

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 956/2024 (S.B.)**

Dr. Shashikant Vithobaji Dhoble,
Aged about 38 years, Occ. Service,
R/o Presently working in Government Medical College,
Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary Department of Education Drugs,
Mantralaya, Mumbai- 400 032.
- 2) Commissioner, Medical Education and Research,
Mumbai.
- 3) Dean, Govt. Medical College,
Chandrapur.

Respondents

Shri N.R.Saboo, Id. Advocate for the applicant.

Shri S.A.Deo, Id. C.P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 11th December, 2024.

Judgment is pronounced on 13th December, 2024.

Heard Shri N.R.Saboo, Id. counsel for the applicant and
Shri S.A.Deo, Id. C.P.O. for the Respondents.

2. Case of the applicant is as follows. In the year 2018 he joined on the post of Assistant Professor in the department of Forensic Medicine in G.M.C., Chandrapur. He was not subjected to transfer at the time of annual general transfers which were to be effected only till 31.08.2024 as per extended limit. The impugned order of his transfer (A-A-1) was issued on 23.09.2024 whereunder he was transferred to I.G.G.M.C., Nagpur. Elaborate guidelines contained in G.R. dated 09.04.2018 were not followed. Though, the impugned order refers to compliance of Sub Sections (4) & (5) of Section 4 of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, there were no exceptional circumstances or special reasons nor could his case be said to be a special case. In fact, apart from him there was no other teaching staff in the department of Forensic Medicine in G.M.C., Chandrapur. The impugned order runs counter to N.M.C. notification dated 28.10.2020 (A-2) which stipulates minimum requirements for annual M.B.B.S. admissions. In fact, respondent no. 3, by communications dated 23.05.2023, 07.06.2023 and 10.08.2023 (A-3, A-4 & A-5, respectively) had requested for providing additional teaching staff in the department of Forensic Medicine in G.M.C., Chandrapur. The applicant had also stressed the need for additional staff in his department by issuing

various communications (A-7, collectively). Specific pleading of the applicant is as follows:-

The applicant was surprised as to how in the month of September, 2024, impugned transfer order can be issued particularly when in the department of Forensic Medicine, GMC, Chandrapur, except his posting there is no other teaching staff. It is submitted that as per norms issued by National Medical Commission, New Delhi, in the department Forensic Medicine one post of Professor, one post of Associate Professor & one post of Assistant Professor is mandatory, failing which seats for MBBS Course & Post Graduation Course may reduced in said faculty. It is submitted that at present in Faculty of Forensic Medicine, GMC, Chandrapur except applicant, other posts of Professor, Associate Professor & one post of Asst. Professor are vacant. Impugned order of transfer of applicant will result in no teaching staff in faculty of Forensic Medicine.

Applicant submits that no other Assistant Professor is transferred in his place. The respondent No.1 with oblique motive in haste issued impugned transfer order under the garb of administrative exigency in colourable exercise of power vested in it.

Applicant submits that while working in respondent No. 3 College he was appointed as Incharge HOD of Forensic Medicine faculty. Applicant is already appointed as Guide to students who are pursuing their P.G. Course. Needless to mention the P. G. course of students is yet to be completed. Applicant submits that as per practice as adopted by respondent department till completion P. G. Course of such students transfer of Guides are avoided.

Applicant submits that since impugned transfer order was passed in month of September, which causes hardship to shift family during such mid-session having other difficulties of accommodation at the place of transfer it is necessary to cancel the impugned transfer order. Applicant submits that his son is studying in Convent College at Chandrapur. Applicant submits that his wife Dr. Shital Dhoble, Asst. Professor in Department of Community Medicine is working in the respondent No. 3 College. As per policy of Govt. as well as G.R. dated 09.04.18, posting of husband & wife nearby station is required to be considered. Old aged father of applicant who is staying with him & having several medical ailment needs personal care.

Applicant submits that no other Assistant Professor is transferred in his place. Applicant submits after having worked on 23.09.24 till office hours, he got information about impugned transfer order. Applicant submits that till date Respondent No.3 did not issue any order to hand

over charge. Needless to mention in faculty of Forensic Medicine since there is no other teaching staff, question of giving additional charge does not arise. Applicant submits that although in the impugned order reference of relieving is ref. by Respondent No.1, till date no order is issued by Respondent No.3. It is submitted that since nobody is posted in place of applicant it is necessary to direct the respondents to permit him to work on the existing post in the respondent No. 3 College.

3. Stand of the respondents is as follows. Transfer is an incident of service. The applicant had served for six years in G.M.C., Chandrapur and he was due for transfer. While passing the impugned order provisions of the Transfer Act were scrupulously followed. There were cogent reasons to pass the impugned order as would be demonstrated by minutes of meeting of Civil Services Board (A-R-1). Guidelines in G.R. dated 09.04.2018 are directory and not mandatory. Moreover, these guidelines do not apply to transfers effected by taking recourse to Sub Sections (4) & (5) of Section 4 of the Transfer Act. Administrative exigency will have primacy over Couple Arrangement Scheme. Specific pleading of the respondents is as follows:-

There is strength of Two hundred MBBS Students in Indira Gandhi Government Medical College, Nagpur and the said Government medical College conducts approximately Two Thousand postmortems in a year and there are 6 posts in Forensic Medicine which were lying vacant. As such although there was huge work of Forensic Medicine available in Indira Gandhi Government Medical College, Nagpur however there was dirth of employees in the department of Forensic Medicine and as such it was necessary to fill in all those vacant posts in Forensic Medicine Department on priority basis.

Due to the vacancy as stated above not only the administration of Indira Gandhi Government Medical College, Nagpur was suffering but the bright future of Two Hundred MBBS students who are taking education in the said college was also in dark. Moreover as per the norms of National Medical Commission it is mandatory to fill in the vacant posts in all the departments failing which there was a threat of discontinuing of the said department as per the norms of National Medical Commission. As such taking into consideration all these pros and cons, the Civil Services Board has recommended the transfer of the applicant along with the other Doctors at Indira Gandhi Government Medical College, Nagpur. In that view of the matter it can be clearly seen that there is no illegality committed by the respondents in transferring the applicant from Government Medical College, Chandrapur to Indira Gandhi Government Medical College, Nagpur when admittedly the applicant was due for transfer and has already completed his tenure.

A bare perusal of Minutes of Civil Services Board would reveal that not only after considering of pros and cons the members of civil services board have recommended the impugned transfer of the applicant but the same has also been approved by the highest competent authority i.e. the Hon'ble the Chief Minister and upon such approval given by the highest competent authority the impugned transfer order was issued on 03.09.2024.

Moreover the alternate arrangement has already been made by the respondent at Government Medical College, Chandrapur and the Respondents have taken utmost care that there would not be any difficulty to the three post graduate students who are taking education at Government Medical College, Nagpur.

It is submitted that One Shri Dr. Shailedra Dhawane who is working as Professor in Forensic Medicine has been transferred to Government Medical College, Chandrapur on 25.09.2024. Further there is no sanctioned post of Associate Professor in Forensic Department at Government Medical College, Chandrapur and there are 2 posts of Assistant Professor in Forensic Department out of which one post is occupied by applicant and other is vacant. Moreover the Respondents have posted Dr. Sharad Kuchewar as a post Graduate Guide at Government Medical College, Chandrapur vide order dated 08.03.2024 and he is eligible to take Three Post Graduate Students per year.

4. In his rejoinder the applicant has pleaded:-

It is submitted that although one Associate Professor Dr. Sharad Kuchewar had been transferred from Government Medical College,

Nagpur in the midterm only for 3 Days in a week for the education of post graduate students in the department as per order dtd.-08.02.24, Dr. Sharad Kuchewar has been reverted back to G.M.C., Nagpur as regular faculty. It is submitted that at present Dr. Sharad Kuchewar is not working in the department of Forensic Medicine G.M.C., Chandrapur but working as associate Professor at his parent institute G.M.C., Nagpur.

In their additional reply the respondents have traversed the pleading of the applicant in his rejoinder, as follows:-

The another contention made by the applicant in respect of the Associate Professor Dr. Sharad Kuchewar is that he has been sent back to his parent institute i.e. Government Medical College & Hospital, Nagpur. The same is also denied as there is no order issued to that effect from the Government. As such the contention of the applicant in respect of same cannot be taken into consideration for deciding the instant Original Application which is relating to the transfer of the applicant

The applicant has further pleaded:-

Applicant submits that at present in IGGMC, Nagpur, one professor Dr. Makrand Vyawhare and one Assistant Professor Dr. Shubham Monde and one senior resident Dr. Priyanka Soni are occupying the respective post. Apart from this fact 3 Gazetted Medical Officers, are working at Department of Forensic Medicine in Indira Gandhi Government Medical College, Nagpur. Thus, there is only deficiency of one Associate Professor which can be filled up by interview conducted recently for Associate Professor by Advs. No. 292/23, 298/23, 279/23 and 17/24 by M.P.S.C. Maharashtra.

5. Section 4 of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 reads as under:-

4. Tenure of transfer :-

(1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.

(2) The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.

(3) Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:

Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.

(5) Notwithstanding anything contained in section 3 or this section the competent authority may, in special cases, after recording reasons in writing and with the prior [approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.

According to the applicant, provisions of Section 4 of the Transfer and Act were not at all followed while transferring him. To counter this contention, the respondents have relied on minutes of

meeting of Civil Services Board held on 03.09.2024 relevant portion of which reads as under:-

प्रशासकीय बदलीचे कारण	नागरी सेवा मंडळाची शिफारस
<p>इंदिरा गांधी शासकीय वैद्यकीय महाविद्यालय, नागपूर या संस्थेतील एम.बी.बी.एस. या अभ्यासक्रमासाठी एकूण २०० इतकी विद्यार्थी क्षमता असून सदर संस्थेतील न्यायवैद्यकशास्त्र विभागात दरवर्षी सरासरी २००० पेक्षा अधिक शवचिकित्सा तसेच इतर न्यायवैद्यक तपासण्या देखील होतात. इंदिरा गांधी शासकीय वैद्यकीय महाविद्यालय, नागपूर येथील दोनही पदे रिक्त आहेत. विद्यार्थी हीत व लोकहीतास्तव सदर पद भरलेले असणे आवश्यक आहे. तसेच राष्ट्रीय वैद्यक आयोगाच्या निकषांनुसारही सदर पद भरणे आवश्यक आहे.</p>	<p>राष्ट्रीय आयुर्विज्ञान आयोगाचे निकष, विद्यार्थीहीत व लोकहीत विचारात घेता इंदिरा गांधी शासकीय वैद्यकीय महाविद्यालय, नागपूर येथे बदली करण्यात यावी.</p>

The minutes further show that transfer of one Dr. Choudhary was also recommended by the Civil Services Board from G.M.C., Chhatrapati Sambhajinagar to I.G.G.M.C., Nagpur in the department of Forensic Medicine. It is a matter of record that to these recommendations for transfers the Hon'ble Chief Minister had accorded approval.

6. The applicant has relied on the following rulings:-

A. **Ramakant Baburao Kendre Vs. State of Maharashtra & Another 2012 (1) Mh.L.J. 951 (Bombay High Court).** In this case it was concluded that there were neither special nor exceptional circumstances to effect the impugned transfer. It was held:-

However, at the same time, in order to enable the Court to exercise the powers of judicial review, at least it is necessary for an authority to write in brief as to how "a special case" is made out, so that the powers of judicial review, which has been held to be a basic structure of the Constitution, can be properly exercised by the High Court/Supreme Court. In that view of the matter, we find that the petition deserves to be allowed.

B. **S.B.Bhagwat Vs. State of Maharashtra & Ors. 2012 (3) Mh.L.J. 197 (Bombay High Court)** in this case it is held:-

Merely calling a case a special case does not constitute 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.

On facts, it was concluded that the impugned transfer order was passed in breach of statutory provisions.

C. **Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance & Development Corporation, Mumbai & Ors. 2013 (3) Mh.L.J. 463 (Bombay High Court).** In this case it is held that mandatory requirement of Section 4 (5) of The Maharashtra Government Servants

Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 cannot be ignored or by-passed.

D. Judgment of Principal Bench of this Tribunal dated 16.09.2014 in **O.A. No. 703/2014 (Shri Raosaheb Daulatrao Mahale Vs. Superintending Engineer, Mumbai and 3 Ors.)**. In this case it is observed:-

The existence of special reason etc. referred to in second proviso to S. 4(4) of the ROT Act 2005 is referable to an "objective" ground based on facts. The quality of objectivity is required to be found out from the measuring device implied by the ROT Act 2005.

The purpose and object of the prior approval as provided U/s 4 (5) of ROT Act 2005 is in order to have a dual check, control and the proper scrutiny in the matter of existence of the grounds based on special reasons and exceptional circumstances as reason for transfer.

In para 23 following factual observations were made:-

It is pertinent to note that Respondent No. 3 has for the sake of compliance of formality, employed in his letter dated 31.07.2014 the words which mean that "his office approves the transfer because the office of Superintending Engineer believes that such transfer was necessary in view of existence of special reason and exceptional circumstance". The language used in said letter reveals that in fact, the Respondent No.3 has surrendered all his authority and powers to the proposal in view that the transfer was supported by a dignitary. The version of Respondent No.3 reveals a message that since the proposal for transfer contains a version that there exist special reasons; Respondent No.3 accepts said version without it being his own decision upon application of his own mind.

7. The respondents have, on the other hand, relied on the following rulings:-

A. **Union of India & Ors. Vs. S.L.Abbas (1993) 4 SCC 357.** In

this case it is held:-

An order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it.

B. **Union of India & Ors. Vs. Ganesh Dass Singh 1995 Supp**

(3) SCC 214. In this case it is held:-

It is also not within the scope of permissible judicial review in such matters relating to mere transfer made by the competent authority for administrative reasons.

C. **Anil S/o Marotrao Khobragade Vs. State of Maharashtra**

& Ors. 2010 (2) Mh.L.J. 319 (Bombay High Court). In this case, on

facts, it was found that while effecting the transfer in the middle of the year on administrative grounds statutory provisions of the Transfer Act were followed and hence no interference was warranted.

D. **Airports Authority of India Vs. Rajeev Ratan Pandey &**

Ors. (2009) 8 SCC 337. In this case, on facts, case of the impugned

transfer order having been actuated by malafides, was held not to have been established.

E. **Santosh Nandalal Dalal Vs. State of Maharashtra & Ors. 2016 (1) Mh.L.J. 45 (Bombay High Court).** In this case it is held that Court/Tribunal is not expected to act as an Appellate Authority in matters of transfer.

F. **Union of India & Another Vs. Deepak Niranjana Nath Pandit (2020) 3 SCC 404.** In this case it is held that an employee cannot claim a posting as of right to place of his choice.

8. The principles laid down in the aforesaid rulings are well settled. What is crucial is whether on facts the impugned order of transfer can be said to be in consonance with or in breach of Section 4 of the Transfer Act. The applicant was due for transfer. The impugned order of transfer was passed on the basis of Sub Sections (4) & (5) of Section 4 of the Transfer Act. Minutes of meeting of Civil Services Board satisfactorily demonstrate that there were exceptional, special reasons to issue the impugned transfer order. Since the impugned order was passed by taking recourse to Sub Sections (4) & (5) of Section 4 of the Transfer Act, guidelines contained in G.R. dated 09.04.2018 were not required to be followed. There is absolutely nothing on record to show that the impugned order of transfer was malafide. Minutes of meeting of Civil Services Board establish that need at I.G.G.M.C. was more pressing. From

pleading of the respondents it can be gathered that care was taken to ensure that education of students in G.M.C., Chandrapur was not adversely affected. Proceeding to delve deeper than this would amount to exercising powers of appeal. Such exercise would be clearly beyond the limited scope of judicial review. For all these reasons, I have come to the conclusion that the impugned order does not suffer from any infirmity. In the result, the O.A. is dismissed with no order as to costs.

Member (J)

Dated :- 13/12/2024
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 13/12/2024
and pronounced on

Uploaded on : 16/12/2024