

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

WRIT PETITION NO. 10838 OF 2014

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Shashikant s/o Sandipanrao Doke,
age 52 years, Occ. Service,
(Police Inspector),
R/o C/o. Police Control Room,
Ahmednagar.

Petitioner.
(Orig. Applicant)

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Home Department,
Maharashtra State Mantralaya,
Mumbai.
2. The Director,
General of Police,
Shaheed Bhagatsingh Marg,
Kulaba, Mumbai – 1.
3. The Special Inspector General,
of Police, (Administration)
Shaheed Bhagatsingh Marg,
Kulaba, Mumbai -1.
4. The State Information Reporter,
C/o. The Director General of Police,
Shaheed Bhagatsingh Marg,
Kulaba, Mumbai – 1.
5. Pramod S. Wagh,
age : Major, Occ. Service,
R/o C/o Superintendent of
Police, Ahmednagar,
Tq. & Dist. Ahmednagar.

Respondents.
(Orig. Respondents.)

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Advocate for Petitioners : Mr. V.D. Salunke

AGP for Respondents 1-4 : Mr. S.S.Tope

Advocate for Respondent 5 : Mr. V.B. Wagh

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.

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DATE OF RESERVING THE JUDGMENT : JULY 28, 2015

DATE OF PRONOUNCING THE JUDGMENT : AUGUST 14, 2015

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JUDGMENT :- (Per V.K.Jadhav, J.)

1. Rule. Rule returnable forthwith. With the consent of the parties, heard finally.
2. By this Petition, the petitioner seeks to challenge the impugned Corrigendum dated 12.08.2014 issued by Director General of Police and the impugned order dated 12.08.2014 issued by Director General of Police, thereby transferring respondent No.5 from Nandurbar to Ahmednagar in place of petitioner so also the impugned Judgment and Order dated 18.11.2014 passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in Original Application No.483/2014.
3. Brief facts giving rise to the present writ petition are as follows :-

The petitioner is in Government service and working as a Police Inspector at Ahmednagar. The petitioner has worked at different places from joining the services as directed by his superiors, however, prior to transfer in question, the petitioner was working at Beed since May-2011 to 9.8.2014. The Assembly Elections, Maharashtra were declared by the Election Commission of India to be held in the month of October, 2014, and accordingly, the directions came to be issued to the State Government for transfer of the Government Officers who are working in their Home Districts and those who are working for more than three years in a place in the said District. According to the petitioner, he was required to give option of three Districts of his choice. Accordingly, the petitioner has given option of three District i.e. Solapur Rural, Ahmednagar and Latur District. Petitioner's option for Ahmednagar District was considered and transfer order dated 5.8.2014 was issued. Near about 46 Police Inspectors from the cadre of the petitioner were transferred and the name of the petitioner stands at Serial No.30 in the said order. The petitioner was transferred from Beed to Ahmednagar. In

pursuance to the order issued by respondents No.2 and 3, as stated above, the petitioner had joined at the transferred place at Ahmednagar on 8.8.2014 B.N. and started discharging his duties.

4. It is further case of the petitioner that, all of a sudden, the petitioner has received a Corrigendum dated 12.8.2014 on 13.8.2014, thereby posting of the petitioner has been changed from Ahmendagar to S.I.D.- Mumbai i.e. with Respondent No.4. In view of the said Corrigendum to the transfer order, the petitioner stood relieved by order dated 13.8.2014.

5. The petitioner, being aggrieved by the impugned Corrigendum, has made representation to Respondent No.1, however, his representation was not considered. The respondent no.5, however, is transferred in place of the petitioner on promotion.

6. In view of the above facts and circumstances of the case, the petitioner approached to the Maharashtra Administrative Tribunal, Mumbai Bench at Aurangabad

by filing Original Application No.483/2014. The Maharashtra Administrative Tribunal, Aurangabad, by its judgment and order dated 18.11.2014 in Original Application No.483/2014, dismissed the said Original Application. The petitioner has, therefore, approached this Court by filing present writ petition.

7. The learned counsel for the petitioner submits that, the impugned Corrigendum, while changing the posting of the petitioner, amounts to transfer of the petitioner. Learned counsel further submits that the petitioner was transferred within eight days under the garb of issuance of Corrigendum. Learned counsel further submits that in order to accommodate respondent No.5, the impugned Corrigendum was issued. It is submitted that the transfer orders are arbitrary and issued with *mala fide* intention only to accommodate respondent No.5. The learned counsel further submits that, transferring respondent no.5 in place of the petitioner is without sanction of the Election Commission and therefore, illegal and bad in law. The learned counsel also submits that the petitioner and the

other officers, who were due for transfer, had given three options of their respective choice, however, except the petitioner all other officers were transferred to the places as per their options. There is no plausible explanation tendered by the respondents to transfer the petitioner beyond the options given by him.

8. The learned AGP for respondents No.1 to 4 submits that the petitioner's name was recommended by the Police Establishment Board No.2 to be transferred from Beed to Ahmednagar, pursuant to the letter dated 4.8.2014 and accordingly the petitioner was shown to be transferred from Beed to Ahmednagar vide order dated 5.8.2014. It is also a matter of fact that, the State Government issued a Corrigendum vide its letter dated 08.08.2014 changing the transfer of Petitioner from "Beed to Ahmednagar" to "Beed to S.I.D.M.S., Mumbai" and on that basis, the same was given effect on 12.08.2014. Learned AGP further submits that, it was *bona fide* error crept in issuing the earlier order of the petitioner and same was rectified by issuing the aforesaid Corrigendum. The learned AGP further

submits that, the Hon'ble Home Minister made certain modifications in front of the names of certain officers i.e. about 11 officers in green colour ink changing their proposed posting and accordingly approved the proposal.

9. The learned AGP further submits that the said modification was given effect in respect of nine officers. It was not effected in case of the petitioner inadvertently and in respect of one another person namely Mr. Suresh Mirghe. Accordingly, the office of respondent No.2 issued Corrigendum dated 12.8.2014 and transferred the Petitioner to S.I.D. Mumbai. In pursuance to the said Corrigendum, the Superintendent of Police, Ahmednagar, has also relieved the petitioner on 13.8.2014 for joining at the transferred place i.e. S.I.D. Mumbai, however, the petitioner did not report at the transferred place. The learned AGP further submits that as per the said modifications carried out by the Hon'ble Home Minister, the petitioner's transfer order dated 5.8.2014 should have been issued from Beed to S.I.D. Mumbai, but inadvertently it was issued from

Beed to Ahmednagar. The learned AGP thus submits that there was no necessity of any prior approval of Election Commission for the said correction as it was not a fresh transfer order. The learned AGP further submits that the impugned Corrigendum dated 12.8.2014 has been acted upon and the petitioner, in consequence thereof, came to be relieved and respondent No.5 had joined at petitioner's place. The learned AGP has thus supported the impugned Judgment and Order rendered by the Maharashtra Administrative Tribunal, Aurangabad in Original Application No.483/2014 dated 18.11.2014. The learned AGP, thus, finally submits that the petition is devoid of any merits and liable to be dismissed.

10. The learned counsel for respondent No.5 submits that respondent No.5 was promoted from the cadre of Assistant Police Inspector to the post of Police Inspector and then order came to be issued of his transfer on promotion at Nandurbar District. The same was modified and he was posted in Ahmednagar District. The learned counsel further submits that, pursuant to

the posting order dated 12.8.2014, respondent No.5 has given joining report in the office of the Superintendent of Police, Ahmednagar on 13.8.2014 and as per the detailed internal posting order, now posted at Shirdi Police Station. Learned counsel further submits that respondent No.5 is discharging his duties at Shirdi Police Station, District Ahmednagar, as per internal posting order passed by the Superintendent of Police, Ahmednagar. The learned counsel for respondent No.5 further submits that the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad has thoroughly examined the original record and rightly dismissed the Original Application filed by the petitioner. The learned counsel thus submits that writ petition may be dismissed.

11. Unless transfer order is vitiated by *malafides* or is made in violation of any statutory provisions, the Court should not interfere with it.

12. The petitioner has assailed the order of transfer mainly on the ground that the petitioner was

transferred within eight days under the garb of issuance of Corrigendum and the transfer order was made to accommodate respondent No.5. It is thus contended that, transfer order is vitiated by *malafides*.

13. We have carefully perused the original record placed before us. It appears that, the proposal of transfer of 46 officers was placed before the Hon'ble Minister alongwith the recommendations by the Authorities. It further appears that, Hon'ble Minister has made certain modifications in front of the names of 11 officers in green colour ink changing thereby their recommended posting. The Hon'ble Minister, with the said modifications, approved the proposal by his order dated 1.8.2014. It is specifically endorsed by the Hon'ble Minister in green ink on the office note that proposal is accepted with the modifications.

14. It further appears from the original record that on 6.8.2014, a further office note was submitted before the Authorities pointing out therein that transfer of the petitioner was inadvertently not issued in terms of the

modifications carried out by the Hon'ble Minister and instead the petitioner was transferred to Ahmednagar. Accordingly, by way of this office note, permission was sought to issue the Corrigendum. Needless to say that the corrigendum dated 12.8.2014 was issued in terms of the order passed on the office note dated 06.08.2014.

15. On perusal of the original record, it also appears that the Hon'ble Minister has carried out modifications in respect of transfers of 11 officers in his handwriting and accordingly, transfers of 9 officers were effected as per the modifications except the petitioner and one Mr. Suresh Mirghe. The said nine officers were transferred at the places as modified by the Hon'ble Home Minister.

16. We do not find any *malafides* in the transfer order of the petitioner as per Corrigendum dated 12.8.2014. The original order of transfer was communicated on 5.8.2014 and office note was submitted before the Authorities pointing out that the transfer order of the petitioner came to be issued inadvertently without giving effect to the modifications carried out by the Hon'ble

Home Minister. By any stretch of imagination, it cannot be said that, under the garb of Corrigendum, the petitioner was transferred again within eight days. There is nothing on record and even we do not find anything after carefully examining the original record that in order to accommodate respondent No.5, the changes have been made in the transfer order pertaining to the petitioner. Respondent No.5 was promoted and was given posting in Ahmednagar District on promotion. There is no question of accommodating respondent No.5 in place of the petitioner. Those modifications in respect of 11 officers were carried out on the office note by the Hon'ble Home Minister in green ink and in view of this, the petitioner ought to have been posted to S.I.D., Mumbai instead of Ahmednagar. We find substance in the submissions that inadvertently the petitioner was transferred to Ahmednagar instead of transferring him to S.I.D., Mumbai as directed by the Hon'ble Home Minister. The same is also evident from the office note placed before the Authorities on the very next day of the issuance of general transfer orders and the subsequent issuance of corrigendum within seven days from the

date of issuance of transfer orders of 46 police officers.

17. In view of the above discussion, we pass following order.

O R D E R

I] Writ Petition is hereby dismissed. Rule discharged.

II] In the circumstances, there shall be no order as to costs.

III] Original Record and Proceedings be returned to Mr. S.S.Tope, the learned AGP.

Sd/-

sd/-

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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