

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

912 WRIT PETITION NO. 103 OF 2016

BAIG IFTEQARULLAH BAIG SAIDULLAH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Ms P. S. Talekar i/by Talekar And Associates

AGP for Respondents State: Mrs. S. S. Raut

Advocate for Respondent Nos.2 & 3 : Mr.V. J. Dixit Senior Advocate holding for Mr. S. V. Dixit and Mr. A. N. Nagargoje

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 21st December, 2016

ORDER:

1. The petitioner assails the order dated 17.12.2015 transferring the petitioner on deputation to Amrawati as a Regional Wakf Officer.

2. Ms. Talekar, the learned counsel for the petitioner submits that the petitioner is working as a Stenographer (Senior Grade) since the year 2002. As per the staffing pattern, the post of stenographer is a single, non transferable post at Head Office. The learned counsel submits that on 17.12.2015, the petitioner is transferred as Regional Wakf Officer, Amrawati on the ground that there is insufficient staff at Amrawati and to look after the work at Amrawati Region, the petitioner is being transferred. Whereas,

on 02.01.2016, the petitioner is suspended on the ground that there is complaint against the petitioner. The order of transfer is malafide and does not stand to any reason. The learned counsel submits that even as per the recruitment rules, nature of duties of Regional Wakf Officer and Stenographer (Senior Grade) are completely different. By very nature of work, Stenographer (Senior Grade) has to be stationed at the Headquarter and he has to implement the orders of the Chief Executive Officer and has to work on the computer and typewriting, whereas, the post of Regional Wakf Officer is an administrative post and has to do the work of administration such as safeguarding the wakf property, to maintain peace in the office, to implement the orders of the Board and to work in the interest of the Wakf. Even grade pay of Regional Wakf Officer is higher than the Stenographer (Senior Grade). The learned counsel further submits that the said transfer is a mid term transfer and the same is also not permissible. In 2011, the petitioner had requested for temporary deputation to Consulate General Of India, Saudi-Arabia as Assistant Haj Officer, but the same was not accepted.

3. Ms. Talekar learned counsel further submits that

four Directors of the Board had recommended not to transfer the petitioner.

4. Mr. V. J.Dixit, the learned Senior Advocate for respondent Nos. 2 and 3 submits that in fact, the post held by the petitioner i.e. Stenographer (Senior Grade) is not a sanctioned post. Considering the work load at Amrawati and the exigency of the circumstances, the petitioner was posted on deputation at Amrawati. According to the learned counsel, the petitioner initially is appointed as clerk-cum-typist and the said post is a transferable post. The learned Senior Advocate further submits that the pay scale of Regional Wakf Officer and Stenographer (Senior Grade) is one and the same. If the grade pay is more, the petitioner is benefited. The petitioner never joined at the transferred place and the same amounts to misconduct. The learned senior advocate submits that it is the choice of the employer to depute the employee at a particular place as per administrative exigencies. No fault can be found in that regard. The learned Senior Counsel further submits that the petitioner cannot choose his place of working.

5. We have considered the submissions canvassed by

the learned counsel for the respective parties.

6. In the present petition, we are not considering the order of suspension. The same is assailed in separate writ petition which would be considered while dealing with the said writ petition.

7. We are also not concerned as to whether the post on which the petitioner is working since the year 2002 as a Selenographer (Senior Grade) is a sanctioned post or not. The same is also not required to be considered in the present writ petition as the said question is not germane to decide the present writ petition.

8. Staffing pattern is placed on record. As per the said staffing pattern, the post of Stenographer (Senior Grade) is shown to be a single, non transferable post of head office. We are also not considering the said aspect.

9. It is not disputed that the petitioner, at the relevant, time was working as a Stenographer (Senior Grade). The nature of the duties to be performed by the Stenographer (Senior Grade) and the Regional Wakf Officer are laid down in the schedule of Recruitment Rules, which is placed on record by the petitioner. The

nature of the work of the Regional Wakf Officer and the Stenographer (Senior Grade) is distinct. It cannot be said that the work of the Stenographer (Senior Grade) is of an administrative nature as that of Regional Wakf Officer. The Regional Wakf Officer appears to be the head in a particular region and his work basically is safeguarding the trust property and implementing the order of the Wakf Board. Whereas the Stenographer (Senior Grade) has to implement the orders of the Chief Executive officer and his basic work is to do work of typewriting/operating computers. Considering the said aspects, it would be stretching too far to say that the Stenographer (Senior Grade) would be in a position to officiate may be on deputation as a Regional Wakf Officer.

10. We are also not considering as to the effect of the petitioner not joining at the transferred place in the present matter as that will also not be relevant.

11. Considering the aforesaid aspects of the matter, the order of transfer will have to be set aside and is hereby set aside.

12. Mr. Dixit the learned Senior Advocate states that the petitioner is already suspended and it would

not be possible for him to work as a Stenographer (Senior Grade) at Aurangabad. We have not commented upon the said aspect in any manner. It is for the parties to take further recourse pursuant to the cancellation of the transfer order.

13. Writ petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC