

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2054 OF 2015

Pankaj R. Patel ... Petitioner

V/s.

The Administrator
Union Territory of Daman and Diu
& others ... Respondents

Mr. Bhavesh Parmar i/b. Mr. Devmani Shukla for the petitioner.

Mr. S.S. Deshmukh for respondents 1 to 3.

**CORAM : NARESH H. PATIL AND
A.S. GADKARI, JJ.**

3rd March, 2015.

P.C.

Heard learned Counsel for the parties.

2. The petitioner was transferred on 26th June, 2014 from Public Works Department to Daman Municipal Council. The petitioner challenged the said transfer order before the Central Administrative Tribunal, Bombay Bench, Mumbai in Original Application No. 598/2014. It is submitted that petitioner had filed an application for interim-relief alongwith main application which was not decided. The matter was adjourned on number of times. The Tribunal by an order dated 20th

January, 2015 observed that since pleadings were complete, the petition be listed for final hearing on 10th February, 2015 before the Division Bench. On 10th February, 2015 the Court recorded following order:

“ Neither the applicant nor his Counsel are present in the Court.

Smt. H.P. Shah, learned counsel for the respondents.

M.A. No. 51/2015 for taking additional affidavit in reply on record is allowed. Post the case on 17.6.2015.”

3. The learned Counsel for the petitioner submits that interim application ought to have been decided by the Tribunal. The failure to decide the application has caused prejudice to the applicant. Reliance is placed on the Supreme Court judgment in the case of **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v/s. Shukla & Bros. {(2010) 4 SCC 785}** and judgment of Division Bench of this Court in the case of **Pipe Arts India Pvt. Ltd., Sanaswadi vs. Gangadhar Nathuji Golamare {2008(6) Mh. L.J. 280}**.

4. The learned Counsel appearing for respondents submits that show-cause notice was issued to the petitioner as he failed to join the transferred posts.

5. Admittedly, the petitioner has not joined the transferred posts even under protest. He is said to be on leave for some days but thereafter there is no record placed before this Court to show that petitioner's absence on duties was sanctioned by the employer. In such matters, we are of the view that petitioner's continuous absence for more than nine

months adversely affect the administration. The Tribunal has listed the petition for final hearing in the month of June. In case the petitioner wants early hearing of application, the petitioner may request the Tribunal accordingly. We do not express any opinion on the merits of the case. With aforesaid observations, Writ Petition is disposed of.

(A.S. GADKARI, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.