

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.952 OF 2023

DISTRICT : THANE

Sub.:- Transfer

Mrs. Gayatri Thonge Patil.)
Age : 42 Yrs, Occu.: Service,)
R/o. Tarangan, Purva B-404, Wayle Nagar,))
Khadakpada, Kalyan West – 421 301.) **...Applicant**

Versus

1. The State of Maharashtra.)
Through its Secretary,)
Public Health Department,)
Mantralaya, Mumbai – 400 032.)
2. The Director of Health (2),)
Maharashtra State, Pune, having)
office at Arogya Seva Sanchanalay,)
Central Building, 1st Floor,)
Pune – 411 001.)
3. Deputy Director of Health,)
Mumbai Division, Thane, having)
office at Regional Mental Hospital)
Compound, Thane (W) – 400 604.)
4. Mrs. Sheetal S. Nagre.)
Age : 45 Yrs., Occu.: Service,)
Presently working as Dietician at)
Regional Mental Hospital, Regional)
Mental Hospital Road, Dharmveer)
Nagar, Thane West, Thane – 400 601))
5. Mrs. Priya Sunil Gurav.)
Age : 45 Yrs., Occu.: Service,)
Presently working at District General)
Hospital, Dharmveer Nagar,)
Thane West – 400 601.) **...Respondents**

Shri A.A. Devkhile, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondent Nos.1 to 3.

Ms. Sakshi Thombre, Advocate for Respondent No.4.

CORAM : Shri Debashish Chakrabarty, Member-A

DATE : 26.04.2024

JUDGMENT

1. The Applicant who is serving on post of 'Dietician' has invoked provisions of 'Section 19' of the Administrative Tribunals Act, 1985 to seek cancellation of 'Transfer Order' dated 30.06.2023 of 'Respondent No.4' and 'Respondent No.5' and thereupon to be transferred to post of 'Dietician' in District Civil Hospital, Thane on grounds of having served in 'Tribal & Remote Areas' as per GAD GR dated 06.08.2002.

2. The learned Advocate for Applicant stated that on 26.09.2007 the Applicant came to be posted as 'Dietician' in 'Sub-District Hospital Dahanu, District Palghar'.

3. The learned Advocate for Applicant further stated that since appointment of Applicant as 'Dietician' on 26.09.2007 till 15.06.2015; she worked as 'Dietician' in 'Sub-District Hospital Dahanu, District Palghar'. Then Applicant was transferred from 'Sub-District Hospital Dahanu, District Palghar' to 'Central Hospital, Ulhasnagar, Thane' where she worked from 16.06.2015 to 17.08.2021.

4. The learned Advocate for Applicant then stated that Applicant upon completion of total tenure of 'Six Years' had become due for transfer from 'Central Hospital, Ulhasnagar, Thane'; she was transferred from 'Central Hospital, Ulhasnagar, Thane' to 'Sub-Division Hospital, Jawhar, District Palghar' and has been working on this post as 'Dietician' since 23.11.2021.

5. The learned Advocate for Applicant then contended that as 'Respondent No.4 and Respondent No.5' who were working at (a) District Civil Hospital, Thane and (b) Regional Mental Hospital, Thane' had become due for transfers on completion of tenures of 6 Years; the Applicant made request to 'Director, Health Services, Pune' on 14.11.2022 to transfer her to either of these posts 'Dieticians'; as her Son was studying in '12th Standard' and family was residing in Kalyan, District Thane.

6. The learned Advocate for Applicant further contended that Applicant specifically had mentioned that 'Respondent No.4 and Respondent No.5' who have been working in (a) District Civil Hospital, Thane and (b) Regional Mental Hospital, Thane' had never served in "Tribal & Remote Areas" since their appointment as 'Dieticians'. The Applicant on the other hand had worked more than 8 years in "Tribal & Remote Areas" and considering 'Personal Hardships', her request should be considered and she be posted as 'Dietician' in either (a) District Civil Hospital, Thane and (b) Regional Mental Hospital, Thane'.

7. The learned Advocate for Applicant emphasized that 'Deputy Director of Health Services, Mumbai Division, Thane' had issued 'Office Circular' on 10.04.2023 for 'General Transfers : 2023' in respect of all employees including 'Dieticians'. The 'Deputy Director of Health Services, Mumbai Division, Thane' had also directed all employees to fill in the forms as per 'Office Circular' of 10.04.2023 and submit them on or before 17.04.2023.

8. The learned Advocate for Applicant then contended that as Respondent No. 4 and Respondent No. 5 were due for transfer, they had submitted online information' as directed by 'Office Circular' dated 10.04.2023 of 'Deputy Director of Health Services, Mumbai Division, Thane'; however, in the column regarding "exemption from transfer process", it was mentioned 'लागू नाही'. Further it was pertinent to note that

both Respondent No. 4 and Respondent No. 5 have never worked in "Tribal & Remote Areas". The Applicant on 15.04.2023 made request to 'Deputy Director of Health Services, Mumbai Division, Thane' for special consideration of her case on the grounds of 'Personal Hardships' for transfer to post of 'Dieticians' either in (i) District Civil Hospital, Thane or (ii) Regional Mental Hospital, Thane.

9. The learned Advocate for Applicant further submitted that 'Deputy Director of Health Services, Mumbai Division, Thane' on 03.05.2023 issued another 'Office Circular' giving guidelines for request transfers of employees who had completed 1 year of service at their places of postings and wished to get transferred to any particular location. So, Applicant again submitted 'Online Information' for such request transfer and subsequently also hard copy through superior authorities in Sub-Division Hospital, Jawhar, District Palghar to 'Deputy Director of Health Services, Mumbai Division, Thane' by letter dated 03.05.2023.

10. The learned Advocate for Applicant further mentioned that 'Deputy Director of Health Services, Mumbai Division, Thane' on 13.06.2023 issued 'Transfer Order' of 'Dieticians' who had completed tenures of more than 6 years and thus were due for transfer on 31.05.2023. However, it is pertinent to note that although both Respondent No. 4 and Respondent No.5 were due for transfer on 31.05.2023 as they had completed tenures of more than 6 years on their respective posts of 'Dieticians' at (a) 'District Civil Hospital, Thane' and (b) 'Regional Mental Hospital, Thane', only 'Respondent No. 5' came to be transferred from 'District Civil Hospital, Thane' to 'Sub-District Hospital, Mangaon, Raigad'. Further, it was equally important to note that, even though 'Respondent No. 4' was also due for transfer on 31.05.2023 having completed total tenures of 6 Years, her name was not included in 'Transfer Order' dated 13.06.2023 for reasons best known to 'Deputy Director of Health Services, Mumbai Division, Thane'.

11. The learned Advocate for Applicant then highlighted discrimination and prejudice against Applicant by emphasizing that after vacant post of 'Dietician' at District Civil Hospital, Thane had been generated following transfer of 'Respondent No. 5' to Sub-District Hospital, Mangaon, Raigad, it should have been offered to Applicant as per her representation submitted on 03.05.2023.

12. The learned Advocate for Applicant argued strongly that 'Director of Health Services, Pune' issued 'Transfer Order' dated 30.06.2023 making partial changes in earlier 'Transfer Order' of 'Deputy Director of Health Services, Mumbai Division, Thane' dated 13.06.2023 only to favour Respondent No.4 and Respondent No.5. By these partial modifications, the 'Director of Health Services, Pune' transferred Respondent No.4 from 'Regional Mental Hospital, Thane' to 'District Civil Hospital, Thane' and Respondent No.5 from 'Sub-District Hospital, Mangaon, District Raigad' to 'Regional Mental Hospital, Thane'. The 'Transfer Order' dated 30.06.2023 of 'Director of Health Services, Pune' was thus in complete violation of policy guidelines of in GAD GR dated 09.04.2018. The Applicant thereafter on 01.07.2023 submitted representation to 'Director of Health Services, Pune' highlighting that Respondent No.4 and Respondent No.5 had served only in these two 'Health Institutions' in Thane City and again requested to post her as 'Dietician' at 'District Civil Hospital, Thane' which had fallen vacant by earlier 'Transfer Order' dated 13.06.2023 of 'Deputy Director of Health Services, Mumbai Division, Thane'.

13. The learned Advocate for 'Respondent No.4' on other hand stated that as Applicant had completed her 6 years' tenure at Central Hospital Ulhasnagar-3 serving from 16.06.2015 to 17.08.2021 she was eligible for transfer as per provisions laid down in 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. The Applicant therefore was transferred from 'Central Hospital, Ulhasnagar-3' to 'Sub-District Hospital, Dahanu,

District Palghar' on 17.08.2021 as per the request made by Applicant during Counselling Season. Thereafter 'Deputy Director of Health Services, Mumbai Division, Thane' had partially modified her place of posting to Sub-Division Hospital, Jawhar, District Palghar. She joined her duties at Sub-Division Hospital, Jawhar, District Palghar on 23.11.2021.

14. The learned Advocate for Respondent No.4 further stated that by 'Transfer Order' dated 13.06.2023 of 'Deputy Director of Health Services, Mumbai Division, Thane' initially 'Respondent No.5' was transferred to Sub-District Hospital, Mangaon, District Raigad. However, later Respondent No.5 had requested for change of her posting from 'Sub-District Hospital, Mangaon, District Raigad' to 'Regional Mental Hospital, Thane'.

15. The learned Advocate for Respondent No.4 further stated that both Respondent No. 4 & Respondent No.5 were due for transfers and as per request of Respondent No.5, the 'Transfer Order' dated 13.06.2023 of 'Deputy Director of Health Services, Mumbai Division, Thane' was partially modified from 'Sub-District Hospital, Mangaon, District Raigad' to 'Regional Mental Hospital, Thane' and as Respondent No.4 was in any case due for transfer, she also came to be transferred from 'Regional Mental Hospital, Thane' to 'District Civil Hospital, Thane' on 30.06.2023. Hence, the actions taken by 'Director of Health Services, Pune' as next 'Superior Transferring Authority' in issuing modified 'Transfer Order' dated 30.06.2023 were just and legal under provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

16. The learned Advocate for Respondent No.4 emphasized that Applicant had mentioned reason why she wanted transfer to post of 'Dietician' in 'District Civil Hospital, Thane' which was to complete her 'Ph.D'. and because her 'Husband' works in 'Maharashtra State

Electricity Co. Ltd.’ at O&M Division, Bhandup. The learned Advocate for Respondent No.4 further stated that as per guidelines in GAD GR dated 09.04.2018, Applicant has not completed her tenure at ‘Sub-Divisional Hospital, Jawahar, District Palghar’ and thus Respondent No.4 came to be transferred to ‘District Civil Hospital, Thane’ by modified ‘Transfer Order’ dated 30.06.2023 of ‘Director of Health Services, Pune’.

17. The learned PO mentioned that as now there was no ‘Vacant Post’ of ‘Dieticians’ in both (i) District Civil Hospital, Thane and (ii) Regional Mental Hospital, Thane; as these had been recently occupied by Respondent No.4 & Respondent No.5; therefore request of Applicant cannot be considered as per provisions of ‘Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005’.

18. The learned PO further explained that under ‘Deputy Director of Health Services, Mumbai Division, Thane’, there were 9 ‘Sanctioned Posts’ of ‘Dieticians’ in various ‘Health Institutions’ and only 2 posts of ‘Dieticians’ were vacant at present in (i) ‘Sub-District Hospital, Mangaon, District Raigad’ and (ii) ‘Sub-District Hospital, Dahanu, District Palghar’. Further, in cases of administrative exigency or even of request transfers, although Government Servants should not be transferred to post where they have previously served, this restrictive condition does not apply to isolated posts such as that of ‘Dietician’ as they do not have any channels of promotion and have to necessarily serve till their superannuation on these 9 ‘Sanctioned Posts’ of ‘Dieticians’ under jurisdiction of ‘Deputy Director of Health Services, Mumbai Division, Thane’.

19. The Affidavit-in-Reply of the ‘Director Health Services, Pune’ dated 23.01.2024 and ‘Deputy Director Health Services, Mumbai Region, Thane’ dated 30.20.2023 do not disclose any plausible and acceptable reasons as to how Respondent No.4 and Respondent No.5, as ‘Dieticians’

have been permitted to continuously serve for unusually long period to time at (i) District Civil Hospital, Thane and (ii) Regional Mental Hospital, Thane. Even after such protracted tenures, whenever they were transferred it appears this was invariably done in tandem and designed for exclusion of all other 'Dieticians' under jurisdiction of 'Deputy Director of Health Services, Mumbai Division, Thane'. Therefore, it is quite evident that even after they were shown as transferred, it was in effect just lateral cum mutual shifting of Respondent No.4 and Respondent No.5 from posts of 'Dieticians' in (i) District Civil Hospital, Thane and (ii) Regional Mental Hospital, Thane. Hence, Respondent No.4 and Respondent No.5 have both managed to 'Game the System' while being beneficiaries of undue benevolence shown by both 'Director of Health Services, Pune' and 'Deputy Director of Health Services, Mumbai Region, Thane' who have acted in cohesion to undermine the spirit of law in Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and contravene guidelines in GAD G.R. dated 09.04.2018. Such well-orchestrated pre planned acts of commission and omission on part of both 'Director of Health Services, Pune' and 'Deputy Director of Health Services, Mumbai Region, Pune' is not only condemnable but even deserves initiation of appropriate action for contravention of 'Rule 3(vi)', 'Rule 3 (ix)' and 'Rule (xviii)' of Maharashtra Civil Services (Conduct) Rules, 1979.

20. The grievances of Applicant in O.A.952 of 2023 cannot be overlooked just because she had joined at 'Sub-District Hospital, Jawahar, District Palghar' on 23.11.2023 and thus yet to complete tenure of 6 Years; because it is imperative in such cases not only to enforce provisions of law but also to promote transparency and fairness in decision making by concerned 'Public Authorities'. Hence, stringent directions are required to be given to 'Director, Health Services, Pune' and 'Deputy Director, Health Services, Mumbai Region, Thane' to enlighten themselves about provisions of 'Maharashtra Government

Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' besides guidelines in G.A.D. G.R. dated 09.04.2018 as well as GRs & Circulars of GAD relating to transfers of 'Government Servants'.

21. The ring fence which has been erected around posts of 'Dieticians' at both (i) District Civil Hospital, Thane and (ii) Regional Mental Hospital, Thane over the years by 'Director of Health Services, Pune and 'Deputy Director, Health Services, Mumbai Region, Thane therefore has to be torned down, so as to ensure non-partisan implementation of law, rules and administrative instructions. Hence, during General Transfers : 2024, the post of 'Dieticians' at (i) District Civil Hospital, Thane and (ii) Regional Mental Hospital, Thane should invariably be made available for appointment to all those 'Dieticians' who have never served on them and shift Respondent No.4 and Respondent No.5 to posts that they have never been transferred to; especially considering the greater significance of equity and equality in taking decisions to effect transfers in small cadres such as of 'Dieticians' with only 9 'Sanctioned Posts' under 'Deputy Director, Health Services, Mumbai Region, Thane'. The provisions of Section 4(4)(ii) and Section 4(5) may be invoked by 'Competent Transferring Authority' and next 'Superior Transferring Authority', as facts highlighted in case of Applicant are reasons good enough to exercise these residuary 'Statutory Powers'. Further; as this remedial course of action has to be taken without fail by 'Director, Health Services, Pune and 'Deputy Director, Health Services, Mumbai Region, Thane during 'General Transfers : 2024', it would be desirable that adequate oversight is kept by (i) 'Principal Secretary, Public Health Department' and (ii) 'Commissioner of Health Services'. Hence, copy of the judgment be forwarded to (i) Principal Secretary, Public Health Department and (ii) Commissioner of Health Services. Hence, the following Order.

ORDER

- (A) Original Application is Partly Allowed.
(B) No order as to Costs.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Mumbai

Date : 26.04.2024

Dictation taken by :

S.K. Wamanse.

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