

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.297 OF 2024

DISTRICT : MUMBAI

Sub.:- Transfer

Shri Jaydeep Maruti Tupat.)
Age : 40 Yrs, Working as Police Constable,)
Uttan Police Station, Mira Bhayandar,)
Thane. R/o. A-Wing, 201, Ananddham)
Building, Krushna Township, Vasai (W),)
District : Palghar.)...**Applicant**

Versus

The Commissioner of Police.)
Mira Bhayandar, Vasai-Virar Police)
Commissionerate, Having office at)
Shanti Garden, Mira Road (E),)
District : Thane.)...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. Archana B.K., Presenting Officer for Respondent.

CORAM : Shri Debashish Chakrabarty, Member-A

DATE : 18.12.2024

JUDGMENT

1. The Applicant who is serving on post of 'Police Constable' has challenged (a) 'Order' dated 01.01.2024 & (b) 'Order' dated 17.02.2024 of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar' by which he was transferred from 'Traffic Branch; Vasai' to 'Uttan Sagari Police Station' by

invoking provisions of 'Section 19' of 'The Administrative Tribunals Act 1985'.

2. The learned Advocate for Applicant stated that by 'Order' dated 27.04.2020 of 'SP, Palghar' issued upon request of Applicant; he came to be transferred from 'Manor Police Station' to 'Traffic Branch; Vasai' then under establishment of 'SP, Palghar'; but now under establishment of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar'.

3. The learned Advocate for Applicant further stated that Applicant started working in 'Traffic Branch; Vasai' with effect from 12.08.2020 after being relieved from 'Manor Police Station' then under establishment of 'SP Palghar'.

4. The learned Advocate for Applicant contended that Applicant was not allowed to complete 'Normal Tenure' of 5 years as provided under provisions of 'Section 22N [1][b]' of 'The Maharashtra Police Act 1951'; as he was abruptly transferred from 'Traffic Branch Vasai' to 'Uttan Coastal Police Station' by (a) 'Order' dated 01.01.2024 & (b) 'Order' dated 17.02.2024 of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar'.

5. The learned Advocate for Applicant further contended that Applicant has been subjected to frequent transfers by 'Order' dated 01.01.2024 of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar'; initially from 'Traffic Branch Vasai' to 'Uttan Sagari Police Station' and soon thereafter by 'Order' dated 17.02.2024 of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar' from 'Uttam Sagari Police Station' to 'Uttan Police Station'. The Applicant was not being allowed to complete 'Normal Tenure' of 5 Years as per entitlement under provisions of 'Section 22N [1] [b]' of 'The Maharashtra Police Act 1951'. The frequent transfers of Applicant were thus instances of misuse of 'Statutory Powers' by 'Commissioner of Police, Mira Bhayandar & Vasai-Virar'.

6. The learned Advocate for Applicant thereafter specifically referred to 'Order' dated 17.02.2024 of 'Commissioner of Police, Mira Bhayandar, & Vasai-Virar' wherein it is mentioned that request had been received from Applicant. However; this was completely false as Applicant had never made any 'Oral' or 'Written' request after he had been transferred from 'Traffic Branch Vasai' to 'Uttan Sagari Police Station' by 'Order' dated 01.01.2024 of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar'.

7. The learned Advocate for Applicant further stated that composition of 'PEB' under 'Commissioner of Police; Mira Bhayandar & Vasai-Virar' was not in strict observance of provisions of 'Section 22-I' of 'The Maharashtra Police Act 1951'; especially with respect of its proviso which necessitates that at least one member of 'PEB' must belong to the 'Backward Classes' and whose appointment if it becomes necessary is required to be done only by 'State Government'.

8. The learned Advocate for Applicant then emphasized that 'Order' dated 17.02.2024 of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar' in which Applicant is shown as attached to 'Head Quarters' was complete misrepresentation of facts; as it is rather evident from 'Order' dated 01.01.2024 of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar' that Applicant had already been transferred from 'Traffic Branch, Vasai' to 'Uttan Sagari Police Station'.

9. The learned Advocate for Applicant then emphasized that subsequent 'Order' dated 17.02.2024 of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar' was issued to transfer Applicant again for no justifiable reason within short span of 'One and Half Month'. Hence, it was outrightly an instance of 'Arbitrary Exercise' of 'Statutory Powers' by 'Commissioner of Police; Mira Bhayandar & Vasai-Virar'; besides it also smacks of malice and prejudice against Applicant. Further; even as earlier 'Order' dated 01.01.2024 of 'Commissioner of Police, Mira

Bhayandar, Vasai-Virar' suffered from identical set of infirmities; it is necessary that both are quashed & set aside. The Applicant must thereupon be permitted to complete 'Normal Tenure' of 5 Years at 'Traffic Branch Vasai' to be counted from 12.08.2020; when Applicant had actually joined as per 'Order' dated 27.04.2020 of 'SP, Palghar'.

10. The learned PO per contra relied on 'Affidavit-in-Reply' filed on 21.03.2024 on behalf of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar' to state that 'Wife' of Applicant had filed 'Written Complaint' against him on 7.11.2023 with 'ACP, Traffic' of 'Mira Bhayander & Vasai -Virar'. The 'Written Complaint' filed by 'Wife' of Applicant on 07.11.2023 was about certain 'Woman Police Constable' serving in 'Traffic Branch Virar' having allegations that both were having an 'Extra Marital Affair' and that even 'Non-Cognizable' cases had been registered against each other at 'Waliv Police Station'.

11. The learned PO further stated that 'Wife' of Applicant had complained that on account of continued harassment due to 'Matrimonial Dispute', she and her children were not staying with Applicant. Further, as possibility of adverse incidents relating to 'Wife' of Applicant happening in future could not be ruled out; 'Police Inspector' of 'Traffic Branch, Zone-2; Vasai Division' had submitted detailed report on 08.11.2023 regarding Applicant to 'Commissioner of Police; Mira Bhayander & Vasai Virar'. The 'Assistant Commissioner of Police (Traffic)' of 'Mira Bhayander & Vasai Virar' thereupon had specifically recommended transfer of Applicant from 'Traffic Branch Vasai' to 'Commissioner of Police, Mira Bhayandar & Vasai-Virar' on 10.11.2023. The 'Order' dated 01.01.2024 of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar' was issued thereafter to transfer Applicant from 'Traffic Branch Vasai' to 'Uttan Sagari Police Station' based on recommendation made by 'PEB' in meeting held on 01.01.2024.

12. The learned PO further clarified that Applicant had been transferred by 'Order' dated 01.01.2024 of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar' from 'Traffic Branch Vasai' to Uttan Sagari Police Station'. Further; although by 'Order' dated 17.02.2024 of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar'; the Applicant had been inadvertently shown as transferred again within just 'One and Half Month' to 'Uttan Police Station'; yet there was no change in earlier transfer of Applicant to 'Uttan Sagari Police Station'.

13. The learned Advocate for Applicant also referred to 'Affidavit-in-Rejoinder' dated 08.04.2024 filed by Applicant to contend emphatically that 'Matrimonial Disputes' of Applicant and 'Wife' were totally unconnected with performance of duties of 'Police Constable' by Applicant. Thus, occurrence of 'Matrimonial Disputes' between Applicant and 'Wife' could not have constituted an 'Exceptional Circumstance' or 'Special Reason' for 'Mid-Term Transfer' as contemplated under provisions of 'Section 22N (2)' of 'The Maharashtra Police Act, 1951'. Hence; 'Commissioner of Police; Mira Bhayandar & Vasai-Virar' had misused 'Statutory Powers'; since 'Wife' of Applicant by 'Written Complaint' filed on 07.11.2023 had only alleged about harassment by Applicant; but certainly had not sought his immediate transfer from 'Traffic Branch, Vasai'. The 'Commissioner of Police; Mira Bhayandar & Vasai-Virar' had therefore extended the scope of 'Written Complaint' filed on 07.11.2023 by 'Wife' of Applicant.

14. The learned Advocate for Applicant further stressed that Applicant should have been given fair opportunity of being heard based on 'Principles of Natural Justice' to explain his side about varacity of 'Written Complaint' made by his 'Wife' on 07.11.2023, before (a) 'Order' dated 01.01.2024 & (b) 'Order' dated 17.02.2024 came to be issued by 'Commissioner of Police, Mira Bhayander & Vasai-Virar'.

15. The learned PO per contra relied on 'Affidavit-in-Sur Rejoinder' dated 22.04.2024 filed on behalf of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar' to explain decision taken by 'PEB' in meeting held on 01.01.2024 by mentioning that as per provisions of 'Section 22(N)(1)' of 'The Maharashtra Police Act, 1951' in respect of 'Police Personnel' who are serving in establishment of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar'; the 'PEB' as required under 'Section 22-I' had been constituted by 'Order' dated 27.12.2022. Hence; 'PEB' which is duly constituted held its meeting on 01.01.2024 under chairmanship of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar' to consider proposal about Applicant submitted by 'Assistant Commissioner of Police (Traffic)' of 'Mira Bhayander & Vasai-Virar' on 10.11.2023. The 'PEB' in meeting held on 01.01.2024 had taken conscious decision to recommend transfer of Applicant to 'Uttan Sagri Police Station' and concerned 'Woman Police Constable' allegedly involved with him in 'Extra Marital Affair' to 'Pelhar Police Station'.

16. The learned PO based on averments in 'Affidavit-in-Sur Rejoinder' dated 22.04.2024 filed on behalf of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar' further emphasized that Applicant was misinterpreting for reports submitted on 08.11.2023 and 10.11.2023 respectively by 'Police Inspector' of 'Traffic Branch, Zone-2, Vasai Division' and 'Assistant Commissioner of Police (Traffic)' of 'Mira Bhayander & Vasai-Virar'; as these had been compiled after 'Preliminary Enquiry' into 'Written Complaint' filed on 07.11.2023 by 'Wife' of Applicant which concluded that he be forthwith transferred from 'Traffic Branch Vasai'. The 'Order' dated 17.2.2024 of 'Commissioner of Police, Mira Bhayander & Vasai-Virar' was issued strictly as per 'Minutes of Meeting' of 'PEB' held on 01.01.2024 which mentions that Applicant be immediately transferred to 'Uttan Sagri Police Station'. Hence, it appears that some typographical error may have occurred; as word "Headquarters" came to be inadvertently mentioned in 'Order' dated 17.02.2024 of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar';

when factual position was totally different because Applicant was already discharging duties of 'Police Constable' at 'Uttan Sagari Police Station'. Therefore; this could not have been grounds for any new grievance of Applicant in order to file 'Affidavit-in-Rejoinder' dated 8.4.2024. The Applicant had been transferred to 'Uttan Sagri Police Station' by 'Order' dated 01.01.2024 of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar' and it came to be only re-confirmed by 'Order' dated 17.2.2024 of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar'.

17. The learned PO relied on 'Affidavit-in-Sur-Rejoinder' dated 22.04.2024 filed on behalf of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar' to highlight that Applicant was from time to time advised through 'Personal Hearings' granted by 'Police Inspector' of "Traffic Branch, Zone-2, Vasai Division". The Applicant was infact repeatedly counseled during which it was suggested to him to earnestly resolve all matters of 'Matrimonial Dispute'. However; as domestic clashes between Applicant and 'Wife' kept increasing resulting in such misbehaviour even tarnishing the 'Public Image' of 'Police Department' and since demeanour of 'Applicant' and concerned 'Woman Police Constable' while on duty was negatively impacting other 'Police Personnel' serving under overall charge of 'Assistant Commissioner of Police (Traffic)' of 'Mira Bhayander, Vasai-Virar'; therefore both Applicant and 'Women Police Constable' were recommended for immediate transfers from their respective posts during meeting of 'PEB' held on 01.01.2024 by 'Commissioner of Police, Mira Bhayander, Vasai-Virar'.

18. The contention of Applicant is thus required to be examined from perspective of law relating to 'Mid-Term Transfer' as defined in 'Section 2(6B)' along with applicability of provisions of 'Section 22 N(2)' of 'The Maharashtra Police Act 1951' which reads as follows :-

"In Addition to the grounds mentioned in sub-section (1), in exceptional cases in Public Interest and on account of Administrative Exigencies, the Competent Authority shall make Mid-term Transfer of any Police Personnel of the Police Force."

The 'Order' dated 01.01.2024 of 'Commissioner of Police, Mira Bhayandar, Vasai-Virar' by which Applicant was transferred to 'Uttan Sagari Police Station' mentions about 'Administrative Exigencies'; while 'Order' dated 17.02.2024 of Commissioner of Police, Mira Bhayandar, Vasai-Virar by which Applicant claims to have been transferred again to 'Uttan Police Station' mentions about due consideration of request made by Applicant.

19. The issue of this re-transfer of Applicant from 'Uttan Sagari Police Station' to 'Uttan Police Station' ostensibly by 'Order' dated 17.02.2024 of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar' is not required to be gone into; as no evidence was placed on record either on behalf of Applicant or by learned PO to establish, if there existed separate 'Sections' as defined under 'Section 12(1)' of 'The Maharashtra Police Act 1951' placed under 'Independent Charge' of separate 'Inspectors of Police' as it would then have meant frequent 'Mid Term Transfer' of Applicant to 'Uttan Police Station' within meaning of 'Section 2(6B)' of 'The Maharashtra Police Act 1951'. Further; such hyper contention made by Applicant has been affirmatively negated in 'Affidavit-in-Sur-Rejoinder' dated 22.04.2024 filed on behalf of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar'.

20. The rival arguments thus get limited to examining the grounds for 'Mid-Term Transfer' under provisions of 'Section 22N(2)' by undertaking discrete segmentation of its concise phraseology into (a) 'In 'Exceptional Cases' (b) 'In Public Interest' and (C) 'On Account of Administrative Exigencies' which enabled 'Mid-Term Transfer' of Applicant to 'Uttan Sagari Police Station' after due approval granted to recommendation of 'PEB' by 'Competent Authority' defined under "Explanation' of Section 22N (2)' of 'The Maharashtra Police Act 1951'.

21. The 'Order' dated 01.01.2024 of 'Commissioner of Police, Mira Bhayandar, Vasai-Virar' by which Applicant was transferred to 'Uttan Sagari Police Station' mentions grounds of 'Mid-Term Transfer' to be 'Administrative Exigencies'; while 'Order' dated 17.02.2024 of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar' by which Applicant claims to have been transferred again within 'One and Half Month' to 'Uttan Police Station' mentions about request made by Applicant. Thus, 'Mid-Term Transfer' of Applicant from 'Traffic Branch, Vasai' to 'Uttan Sagari Police Station' has to be understood as having been effected 'On account of 'Administrative Exigencies' and not by invoking other options available under 'Section 22(N)(2)' such as 'In Public Interest' or 'In Exceptional Cases'. However, an inference which may get inadvertently drawn is that instances of 'Private Misconduct' by 'Police Personnel' when brought to knowledge of superior officers through 'Written Complaint' made by 'Wife' which may involve 'Matrimonial Dispute' or allegations of 'Extra Marital Affair'; can even get subsumed within expansive meaning of words such as 'In Public Interest' as 'In Exceptional Cases' provided under 'Section 22N(2)' of 'The Maharashtra Police Act 1951'.

22. **The Hon'ble Bombay High Court in Writ Petition No. 2751 of 2023 in its 'Judgment' dated 20.02.2008** had examined culpability 'Police Personnel' under 'Section 25' of 'The Maharashtra Police Act 1951' with respect to imposition of penalties to observe that delinquency of 'Police Personnel' must be with respect to 'Discharge of Official Duties'. The pertinent observations are as follows:-

"Perusal of the above quoted provision shows that the punishments which are mentioned in that section can be imposed on an Inspector or any member of the police force holding subordinate rank, if in the opinion of the State Government or in the opinion of the authorised officer that servant is cruel, perverse, remiss, or negligent in, or unfit in the discharge of his official duties. Therefore, the conduct which is to be made basis of the punishment should have nexus with discharging of duties by the concerned member of the police force. Perusal of the order of the Maharashtra Administrative Tribunal shows that attention of the Tribunal was invited to the provisions of Section 25 of the Bombay police Act but it appears from the order that the Tribunal misread the provisions of Section 25 of the Act. In paragraph 7 on page 9 of the order, it is recorded that the conduct of the petitioner

was cruel or perverse as contemplated by Section 25 of the Bombay police Act, but the Tribunal ignores that the cruel or perverse conduct has to be in discharge of official duties by the member of a police force."

23. The **Hon'ble Supreme Court of India in Judgment dated 25.03.1963 in Civil Appeal No. 887/1962** on the other hand had examined at length the case of some 'Sub Editor' of an 'English Newspaper' whose services were terminated after due enquiry into acts of 'Private Misconduct'. The thoughtful observations about what would constitute such 'Private Misconduct' in an organizational context but in 'Public View' are reproduced below:-

"The standing orders, which have been subsequently adopted by the respondents, however help us in determining what the respondents treat as misconduct. One has merely to glance at the twenty categories of misconduct specified by Para. 10 of the standing orders to realize that a private quarrel between an employee of the respondents and another citizen cannot fall within any of those categories. It is true that in the absence of standing orders, it would be open to the employer to consider reasonably what conduct can be properly treated as misconduct. It would be difficult to lay down any general rule in respect of this problem. Acts which are subversive of discipline amongst the employees would constitute misconduct; rowdy conduct in the course of working hours would constitute misconduct; misbehavior committed even outside working hours but within the precincts of the concern and directed towards the employees of the said concern may in some cases, constitute misconduct; if the conduct proved against the employee is of such a character that he would not be regarded as worthy of employment, it may, in certain circumstances, be liable to be called misconduct. What is misconduct will naturally depend upon the circumstances of each case. It may, however, be relevant to observe that it would be imprudent and unreasonable on the part of the employer to attempt to improve the moral or ethical tone of his employees' conduct in relation to strangers not employed in his concern by the use of the coercive process of disciplinary jurisdiction. As we have already observed, it is not possible and we do not propose to lay down any general rule in that behalf. When standing orders were framed, there is no difficulty because they define misconduct. In the absence of standing orders, the question will have to be dealt with reasonably and in accordance with commonsense."

24. The challenge to 'Mid-Term Transfer' of 'Police Personnel' as defined under 'Section 2(6B)' of 'The Maharashtra Police Act, 1951' who was serving in post of 'API' resulting out of complaint of 'Wife' alleging harassment due to 'Matrimonial Dispute' came to be decided in favour of Applicant therein by '**Judgment dated 11.03.2022 in OA No.29/2022.**' The relevant extracts are as follows:-

"Thus, it is explicit that competent authority can transfer Police Personnel in public interest and on the ground of administrative exigencies mid-term. However, in

present case the perusal of minutes of P.E.B-2 reveals that no such case is made out to show any administrative exigencies or public interest existed for his Transfer. Curiously he is transferred on the complaint lodged by the wife. The perusal of compliant reveals that there is matrimonial dispute between the Applicant and his wife. In complaint it is alleged that wife is subjected to harassment by the Applicant. The wife therefore requested to transfer the Applicant to the distant place from Navi Mumbai. Surprisingly P.E.B. simply obliged the Applicant's wife by transferring him to Nagpur without bothering as to whether it can be the ground of transfer under section 22N(2) of Maharashtra Police Act. Needless to mention, wife's compliant or matrimonial dispute between the Applicant and his wife cannot be ground to transfer the Applicant in the eye of law. Suffice to say the Applicant's transfer is in total contravention of Section 22(N)(2) of Maharashtra Police Act. Impugned order is thus arbitrary and non-application of mind and law is evident."

The Judgment dated 11.03.2022 in O.A.No.29/2022 dealt with complaint from 'Wife' related only to 'Matrimonial Dispute', but it was conspicuously different from case of Applicant which stands linked to 'Extra Marital Affair' with some 'Women Police Constable'.

25. The Hon'ble Bombay High Court in 'Judgment' dated 20.01.2021 in Writ Petition No. 2513/2001 had made incisive observations while upholding the 'Removal from Service' in respect of 'Police Constable' against background of facts and circumstances which were rather identical to that of Applicant. The incisive observations are as reproduced below :-

"The petitioner was initially appointed as Police Constable in the year 1978. In 1981 one Balkishan Paliwal made a complaint to the Department regarding illicit relationship of the petitioner with his wife. On the basis of the said complaint, preliminary enquiry was carried out which resulted into service of the charge-sheet on the petitioner in September 1986. Thereafter the departmental enquiry was conducted in connection with illicit relationship of the petitioner with the wife of the complainant. The enquiry was conducted in connection with moral turpitude and alleged illicit relationship of the present petitioner with the wife of the complainant. The Enquiry Officer found that the charges against the petitioner regarding illicit relationship with the wife of the complainant are proved. The Enquiry Officer, however, suggested penalty of bringing the petitioner in the basic pay scale for a period of two years and withholding the increments. Since the Enquiry Officer was not the Disciplinary Authority, he forwarded the report to the Disciplinary Authority. Respondent no.2 Commissioner of Police, who was the Disciplinary Authority of the petitioner, agreed with the findings given by the Enquiry Officer regarding misconduct and ultimately passed the order of removal from service against the petitioner by an order dated 27th February 1987. The aforesaid order passed by the Disciplinary Authority was challenged by the petitioner by filing departmental appeal. The said appeal was also dismissed by the Appellate Authority on 14.6.1988. Against the said order, the petitioner initially preferred the writ petition before the High Court being Writ Petition No.82/1991. However, the said petition was transferred to the Maharashtra

Administrative Tribunal. The Tribunal by the impugned order has dismissed the appeal of the petitioner.”

The ‘Police Constable’ concerned was thus subjected to ‘Disciplinary Enquiry’ for ‘Private Misconduct’ relating to ‘Extra Marital Affair’ and awarded higher degree of ‘Penalty’ of ‘Removal from Service’ under provisions of ‘Section 25(1)(e)’ of ‘The Maharashtra Police Act 1951’.

26. The action in respect of Applicant on other hand is hardly punitive being just ‘Mid Term Transfer’ under provisions of ‘Section 2(6B)’ read with ‘Section 22N(2)’ of ‘The Maharashtra Police Act 1951’ which does not necessitate existence of such definitive grounds when misconduct of ‘Police Personnel’ is required to be classified as being either (a) ‘Cruel’ (b) ‘Perverse’ (c) ‘Remiss’ or (d) ‘Negligent’ (e) ‘Unfit for Discharge of Duties’ unlike when after ‘Departmental Enquiry’ is completed penalties may be required to be imposed on ‘Police Personnel’ under ‘Section 25’ of ‘The Maharashtra Police Act 1951’. The ‘Mid-Term Transfers’ of ‘Police Personnel’ are more common and effected for generic reasons as diction of ‘Section 22N(2)’ indicates which are (a) ‘In Exceptional Cases’ (b) ‘In Public Interest’ (c) ‘On Account of Administrative Exigencies’. Hence, the ‘Judgment’ dated 20.02.2008 in ‘Writ Petition No.2751/2008’ of ‘Hon’ble Bombay High Court’ which was in respect of ‘Section 25’ of ‘The Maharashtra Police Act 1951’ does not assist in deciding cases of transfers of ‘Police Personnel’; even if reasons for it are in nature of ‘Private Misconduct’ and construed as being ‘Cruel’ and ‘Perverse’ especially in relation to ‘Wife’. Further, it must also be observed that ‘Judgment’ dated 11.03.2022 in O.A. No. 29/2022 did not observe any specific reasons as to why ‘Written Complaint’ which was filed by ‘Wife’ of ‘Police Personnel’ therein did not constitute yet another justiciable instance within domains vast such as (a) ‘In ‘Exceptional Cases’ (b) ‘In Public Interest’ and (C) ‘On Account of Administrative Exigencies’ as incorporated under ‘Section 22N(2)’ of ‘The Maharashtra Police Act 1951’.

27. The action taken by 'Commissioner of Police, Mira Bhayandar, Vasai-Virar' against Applicant and 'Woman Police Constable' concerned was only to transfer them together to different 'Police Stations' by invoking provisions of 'Section 22N(2)' of 'The Maharashtra Police Act 1951'. The Applicant against the above backdrop was naturally expected to be contended about the fact that no 'Disciplinary Enquiry' had been initiated and no punitive action came to be taken against him under 'Section 25' of 'The Maharashtra Police Act 1951'.

28. The transfer of any 'Government Servant' including 'Police Personnel' is to be considered as an 'Implied Condition Of Service'. Hence, it would not be out of context to observe that 'Mid-Term Transfer' of Applicant under 'Section 22N(2)' of 'The Maharashtra Police Act, 1951 to 'Uttan Sagari Police Station' was equally probable; as occurrence could of such event happen even if there were to be no 'Written Complaint' from his 'Wife' about 'Matrimonial Dispute' or allegations of 'Extra Marital Affair' with some 'Women Police Constable'.

29. The Applicant will do well in future to always remember words of caution for all 'Police Personnel' about exacting standards of their 'Personal Conduct' which are found in 'Para 416 (1)' and 'Para 417(5)' of 'Chapter XII' of 'The Manual Maharashtra Police Act 1959 as reproduced below :-

"416(1) It is highly improper for Policemen, while on duty in uniform, to smoke in the public, visit hotels for food or talk leisurely with friends. This creates an unfavourable impression in the minds of the public who cannot distinguish whether such men are on or off duty at the time.....

"417(5) Every member of the force should adopt every legitimate means in his power to assist in raising the prestige of the service in the estimation of the public and in securing its goodwill and respect by right behaviour, on or off duty."

30. The transfer of Applicant by (a) 'Order' dated 01.01.2024 of 'Commissioner of Police, Mira Bhayandar & Vasai-Virar' & (b) 'Order' dated 17.02.2024 of 'Commissioner of Police, Mira Bhayandar, Vasai-Virar from 'Traffic Branch, Vasai' to 'Uttan Sagari Police Station' for reasons recorded above does not infringe provisions of 'Section 22(N)(1)(b)' of 'The Maharashtra Police Act 1951' which specifically provides 'Police Constables' with 'Normal Tenure' of 'Five Years' at 'One Place of Posting'. The Applicant upon being transferred from 'Traffic Branch Vasai' to 'Uttan Sagari Police Station' continues to serve within establishment of 'Commissioner of Police, Mira Bhayandar, Vasai-Virar' and is still stationed at 'One Place of Posting'; as enunciated by **'Judgment' dated 01.09.2021 of Hon'ble High Court at Bombay in Writ Petition No.9984/2019 and other Writ Petitions : State of Maharashtra & Anr. Vs. Anuradha S. Dhumal & Ors.**

31. The 'Statutory Right' of Applicant as defined under 'Section 22N(1)(b) of 'The Maharashtra Police Act 1951' is not infracted because his transfer from 'Traffic Branch, Casai' to 'Uttan Sagari Police Station' by (a) 'Order' dated 01.01.2024 & (b) 'Order' dated 17.02.2024 of 'Commissioner of Police; Mira Bhayandar & Vasai-Virar' are based on recommendations made by 'PEB' and on specific grounds of 'On account of 'Administrative Exigencies' under 'Section 22(N)(2) of 'The Maharashtra Police Act 1951' and they do not displace Applicant in manner so as to truncate his 'Normal Tenure' of 'Five Years' at 'One Place of Posting' under establishment of 'Commissioenr of Police, Mira Bhayandar & Vasai Virar'. Hence, the following Order.

ORDER

(A) The O.A. No. 297/2024 is Dismissed.

(B) No Order as to Cost.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Mumbai

Date : 18.12.2024

Dictation taken by :

S.K. Wamanse.

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