

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13177 OF 2016

Smt.Sakshi Sameet Bhosale .. Petitioner
Vs.
The State of Maharashtra and ors. .. Respondents

**WITH
WRIT PETITION NO. 9699 OF 2017**

Chief Secretary
Government of Maharashtra .. Petitioner
Vs.
Shri Rajesh Manikrao Bhapkar and anr. .. Respondents

Mr. Dinesh Khaire, for the Petitioner in WP/13177/2016.
Mr..A.Y. Sakhare, Senior Counsel i/b Mr.H.E.Palwe, for
Respondent No.4.
Mr.O.M. Kulkarni, AAGP for State-Respondent in
WP/13177/2016 and for petitioner in WP/9699/2017.

**CORAM : SMT. V.K.TAHILRAMANI &
M.S.KARNIK, JJ.**

21st NOVEMBER, 2017

ORDER (PER M.S.KARNIK, J) :

1. By these Petitions filed under Articles 226 & 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 10/11/2016 passed by the

Maharashtra Administrative Tribunal, Mumbai (hereinafter referred to as 'Tribunal').

2. Since common questions of law and facts arise in these Petitions, the same can conveniently be disposed of by this common order. For the purpose of appreciating the controversy raised between the parties, facts from Writ Petition 13177 of 2016 are taken into consideration.

3. By judgment and order dated 10/11/2016 passed by the Tribunal, Original Application (for short 'OA') filed by the present respondent No.4 came to be allowed. OA was filed by present respondent No.4 before the Tribunal challenging the transfer order dated 03/07/2016 posting the respondent No.4 from Mumbai to Solapur and also the order dated 03/07/2016 posting the petitioner in his place as Excise Sub-Inspector, Q-1 Division, Mumbai.

4. Respondent No.4 approached the Tribunal with the case that he was posted as Excise Sub-Inspector, Q-1 Division,

Mumbai by order dated 02/02/2013. The post of Sub-Inspector in State Excise Department is a Group 'C' post. Respondent No.4 relying upon first proviso to Section 3(1) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delays in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act' for short) contended that the post which respondent No.4 was holding is a non-secretariat Group 'C' post and therefore, entitled to two full tenures of 3 years in an office or department. Respondent No.4 not having completed 6 years on the date when the impugned order of transfer dated 03/07/2016 was issued, the transfer order is vitiated. The next contention of the respondent No.4 was that he was transferred in the month of July and not in the month of April or May when the general transfers are to be effected. In his submission, it being midterm transfer, respondent No.4's transfer was required the approval of immediate superior transferring authority mentioned in the table under Section 6 of the Transfer Act. This was necessary under Section 4(4)(ii) of the Transfer Act. Respondent No.4 further contended before the

Tribunal that there are no exceptional circumstances or special reasons for transferring him and thus, transfer order is issued in violation of Section 4(4)(ii) and 4(5) of the Transfer Act. It is the further contention of respondent No. 4 that the petitioner was transferred at her request without there being any exceptional circumstances or special reasons.

5. Opposing the Original Application, the petitioner contended before the Tribunal that she was posted at Mumbai on account of her request as her husband was working at Mumbai. This is as per the policy of the State Government to post husband and wife at the same place. As respondent No.4 was transferred out of Mumbai, the post in Mumbai became vacant where the petitioner was posted.

6. The State of Maharashtra supported the petitioner's case. According to the learned AGP as order dated 03/07/2016 was a midterm transfer order, it was issued with the approval of the Hon'ble Chief Minister and was issued in compliance with

the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. Reliance was placed on the exceptional circumstances which have been considered and the same are mentioned in the affidavit in reply filed by the State of Maharashtra on 30/08/2016 which read thus :

“The minutes also says that in the State of Maharashtra various regions like Vidarbha, Marathwada and Konkan especially border districts of these regions, flying squads vacant posts, important liquor/spirit manufacturing units and border check posts are special sensitive locations for the department, therefore it is necessary to fill up the vacant posts in the above locations in order to check the transfer of illegal liquor effectively. Therefore the principal is set that the vacancies is to be filled by considering optimum working Sub-Inspector in each divisions of the state.”

7. Learned AGP invited our attention to the paragraph 10 of the affidavit in reply of the State filed before the Tribunal which reads thus :

“10. With reference to para no. 6.9, I say and submit that due to some unavoidable circumstance the Nagri Seva Mandal could not meet in May but, considering the necessity of transfer the meeting held on 14th June 2016. As per the meeting of Nagri Seva Mandal held on 14th June 2016. The record of minutes of meeting of Nagri Seva Mandal enumerates that those Sub Inspectors working for more than 3 years on same post are necessary to be transferred on administrative grounds. It is also mentioned that in un exceptional circumstances some Sub Inspectors are required to be transfer under the Rule of couple agreement. (Sic.)”

8. For the reasons mentioned in the impugned order, the Tribunal was pleased to allow OA and quashed the impugned orders dated 03/07/2016.

9. Learned Counsel for the petitioner Mr. Khaire submits that the impugned order passed by the Tribunal calls for interference as the Tribunal has not correctly appreciated the scope of Section 4(4)(ii) and Section 4(5) of the Transfer Act. In his submission, affidavit in reply filed by the State is very categorical which records minutes and in that view of the matter, this being an exceptional circumstance, respondent No.4 was sought to be transferred. In his submission, once the exceptional circumstance or special reason for transferring respondent No.4 exists, then it is not necessary for the respondent No.4 to have completed his tenure of 6 years. The reason indicated by the State Government is definitely a special reason for transferring respondent No.4. Learned Counsel for the petitioner further submits that upon completion of 3 years, it is the discretion of the Government to retain a non secretariat

Group 'C' employee upon completion of 3 years for further period of 3 years and respondent No.4 cannot claim this as a matter of right. In his submission, it is consequent upon transfer of respondent No.4 that the petitioner came to be accommodated in place of respondent No.4. Learned Counsel would further submit that the petitioner was justified in making a request as rules permit husband and wife for being posted at one place and therefore, the Tribunal was not justified in holding that this is not an exceptional circumstance.

10. Learned AGP appearing on behalf of the State of Maharashtra - petitioner in WP/9699/2017 supported the contentions advanced by Mr. Khaire and raised similar contentions. He submitted that the procedure laid down in the Transfer Act is duly followed. He further submits that exceptional circumstances and special reasons are already brought on record. He points out that a decision was taken that all those Sub-Inspectors working on the same post for more than 3 years are necessary to be transferred on administrative

ground. In his submission, order passed by the Tribunal needs to be interfered with.

11. Learned Senior Counsel Mr. Sakhare for respondent No.4 in WP/13177/2016 invited our attention to the findings recorded by the Tribunal. In his submission, the findings call for no interference.

12. Having considered the submissions advanced by learned Counsel, we are of the opinion that present Petitions are devoid of any merit. It is not in dispute that the petitioner had not completed two full tenures on the post presently held by him. Further he is belonging to non secretariat Group 'C' employee entitled to tenure of 6 years in a post. The State Government has taken a decision to transfer those Sub-Inspectors working for more than 3 years on the same post as it is necessary to transfer them on administrative ground. As the same was midterm transfer, the same was issued with the approval of the Hon'ble Chief Minister.

13. The Tribunal perused the relevant file from Mantralaya and upon perusal of the same observed as under :

“Learned Chief Presenting Officer has produced the concerned Mantralaya file for my perusal. It is seen that though the transfer order has the approval of the Hon'ble Chief Minister, the note put up by the concerned department does not mention anything as to why these orders have been issued in a month other than April-May.”

14. In this view of the matter, the Tribunal came to the conclusion that no reason for transfer of respondent No.4 out of Mumbai was mentioned when the decision was taken to transfer him out with the approval of the Hon'ble Chief Minister. The Tribunal records that even in the proposal exceptional circumstances or special reasons should have been mentioned as is the requirement of second proviso of Section 4(4) of the Transfer Act. The said proposal does not conform to this requirement.

15. The Tribunal has recorded a finding that the order of transfer clearly violated Section 4(4)(ii) and Section 4(5) of the Transfer Act and the same being a mid tenure transfer, under

Section 4(5), special reasons should have been mentioned. It is further not in dispute that the petitioner had requested for transfer to Mumbai in the light of the policy of the State Government that husband and wife should be retained at one place. The Tribunal has therefore held that it is on account of accommodating the petitioner, respondent No.4 has been transferred. We do not find any error in the approach of the Tribunal in coming to conclusion that there were no exceptional circumstances or special reasons to transfer respondent No.4 in the month of July and before completion of his tenure.

16. Learned Counsel Mr. Khaire for the petitioner has placed reliance on the decision of this Court in the case of **Santosh Nandlal Dalal Vs.State of Maharashtra and others, 2016 (1) Mh.L.J. 45**. The said decision in our opinion, is not applicable to the facts of the present case. One of the issues involved in the present case is the transfer order was issued to accommodate the petitioner.

17. We, therefore, do not find any reason to interfere with the view taken by the Tribunal. The Petitions are accordingly dismissed with no order as to costs.

(M.S.KARNIK, J.)

(SMT. V.K.TAHILRAMANI, J.)