

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5120 OF 2015

Dr.Juzar I. Fidvi

-vs-

Dr.Shalini Sahebrao Fuse and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A.C.Dharmadhikari & N.D.Thombre, counsel for the petitioner.
Mr. M.M. Sudame & Mr. G.Sengar, counsel for the respondent No.1.
Mr.D.B.Patel, A.G.P for the respondent Nos.2 to 5.

CORAM : SMT. VASANTI A. NAIK &
A. I. S. CHEEMA, JJ.

DATE : 03.09.2015.

By this petition, the petitioner impugns the order of the Maharashtra Administrative Tribunal, dated 25/08/2015, allowing the original application filed by the respondent No.1 and cancelling the orders of transfer of the respondent No.1 from Nagpur Government Medical College to Akola Government Medical College and of the petitioner from Akola Government Medical College to Nagpur Government Medical College.

The petitioner as well as the respondent No.1 are working as professors in Obstetric and Gynaecology in the Government Medical College. The petitioner was due for transfer and hence he was transferred from Government Medical College, Nagpur to Government Medical College, Akola on 03/07/2014. It is the case of the petitioner that since the petitioner was unwell after suffering a heart problem and was required to take some treatment at Nagpur, the petitioner made a request to transfer him from Akola Medical College to Nagpur Medical College. The petitioner was, therefore, transferred by the order, dated

25/06/2015 from Akola to Nagpur and instead the respondent No.1 was transferred from Nagpur Medical College to Akola Medical College.

The respondent No.1 challenged the transfer order, dated 25/06/2015, transferring her from Nagpur to Akola, as she was on the verge of retirement. According to the respondent No.1, the transfer of the petitioner from Akola to Nagpur was due to the pressure exerted by a Hon'ble Minister. It was the case of the respondent No.1 that the transfer of the respondent No.1 and the petitioner was not a general transfer, but was a special transfer, as mentioned in the transfer order. The Tribunal, on an appreciation of the material on record, by the impugned order, dated 25/08/2015, allowed the original application filed by the respondent No.1 and set aside the order of transfer, dated 25/06/2015, transferring the petitioner from Akola to Nagpur and the respondent No.1 from Nagpur to Akola.

It is submitted on behalf of the petitioner that there was no breach of procedure while effecting the transfer of the petitioner from Akola to Nagpur. It is stated that the transfer of the petitioner from Akola to Nagpur is a general transfer and the petitioner is not transferred due to special reasons. It is stated that the Hon'ble Chief Minister has recorded special reasons for transferring the petitioner from Akola to Nagpur as required by the provisions of Section 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. It is stated that though the Hon'ble Minister had written a letter for the transfer of the petitioner from Akola to Nagpur, the Hon'ble Minister was not instrumental in ensuring the transfer of the petitioner. It is stated that the Tribunal ought not have cancelled the transfer of the petitioner and the respondent No.1 for the reasons recorded in the order and because the respondent No.1 was to retire on attaining

the age of superannuation within a period of one year and two months. It is lastly submitted that in similar set of facts the Tribunal had dismissed Original Application No.347 of 2015 by the order dated 25/08/2015.

On hearing the learned counsel for the parties and on a perusal of the impugned order, it appears that there is no scope for interference with the impugned order, in exercise of the writ jurisdiction. The Tribunal found that the Hon'ble Minister had issued a letter seeking the transfer of the petitioner from Akola to Nagpur within a period of one year from his transfer from Nagpur to Akola on the ground that he was unwell. The Tribunal rightly held that the transfer of the petitioner was effected due to political interference and exceptional circumstances did not exist for transferring the petitioner from Akola to Nagpur. The Tribunal rightly recorded that a transfer made merely on the request of an employee would not satisfy the test of existence of special reason or exceptional circumstances. The Tribunal held and rightly so that the transfer of the petitioner from Akola to Nagpur could not be said to be in public interest. The Tribunal observed that every employee has to face one or the other health or domestic difficulties in advanced age. The respondent No.1 was also on the verge of retirement and was about to retire within a period of one year and two months. The Tribunal found that both the petitioner and the respondent No.1 had served only in the Nagpur Government Medical College throughout their service career. The Tribunal found that the transfer of the respondent No.1 from Nagpur to Akola was effected merely with a view to favour the petitioner, who had requested his transfer from Akola to Nagpur. The transfer of the petitioner was in personal interest and the Tribunal, therefore, held that the order of the transfer could not be sustained. We do not find any illegality whatsoever in the impugned order so as to interfere with the same. The submissions

made on behalf of the petitioner are liable to be rejected for the reasons recorded herein above as also the reasons recorded by the Tribunal. We do not find similar set of facts in the case in Original Application No.347 of 2015 and original application in this case, bearing No.340 of 2015. The facts in both the original applications are different and distinguishable. It, therefore, cannot be said that the Tribunal has taken contrary views in similar set of facts in two original applications.

Since the order of the Tribunal is just and proper, the writ petition is dismissed with no order as to costs.

At this stage, a prayer is made by the learned counsel for the petitioner to stay the effect and operation of this order for a period of two weeks.

The prayer made on behalf of the petitioner is strongly opposed by the respondents. In the circumstances of the case, we are not inclined to stay the effect and operation of this order any longer, as a period of more than two months has expired from the date of transfer and there is hardly a year for the respondent to retire. The prayer is, therefore, rejected.

JUDGE

JUDGE