

J U D G M E N T

[Delivered on 7th October, 2016]

Applicant Samiuddin Shafiuddin Ansari is an Ophthalmic Officer, Group-C. Admittedly, he was serving at Rural Hospital, Talkheda, Tq. Majalgaon, District Beed w.e.f. 17-06-2013. Vide impugned order dated 31-05-2016, he has been transferred on the same post of Ophthalmic Officer, Group-C at Kasa, District Palghar. Said order of transfer has been challenged in this O.A. According to the applicant, he has filed representation for reconsideration of his transfer and to transfer him at or nearby Beed. However, his representation was not decided and hence he was constrained to file this O.A.

2. According to the applicant, he has not completed 2 normal tenures of 3 years each i.e. 6 years at Talkheda. His wife Mrs. Chisti Farhana Jabeen Riyaz Ahmad is working as Head Master in Zilla Parishad Primary School, Ambika Nagar, Padalsingi, Tq. Georai, District Beed. Vide impugned order, the applicant has been posted at a distance of 500 k.m., which has caused great inconvenience to him, particularly, when the applicant was not due for transfer. He has, therefore, prayed that the impugned of transfer in respect of the applicant be cancelled and in the alternative, respondents be directed to consider his request to

adjust or accommodate at or nearby place so as to avoid family inconvenience.

3. Respondent nos.1 to 4 have filed their reply affidavit and submitted that the applicant has completed almost 10 years in Beed District including post at Talkheda. He has already completed 3 years' tenure at Talkheda Rural Hospital, Beed, and therefore, he was transferred as per administrative convenience. The applicant has already obeyed the order and has joined at Rural Hospital Kasa, District Palghar.

4. Respondent no.5 Chandrashekhar Madhavrao Barbind has been posted in place of the applicant. He has filed reply affidavit. According to him, he has been posted in Tribal area since 15-07-2009, and therefore, he is entitled to choice posting. He has, further stated that vide impugned order dated 31-05-2016 more than 75% employees have been accommodated on their own request but his claim has not been considered. He states that posting at Talkheda in place of the applicant is most inconvenient to him. He, further states that nobody is posted in his place at Rural Hospital Mandvi, and therefore, he be allowed to serve at Mandvi. It seems that though respondent no.5 has been relieved he has not yet joined in place of the applicant.

5. Applicant has filed rejoinder affidavit and claimed that he be allowed to continue to work at Talkheda. Since respondent no.5 is not willing and relieved, respondent no.1 to 4 have filed additional affidavit and mentioned that respondent no.5 was relieved from Mandvi on 28-09-2016.

6. Heard Shri J.S.Deshmukh learned Advocate for the applicant and Shri V.R.Bhumkar learned Presenting Officer for respondents. I have perused memo of O.A., affidavit in reply, affidavit in rejoinder, additional affidavit as well as various documents placed on record by the parties.

7. Only material point to be considered is whether the impugned order of transfer is legal and proper ?

8. From documents placed on record, it is evident that the applicant has completed almost 3 years at Talkheda and his total tenure at Beed is more than 10 years. Therefore, in such circumstances, the impugned order of transfer has been issued and applicant's request was not considered. There is nothing on the record to show that the impugned order of transfer was passed with some ulterior motive.

9. It is evident from the affidavit in reply of respondent no.5 that almost 75% employees have been accommodated as per

their own request. In such circumstances, no mala fides can be attributed against the respondent authorities for transfer of applicant and respondent no.5. Therefore, I do not find any illegality in the impugned order of transfer.

10. Learned Advocate for the applicant submits that his place of posting i.e. Kasa, Palghar is about 500 k.m. away from his present posting. His wife is serving as Head Master in Z.P. School at Beed. It is also material to note that respondent no.5 is not interested in joining in place of the applicant, and therefore, applicant's post was very much vacant. Respondent no.5 has been relieved recently during the pendency of this O.A. on 28-09-2016. Even the respondents are not confident as to whether the respondent no.5 has really joined in place of the applicant. Respondents have placed on record one letter written by Civil Surgeon Beed to Deputy Director Health Services, Latur on 29-09-2016 (page 78). In the said letter, it is clearly mentioned that respondent no.5 has not yet joined in place of the applicant.

11. Considering all these aspects, I feel that it will be in the interest of justice and equity to direct the respondent authorities to consider applicant's representation with proper perspective considering applicant's difficulties and other circumstances. In view thereof, I pass following order:

ORDER

- (a) O.A. is partly allowed.
- (b) Respondent no.1 Director of Health Services, Mumbai is directed to take decision on the representation filed by the applicant dated 03-06-2016 considering the circumstances and subsequent developments as already discussed hereinabove.
- (c) Decision thereon shall be taken within 2 months from this order, considering difficulties faced by the applicant, and the administrative convenience, without being influenced by any of the observations made in this order by the Tribunal and it shall be conveyed to the applicant in writing.
- (d) There shall be no order as to costs.

(J. D. Kulkarni)
MEMBER (J)