

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.186 OF 2017

Shivaji S/o Pandurang Nikale The State of Maharashtra and others.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.Avinash Deshmukh, advocate for the petitioner.
Mr.P.S.Patil, Additional Government Pleader for the State.

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

Date : 20.02.2017.

PER COURT :

1. Heard.
2. The petitioner assailed the order of transfer by filing Original Application before the Tribunal. The Tribunal dismissed the Original Application. Aggrieved thereby, the present petition.
3. Mr.A.S.Deshmukh, learned counsel for the petitioner strenuously contends that the petitioner at the relevant time was working as Forester (Saw Mill), Aurangabad, since 2.6.2012. The petitioner completed three years on 30.5.2015. The petitioner vide the impugned order dated 29.5.2016, is transferred as Assistant Plantation Officer in the Aurangabad Division. The learned counsel submits that the petitioner at that time had completed about

four years. The second tenure of the petitioner had commenced. After completion of one tenure, the employer did not choose to transfer the petitioner and retained the petitioner at the same place. In view of that the petitioner could not have been transferred before completion of two tenures. The learned counsel submit that the judgment of the Division Bench of this Court in the case of **“Santosh Nandalal Dalal Vs. State of Maharashtra”** reported in **2016(1) Mh.L.J.45**, has been misread by the Tribunal. The learned counsel further submits that the impugned order of transfer is punitive. By way of punishment a person can not be transferred. The notings in the file states that there are complaints against the petitioner, for which the petitioner was issued notices and as such the petitioner is transferred. Such a transfer is impermissible. The learned counsel relies on the judgment of the Apex Court in the case of **“Somesh Tiwari Vs. Union of India and others”** reported in **2009 (2) SCC 592**.

4. Mr.Shelke, learned counsel for Respondent No.4, who is transferred in place of the petitioner states that petitioner has joined at his transferred place on 1.6.2016 and since then is officiating his duties.

5. Learned Additional Government Pleader states that the administrative exigencies prompted the Government to transfer the petitioner. Considering the public interest, the transfer has been

effectuated. Learned A.G.P. relies on the judgment of the Division Bench of this Court in the case of **“Santosh Nandalal Dalal Vs. State of Maharashtra”** referred to supra.

6. We have considered the submissions canvassed by the learned counsel for respective parties. The Division Bench of this Court in the case of **“Santosh Nandalal Dalal Vs. State of Maharashtra”** referred to supra has observed that proviso to Section 3(1) of the Transfer Act, does not confer any right on Group C employee from non-secretariat service to work at one station for six years. The petitioner has worked at one station holding the same post for four years and thereafter is transferred. The transfer is considering the public interest. The notings in the file has been reproduced by the Tribunal in its judgment. The same is in vernacular language. It states that there were some complaints received against the petitioner of serious nature. The petitioner was apprised of his conduct by issuing letters dated 5.3.2016 and 6.5.2016 and considering the larger public interest, it is not expedient to give extended term to the petitioner on administrative ground. It can not be said that the transfer is punitive in nature. Considering the larger public interest and the administrative exigency, the petitioner is not given extended term at the said post. The petitioner had completed four years of service at the same post and the same place. In view of that the judgment of

the Apex Court in the case of **“Somesh Tiwari Vs. Union of India and others”** referred to supra would be of no avail to the petitioner.

7. There is another facet to the case. The Respondent No.4 is transferred at the post which was held by the petitioner earlier to the impugned transfer. The Respondent No.4 has joined the said post on 1.6.2016 and is officiating on the said post for almost eight months. The petitioner is also transferred at a nearby place about 25 Kms.

8. Considering the aforesaid conspectus of the matter, the Tribunal has not committed any error in passing the impugned Judgment. The Writ Petition is disposed of. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.20.02.2017.
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