

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

WRIT PETITION NO.9206 OF 2015

Jitendra Manohar Jadhav,
Age: 49 Years, Occ. Service as Laboratory
Tehnician in Rural Hospital, Amalner,
Dist. Jalgaon, R/o. Mutthe Lane,
Amalner, Dist. Jalgaon.

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through the Secretary,
Public Health Department,
Mantralaya, Mumbai.
- 2] The Deputy Director of Health Services,
Nasik Region, Nasik.
- 3] The Director of Health Service,
Aarogya Bhavan,
St. Gorges Hospital Compound,
V.T., Mumbai 400 001.

Copies to be served on G.P., H.C.
Aurangabad Bench.

RESPONDENTS

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Mr. Ajay S. Deshpande, Advocate for the Petitioner
Mr. A.G.Magare, AGP for the Respondent Nos.1 to 3 / State

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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 09.02.2016
Pronounced on: 02.03.2016

JUDGMENT: [Per S.S.Shinde, J.]:

- 1] This Petition takes exception to the decision
rendered by the Administrative Tribunal, dated 25.08.2015

in Original Application No.440 of 2015 at Exhibit-E, and also, to the impugned order of transfer dated 30.05.2015 at Exhibit-B issued by respondent no.3, thereby transferring the petitioner from Rural Hospital, Amalner, Dist. Jalgaon to District Hospital, Nandurbar, on administrative ground.

2] It is the case of the petitioner that, the petitioner came to be posted at Amalner in Rural Hospital in Jalgaon District on his own request. The petitioner is working as Laboratory Technician in Rural Hospital, Amalner, from 01.06.2011. Being a Group-C Government Servant, as per the provisions of the Transfer Act, 2005, he is entitled to continue at a station for two consecutive tenures of three years each. Accordingly, the petitioner was expecting to be continued at his present place of posting at Amalner till May, 2017. However, before he completes the prescribed tenure, he is sought to be transferred from Amalner, District Jalgaon to Nandurbar District Hospital, Nandurbar, by the impugned order dated 30.05.2015, which has been served upon the petitioner on 08.07.2015.

3] It is further the case of the petitioner that, bare perusal of the impugned transfer order reveals that, there

has been no compliance of the statutory provisions while issuing the same, especially while effecting the petitioner's mid-tenure transfer. No prior approval, as is required to be obtained for effecting mid-tenure transfer, has been obtained thereby the impugned order of transfer is an order issued in contravention of the provisions of Transfer Act, 2005, and therefore, the same deserves to be quashed and set aside by this Court. On 13.07.2015, the petitioner approached the Administrative Tribunal, challenging the transfer order dated 30.05.2015 predominantly on the ground of it being issued in contravention of the provisions of Transfer Act, 2005. On 17.08.2015, the respondents filed reply-affidavit at the last moment containing in numerous complaints against the petitioner by stating that, the Director being the superior authority of the State help and thus he is competent to take decision and there is no need to obtain special permission regarding transfer of the petitioner.

4] It is further the case of the petitioner that, as a matter of fact, in the wake of the provisions of Section 3 and Section 4 of the Transfer Act, 2005, solely on the basis of the submissions regarding competence of respondent no.

3 of issuing mid-tenure transfer, Original Application was required to be allowed, however, to the petitioner's dismay, the Administrative Tribunal has failed to conceive the effect of such transfer issued in contravention of the provisions of Transfer Act and the Tribunal has ventured to observe that, the provisions of the Transfer Act are not mandatory. Therefore, Writ Petition deserves to be allowed by quashing the impugned order of transfer, to subserve the ends of justice.

5] The learned counsel appearing for the petitioner also invited our attention to the averments in the additional affidavit filed by the petitioner on 25th January, 2016. He submits that, the reply affidavit was submitted by the respondents on 14th August, 2015 itself, and then the matter was finally heard on the same day. It is also submitted that, since the matter was taken up for hearing on the same day, the petitioner could not file detailed rejoinder-affidavit so as to controvert the claims made in the affidavit-in-reply. The learned counsel appearing for the petitioner pressed into service exposition of the Hon'ble Supreme Court in the case of Union of India and others Vs. S.L.Abbas¹.

1 [1993] 4 SCC 357

6] Upon hearing the learned counsel appearing for the petitioner and the learned AGP appearing for the respondent – State, and upon careful perusal of the pleadings in the Petition, averments in the additional affidavit filed by the petitioner, and the reasons assigned by the Maharashtra Administrative Tribunal, we are of the opinion that, the matter needs to be remitted back to the Maharashtra Administrative Tribunal for re-consideration on all issues raised by the petitioner for the reasons stated herein below. There is no denial to the fact that, the respondents filed affidavit in reply before the Maharashtra Administrative Tribunal on 14th August, 2015, and as contended by the learned counsel appearing for the petitioner, the petitioner had no opportunity to file rejoinder-affidavit to controvert the claims made in the affidavit in reply. *Secondly*, it appears that, the Maharashtra Administrative Tribunal in para 9 to 11 of the impugned order has discussed in detailed about the allegations made against the applicant. It appears that, relying upon the material placed on record by the respondents, the Maharashtra Administrative Tribunal in para 11 held that, there are number of complaints against the applicant and even the Municipal Council Employment

Union, Amalner, has made serious allegations against the applicant wherefrom it seems that the applicant was not performing his duty properly and was causing inconvenience to the patients. There are other observations also in the said paragraphs. It is also observed that, the provisions of Transfer Act are not mandatory, and therefore, the Maharashtra Administrative Tribunal dismissed the Original Application.

7] In our opinion, the petitioner ought to have been given opportunity to reply averments in the affidavit-in-reply filed by the respondent – State on 14th August, 2015. However, it appears that, on the same day, the MAT proceeded to decide Original Application finally. The averments in the said affidavit in reply relate predominantly to the factual assertions. The learned counsel for the petitioner submits that, additional affidavit filed by the petitioner may be treated as rejoinder affidavit in Original Application so as to adjudicate controversy on facts. However, first time while exercising the writ jurisdiction, such exercise is not desirable. The discussion in the impugned Judgment of the Maharashtra Administrative Tribunal in para 9 to 11, may likely to affect upon the

service career of the petitioner, in case said discussion is not confined to the issue of transfer. The petitioner did raise the point that, the provisions of Transfer Act are not mandatory, however, it appears that, the said point has not been elaborately discussed and dealt with by the Maharashtra Administrative Tribunal. Therefore, without entering into the merits of the issues raised in this Petition, we deem it appropriate to quash and set aside the impugned Judgment and order dated 25th August, 2015, passed by the Maharashtra Administrative Tribunal in Original Application No. 440 of 2015, and accordingly, same is quashed and set aside. Original Application No.440 of 2015 is restored to its original file. The parties are relegated before the Maharashtra Administrative Tribunal for adjudication afresh of the Original Application on all the issues raised in the Original Application and the present Petition. The Maharashtra Administrative Tribunal to decide the Original Application afresh as expeditiously as possible, and preferably within 6 weeks from today.

Needless to observe that, the petitioner will be entitled to tender affidavit in rejoinder before the Maharashtra Administrative Tribunal.

8] Writ Petition is partly allowed. Petition stands disposed of on above terms.

Sd/-

[P.R.BORA]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE

DDC