

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

WRIT PETITION NO. 9751 OF 2016

Rajendra S/o Daulatrao Wankhede,
Age : 54 Years, Occu. : Service
Working as Forester (Saw Mill Checking)
Aurangabad,
R/o N-7, Sector-F, House No. 1/1,
Ayodya Nagar, CIDCO, Aurangabad,
Tq. & Dist. Aurangabad. .. Petitioner

Versus

1. Shivaji Pandurang Nikale,
Age : 56 Years, Occu. : Assistant
Plantation Officer,
R/o Vishnunagar, Hiverkeda Road,
Kannad, Tq. Kannda,
Dist. Aurangabad.
2. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai - 32.
3. The Chief Conservator of Forest
(Regional), Aurangabad,
District Aurangabad.
4. The Deputy Conservator of Forest,
Aurangabad Forest Division,
Aurangabad,
District Aurangabad. .. Respondents

Shri Avishkar S. Shelke, Advocate for the Petitioner.
Shri Sujeet D. Joshi, Advocate for the Respondent No. 1.
Shri V. H. Dighe, A.G.P. for Respondent Nos. 2 to 4.

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

DATE : 22ND SEPTEMBER, 2016.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Mr. Shelke, the learned counsel for the petitioner states that, the petitioner was transferred in the place of the respondent No. 1 and vice versa. The respondent No. 1 assailed the order transferring him by filing Original Application No. 420 of 2016. Though the petitioner would be prejudiced by any adverse order passed against him, in the said original application, the petitioner was not arrayed as party and in absence of the petitioner impugned order came to be passed by the Tribunal. The learned counsel submits that, the petitioner did not get any opportunity to put forth his stand. The petitioner had already joined the post at his transferred place on 01.06.2016. Even salary was paid to the petitioner from the said office. Since June 2016 the petitioner is working on the said post. According to the learned counsel, the Tribunal in absence of the petitioner could not have passed the said order.

3. Mr. Joshi, the learned counsel for the respondent No. 1 submits that, the petitioner was aware of the transfer order being challenged before the Tribunal. The petitioner could have appeared before the Tribunal to put forth his case. Though the proceedings were pending before the Tribunal for almost three months. The petitioner slept over and did not appear in the matter. Now the petitioner cannot turn around and make a grievance of opportunity not being granted to him. Even the state was not co-operating. The state filed the order of transfer of the petitioner only along with reply to rejoinder affidavit and not prior to it. According to the learned counsel, the order of transfer which was under challenge did not specify that the petitioner is transferred in the place of the respondent No. 1. The respondent No. 1 was not aware that he is transferred at the place of petitioner. The order of transfer did not specify the said aspect.

4. We have also heard the learned Assistant Government Pleader. The learned A. G. P. states that, in the reply filed before the Tribunal, the state had made it clear that, it was the petitioner who has been transferred in place of the respondent No. 1. As such, it is erroneous on the part of the respondent No. 1 to say that, the said fact was not brought to the notice of the respondent No. 1.

5. We have considered the submissions canvassed by learned counsel for respective parties.

6. It is a fact that, by the impugned order passed by the Tribunal, the petitioner would be affected and would stand displaced from the place where the petitioner is transferred as stated by the petitioner and the learned A. G. P. that, the petitioner has already joined at his transferred place on 01.06.2016 and that salary is paid to him on and from June 2016. The rights of the petitioner certainly would be affected by the impugned order. It is the cardinal and fundamental principle of natural justice that, no man shall be condemned unheard.

7. As the petitioner was not party before the Tribunal, naturally the petitioner could not put forth his case. In such a case opportunity deserves to be given to the petitioner.

8. In the light of the above, we pass the following order.

9. The impugned order is quashed and set aside and the parties are relegated before the Maharashtra Administrative Tribunal, Aurangabad. The parties shall appear before the Tribunal on 03rd October, 2016. The respondent No. 1 shall array the present petitioner as respondent in the Original Application No. 420 of 2016. As date for appearance is already given, fresh

notices to parties are not necessary. The petitioner shall file his say within a period of ten (10) days from the date of appearance before the Tribunal. Considering the fact that, it is a case of transfer and the matter is remitted back from this Court, we request the Tribunal to dispose of the proceedings as expeditiously as possible and preferably within a period of one month from the date of filing say by the petitioners.

10. Rule accordingly is made absolute in above terms. No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Sept. 16