

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.4204 OF 2017**

Yogini Avinash Balankhe,
Age 39 years, Occ.Service
(as Field Officer, MPCB),
Sub-Regional Office, Jalna),
R/o R.H.No.10, Sahyadri Hills,
Bagadiya Nagar, Shivaji
Nagar, Aurangabad. ... Petitioner.

Versus

1. The State of Maharashtra
Control Board, Mumbai,
through its Member Secretary,
Kalpataru Point, 2nd floor,
Sion-Matunga Scheme Rd.No.8,
Opp.Sion Circle, Sion(East),
Mumbai-22.
2. The Sub-Regional Officer,
Maharashtra Pollution Control
Board, Jalna.
3. The State of Maharashtra,
through its Secretary,
General Administration Dept.,
M.S., Mantralaya, Mumbai-32. ... Respondents.

...
Mr.Avinash S.Deshmukh, advocate for the
petitioner.
Miss.R.P.Gaur, A.G.P. for the State.
Mr.U.B.Bondar, advocate for Respondent Nos.1 and
2.

...

**CORAM : S.V.GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

**Reserved on : 12.04.2017
Pronounced on : 03.05.2017.**

JUDGMENT (Per S.V.Gangapurwala, J.)

1. The petitioner assails the order dated 22.3.2017, issued by Respondent No.1 transferring the petitioner from Jalna to Ahmednagar.

2. Mr.Deshmukh, learned counsel for the petitioner submits that in May 2015, the petitioner was transferred from Regional Office Aurangabad to Sub-Regional Office Jalna, pursuant to the request made by her. The petitioner had hardly completed tenure of about 21 months on her post as Field Officer at Jalna and the petitioner received the impugned order of transfer. The learned counsel submits that the said order of transfer is not in consonance with Circular dated 27.11.1997 and 12.12.2012. The normal tenure for an employee in a post is three years. The petitioner has not completed three years on her post at Jalna. The petitioner was not due for transfer from the said

place/headquarters. In December 2016, Respondent No.1 had issued a Circular calling upon the employees to give their respective options regarding posting. The petitioner requested for transfer and posting in the Sub-Regional Office or in the Regional Office at Aurangabad as the family of the petitioner is staying at Aurangabad. According to the learned counsel, the petitioner requested for transfer at Aurangabad but the same was not considered and the petitioner was transferred to Ahmednagar ostensibly on administrative ground. The request for mutual transfer was not accepted. The mid-term tenure transfer is not justifiable and the same is not for palatable reason. The learned counsel further submits that at Ahmednagar, where the petitioner is sought to be transferred, three Field Officers are already posted and working and in Jalna there are only two Field Officers including the petitioner. The learned counsel submits that on one hand, the petitioner is being transferred out of Jalna hardly within the tenure of 21 months. On the other hand, number of other Field Officers have been continued on their

respective posts inspite of the fact that they have overlived their respective tenures. Order of transfer is also a mid-tenure transfer. The Respondent No.1 has indulged in pick and choose method causing injustice to the petitioner while showing undue favour to the others.

3. Learned counsel further submits that the representation is given by the petitioner requesting for cancellation of unjustified transfer. The petitioner has pointed out to the Respondent No.1 the difficulties faced. The son of the petitioner is undergoing 10th Board examination. The inlaws are totally dependent upon her and her mother has undergone eye surgery. The son has also to appear in entrance examination to be conducted by the Services Preparatory Institute at Auragnabad on 7.5.2017. The said representation is not considered. The order of transfer is without application of mind. Learned counsel further submits that the noting dated 2.8.2016 in the concerned file states that at least two Field Officers are required in the SRO Office at Jalna. As such the contention of

Respondent that the transfer order was issued considering administrative exigency is erroneous. Uniform criteria is not being applied. The petitioner has given specific instances to substantiate that the Field Officers who have overlived their tenure are continued. The transfer order be set aside.

4. Mr.Bondar, learned counsel for the Respondents submits that the jurisdiction of Respondent No.1 Board is divided into 12 Regions. District Jalna is included in Aurangabad Region. The post on which the petitioner is appointed is transferable post. In the month of June 2008, the petitioner was transferred to the Regional Office at Aurangabad. Since June 2008 to May 2015, the petitioner was posted as Field Officer in the Regional Office at Aurangabad. In June 2015, upon the request of the petitioner, the petitioner was posted in the Sub-Regional Office at Jalna with effect from 5.6.2015. Till date the petitioner continued there. The Sub-Regional Office, Jalna falls within Aurangabad Region. For more than eight years, the petitioner is

continuously posted in Aurangabad Region. In March 2017, considering the administrative exigencies, the Respondent No.1 issued order dated 22.3.2017 for transfer of 27 Field Officers and one Sub-Regional Officer. The petitioner has not yet joined. Majority of the other persons who are transferred have joined. As per para 2(2) of the Circular dated 27.11.1997 and 12.12.2012, it is clear that the transfer of employee essentially for administrative reasons should not be made within a period of one year from the date of posting. The bar of period of three years does not operate in the case of transfers for administrative reasons. The Respondent No.1 Board is the best Judge to determine the administrative exigency in a particular region. The Respondent No.1 has not indulged in pick and choose policy. Mr.Bondar, learned counsel relies on the order passed by the Division Bench of this Court at Bombay in W.P.No.10495/2013 dated 19.11.2013.

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

parties.

6. The Courts are normally loath in interfering with the orders of the transfer. The Courts would exercise their powers of judicial review in orders of transfer only if it is shown that the laid down procedure is not followed or that the transfer is malafide and not for boanfide reason.

7. It is not disputed that the petitioner is serving in Aurangabad Region for more than eight years. In 2015, the petitioner was transferred to Sub-Regional Office, Jalna at the request of petitioner. The Sub-Regional Office, Jalna is a part of Auragnabad Region. It is also a fact that the petitioner in February 2015, had requested for mutual transfer at Aurangabad. The petitioner as has continuously worked in Aurangabad Region for more than eight years, on administrative ground is transferred at Ahmednagar. The Circular relied by the petitioner states that those employees who have normally worked in one office for three years or

for five years in one Region are liable for transfer. The petitioner had completed eight years in Aurangabad Region, as such was transferred on administrative ground. It would be seen that the petitioner was transferred from Aurangabad to Jalna in 2015 at her request and again in February 2017 had requested for transfer from Jalna to Aurangabad. Under the impugned order, the petitioner is transferred from Jalna to Ahmednagar i.e. to a different Region. The petitioner had worked for more than eight years in Aurangabad Region as such was certainly due for transfer in another Region and the petitioner herself requested for transfer from Jalna to Aurangabad. There were about 27 Field Officers who are transferred under the order dated 22.3.2017. We do not see any malafides on the part of the Respondents in issuing transfer order to the petitioner. Normally transfer are to be effectuated in April/May. The transfer order is issued on 22.3.2017 and the petitioner has been given time for joining.

8. Considering aforesaid, the impugned

order of transfer needs no interference.

9. In case the petitioner makes any representation, it is at the discretion of the authorities to consider the same.

10. In view of the above, the Writ Petition is dismissed. No costs.

Sd/-

(SANGITRAO S. PATIL, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

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