

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8867 OF 2016

Smt. Vijaya d/o Sahebrao Chaudhari Petitioner
vs
1 The State of Maharashtra
2 The Chief Executive Officer,
Pune Zilla Parishad, Pune
3 District Health Officer,
Health Department, Pune
4 Medical Officer, Primary Health Centre,
Rahu
5 Medical Officer, Primary Health Centre,
Karla. Respondents

Mr. Ashwin Sakolkar for the petitioner.
Mr. Sanjeev J. Rairkar for respondents 2 to 5.

**CORAM: ANOOP V. MOHTA AND
G. S. KULKARNI, JJ.**

DATE : August 12, 2016

ORAL JUDGMENT (Per G. S. Kulkarni, J.):

Rule, returnable forthwith. By consent of parties, heard finally.

2 The Petitioner, who is in the service of Zilla Parishad, Pune as a Pharmacist, has been transferred by an order dated 30 April 2016 annexed at page 25 of the paper-book from Primary Health Centre, Rahu, Taluka: Daund to the Primary Health Centre, Karla, taluka:

Maval, District. Pune. The transfer order categorically records that the Petitioner should be relieved on 31 May 2016 after the office hours for enabling her to join at the transferred place and that the Petitioner should immediately join the post at Karla. Accordingly, the Petitioner, by her letter dated 31 May 2016 handed over the charge of her post at Rahu, taluka Daund. On 1 June 2016, the Petitioner reported at the transferred place. A letter to that effect is addressed to the Medical Officer, Primary Health Centre, Karla.

3 It appears that only because certain report of the Petitioner being relieved from Rahu was not received by the concerned Medical Officer at Karla, the Petitioner was not permitted to join and discharge her duties at the transferred posting. The Petitioner therefore addressed letter dated 1 June 2016 to the Medical Officer at Karla pointing out that she has been transferred by virtue of the said transfer order and accordingly, she is entitled to work at the transferred posting. However, surprisingly, by letter dated 3 June 2016 the Medical Officer, Primary Health Centre, Karla informed the Petitioner, that as she has not produced the relieving order from Rahu and, therefore, she would not be permitted to join duties at Karla.

4 A further complication is created by letter dated 6 June 2016 whereby the Medical Officer at Rahu informs the Petitioner that she is un-authorisedly absent from 1 June 2016. The Petitioner was called upon to show cause as to why disciplinary proceedings should not be initiated against the Petitioner. By further communication dated 6 June 2016, the Medical Officer, Primary Health Centre, Rahu clarified that as his Office has not received the official transfer order issued to the Petitioner and appropriate steps should be taken only after transfer order is officially received by the Medical Officer at Rahu.

5 The Petitioner, being aggrieved by the above actions, approached the Maharashtra Administrative Tribunal (MAT) which, initially by an order dated 28 June 2016 granted an ad-interim protection to the Petitioner. However, by further order dated 12 July 2016, the MAT disposed of the Original Application on the ground that Petitioner being an employee of the Zilla Parishad, the Tribunal did not have jurisdiction under the Administrative Tribunals Act, 1985 and the Original Application was accordingly disposed of. It is in the

above position the Petitioner has approached this Court in the present Petition.

6 We have heard the learned counsel appearing for the parties. Mr. Rairkar, learned counsel appearing for the Zilla Parishad, at the outset does not dispute that the Petitioner was issued the transfer order in question. He, however, submits that he would like to file a reply to the writ petition. When it is not disputed that the transfer dated 30 April 2016 is in operation and that the consequence of the transfer order is that the Petitioner was required to hand over the charge of her post at Rahu on 31 May 2016, we cannot agree to the request of Mr. Rairkar that the Respondent Zilla Parishad be granted an opportunity to file reply on some issues which do not fall for consideration in this Petition. This submission thus need not detain us in disposing of the petition as the basic fact of the issuance of transfer order is not in dispute.

7 In pursuance to the transfer order dated 30 April 2016, the Petitioner has handed over the charge on 31 May 2016 and reported for duties at Karla on 1 June 2016. If this is the position, then we

find it is surprising as to how the Petitioner could not be permitted to join the duties at the transferred post at Karla and discharge her duties/functions. We also find that the action which has been resorted by the Medical Officer at Rahu threatening the disciplinary action against the Petitioner is also totally unwarranted in the facts of the case. The Petitioner cannot be rendered to be a victim of the communication gap or any other official formalities which are pending between two different offices. The transfer order being subsisting is presumed to be legal and valid. This position has not been disputed by the Zilla Parishad either before the Tribunal or before this Court.

8 In view of the above situation, we do not find that the impugned action on the part of the Respondents in not permitting the Petitioner to join posting at the transferred place at Karla is just and proper. On the facts as they stand we have no hesitation, but to allow the present Petition. The writ petition is accordingly allowed by directing the Respondents to permit the Petitioner to join the transferred place under the transfer order dated 30 April 2016. We also quash and set aside communication dated 6.6.2016 annexed at Exhibit H (page 35) of the Petition. The Respondent shall also make

the payment of arrears of salary, if any, to the Petitioner at the transferred place of posting within a period of two weeks.

9 At this stage, M. Rairkar, learned counsel appearing for Zilla Parishad, states that there are certain issues which are pending before the Commissioner. We do not express any opinion as that is not the subject matter of the present Petition.

10 Rule is made absolute in the above terms. There shall be no order as to costs.

Parties to act on an authenticated copy of this order.

(G. S. KULKARNI, J.)

(ANOOP V. MOHTA, J.)