

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

Writ Petition No.8813 of 2014

* Santosh Nandalal Dalal,
Age 44 years,
Occupation : Service,
R/o Bhayaji Niwas,
Hanumanwadi, Chalisgaon,
District Jalgaon. **.. Petitioner.**

Versus

- 1) State of Maharashtra,
Through its Principal Secretary
Food and Civil Supply and
Consumer Protection Department,
Mantralaya, Mumbai - 32.
- 2) The Chief Controller,
Legal Metrology
(Weights and measures)
Government Barrack No.7,
Free Press Journal Marg,
Nariman Point Mumbai - 7.
- 3) Dnyaneshwar Vasantrao Deore,
Age 48 years,
Occupation : Inspector of Legal
Metrology (W & M),
Ganesh Colony, Shirpur,
District Dhule. **.. Respondents.**

Miss Pradnya Talekar, Advocate, holding for Shri. Abhijit
C. Darandale, Advocate, for petitioner.

Smt. R.K. Ladda, Assistant Government Pleader, for
respondent Nos.1 and 2.

Shri. B.R. Kedar, Advocate, for respondent No.3.

**CORAM: T.V. NALAWADE
INDIRA K. JAIN, JJ.**

DATE : 6th MAY 2015

JUDGMENT:

1) Rule, rule made returnable forthwith. Heard both sides for final disposal by consent.

2) The petition is filed to challenge the judgment and order of Original Application No.88 of 2014 which was pending before the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad (hereinafter referred to as "the MAT" for short). The application filed by present respondent No.3 to challenge his transfer and also the transfer of present petitioner is allowed by the MAT. These two persons are working as Inspectors of Weight and Measures in Legal Metrology Department of the State Government.

3) By order dated 31-5-2010 respondent No.3 of the present proceeding was transferred from Malegaon, District Nasik to Chalisgaon, District Jalgaon. Similarly, the petitioner was transferred to Bhusawal. They joined

their duties at Chalisgaon and Bhusawal. As per the procedure given in the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "the Act", for short) the transfers of these employees are made by the Chief Controller of this Department and he is the competent authority for all the employees of Class III cadre (Group "C") in the State in this Department. The post of Inspector is Class III Post (Group "C").

4) On 31-5-2013 respondent No.2, the competent authority, issued transfer orders in respect of 22 Inspectors. These 22 persons had completed three years of service, normal tenure at their respective posting places. The Minister of Food & Civil Supplies and Consumer Protection Department, under whose Department the petitioner works gave directions to respondent No.2, competent authority on 12-6-2013 and asked him to see that the remaining Inspectors who had completed three years of tenure are also transferred. It was noticed that the employees who had not joined the

new postings under the previous orders of transfer dated 31-5-2010 immediately and who had joined few days after, in the month of June but before 15-6-2010, were not transferred under the transfer orders dated 31-5-2013. The Minister observed that the Department was working as Enforcement Department, and it was not desirable to post such Inspectors on the same post for 4 years i.e. for more than three years. In view of this order of the Minister, respondent No.2 prepared a list of Inspectors due for transfer and submitted it to the Minister. Then the office of the Minister gave direction to the competent authority to issue transfer orders of those employees by using provision of Section 4(5) of the Act. Accordingly, the competent authority issued orders on 5-9-2013.

5) As per the procedure adopted by the Department and the procedure given in the Act, 69 Inspectors were due for transfer in the month of May 2013. In the order dated 31-5-2013, 22 employees came to be transferred and in view of the directions given by the Minister, the remaining 47 Inspectors also came to be transferred under order dated 5-9-2013. The present

petitioner was transferred from Bhusawal to Chalisgaon under the order dated 5-9-2013 and respondent No.3 came to be transferred from Chalisgaon, District Jalgaon to Shirpur, District Dhule.

6) Both, petitioner and respondent No.3 joined their new postings immediately after the orders of transfer. Choices of the petitioner and the respondent No.3 were collected by the Department for general transfers in January 2013 itself. Respondent No.3 had given Dhule District as his first choice and he came to be posted in Dhule District under order dated 5-9-2013. The petitioner had given his choice by giving Dhule District as his first choice and Jalgaon District as the second choice. The petitioner got Chalisgaon, District Jalgaon.

7) In the application before the MAT, present respondent No.3 contended that his transfer under order dated 5-9-2013 was mid-term transfer and as no reasons were given, the order was illegal. He also contended that in view of the provision of Section 3(1) of the Act, he has right to work for two full tenures of 3 years each (for total

period of six years) at the same station like Chalisgaon and so, his transfer was made before the expiry of the tenure guaranteed to him under the Act. The MAT accepted both the contentions. The MAT referred to some orders made in the past by Division Bench of the MAT at Principal Seat at Mumbai and also the order made by Single Judge of the MAT at Aurangabad.

8) For the State, affidavit-in-reply is filed and it is contended for the State that there was power with the Minister to make such orders and further the procedure as laid down in the Act was followed. It is also contended that all the Inspectors who were due for transfer in the year 2013 came to be transferred and so there was no room for the present respondent No.3 to challenge the order.

9) It appears that the decision of the MAT is based mainly on the interpretation of provision of section 3(1) made by the Division Bench of the MAT at the Principal Seat at Mumbai. There is also reference to the order made by the Single Bench of the MAT in Original Application

No.498/2011. The relevant portion of the Division Bench judgment delivered in Original Application Nos.376 and 377 of 2007 is quoted by the MAT at paragraph 11 and it is as under :-

"11. This issue was examined by the Division Bench of Principal Seat of this Tribunal at Mumbai in O.A. Nos.376 and 377 of 2007 wherein it is held that,

"(1) Fixed tenure of a government servant at a particular post is 3 years for all groups.

(2) In non-secretariat service, the employee shall be transferred from that office-department on his completing two full tenures there. In other words, he may be transferred to a post within particular office or department on completion of 3 years in that office and out of that office or department on completion of two full tenures i.e. 6 years."

Paragraph-92 of the said order further interprets the 1st proviso of Section 3 as under-

"92. Having noted the meaning of term 'office', (supra), we take up for consideration the effect of 1st proviso to section 3. In our considered view that a group 'C' government employee can be posted in a particular office for six years, and in 'post' for three years. We illustrate it. In a collectorate there are different branches, such as Revenue, Land reforms, Land acquisition etc. A government servant of Group 'C', if working in the land acquisition branch, on his completion of three years, can be posted to another branch under the control of Collector, and in such eventuality the total tenure will be six years and on completion of six years in the office of collector, such government servant, has to be transferred from that 'post' in the office. Thus it cannot be said that group 'C', government servant gets a right to be posted in a post for a period of six years. The legislature in its wisdom has used word 'office' and not 'post' in this proviso which is the pointer to our conclusion. It

cannot be forgotten that the Act has defined word 'post'. In spite of this the legislature with definite purpose have used "office".

The aforesaid portion shows that the Division Bench had not observed that Group 'C' government servants have right to be posted in a post for a period of six years. On the contrary, such contention was not accepted. The observations were to the effect that even if the period of six years is given to an employee at a station he can be posted in 2 different branches of the office during this period of six years but after the expiry, there will be no other alternative than to transfer him from that post in the office. Thus, it can be said that the learned Single Judge of the MAT has taken a view on the basis of observations made by the other learned Single Judge that Group 'C' employee has right to work at one station for six years. Both the sides submitted that this Court has not made interpretation on this point. Some cases of this Court however were referred to by both the sides.

10) The object of the Act is to regulate transfers and to prevent delay in discharge of official duties by

Government servants. It cannot be disputed that transfer is an incident of service. The object of the Act shows that it is to regulate the transfers and the object is not to prevent the transfers by the State. The second object of the Act is to prevent the delay in discharge of official duties and that is in the larger interests of public. In the cases reported as (1) **2008 (1) All MR 45 (V.B. Gadekar v. Maharashtra Housing & Area Development Authority);** and, (2) **2009(4) Mh.L.J. 163 (State of Maharashtra v. Ashok Ramchandra Kore)** the manner in which the provisions need to be construed is discussed by this Court.

11) The provision of section 3 of the Act runs as under :

"3. Tenure of posting. (1) For All India Service Officers and all Group A, B and C State Government Servants or employees, the normal tenure in a post shall be three years :

Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or Department:

Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years

and shall not be continued in the same Department for more than two consecutive tenures.

(2) Employees in Group D shall normally not be subjected to fixed tenure. They shall not be transferred out from the station where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them."

The relevant portion of section 4 of the Act is 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)

(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."

12) The combined reading of provisions of sections 3(1) and 4(1) shows that the normal tenure in a post of a government servant shall be 3 years. The first proviso to section 3(1) of the Act shows that an employee of Group 'C' from non secretariat service may be retained at that office or department for two full tenures (one full tenure consists of 3 years). The proviso does not give right to the employee to get two full tenures at that office or department but it only allows the employer, competent authority, to continue the Group 'C', non secretariat employee to continue at the office or department for six years. The second proviso shows that if the employee of Group 'C' is from secretariat service he cannot be continued in the same post for more than 3 years and he

shall not be continued in the same department for more than two consecutive tenures. The plain reading of section 3(1) and both the provisos shows that Group 'C' employee who is not from secretariat service can be kept at that office or department for six years but if he belongs to secretariat service he cannot be kept in the same post for more than three years though he can be kept in the same department for two consecutive tenures. These restrictions are in public interests. These provisions on one hand, show that the State, competent authority can use these provisions for keeping one employee at the same station for two full tenures but the State is not expected to continue him after completion of two full tenures. Thus, the provision of section 3(1) with the two provisos, does not show that any right is conferred on Group 'C' employee from non secretariat service to work at one station for six years.

13) The provision of section 4(5) shows that even before completion of the tenure of the post, a government servant can be transferred by the competent authority but the authority is expected to show that it is a special case

and reasons need to be recorded for making such transfer. Prior approval of immediate superior authority of the transferring authority needs to be obtained for such transfer. In section 6 of the Act various competent authorities with their subordinations are mentioned.

14) The proviso of section 4(2) shows that the competent authority is expected to prepare list of government servants who will be due for transfer in the month of April or May of the year and that list needs to be prepared in the month of January of that year. It is not disputed that in the present case that such list was prepared and both, present petitioner and respondent No.3, were shown in the said list. Provision of section 4(4) of the Act shows that transfers of government servants shall ordinarily be made only once in a year and they are to be made in the month of April or May. Such transfers can be called as 'annual general transfers'. The provision of section 4(4)(ii) shows that, after the annual general transfers if competent authority is satisfied that transfer is essential for special reasons then after recording reasons in writing and getting prior approval of the next higher

authority such transfers, mid-term transfers, can be effected.

15) In the present matter admittedly 69 Inspectors were due for transfer in the year 2013. Out of these 69 Inspectors, only 22 Inspectors were transferred in the month of May. There is the record to show that the Minister of the concerned Department interfered and asked to effect transfers of remaining 47 Inspectors also. The reason is given by the Minister that it was not advisable to allow the Inspectors to work on the same post, at the same station for the period of 4 years as it was Enforcement Department. There is correspondence showing that the Minister expressed that such orders can be made in view of the provisions of Section 4(5) of the Act. In the order issued by the Chief Controller, there is mention that the order dated 5-9-2013 was issued under section 4(5) of the Act. Though reason is not there in the orders issued by the Chief Controller, the reason is there in the order made by the Minister of the Department. In the present matter the order may fall under section 4(4) (ii) of the Act but the procedure and intention behind this

provision and section 4(5) are the same.

16) In aforesaid sections necessity of compulsory transfer of a public servant can be found. The Court/Tribunal is not expected to act as an appellate authority in such cases. Possibility of creation of vested interests by public servant at a particular station or on the post when he is allowed to work for longer period needs to be kept in mind and that can be a good reason for mid term transfer. If transfers are made on such grounds it needs to be presumed that the transfers are made in public interests.

17) If there is nothing to infer favouritism or mala fides, the Court/Tribunal is not expected to interfere in the transfer orders if the transfer order is made after following aforesaid procedure. When the government servant is due for transfer he cannot have much scope to challenge the mid term transfer on aforesaid ground. As many as 47 Inspectors were transferred under the same order and so it cannot be said that favouritism was done in favour of a particular employee like present petitioner. Further as per the record, respondent No.3 got posting of

the first choice given by him and the petitioner for the posting of second choice. This circumstance is also relevant while considering the challenge to the transfer order. This Court has no hesitation to hold that there were no mala fides and the order is not arbitrary.

18) Attempt was made by the learned counsel for the respondent No.3 to submit that it was not proper on the part of the Minister to give direction of transfer to the competent authority. This submission is not at all acceptable. If the competent authority, transferring authority, is not doing the needful, the superior authority can always interfere to correct the things. The definition of competent authority given in section 2(b), the definition of transferring authority given in section 2(j) and the provisions of sections 4 and 6 show that the superior authority like Minister can interfere and correct the things. Thus, for Tribunal there was no reason to interfere in the transfer order but due to some interpretation, which was not correct, done by the learned Single Judge of the MAT the transfer came to be cancelled. The MAT did not even consider the circumstances that in the same

order 47 persons were transferred and the observations made by the MAT can be used as against the entire order of transfer. Other persons had not come before MAT and respondent No.3 had also come to MAT after joining the new posting and after expiry of six months from the date of joining the new posting. These circumstances were also relevant and they ought to have been considered by the MAT. As already observed, there is discretion with the competent authority in the matter of transfer and the Court/Tribunal cannot interfere lightly in the order made by the authority by using discretion. There is sufficient material of aforesaid nature to show that the order was made after satisfaction about the necessity by the competent authority.

19) The learned counsel for the respondent No.3 placed reliance on cases reported as **2012 (3) Bom C.R. 442 (Aurangabad Bench) Purshottam Govindrao Bhagwat v. State of Maharashtra**); and **2010(2) Mh.L.J. 58 (Shivprakash Maruti Waghmare v. State of Maharashtra)**. The facts of these cases were different and further, the point involved in the present matter was not squarely

involved in these reported cases. They are of no use to respondent No.3.

20) In the result, the petition is allowed. The judgment and order dated 18-9-2014 passed on Original Application No.88 of 2014 by Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad is hereby quashed and set aside. Original Application No.88 of 2014 filed by present respondent No.3 is hereby dismissed. Rule made absolute in above terms.

Sd/-
(INDIRA K. JAIN, J.)

Sd/-
(T.V. NALAWADE, J.)

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