raigad' in place of Applicant was received by 'Additional Chief Secretary, PWD' on 22.11.2023.

17. The transfer of Applicant from post of 'Executive Engineer PWD; Panvel, District Raigad' was therefore approved at behest of 'Hon'ble Minister in Charge' of 'PWD' who intriguingly choose to act 'Suo-Moto' as 'Competent Transferring Authority' to change the recommendations which had been duly made by 'CSB' in respect of Respondent No.2. The proposal was routinely approved by next 'Superior Transferring Authority' who is 'Hon'ble Chief Minister Maharashtra'. Infact, the only proposal which was submitted for consideration of 'Hon'ble Minister-in-Charge' of P.W.D. and 'Competent Transferring Authority' was that of 'Respondent No.2' to be posted to 'Vacant Post' of 'Executive Engineer PWD; Jawhar, District Palghar' as it had been recommended by 'C.S.B' in meeting held on 28.06.2023. The 'CSB' had never recommended transfer of Applicant. So it stands established that 'Government Order' dated 22.11.2023 of 'PWD' to transfer Respondent No.2 to post of 'Executive Engineer PWD; Panvel, District Raigad' came to be issued in contravention of principles laid down by Hon'ble Supreme Court of India in **(2013) 15 SCC 732 T.S.R. Subramanian and Ors. Vs. Union of India & Ors.**

18. The 'File Notings' of 'PWD' interestingly reveal that 'Additional Chief Secretary, PWD' and 'Secretary (Roads), PWD' had on more than one occasion diligently re-submitted the proposal as recommended by 'CSB' in meeting held on 28.06.2023 by mentioning facts about both Applicant and Respondent No.2 and had even sought reconsideration of 'Suo-Moto' decision taken by 'Hon'ble Minister-in-Charge' of 'PWD' as 'Competent Transferring Authority' but to no avail, as it had already been approved by 'Hon'ble Chief Minister Maharashtra'. However, even after it was specifically mentioned that post of 'Executive Engineer PWD; Panvel, District Raigad' held by Applicant since 29.07.2021 was not available; yet name of 'Respondent No.2' was incorporated 'Suo-Moto' into 'File Notings' directly at level of 'Hon'ble Minister-in-Charge' of 'PWD' as 'Competent Transferring Authority' and as a result Applicant was transferred to 'Vacant Post' of 'Executive Engineer PWD; Jawhar, District Palghar'. The 'Hon'ble Minister-in-Charge' of PWD as 'Competent Transferring Authority' had no justiciable reasons to 'Suo-Moto' recommend in such cavalier manner transfer of

Respondent No.2 to post which was occupied by Applicant especially when there was no recommendation at all from 'CSB' and seek approval from next 'Superior Transferring Authority' who is 'Hon'ble Chief Minister Maharashtra'.

19. The landmark judgment of ***Hon'ble Supreme Court of India in T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732, dated 31st October, 2013*** highlights in particular vulnerability of Government Servants to frequent transfer especially of those who serve under State Governments. The Hon'ble Supreme Court of India had pertinently observed that:

"We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society."

20. **The Hon'ble Supreme Court of India in *East Coast Railway & Another Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678*** has unequivocally emphasized on 'Application of Mind' and recording of reasons by 'Public Authority'; so that there is no scope for arbitrariness in exercise of 'Statutory Powers'. The Hon'ble Supreme Court of India has incisively observed as under :-

"There is no precise statutory or other definition of the term 'arbitrary'. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."

21. **The Hon'ble High Court of Bombay in W.P. (L) No. 1940 of 2011 decided on January 24, 2012 (Shri S.B. Bhagwat V/s. State of Maharashtra & Ors.)** has elaborated about the cautious manner in which law relating to 'Mid Term' and 'Mid Tenure' transfers of Government Servants must be implemented by observing as follows :-

“An employee who has not completed his normal tenure of three years may yet be subjected to transfer, as provided in sub-section (5) of section 4. Sub-section (5) of section 4 begins with an overriding non-obstante provision, but requires that reasons have to be recorded in writing in a special case for transferring an employee even prior to the completion of tenure. Merely calling a case a special case does not constitute a sufficient reason. The rationale why the legislature has required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers. Indeed, the matter of transfers has been brought within a regulatory framework laid down in the statute enacted by the State legislature. Section 4(5) permits as an exceptional situation, a transfer to be carried out, notwithstanding anything contained in section 3 or in section 4. The exceptional power must be exercised strictly in accordance with sub-section (5) of section 4. It is a settled position in law that when a statutory power is conferred upon an authority to do a particular thing, that exercise has to be carried out in the manner prescribed by the statute.”

22. **The Hon'ble High Court of Bombay in Writ Petition No.5465/ 2012 decided on March 07, 2013 (Shri Krishor Shridharrao Mhaske Vs. Maharashtra OBC, Finance & Development Corporation & Ors.** explained about importance of restrain to be exercised by 'Competent Transferring Authority' with respect to proposals for 'Mid-Term' & 'Mid-Tenure' transfers of Government Servants by observing as follows:-

“Section 4(5) which begins with the non-obstante clause obligate the Competent authority to seek prior approval of the competent transferring authority as indicated in Section 6 of the Act and also to record reasons in writing in special case of the mid-term or pre-mature transfer of any Government servant who has not completed three years of normal tenure on particular post. Section 6 of the Act lays down the categories of the Government servants in column no (1) of the table who may be transferred by the competent transferring authorities as mentioned in column (2) of the table.”

“The mid-term or pre-mature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and

prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or bye-passed. The exceptional reasons for the special mid-term or pre-mature transfer ought to have been stated in writing. Vague, hazy and meager expression such as "on administrative ground" cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements. The impugned order of the transfer in the absence of mention of special and exceptional reasons was passed obviously in breach of the statutory obligations and suffers from the vices as above."

23. **In Hon'ble High Court of Bombay in *Shri Santosh Machhindra Thite Vs. The State of Maharashtra & Ors.*, 2019(4) ALL MR 681** has highlighted the significance of consultation and reaching of agreement about proposals for 'Mid Term' and 'Mid Tenure' transfers of Government Servant between 'Competent Transferring Authority' and 'Secretary' of 'Administrative Departments' by observing as follows :-

"The power of transfer under sub-section (5) of section 4 is to be exercised by the Competent Authority only in special cases, after recording reasons in writing and that also with the prior approval of the immediately superior Transferring Authority (in the present case, the Hon'ble Chief Minister). According to the stand of the State Government, the power was exercised by the Hon'ble Minister as a Competent Transferring Authority within the meaning of section 6.

Therefore, the power purportedly exercised is not in consonance with sub-section (5) of section 4 as the concerned Secretaries were not consulted. The Hon'ble Minister can exercise the powers as a Competent Transferring Authority under section 6 only after consultation with the Secretaries of the concerned Departments. Hence, the Hon'ble Minister had no power to pass orders under sub-section (5) of section 4 of the said Act without consultation with the Secretaries."

24. **The Hon'ble Bombay High Court in *Seshrao Nagarao Umap Vs. State of Maharashtra*, (1985)II LL J 73(Bom)** has summarized important aspects of law relating to 'Colourable Exercise' of 'Statutory Powers' of transfer only to accommodate another Government Servant by pertinently observing as follows :-

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilize the services of its employees. However this power must be exercised honestly, bona fide and

reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colorable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair."

25. **The Hon'ble High Court of Bombay in Writ Petition No.8987 of 2018 (Shri Balasaheb Vitthalrao Tidke Vs State of Maharashtra & Ors.)** had relied on contents of 'Affidavit in Reply' filed by then 'Chief Secretary; Government of Maharashtra' to caution against attempts to bring 'Political Influence' to transfer of Government Servants by incisively observing as under :-

"Now there is a clear assurance that all transfers will be effected strictly in accordance with the provisions of the said Act of 2005 and none of the transfers will now be influenced by the recommendations of the political leaders including the Hon'ble Ministers (Who are not a part of the process of transfers). We direct that the statements made in para-1 of the said Affidavit are brought to the notice of all the concerned who have to exercise powers of transfers under the said Act of 2005 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants".

26. The peculiar circumstances behind 'Mid Term' and 'Mid Tenure' transfer of Applicant' from post of 'Executive Engineer PWD; Panvel, District Raigad' can now be visualized more clearly upon 'Lifting of Veil' from the unusual modalities which had been adopted by 'Hon'ble Minister in Charge' of 'PWD' as 'Competent Transferring Authority' to somehow ensure that Respondent No.2 came to be transferred in place of Applicant who consequently was transferred out to 'Vacant Post' of "Executive Engineer, PWD, Jawhar Division, District Palghar'

27. The 'Mid Term and Mid Tenure' transfer of Applicant by 'Government Order' dated 22.11.2023 of 'PWD' from post of 'Executive Engineer, P.W.D. Panvel, District Raigad' to 'Vacant Post' of "Executive Engineer, PWD, Jawhar, District Palghar' when evaluated against large canvas of legal principles enunciated through landmark judgments of Hon'ble Supreme

Court of India and Hon'ble Bombay High Court **is** found to be vulnerable on grounds of (a) Unlawful Exercise of Statutory Powers, (b) Arbitrary Exercise of Statutory Powers, (c) Colorable Exercise of Statutory Powers and thus is quashed and set aside. However, as Applicant was granted 'Interim Relief' on 23.11.2023 permitting her to continue on post of 'Executive Engineer PWD; Panvel, District Raigad' and as Applicant has since completed 'Normal Tenure' of 3 years on 29.07.2024 as per entitlement under 'Section 3(1)' of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and further as 'Departmental Enquiry' has also been instituted under 'Rule 8' of Maharashtra Civil Services (Discipline and Appeal) Rules 1979; the cancellation of 'Mid Term' and 'Mid Tenure' transfer of Applicant from post of 'Executive Engineer, P.W.D. Panvel, District Raigad' to post of 'Executive Engineer, PWD, Jawhar Division, District Palghar' as per 'Government Order' dated 22.11.2023 of PWD shall not act as 'Shield of Protection' with respect to ongoing 'Departmental Enquiry'.

28. The 'Mid Term' and 'Mid Tenure' transfer of Respondent No.2 to post of 'Executive Engineer P.W.D.; Panvel, District Raigad' could not have been effected at all by 'Government Order' dated 22.11.2023 of 'PWD' being in brazen violation of provisions of Rule 8 of Maharashtra Government Allotment of Revenue Divisions (Gazetted and Non-Gazetted) Rules, 2021 and direct contravention of letter and spirit of Judgment of Hon'ble Supreme Court of India in **T.S.R. Subramanian and Ors. V/s. Union of India & Ors. (2013) 15 SCC 732**. The 'Competent Transferring Authority' who is 'Minister-in-Charge' of 'PWD' had conveniently side-stepped legal principles laid down by various judgments of Hon'ble Supreme Court of India & Hon'ble Bombay High Court. The Respondent No.2 who was initially recommended to be transferred by 'CSB' in meeting held on 28.06.2023 to 'Vacant Post' of 'Executive Engineer PWD; Jawhar, District Palghar' should therefore be directed to join there and only upon completion of 'Minimum Tenure' of '3 Years' in 'Konkan -1 Division' which has been allotted to him would 'Respondent No.2' become eligible for transfer to any other post outside 'Konkan-1' Division' as per provisions of 'Rule 8 of Maharashtra Government Allotment of Revenue Divisions (Gazetted and Non-Gazetted)

Rules, 2021' including to post of 'Executive Engineer, PWD, Panvel, District Raigad' but upon stringent observance of provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. Hence, the following order :

ORDER

(A) The Original Application No.1475/2023 is Allowed.

(B) The 'Government Order' of 'PWD' dated 22.11.2023 of Applicant is quashed and set aside. However, there would not be any impediment now for Applicant to be transferred from post of 'Executive Engineer, PWD, Panvel, District Palghar' having completed on 29.07.2024, the 'Normal Tenure' of 3 Years under 'Section 3(1)' of provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. Further there would also not be any 'Shield of Protection' for Applicant with respect to ongoing 'Disciplinary Enquiry' under 'Maharashtra Civil Services (Discipline and Appeal) Rules 1979'.

(C) The 'Government Order' of 'PWD' dated 22.11.2023 about transfer Respondent No.2 to post of 'Executive Engineer, PWD, Panvel, District Raigad' is also quashed and set aside due to gross violation of imperative condition of 'Minimum Tenure' of 3 Years which is not yet completed by Respondent No. 2 in 'Konkan-1 Division' as per provisions of 'Rule 8' of 'Maharashtra Government Allotment of Revenue Divisions (Gazetted and Non-Gazetted) Rules, 2021'.

(D) No Order as to Costs.

Sd/-

(Debashish Chakrabarty)
Member(A)

