

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.**

**WRIT PETITION NO.12817 OF 2016
WITH
C.A.NO.131 OF 2017
IN
WRIT PETITION NO.12817 OF 2016**

Ganesh S/o Tulshiram Pagare,
Age 47 years, Occ.Service,
R/o Snehnagar, Near Rajasthan
School, D.P.Road, Beed,
Tq. and Dist.Beed. ... Petitioner.

Versus

1. The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

2. The Commissioner/Director,
Municipal Administration,
Government Transport Services
Building, 3rd floor, Worli,
Mumbai.

3. The Divisional Commissioner,
Municipal Administration
Department, Aurangabad
Division, Aurangabad.

4. The District Collector,
Collector Office, Beed.

5. The Chief Officer,
Municipal Council, Beed,
Tq. and Dist.Beed. ... Respondents.

Mr.S.P.Urgunde, advocate for the petitioner.
Mr.V.S.Badakh, A.G.P. for the State.

...

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

Date : 02.05.2017.

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

1. Rule. Rule returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

2. The petition takes exception to the order passed by the Maharashtra Administrative Tribunal, thereby rejecting the Original Application challenging the transfer order dated 12.8.2016.

3. According to Mr.Urgunde, learned counsel, the order of transfer is mid-tenure and mid-term transfer. The provisions are not followed. Between 2014 and 2016, the petitioner has been transferred three times. Even transfer from one post to another and/or one Department to another Department amounts to transfer. The learned counsel further submits that transfer in

question is a mid-term transfer.

4. Learned A.G.P. submits that the transfer was made consider exigencies, complaints being received and the order of the Commissioner dated 2.3.2016. The Divisional Commissioner is the next superior authority to the appointing authority.

5. Mr.Indani, learned counsel for the intervener submits that in fact, the Commissioner had written on 2.3.2016 to the Collector, however, the petitioner approached this Court and filed Writ Petition bearing W.P.No.3584/2016 in which initially stay was granted by this Court and because of the order of stay operating, the transfer order could not be passed by the Collector. The said petition was decided in July 2016 and thereafter in August 2016, the order of transfer is passed. It is because of litigation pending in the Court and the prohibitory orders operating, the transfer order was not issued. The learned counsel submits that it is at the behest of the Commissioner, who is

the next superior authority the order of transfer is issued and as such the provisions of Transfer Act are followed.

6. We have considered the submissions.

7. We need not enter into the debate as to whether it is a mid-tenure transfer. The order of transfer dated 8.12.2016 is a mid-term transfer.

8. If it is stated that the transfer is at the behest of the Divisional Commissioner then the order of transfer would be hit by the doctrine of order by dictation which is not permissible.

9. If it is assumed that the Collector being the appointing authority has passed the order of transfer then provisions of Section 4(ii) has not been complied as the proposal is not placed before the Commissioner who is the next superior authority. This Court while disposing of earlier Writ Petition bearing

W.P.No.3584/2016, under its order dated 18.7.2016, had observed that the State should apply the transfer policy in accordance with the relevant procedure, Rules, Government Resolutions.

10. The Transfer Act, 2005 would be applicable to the petitioner as the petitioner is an employee in the State cadre. Admittedly, the proposal is not placed before the next superior authority.

11. In view of that the impugned order of the Tribunal is quashed and set aside, so also the impugned order of transfer to the extent of petitioner is set aside.

12. Needless to state, the Respondents are at liberty to take steps with regard to transfer of petitioner in accordance with the Transfer Act, 2005.

13. Rule accordingly made absolute in above terms. No costs.

14. In view of disposal of Writ Petition,
Civil Application also stands disposed of.

Sd/-

(SANGITRAO S. PATIL, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

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