IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8583 OF 2016
(Gulab Deoram Walase Vs. The State of Maharashtra and others)

Mr. Suresh D. Dhongade, Advocate for the Petitioner
Mr. A.B. Girase, Government Pleader for respondent Nos. 1 and 2

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

DATE : 9th AUGUST, 2016

PER COURT :

Not on Board. Mentioned. Production is allowed and taken on Board.

2. Heard the learned counsel appearing for the petitioner and the learned Government Pleader for respondent Nos. 1 and 2.

3. The learned counsel for the petitioner submits that already the impugned judgement and order has been stayed by the learned Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad till 12th August, 2016. He further submits that the petitioner is about to retire within nine months. Therefore, the petitioner may be retained at Ahmednagar. There are cadre posts at

other places. However, the respondents have chosen to transfer the petitioner from Ahmednagar. The petitioner is not claiming the benefits/post retiral benefits of the cadre post. He further invites our attention to the provisions of Section 4 (1) (2) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short, "Act of 2005") and submits that no Government servant shall ordinarily be transferred unless he has completed his tenure of the posting as provided under section 3. He submits that the normal tenure of the posting is of three years. He further submits that the transfer of the petitioner is a mid-term transfer. He submits that as per Sub-Section (2) of Section 4 of the Act of 2005, the transfer should be in the month of April or May. It is submitted that in case of transfer of the petitioner from Ahmednagar to Pune, he will suffer hardship. He submits that in case this Court is not inclined to entertain this petition, then atleast the petitioner may be retained for two to three months at Ahmednagar.

4. On the other hand, the learned Government

Pleader, appearing for the State, submits that the post occupied by the petitioner is a cadre post. Admittedly, the petitioner does not belong to the Indian Forest Service (I.F.S.) cadre. The officer from the I.F.S. cadre is available to be posted at Ahmednagar. He invites our attention to Rule 9 of the Indian Forest Service (Cadre) Rules, 1966 and submits that it is only in case of the non-availability of the officer from the I.F.S. cadre officer, the vacancy can be filled up for temporary period and when a suitable candidate/officer is available, such vacancy is to be filled up from the I.F.S. cadre. He submits that in the present case, now the officer from I.F.S. cadre is available. He, therefore, prays that the writ petition may be rejected.

5. We have heard the learned counsel for the petitioner and the learned Govt. Pleader at length. With their able assistance, we have gone through the grounds taken in the petition and the annexures thereto and perused the impugned judgment and order passed by the learned Maharashtra Administrative Tribunal.

6. Admittedly, the petitioner does not belong to I.F.S. cadre and therefore, he has no right to claim the

post occupied by him at Ahmednagar. Further, admittedly, the said post is meant for the officer from I.F.S. cadre. The contention of the petitioner that his transfer, vide order issued in the month of March, 2016, thereby transferring him from Ahmednagar to Pune, amounts to mid-term transfer, cannot be accepted and deserves no consideration in view of the fact that already the officer from I.F.S. cadre is available to be posted at Ahmednagar.

7. As regards the processing of the pension papers of the petitioner and the papers in relation to his post-retiral benefits, it can also be done from the office at Pune where the petitioner is transferred. The petitioner submits that at either place, the cadre posts are available. However, in that respect, it is for the State Government to take such decision and it is not for this Court to cause any interference in the jurisdiction of the State Government in the matter of posting its officers in the State of Maharashtra. Therefore, for the reasons aforestated, we are of the opinion that the reasons recorded by the learned Maharashtra Administrative Tribunal in the impugned judgment need no

interference. The writ petition, therefore, is liable to be rejected.

8. Though the learned counsel for the petitioner has insisted for extension of time to vacate the post at Ahmednagar, in that respect also, once we have taken a view that the petitioner does not belong to I.F.S. cadre and has no legal right to retain the said post, we are not inclined to consider the said prayer made on behalf of the petitioner. In the result, the writ petition is rejected.

[**SANGITRAO S. PATIL**]
JUDGE

[S.S. SHINDE]
JUDGE

npj/wp8583-2016