

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.444 OF 2016

DISTRICT : KOLHAPUR

Dr. Shri Rajesh Vasant Rao Jadhav.)
Age : 36 Yrs, Occu.: Service as Medical)
Officer at Shirol Rural Hospital at Shirol,)
Tal.: Shirol, District Kolhapur and R/o.)
Dr, J.J. Magdum Hsg.Soc., Plot No.20,)
Agar Bhag, Jaysingpur, Tal. Shirol,)
District : Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Public Health Department,)
Having Office at 10th Floor, G.T.)
Hospital Building, Mumbai 400 001.)
2. The Director of Health Services.)
M.S, Having Office at Arogya Bhavan)
1st Floor, St. George's Hospital)
Compound, Near CST Station,)
Mumbai 400 001.)
3. The District Civil Surgeon, Kolhapur,)
Having office at Chhatrapati)
Pranilal Rajwade Hospital)
Compound, Dasara Chowk,)
Kolhapur.)...**Respondents**



Mr. P.S. Bhavake, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

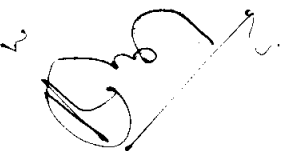
DATE : 17.01.2017

JUDGMENT

1. A Medical Officer having been transferred from Rural Hospital, Shirol to Sub-District Hospital, Gadhinglaj within the matter of a couple of weeks is aggrieved thereby and is up before me by way of this Original Application (OA).

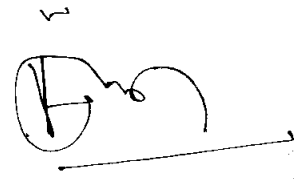
2. I have perused the record and proceedings and heard Mr. P.S. Bhavake, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

3. The Applicant is a Doctor and while in service, he did his Post Graduation (MS) in Gynecology. It is the case of the Applicant that even at this young age, he has become a heart patient which attended risk and need for treatment, etc. It follows, therefore, that he is advised against the physical strain beyond a certain limit. He has annexed documents in support of his health condition. By



an order dated 18th January, 2016 which is at Exh. 'E' (Page 26 of the Paper Book (PB)), 10 Doctors including the Applicant (Serial No.8) were transferred. In the preface to the order which is in Marathi, it was stated that the general transfers had been effected earlier, but some modifications were necessitated on account of request and other reasons. The Applicant came to be transferred from Sub-District Hospital, Gadhinglaj, District Kolhapur to Village Hospital Shirol, District Kolhapur. He was, however, relieved from Gadhinglaj only on 1.5.2016 while on 10.5.2016, the order herein impugned came to be issued which is at Exh. 'F' (Page 28 of the PB). That order in its side-heading in Marathi mentions the subject as 'Transfer of Medical Officers' (in Marathi वैद्यकीय अधिका-यांच्या बदलीबाबत). It was therein mentioned in so far as the Applicant was concerned that his earlier transfer from Gadhinglaj to Shirol made on his personal request and as per the recommendation of a public representative was cancelled and he in the manner of speaking was reposted at Gadhinglaj. As already indicated above, it is this order of transfer which is the subject matter of challenge in this OA.

4. Vide the Affidavit-in-reply filed by Shri Namdev G. More, an Administrative Officer in the Office of Sub-



District Hospital, Gadhinglaj, elaborate pleadings have been made as to how the administrative reasons compelled the impugned order to be made in which connection, the strength of specialty-wise Doctors has been set out. It appears to be the case of the Respondents that the opening for Gynecologist at Shirol is just one while the Applicant would be 2nd Gynecologist there. Further, the number of Doctors at Gadhinglaj had dwindled down, and therefore, more Doctors were required at Gadhinglaj. The fact, however, remains that here the appointments, transfers, etc. are made of Medical Officers. Once the orders are issued, they would be statute regulated.

5. It is an indisputable factual position that the present matter is governed by the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act). It is equally clear that the requirement of the said law in so far as the Applicant's transfer from Shirol to Gadhinglaj is concerned was not observed at all. Even the signature of the Hon'ble Chief Minister if one were to take the noting as it is was, taken on 2.7.2016 by which time, the transfer had already been made. In the manner of speaking, the result brought into existence was that the approval of the competent authority

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did not precede but succeeded the impugned order of transfer.

6. Ms. Gohad, the learned Presenting Officer (PO) in fact wanted to make an hairline distinction by pointing out that the present was an instance of change of posting rather than transfer. It is not possible at all for me to agree with her because in the first place, as rightly pointed out by Mr. Bhavake, the learned Advocate for the Applicant, the word, 'transfer' as defined by Section 2(1)(i) of the Transfer Act is, "transfer means posting of a Government servant from one post, office or department to another post, office or department". Therefore, granting all latitude to the learned PO, it is a transfer, pure and simple within the meaning of the said word as defined by the Act and the hair splitting is futile. Besides, the orders of transfer at more places than one, use the word in Marathi which when translated in English would mean "transfer". And still further and most importantly, the Court has to determine on the basis of the material on record as to whether the ingredients that are required to constitute transfer are present or not. If they are present, then regardless of whatever word has been used, it would be transfer in accordance with the provision of the Transfer Act. The ingenuity in the matter of wording an order necessitated perhaps by the codified condition of



service that transfer is, and which could be a pain in the neck of the authorities, they might coin various words, but that would not derogate against what is the legal implication of a particular order. I have, therefore, got no hesitation in rejecting the submissions in this behalf of the learned PO Ms. Gohad.

7. The crux of the matter, therefore, is that it was clearly a case of mid-tenure transfer having been effected less than two weeks after it was issued and I need not even put on anvil, the reasons that according to the Respondents impelled them to effect the transfer too soon as it were. If they had a genuine cause to do so, then they ought to have followed the procedure laid down by the Transfer Act which as already discussed above has not been done. I am, therefore, quite clearly of the opinion that the impugned order is unsustainable in law. By an interim order made by me presiding over the Vacation Bench on 26th May, 2016, I had directed status-quo to maintain after defining it with the result, the Applicant continued to function at Shirol. Now, in my opinion, the said interim order will have to be confirmed.

8. The order herein impugned transferring the Applicant from Shirol to Gadhinglaj vide Exh. 'F' (Page 28



of the PB) dated 10th May, 2016 is hereby quashed and set aside. The interim order above referred to is confirmed. The Respondents are directed to let the Applicant function as at present at Shirol till such time as by law and rules, he becomes due for transfer. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
17.01.2017

Mumbai
Date : 17.01.2017
Dictation taken by :
S.K. Wamanse.

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