

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 9224 OF 2014

Brahmaprakash s/o Thakurdas Thakur,
Age : 60 years, Occu.: Nil,
(Retd. As Sub Divisional Engineer),
R/o: Plot No.2, Gut No.106,
Satara Parisar, Aurangabad.

... **PETITIONER**

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai – 32.
- 2) The Chief Engineer,
Minor Irrigation [Local Sector],
Bungalow No.12, Jail Road,
Yerwada, Pune – 6.
- 3) The Superintending Engineer,
Minor Irrigation [Local Sector]
Circle, Aurangabad, Behind
Bandhkam Bhawan,
Adalat Road, Aurangabad.

... **RESPONDENTS**

[Notices of Respp. N. 1 to 3 to be
served on the Ld. Government Pleader,
High Court Bench at Aurangabad]

Mr. Rejendra S. Deshmukh, Advocate with Mr.Avinash Deshmukh,
Advocate for the Petitioner.
Mrs.S.A.Dhumal, Advocate for Respondent Nos.1 to 3.

CORAM : **S. V. GANGAPURWALA and
N. W. SAMBRE, JJ.**
DATE : 29th January, 2015.

ORAL JUDGMENT: (Per S. V. Gangapurwala, J.)

1 Rule. Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, the petition is taken up for final hearing.

2 Mr. Deshmukh, learned counsel for the Petitioner submits that the Tribunal committed an error while negating the case of the Petitioner to consider the period from 23rd July, 2009, to 30th December, 2009, as compulsory wait period. The learned counsel submits that the order of transfer dated 30th June, 2009, and consequential order dated 16th July, 2009, were never served upon the Petitioner. Thereafter, the transfer order was modified vide order dated 17th December, 2009, and the Petitioner joined pursuant to the said order. The learned counsel submits that in such a situation, Rule 31(c) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, apply. The learned counsel submits that as per Rule 9 (14)(f)(i), the period can be considered as compulsorily wait period as the order was also modified. The initially transfer order being not served upon the Petitioner, the same can be said to be in transit. The Tribunal has failed to consider the said provisions in its correct perspective. Only because the Petitioner had challenged the said transfer order, cannot mean that the

Petitioner is in receipt of the said order or the said transfer order is served upon the Petitioner. Even the charge has been taken in an illegal manner. The provisions of Rule 29 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, have not been followed. According to the learned counsel, the said period is required to be considered as a compulsory wait period. The Petitioner is entitled for emoluments during the said period.

3 The learned Additional Government Pleader submits that when the Petitioner has challenged the said order of transfer, it would mean that the Petitioner has been served with the order of transfer. It would be too late on the part of the Petitioner to contend that the said order of transfer is not served upon the Petitioner. It is at the request of the Petitioner, the order of transfer is modified. According to the learned Additional Government Pleader, the Tribunal has considered all the relevant aspects of the matter in its correct perspective and arrived at a correct conclusion. No error has been committed by the Tribunal.

4 We have considered the submissions canvassed by the learned counsel for respective parties. Before we proceed to deal with the contentions canvassed by the learned counsel for respective parties, it would be relevant to refer to the provisions relied by the

learned counsel. Rule 9 (14)(f)(i), Rule, 29 read with Rule 31(c) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, read as under:

“9. 14)

- (f) the period for which a Government servant is required to wait compulsorily until receipt of his posting orders in the cases mentioned below:-
- (i) Whose orders of transfer are held in abeyance, cancelled or modified while in transit, or

...

29. Relieving Government servant to intimate probable date of joining to the Government servant to be relieved.

Every relieving Government servant is responsible for informing the Government servant to be relieved, at the earliest possible moment, of the date when he will be in a position to receive charge, and it is the duty of the Government servant to be relieved to be in readiness to deliver charge on that date.

...

31. Charge must be handed over at the headquarters, both relieved and relieving Government servants to be present.

Except as otherwise provided below, the charge of a post must be made over at the headquarters, both the relieving and relieved Government servants being present -

- (c) In exceptional circumstances, which should be recorded a competent authority may permit the charge of a post to be made over in the absence of the relieved Government servant by letter or by telegram at or outside the headquarters of the post.”

5 The Tribunal has gone on the premise that when the Petitioner has challenged the order of transfer, the Petitioner has an implied knowledge of the order of transfer. Rule 9 (14)(f)(i), lays down that if the order of transfer is modified while in transit, the said period can be considered as compulsorily wait period. We have asked the learned Additional Government Pleader as to whether there is any record showing that the order dated 30th June, 2009, and order dated 16th July, 2009, has been served upon the Petitioner. No such record is coming forth. The Petitioner in his original application has made a specific averment that said orders of transfer, at no material point of time has been served upon the Petitioner. It is also not disputed fact that subsequently on 17th December, 2009, the Petitioner is issued modified transfer order and the Petitioner had joined the place as per the modified transfer order. The affidavit is also filed by the Respondents clearly stating that the matter of posting the Petitioner at another place, was under active consideration and because of the code of conduct, the decision could not be taken immediately. The Applicant vide letter dated 29th July, 2009, had requested to transfer him at minor Irrigation (Local Sector) Sub Division, Hingoli. The proposal was considered and recommended by the Chief Engineer on 7th August,

2009, and thereafter, the same was also submitted to the Honourable Chief Minister as contemplated under the provisions of the Maharashtra Transfer Act. Thereafter, the code of conduct became effective from 31st August, 2008, and such delay was caused in taking the decision.

6 All these aforesaid facts unequivocally substantiate the case of the Petitioner under Rule 9 (14)(f)(i). The Petitioner has been unilaterally relieved.

7 In light of the above, the period from 23rd July, 2009, to 30th December, 2009, could have been considered as compulsorily wait period and the benefit of the same ought to have been given to the Petitioner.

8 In light of the above, we pass the following order:

- I. The impugned judgment and order, is quashed and set aside.
- II. The Respondents shall give benefit of compulsorily wait period to the Petitioner from 23rd July, 2009, to 30th December, 2009, and shall give all the consequential benefits arising therefrom. However, the Petitioner would not be entitled for salary for the said period on the

ground of no work no pay. Except the same, all other benefits, the Petitioner would be entitled to for the said period.

III. Rule is accordingly made partly absolute in above terms. No costs.

ndm

[N. W. SAMBRE, J.]

[S. V. GANGAPURWALA, J.]