

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

WRIT PETITION NO. 1459 OF 2017

VISHWANATH BABUNATH NATH ...Petitioner

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

...Respondents

Advocate for Petitioner : Mr. Deshmukh Avinash S.
AGP for Respondents : Mr. P.S.Patil
Advocate for Respondent no.3 : Mr. A.S.Deshpande
.....

CORAM : S.V.GANGAPURWALA & K.L.WADANE, JJ.

DATED : 16th FEBRUARY, 2017

O R D E R :

The petitioner was promoted to the cadre of Superintending Engineer and was posted at Aurangabad on or about 16.12.2015. The petitioner joined the said post on 21.12.2015. On or about 2.9.2016 the petitioner was issued an order of transfer from Aurangabad to Mumbai. The

petitioner filed representation urging to cancel the said transfer order. The same, it appears, was not acceded to by the Government. The petitioner on or about 16.11.2016 filed Original Application before the Maharashtra Administrative Tribunal, Aurangabad. The Tribunal initially granted interim relief in favour of the petitioner. Thereafter, the Tribunal vide order dated 27.1.2017 dismissed the Original Application. Aggrieved thereby the present petition.

2. Mr. Deshmukh, learned counsel for the petitioner strenuously contends that the petitioner was posted at Aurangabad on 16.12.2015 and hardly within a period of eight months the petitioner is transferred to Mumbai, that too, mid term. Learned counsel submits that this transfer is against the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as, "the

Act of 2005"). Learned counsel submits that the petitioner could not have been transferred before the normal tenure of three years and if the authority wants to transfer a person before the stipulated period of three years, then special reasons are to be assigned for the same. The said reasons did not exist. Section 4 of the Act of 2005 has not been followed. The reason that the petitioner has experience of working in Mantralaya cannot be a reason for bringing transfer within the ambit and purview of special circumstances. To substantiate his contention the learned counsel relied on the judgment of the Division Bench of this Court in the case of **Pradeepkumar s/o Kothiram Deshbhratar vs State of Maharashtra and others**, reported in **2011 (5) Mh.L.J. 158**. Learned counsel submits that even as per the Note put forth before the Hon'ble Minister the persons from Kokan Division were required to be considered for transfer at Maitri Kaksha. The petitioner was posted at Aurangabad, as such could not have been considered for transfer.

3. Learned counsel further relies on the Notification dated 28.4.2015 to contend that an employee has to be retained in a Revenue Division for a period of three years and Mumbai is included in Kokan Division whereas Aurangabad consists of a separate Division. In view of that Notification also the petitioner could not have been transferred.

4. Learned counsel submits that the representation made by the petitioner for cancelling transfer was under active consideration of the authority, but to accommodate respondent no.3 the said representation of the petitioner was not considered. Respondent no.3 is posted at Aurangabad in the place of the petitioner on the recommendation of a M.L.A. Learned counsel submits that the said aspect shows the mala fides. According to the learned counsel, the petitioner is still holding charge at Aurangabad. As the order of transfer is per se and ex facie illegal, same deserves to be quashed and set aside.

Learned counsel further submits that the Tribunal has failed to consider the provisions of the Act of 2005 and the Notification, in its correct perspective and thereby has arrived at erroneous conclusion.

5. Mr. Patil, learned A.G.P. submits that the list placed before the authority for considering transfers at Maitri Kaksha was of 66 persons of the grade of Superintending Engineer. The name of the petitioner was also part of the said list. Considering the experience acquired by the petitioner while working in Mantralaya the name of the petitioner was recommended. New scheme is floated by the Government i.e. Single Window System (Maitri Kaksha). Considering the work experience of the petitioner the Hon'ble Chief Minister has approved the same. Learned counsel submits that the reason given is not open for review by the courts. Learned A.G.P. relies on the judgment of the Division Bench in the case of **State of Maharashtra vs Ashok Ramchandra Kore and another,**

reported in **2009 (3) B.C.R. 673.**

6. Mr. Deshpande, learned counsel for the respondent no.3 submits that respondent no.3 is transferred at the place of the petitioner two months after the transfer of the petitioner. It is not at the behest of respondent no.3 the petitioner is transferred. The procedure has been followed.

7. We have considered the submissions canvassed by the learned counsel for the respective parties, so also have gone through the judgment of the Tribunal dismissing the Original Application.

8. This Court in exercise of its jurisdiction in cases of transfer would consider two aspects (1) adherence to the procedure; and (2) the transfer not being effectuated with mala fide.

9. The transfer of Government servant is

regulated by the Act of 2005. The normal tenure of a Government servant at a particular place is three years, however, the authority is empowered to exercise its discretion of transferring a Government servant prior to completion of the said tenure. The same is dealt with in Section 4 (5) of the Act of 2005. Section 4 (5) of the Act of 2005 reads as under :-

"4- Tenure of transfer

.....
 (5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of the immediately superior) Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post. "

Reading the said provisions, it is manifest that in special cases after recording reasons in writing and with the prior approval of the immediate superior transferring authority the competent authority may transfer a Government servant before completion of the tenure of the post. In the present case, on perusal of the

record it is manifest that the Hon'ble Chief Minister has signed the said recommendation thereby approving the name of the petitioner for transfer from the post held by the petitioner as Superintending Engineer, Aurangabad to Maitri Kaksha. There is no transferring authority superior to the Hon'ble Chief Minister in the State. The reason assigned for transfer is that the experience of the petitioner while working at Mantralaya would be beneficial.

10 The contention of the petitioner is that there are many other persons holding post of Superintending Engineer for working in Mantralaya and they could have been considered. The said contention, if accepted would lead us no where. Each and every person who has worked in Mantralaya would come up with this plea. The petitioner was selected amongst many persons who had worked at Mantralaya earlier. We could have considered the argument of the petitioner, had it been a case of mala fides. The transfer of the petitioner is not

on the ground to accommodate some other candidate/employee. No person was transferred at the place of the petitioner when the transfer orders were issued to the petitioner. In a newly created Maitri Kaksha (Single Window System) the petitioner was transferred and in place of the petitioner no person was posted. It is only after a period of two months of the transfer order being issued to the petitioner, the respondent no.3 was directed to join at the place of the petitioner. We could not gather the case of mala fides from the pleadings of the petitioner either before the Tribunal or before this Court. In absence of any mala fides and due procedure being adhered to, the Courts would be slow in interfering with the orders of transfer.

11. In the case of **Pradeepkumar** referred to supra, the Court observed that reasons must be recorded for permitting such a transfer and must be found to be in the interest of administration and cannot be at the whim or wish of a particular

individual. In the said case, the Court observed about the transfer of the petitioner and respondent no.5 therein, the transfer was inter se between the petitioner and respondent no.5 therein. The specific cases which were looked into by the Hon'ble Minister were considered and the Court came to the conclusion that it was only on the basis of the request made by the President of Zilla Parishad and recommendation of the Hon'ble Minister the proposal was treated as a special case.

12. In the case of **State vs Ashok** referred to supra, the Court observed that the experience in the field of implementation of two irrigation schemes by the person for bringing him in place of another respondent in the said case was sufficient reason to bring it within the special case. It is further observed that reasons recorded by the State could not have been gone into by the Tribunal and the employer shall be the best judge who would appreciate the performance of the

employees and their suitability in a particular place.

13. In the present case also the suitability of the petitioner to function at a Single Window System was considered by the authority. Performance is also considered. The procedure as laid down under Section 4(5) of the Act of 2005 has been followed. No allegations of mala fides exist.

14. The Notification dated 28.4.2015 relied by the petitioner will have to be read in consonance with the Act of 2005.

15. In view of all the afore said aspects, the judgment of the Tribunal cannot be faulted with. As such, Writ Petition is disposed of. No costs.

16. At this stage, learned counsel for the petitioner seeks continuation of the interim relief granted earlier. Learned A.G.P. and Mr.

Deshpande, learned counsel for respondent no.3 opposes said request.

Considering that interim relief is operating, we continue the said interim relief for a period of two weeks from today.

Needless to state, on lapse of two weeks, interim relief granted by this Court shall come to an end.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

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