

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 102 OF 2024

(Subject:- Transfer)

DISTRICT:-OSMANABAD

Shirish Ramchandra Yadav)
Age; 54 years, Occ; Govt. Service Presently)
Working as Dy. District Election Officer,)
c/o Collector Office, Osmanabad.)
Email; yadavshirish@gmail.com)
Mob. No. 9545188005) **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through Additional Chief Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai 400 032.)
- 2. The Divisional Commissioner,**)
Aurangabad Division, Aurangabad.)
- 3. Sandeep Kulkarni**)
Age: Major, Occ; Dy. Collector (GAD))
Collector Office, Nanded.)
Ta. & Dist. Nanded.) **RESPONDENTS**

APPEARANCE : Shri J.J. Patil, learned counsel for
the applicant.
: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATE : **08.05.2024.**

ORAL - ORDER

Heard Shri J.J. Patil, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities finally with consent at admission stage.

2. This is about the transfer of the applicant who is working as Deputy Collector presently working as Deputy District Election Officer, Dharashiv.

3. Learned counsel for the applicant submits that neither the district Dharashiv is the home district of the applicant nor he has completed three years out of last four years in Revenue District, Dharashiv. Learned counsel for the applicant has pointed out the order dated 12.06.2023. By the said order dated 12.06.2023, the applicant came to be transferred from the post of Deputy District Election Officer, Beed to Deputy District Election Officer, Dharashiv. Learned counsel for the applicant submits that by impugned order dated 31.01.2024, the applicant came to be transferred mid-tenure on the post of Special Land Acquisition Officer, Nanded.

4. Learned counsel for the applicant submits that in terms of clause No. (v) of paragraph No.6 of the directives issued by Election Commission of India by way of communication dated 21.12.2023, no officer/official, against whom a criminal case related to official functioning is pending in any court of law, be associated with/deployed on election related duty.

5. Learned counsel for the applicant submits that way back in the year 2005, one crime bearing No. 579/2005 and in the year 2015, another crime bearing No. 3117/2015 came to be registered against the applicant. Both the crimes are registered under prevention of Corruption Act, 1988 and in connection with both these crimes, criminal cases are still pending in the court.

6. Learned counsel for the applicant submits that in terms of clause No. (v) of paragraph No. 6 of the directives issued by Election Commission of India by way of communication dated 21.12.2023, the case of the applicant is not covered under the transfer policy as declared by the Election Commission of India and as the matter of

precaution, the Commissioner desires that he should not be associated with/deployed on election related duty.

7. Learned counsel for the applicant has further pointed out the communication made by the Collector, Dharashiv dated 25.01.2024 to the Government of Maharashtra wherein the Collector, Dharashiv made it clear that the applicant can be posted as Deputy Collector, Land Acquisition Medium Project No.02 which post is not connected with the elections. Learned counsel for the applicant submits that despite this communication and even though the transfer policy as declared by the Election Commission of India is not applicable to the case of the applicant, by way of impugned order of transfer, the applicant came to be transferred. Learned counsel for the applicant submits that the Original Application deserves to be allowed.

8. Learned Presenting Officer submits that in terms of the directives issued by Election Commission of India particularly clause No.(v) of paragraph No. 6 of the said directives dated 21.12.2023, the applicant has been rightly transferred from the post of Deputy District Election Officer, Dharashiv to Special Land Acquisition Officer, Nanded.

Learned P.O. submits that the applicant was directly connected with the Election while working as a Deputy District Election Officer, Dharashiv and as such, he was required to be transferred. There are two crimes registered against the applicant under the prevention of Corruption Act for which the Criminal Cases are still pending before the Court. Learned Presenting Officer submits that there is no substance in the Original Application and the same is liable to be dismissed.

9. On careful perusal of the directives issued by Election Commission of India by way of communication dated 21.12.2023 particularly paragraph No.6 it appears that the Election Commission of India formulated the categories of the officers not covered under transfer policy. It also observed in paragraph No. 6 that the Commission has no intention of massive dislocation of state machinery by large scale transfer. Hence, the aforesaid transfer policy is normally not applicable to the categories of officers as mentioned below. Paragraph No. 6 of the said directives is reproduced hereinbelow:-

“6. **Categories of Officers not covered under transfer policy**

During an election, a large number of employees are drafted for different types of election

duty and the Commission has no intention of massive dislocation of state machinery by large scale transfers. Hence, the aforesaid transfer policy is normally not applicable to the categories of officers mentioned below:-

- “(i) Officers posted in the State headquarters of the department concerned.*
- (ii) Officers/Officials who are not directly connected with elections like doctors, engineers, teachers/principals etc. However, if there are specific complaints of political bias or prejudice against any such govt. officer, which on enquiry, are found to be substantiated, then CEO/ECI may order not only the transfer of such official but also appropriate departmental action against the said officer.*
- (iii) The officers appointed as Sector Officer/Zonal Magistrate involved in election duties are not covered under these instructions. However, the observers, CEO/DEOs and ROs should keep a close watch on their conduct to ensure that they are fair and nonpartisan in the performance of their duties.*
- (iv) Is further directed that the officers/officials against whom the Commission had recommended disciplinary action in past and which is pending or which has resulted in a penalty or the officers who have been charged for any lapse in any election or election related work in the past, shall not be assigned any election related duty. However, an officer who was transferred during any past election under the Commission's order without any recommendation of disciplinary actions will not be, just on this ground, considered for transfer, unless specifically so directed by the Commission. A copy of the Commission's instruction number 464/INST/2008-EPS dated 23rd December 2008 regarding tracking of names of tainted officers is enclosed. CEOs must ensure its compliance.*
- (v) The Commission further desires that no officer/official, against whom a criminal case related to official functioning is pending in any court of law, be associated with/deployed on election related duty.*

- (vi) *Any officer, who is due to retire within the coming six months will be exempted from the purview of the Commission's directions mentioned in para-3. The six months period shall be reckoned backwards from 30th June, 2024. Further, officer falling in the category (home district/3 years+ criteria and due to retire within 6 months) if holding an election related post mentioned in para 5, shall be relieved of that charge and not be associated with any election related duty. It is however, reiterated that such retiring officer need not be transferred out of the district.*
- (vii) *All the officials of the State (except those posted in the office of the Chief Electoral Officer), who are on extension of service or re-employed in different capacities, will not be associated with any election related work.”*

10. In view of the title and clarification in paragraph No. 6, sub clause No. (v) is required to be read. It is thus clear on reading clause No.(v) of paragraph No. 6 that if the criminal case related to official functioning is pending in any court of law, such Government servant is not required to be transferred as such officer is not covered under the transfer policy. The Commission has however, pressed the rider that such officer/official shall not be associated with/deployed on election related duty.

11. In my considered opinion, learned Collector of Dharashiv understood correctly the purport of paragraph No. 6 and clause No. (v) of the directives issued by Election Commission of India dated 21.12.2023. By way of

communication dated 25.01.2024, the Collector, Dharashiv has informed to the Government that the applicant may be posted as Deputy Collector, Land Acquisition Medium Project No.02 which post is not connected with any election duties. However, ignoring the mandate of the directives issued by Election Commission of India so also the correct interpretation drawn by the learned Collector, Dharashiv, the impugned order of transfer seems to have been passed.

12. In view of above, the impugned transfer order to the extent of applicant is not sustainable in the eyes of law particularly in terms of clause No. (v) of paragraph No.6 of the directives issued by Election Commission of India dated 21.12.2023. The purpose can be served if the applicant is posted on some non-executive post in Revenue District, Dharashiv itself without transferring him in any other district. Hence, the following order:-

ORDER

The Original Application is hereby allowed in the following terms:-

- (A) The impugned transfer order dated 31.01.2024 (Annexure 'F') is hereby quashed and set aside to the extent of the present applicant.

- (B) Needless to say that in terms of communication dated 25.01.2024 issued by the Collector, Dharashiv to Government, the applicant may be given the posting in Revenue District Dharashiv itself on any non-executive post i.e. Deputy Collector, Land Acquisition Medium Project No.02 as per the vacancy available. In case if it is not so available for want of vacancy, the applicant may be given the posting on any non-executive post in the same district for which the applicant may not raise any objection as agreed.
- (C) In the circumstances, there shall be no order as to costs.
- (D) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad
Date : 08.05.2024
SAS O.A. 102/2024(S.B.) Transfer