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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13638 OF 2016

Jyoti Kadam.

...Petitioner.

vs.

State of Maharashtra and Ors.

...Respondents.

Mr. Mihir Desai, Sr. Advocate i/by Mihir Joshi for the Petitioner.  
Mr. A.V. Anturkar, Sr. Advocate with Mr. D.A.Nalavade and Amol  
Gatne for Respondent No.3.  
Mr. A.B.Vagyani, Govt. Pleader with Mr. C.P .Yadav, AGP. for  
Respondent Nos. 1 and 2.

CORAM : R.M. BORDE AND

A.S. GADKARI, JJ.

DATE : 07<sup>th</sup> February, 2017

PC:

1. The petitioner is objecting to the order passed by the Maharashtra Administrative Tribunal in Original Application No.944 of 2016 and praying for quashing and setting aside the order dated 14.9.2016 passed by original respondent No.1 transferring original respondent No.3 as Sub Divisional Officer, Haveli in place of Mrs. Snehal Barge, S.D.O. Haveli, cancelling posting of the original applicant Shri. Sanjay Deshmuh as S.D.O. and the order dated 22.9.2016 issued by original respondent No.2 cancelling the posting of the applicant. The Tribunal has further set aside the transfer order of original respondent No.3 Smt. Jyoti Late (Kadam). It is further ordered by the Tribunal that respondent No.3 Sanjay Deshmukh to function as S.D.O. Haveli.

2. In pursuance to the recommendations made by the Committee constituted under the provisions of The Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005, the petitioner was recommended for transfer to Kolhapur and respondent No.3 was recommended transfer as S.D.O., Haveli, District Pune. The entry No.8 recorded in the Minutes of the Meeting of Board, the recommendation in respect of transfer of respondent No.3 has been corrected i.e. by substituting Haveli in place of Khed Rajgurunagar. It is contended that these corrections in the recommendation of the Board is effected at the instance of Revenue Minister. The recommendations made by the Board have been approved by the Hon'ble Chief Minister. It further transpires that second transfer order came to be issued on the same day making certain changes in the first transfer order issued on the basis of recommendations of the Board transferring the petitioner as S.D.O. at Haveli while respondent No.3 Shri. Sanjay Deshmukh's transfer order was directed to be put on hold by the Hon'ble Chief Minister. It is contended by petitioner that one Smt. Snehal Barge who was functioning as S.D.O. Haveli was relieved from the post and she handed over the charge to one Dattatraya Kavitke. It is further

contended that respondent No.3 took over charge as S.D.O. Haveli unilaterally and signed the CTC. This action of respondent No.3 was not approved by the Collector who issued notice on 17.9.2016 directing respondent No.3 to show cause. It is further contended by the petitioner that respondent No.3 ceased to function as S.D.O. Haveli after receipt of the instructions from the Collector in that regard. The petitioner was thereafter directed to take charge of the post of S.D.O. Haveli in view of the order issued on 15.9.2016 and accordingly the petitioner took over the charge of the post from Shri. Dattatray Kavitke. The respondent No.3 challenged the subsequent order of transfer dated 14.9.2016 by presenting the original application before the Maharashtra Administrative Tribunal which came to be allowed. The said order passed by the MAT is matter of challenge in the instant petition.

3. The orders of transfer are expected to be issued under the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Section 2(b) defines appointing authority of the Government servants which includes the transferring authority specified in Section-6. The phrase Transferring Authority is defined in Section 6 of the said Act

and more specifically specified in Column I of the table mentioned there under. Clause (a) of the said table mentions about the Group-A of Government Servants i.e. Officers of all India Services. The officers of the said services are in Group A having pay scale of Rs.10,650 to 15,850 and above and the competent transferring authority is mentioned as Chief Minister. The tenure of transfer is prescribed in Section 4 of the Act. In view of sub section (4) of Section 4 of the Act, the transfer of Government Servant shall ordinarily be made only once in a year in the month of April or May. It is further provided that transfer may be effected any time in the year in the circumstances as specified in clause (ii) of Section 4 of the Act. So far as officers falling under the State service Group "A", having pay scale of Rs.10,650-15,850 and above the Competent Authority to direct transfer is Chief Minister whereas in respect of officers of the State Services in Group "A" having pay scale less than Rs.10,650-15,850 and the Gazetted Officers, the competent authority is Minister in Charge who shall in consultation with Secretaries of the concerned Department is competent to direct transfer. It is noticed that in respect of transfer of Gazetted officers meeting of Board was for consideration of transfer of officers on 12.9.2016 and chaired

by the Principal Secretary (Revenue), Secretary (Forest) as member and Dy. Secretary (Establishment-E-2) as the member secretary. The Board has recommended transfer of the respondent No.3 initially as S.D.O. Khed, Rajgurunagar, District Pune. However, the said recommendation of the board has been amended as per the instructions of Revenue Minister and it was recommended to post respondent No.3 at Haveli, District Pune. So far as the petitioner is concerned, the Board recommended her transfer as Dy. Collector (Election) Kolhapur on vacant post. It does appear that the Minutes of the meeting of the board as well as the amendment suggested by Revenue Minister include recommendation of transfer of respondent No.3 which have been signed and approved by members of Board and Minister for Revenue. The Hon'ble Chief Minister in approval of the recommendations of the board put his signature recommending transfer of officers of Revenue Department on 13.9.2016. The minutes of the meeting of board were signed by the members on 12.9.2016 whereas the Hon'ble Chief Minister has approved the minutes of the meeting by putting his signature on 14.9.2016 recommending the transfer of officer of Revenue Department. It does appear that thereafter on the same day certain other amendments were made and the petitioner

was directed to be transferred to Haveli, District Pune in place of respondent No.3 at the instructions of Hon'ble Chief Minister.

4. It is the contention of respondent No.3 that that second order of transfer approved at the instance or the intervention of the Chief Minister is not in accordance with the provisions of Act of 2005. It is contended that the respondent No.3 has already assumed the charge and considering the submissions made by respondent No.1, the subsequent order issued on 14.9.2016 is quashed by Maharashtra Administrative Tribunal. It is contended that the first order of transfer issued directing transfer of respondent from Haveli, District Pune is in conformity with the provisions of the Act of 2005. The transferring authority of the officers of the petitioner and respondent No.3 is the Minister in-charge of the department and the Secretaries of the concerned department, or members of Board. The recommendations were made by the Board, Secretaries of the concerned department as well as the Minister in charge, at the first instance have been approved by the Chief Minister. It does neither appear that the Board has approved nor transferring authority i.e. Minister in-charge has consented for issuance of the second order. The amendment to the first

order appears to have been suggested by the Chief Minister and on the basis of the said recommendations, amended (second) order directing transfer of respondent No.3 was issued. The issuance of the second order shall have to be considered as not in conformity with Section 6 of the Act. The authorities have issued the first order of transfer on the basis of the recommendation of the board as well as on the basis of the recommendation of the Hon'ble Minister holding relevant department and said recommendation of Board which was approved by Hon'ble Chief Minister that has been over turned in issuing second order without approval of Board. The subsequent order thus issued is not in accordance with decision of the board and violation of Section 6 of the Act.

5. The counsel for the respondent No.3 has invited our attention to the Judgment of the Apex Court in the matter of ***T.S.R. Subramanian and ors. vs. Union of India and ors.*** reported in **(2013) 15 SCC 732** and Para 32 to 35 read thus:-

“32. We find it, however, difficult to give a positive direction to constitute an independent CSB at the Centre and State level, without executive control, which Hota Committee has recommended to be statutory in nature, that too, comprising of persons from outside the Government. The petitioners placed considerable reliance on the judgment of this Court in *Prakash Singh vs. Union of*

*India and urged that similar directions be given to insulate, to at least some extent, the civil servants from political/executive interference. Retired persons, howsoever eminent they may be, shall not guide the transfers and postings, disciplinary action, suspension, reinstatement, etc. of civil servants, unless supported by law enacted by Parliament or the State Legislature.*

*33. CSB, consisting of high-ranking in-service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State Level, could be a better alternative (till Parliament enacts a law), to guide and advise the State Government on all service matters, especially on transfers, postings and disciplinary action, etc. though their views also could be overruled, by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions. Parliament can also under Article 309 of the Constitution enact a Civil Service Act, setting up a CSB, which can guide and advise the political executive transfer and postings, disciplinary action, etc. CSB consisting of experts in various fields like administration, management, science, technology, could bring in more professionalism, expertise and efficiency in governmental functioning.*

*34. We, therefore, direct the Centre, State Governments and the Union Territories to constitute such Boards with high ranking serving officers, who are specialists in their respective fields, within a period of three months, if not already constituted, till Parliament brings in a proper legislation in setting up CSB.*

*35. We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at*

*the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also priorities various social and economic measures intended to implement for the poor and marginalized sections of the society.”*

6. It is contended that in conformity with the Judgment of the Supreme Court, the State Govt. has constituted the Board for enforcement of the provisions of the Act of 2005. The President of the Board is Additional Chief Secretary, Principal Secretary/Secretary (Revenue) whereas the Board consists of Principal Secretary, Secretary (Forest), Joint Secretary/Dy. Secretary (Establishment) Tribal Development and Joint Secretary/Dy. Secretary (Revenue E-1 and E-2) Revenue and Forest Department as member secretary. The Board consisting of officers as laid down in Government resolution dated 20.7.2016 has recommended the transfer of respondent No.3 to Haveli, District Pune which

recommendations have been approved by the Revenue Minister and the Chief Minister has also concurred with recommendations of the Board as has been recorded above. While issuing the amendment to the first order the issue of amendment to order of transfer has not been referred to or considered by the board in accordance with the provisions of the Act and in conformity with Govt. resolution. An affidavit in reply has been submitted by the State Government upon issuance of the directions by this Court. The State Government however, has not explained the necessity or the exigency for issuance the second order of transfer. The affidavit tendered by the State Govt. is silent on these material aspects. It is also noticed that the State Govt. did not file its reply before the MAT and only upon issuance of directions by this Court reply has been presented however, without explaining the reasons for issuance of second order of transfer. We have perused the order passed by the MAT. We do not find any error or perversity in the order. For the reasons recorded above, the Petition being devoid of any substance is dismissed.

7. The learned counsel appearing for the petitioner states that the petitioner has been assigned election duty by the State Election Commission. If that be so, the instant order shall

not come in the way of performance of such duty as directed by the Election Commission.

8. The counsel for the petitioner prays for continuation of order and status quo granted by this Court on 19.12.2016. However, for the reasons stated above, we do not find justification in continuation of the said interim order. The prayer is accordingly rejected.

(A.S.GADKARI, J.)

(R.M. BORDE, J.)