

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 10449 OF 2014**

Shri Sopan Sitaram Mane .. Petitioner
versus
The State of Maharashtra & Ors. .. Respondents

Mr. A. C. Deshpande for Petitioner.
Mr. C. P. Yadav – AGP for State.

**CORAM: V. M. KANADE AND
M. S. SONAK, JJ.
DATE : 29 JULY 2016**

P.C.:

1] The petitioner challenges the judgment and order dated 16 July 2014 made by the Maharashtra Administrative Tribunal (MAT) dismissing the petitioner's original application no. 1046 of 2011.

2] Mr. Deshpande, learned counsel for the petitioner has submitted that the petitioner, in terms of the Maharashtra Civil Services (Pay) Rules, 1981, was entitled to pay protection as a matter of right and in any case, since, the petitioner was not made aware that he would be transferred to the post, which carried the lower pay scale, the petitioner's earlier pay scale as liftman was required to be restored and on the said basis, the petitioner was liable to be awarded the benefit of time bound promotional scale. Mr. Deshpande submitted that since the MAT has not considered these aspects or in any case not considered these aspects in the proper perspective, case is made out to warrant interference with the impugned order.

3] Mr. Yadav, learned AGP submitted that the petitioner was

transferred from Mumbai to Kolhapur at his own request in the year 2000. The petitioner has benefited from such request transfer and therefore, cannot, at this stage, complain about the pay scale applicable to the transferred post. Mr. Yadav submitted that the Rules upon which reliance is placed by the petitioner are not at all applicable to the facts and circumstances of the present case, including in particular the circumstance that the petitioner was transferred at his own request. For these reasons, Mr. Yadav submitted that the petition is liable to be dismissed with costs.

4] We have considered the rival submissions. We have also perused the record as well as the impugned judgment and order. In our judgment, there is no case made out to interfere with the impugned judgment and order in the exercise of extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

5] In this case the petitioner was posted as a liftman at Elphinstone College, Mumbai. The petitioner some time in the year 1999 made a request for transfer to Kolhapur on the ground that his presence at Kolhapur was necessary to take care of his ailing mother and further, the climate at Kolhapur would be conducive to the health of his daughter who was said to be afflicted by Asthma. In pursuance of such request, the petitioner was transferred to Kolhapur by order dated 11 January 2000 to a Class IV post. Incidentally even the post of liftman held by the petitioner in Mumbai was a Class IV post. Thus, this was a case of transfer from one Class IV post to another.

6] The record further indicates that there are different scales corresponding to the nature of work and responsibility even within the

grade of Class IV post. Since, in Kolhapur, there was no post of liftman, the petitioner was transferred and posted to the post of peon, which carried scale of pay lesser than the scale applicable to the post of liftman. At this point of time, it is not possible to accept the petitioner's contention that he was ignorant of this position or that any further option was required to be given to him in the matter.

7] The petitioner claims that he represented in the matter of pay protection. However, there is nothing on record to indicate that the petitioner actually declined the benefit of transfer and applied for repatriation to Mumbai in the post of liftman. In the absence of such material, we see no error on the part of the MAT in declining relief to the petitioner.

8] The petitioner, cannot, enjoy and continue to enjoy the benefits of request transfer to Kolhapur for so many years and thereafter, turn around and seek pay protection as a matter of right. The Rules to which reference was made by learned counsel for the petitioner are clearly not attracted in a circumstance of this nature. In any case, the rules, in a situation of this nature, do not mandate any pay protection.

9] The MAT has properly addressed itself to the facts, circumstances and law on the subject. There is no illegality, much less, any jurisdictional error in the making of the impugned judgment and order.

10] This petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

(V. M. KANADE, J.)