

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1580 OF 2015

Mustafa Shabbir Shaikh,
Age: 38 Years, Occup: Service,
R/o. Malkondji, Tq. Ausa,
Dist.: Latur

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Department of Fisheries,
Mantralaya, Mumbai-32.
- 2] The Commissioner of Fisheries,
Taraporwala Aquarium,
Netaji Subhash Road,
Charni Road, Mumbai – 400 002.
- 3] Regional Deputy Commissioner of
Fisheries, Collector Office Campus,
Aurangabad
- 4] Assistant Commissioner of Fisheries,
Collector Office Campus,
Central Building, Latur
- 5] Balasaheb Rambhau Medhekar,
Age: 38 years, Occup: Service,
R/o. Gadekar Niwas,
Ravindranath Tagor Nagar,
Behind Hanuman Mandir,
Latur, Tq. & Dist. Latur

RESPONDENTS

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Mr. V.S.Panpatte, Advocate for the Petitioner
Mr. V.H.Dighe, AGP for the Respondent – State
Mr. Prashant P. Kulkarni, Advocate for the Respondent No.5

...

WITH
WRIT PETITION NO. 3433 OF 2015

- 1] The State of Maharashtra
Through Department of Fisheries,
Mantralaya, Mumbai-32.
- 2] The Commissioner of Fisheries,
Taraporwala Aquarim,
Netaji Subhash Road,
Charni Road, Mumbai-02.
- 3] The Regional Deputy Commissioner of
Fisheries, Collector Office Campus,
Aurangabad
- 4] The Assistant Commissioner of Fisheries,
Collector Office Campus, Central Building,
Latur

PETITIONERS

VERSUS

- 1] Balasaheb Rambhau Mendhekar,
Age 38 Years, Occu. Service,
R/o. Gadekar Niwas, Ravindranath
Tagore Nagar, Behind Hanuman
Mandir, Latur, Tq. & Dist. Latur
- 2] Mustafa Shabbir Shaikh,
Age 38 Years, Occu. Service,
R/o. Malkondji, Tq. Ausa, Dist. Latur

RESPONDENTS

...

Mr. V.H.Dighe, AGP for the Petitioners – State
Mr. Prashant P. Kulkarni, Advocate for the Respondent No.1
Mr. V.S.Panpatte, Advocate for the Respondent No.2

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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 13.04.2015
Pronounced on: 20.04.2015

PER COURT: [Per S.S.Shinde, J.]:

1] Both Writ Petitions takes an exception to the Judgment and Order dated 4th February, 2015 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad in Original Application No.464/2014, therefore, heard together and being disposed of by the common order.

2] It is the case of the petitioner in Writ Petition No.1580 of 2015 that, the petitioner was initially appointed as Senior Clerk on 30th July, 2009 and posted in the office of the respondent No.4 at Latur. It is further the case of the petitioner that, since the petitioner has not completed his tenure of 6 Years at Latur, he was not due for transfer as per the relevant policy. However, by an order dated 31st May, 2014, petitioner was transferred from Latur to Nanded in place of Shri C.V.Sontakke. The respondent No.5 was transferred in place of petitioner at Latur and Shri C.V.Sontakke was transferred from Nanded to Amravati. It is further the case of the petitioner that, the petitioner was on leave on 3rd June, 2014 and as such he had no knowledge about the transfer order. However, in absence of petitioner, respondent No.5 joined at Latur in place of

petitioner and also took *ex parte* charge. After getting knowledge of transfer order dated 31st May, 2014, the petitioner was willing to join at Nanded, though his mother was suffering from paralysis and was taking treatment at Latur. However, by an order dated 06.06.2014, the respondent No.1 stayed the transfer of Shri C.V. Sontakke and as such, the petitioner could not join at Nanded. Thereafter, by an order dated 5th July, 2014, the respondent No.2 transferred the petitioner to Amravati. However, in view of the genuine domestic difficulty i.e. illness of his mother and her medical treatment at Latur, the petitioner approached the Hon'ble Minister of Animal Husbandry and Fishery with request that, he may not be transferred from Latur to Amravati. Accordingly, on the instructions of the Minister, the respondent No.1 directed respondent No.2 not to disturb the posting of the petitioner at Latur. By an order dated 28th August, 2014, the respondent No.2 transferred respondent No.5 from Latur to Amravati and posted the petitioner at Latur. By the said subsequent order dated 28th August, 2014, the respondent No.2 requisitioned the services of the respondent No.5 in the office of Regional Deputy Commissioner of Fisheries at Latur itself. It is further the case of the petitioner that, the respondent No.4

also relieved the respondent No.5 from his office and allowed the petitioner to join and with effect from 30th August, 2014, till the date, petitioner is discharging his duties in the office of the respondent No.4 at Latur. However, the respondent No.5 by suppressing the material and relevant facts mentioned herein above, filed Original Application No. 464/2014 before the Maharashtra Administrative Tribunal, challenging the transfer order dated 28th August, 2014.

The respondent Nos. 1 to 4 filed detailed affidavit in reply justifying the transfer order dated 28th August, 2014. However, by the impugned Judgment and Order dated 4th February, 2015, the Maharashtra Administrative Tribunal allowed the Original Application filed by the respondent No.5 and quashed the transfer order dated 28th August, 2014. Hence, Writ Petition is filed by the petitioner.

3] Writ Petition No.3433/2015 is filed by the State of Maharashtra through the Department of Fisheries and its Officers, being aggrieved by the same Judgment and Order, which is subject matter of the afore mentioned Writ Petition

No. 1580/2015.

4] The learned counsel appearing for the petitioner in Writ Petition No.1580/2015 submits that, the transfer of the petitioner was even before completion of 6 Years from Latur to Nanded, and further from Nanded to Amravati, was contrary to the policy of the State Government. It is submitted that, transfer was mid-term ignoring the illness of the petitioner's mother. It is submitted that, merely because the Minister has acceded to the request of the petitioner and retained the petitioner at Latur, is not a ground to interfere in the transfer order dated 28th August, 2014. It is submitted that, petitioner's mother was suffering from illness, and therefore, on his request, his transfer from Latur to Amravati was cancelled and he is retained at Latur. Therefore, the learned counsel appearing for the petitioner relying upon the pleadings in the Petition, grounds taken therein submits that, Petition may be allowed.

5] On the other hand, the learned counsel appearing for the respondent No.5 submits that, on his transfer to Latur, as a matter of fact, he joined at

transferred place and worked for couple of months, even his transfer was mid-term and before completion of 6 years at Beed, however, he accepted transfer order since same was on administrative ground. It is submitted that, the Maharashtra Administrative Tribunal has considered entire material placed on record and cancelled the transfer order dated 28th August, 2014, therefore, this Court may not interfere in the impugned Judgment and Order.

6] The learned AGP also invited our attention to the grounds taken in the Petition filed by the State through Department of Fisheries and submits that, the impugned Judgment and Order of the Maharashtra Administrative Tribunal may be quashed and set aside.

7] We have considered the submission of the learned counsel appearing for the petitioner and also learned AGP, and the learned counsel appearing for the respondent No.5, with their able assistance, we have perused the pleadings in the Petition, annexure thereto, reply filed by the respective respondents and the impugned Judgment and Order passed by the Maharashtra Administrative Tribunal. It appears from the material

placed on record that, the transfer of the petitioner initially from Latur to Nanded was on administrative ground. The transfer of Mr. C.V.Sontakke from Nanded to Amravati was also keeping in view administrative convenience and further transfer of the respondent No.5 from Beed to Latur was also on account of administrative grounds. Therefore, so far initial transfer orders are concerned, no any *mala fide* can be attributed to the concerned Officers, who have passed those transfer orders.

8] Upon reading the pleadings of the Writ Petition No.1580/2015, the petitioner was prepared to join at Nanded though his mother was not keeping well. However, on account of illness of his mother, petitioner was not prepared to go to Amravati from Latur. It is true that, Mr.C.V.Sontakke, who was transferred from Nanded to Amravati, his transfer was stayed and as a result petitioner could not join at Nanded, and thereafter, he requested for retaining him at Latur on the ground of illness of his mother. However, indulgence shown by the concerned Minister, and the direction issued by him to the concerned Authorities to issue transfer order, which formed the basis for transfer order dated 28th August, 2014 cannot be

countenanced. The Maharashtra Administrative Tribunal has rightly observed in para 13 of the Judgment that, none of the rules / modalities have been followed while issuing impugned transfer order dated 28.08.2014. The Maharashtra Administrative Tribunal observed that, the order dated 28th August, 2014 transferring the original applicant i.e. respondent No.5 herein from Latur to Amravati was purely on account of political interference by the Minister.

9] Upon careful perusal of the reasons assigned by the Maharashtra Administrative Tribunal, in our opinion, the said reasons are in consonance with the documents placed on record and there is no perversity as such. The Maharashtra Administrative Tribunal is right in observing that, there could not have been political inference in the routine transfers on the administrative convenience of the employees working on the Class-III posts. Upon perusal of the reasons assigned by the Maharashtra Administrative Tribunal and in particular para 10 thereof, it appears that, the directions of the Minister were not restricted only to the cancellation of the order of transfer of the petitioner from Latur to Amravati, but the direction was given by the

Minister, Husbandry, Dairy Development and Fisheries by letter dated 10th July, 2014 to the Deputy Secretary, Fisheries, mentioning therein, as under:

“तरी श्री. मुस्तफा शब्बीर शेख, वरिष्ठ लिपिक यांना तात्पुरती प्रतिनियुक्ती न देता बदली आदेश रद्द करून त्यांची पदस्थापना सहा. आयुक्त, मत्स्य व्यवसाय, लातूर येथे पुर्ववत करण्यात यावी व केलेल्या कार्यवाहीचा अहवाल मला तिन दिवसांच्या आत सादर करावा.”

Therefore, the Maharashtra Administrative Tribunal was constrained to observe that, the transfer order of the original applicant i.e. respondent No.5 herein, at Amravati was consequence of cancellation of his transfer order at Latur, only because of interference by Hon'ble Minister and it is nothing but a purely political interference. Had it been a fact that, the respondent No.5 [petitioner herein] Shri Shaikh was really in need of stay at Latur only because of his mother suffered from paralysis attack, he should have been satisfied with the order of his deputation, but he was not ready to accept the deputation at Latur.

10] In the light of the discussion in the forgoing

paragraphs, we are of the opinion that, the impugned Judgment and Order of the Maharashtra Administrative Tribunal, needs no interference. Therefore, both the Petitions lack merits hence stands rejected.

Sd/-
[P.R.BORA]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

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DDC