

BDPPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.14200 OF 2016**

1] The State of Maharashtra through)
 The Additional Chief Secretary,)
 Home Department, Mantralaya,)
 Mumbai – 32.)
)
 2] The Commissioner of Police, Mumbai)
 Through the Police Establishment Board)
 at Commissionerate level,)
 Mumbai Police Commissionerate, L.T.)
 Marg, Opp. Crawford Market, Fort,)
 Mumbai – 1) Petitioners.
 (Original Respondents)

V/s

1] Shri Siddharth Krushnarao Kasbe)
 Age – 55 years, Occupation)
 R/o – Chandra-Mallika, 4th Floor,)
 Flat No.404, Worli, Mumbai – 18)
)
 2] Shri Bhagwat B. Bansod,)
 Age – 53 years, Occupation)
 R/o – 303, U-Bldg, Hanjar Nagar,)
 Tata House, Andheri-East)
 Mumbai – 93)Respondents.
 (Original Applicants)

Mr. C.P. Yadav, AGP for the State.

Mr. Bhushan Arvind Bandiwadekar for Respondent No.1.

**CORAM: R.M. BORDE &
A.S. GADKARI, JJ.**

DATE: 20th January, 2017

ORAL JUDGMENT: (Per R.M. Borde, J.)

1] Heard.

2] Rule. Rule is made returnable forthwith. Respondent No.1 waives service. By consent of parties, Petition is taken up for final hearing at the stage of admission.

3] Petitioner/State is objecting to the decision rendered by the Maharashtra Administrative Tribunal ("MAT") in Original Application No.829 of 2016 on 24/11/2016 allowing the OA tendered by the Applicant/employee, challenging the order of transfer effected by original Respondent No.1.

4] Respondent No.1 herein is appointed as Police Inspector and, at the relevant time, prior to issuance of the impugned order of transfer, was functioning at R.A.K. Marg Police Station. By the order impugned in this Petition, Respondent No.1/employee has been transferred as Senior Police Inspector, Protection and Security Branch. Admittedly, the order of transfer is issued during middle of the term. It is the contention of Respondent No.1/employee that the order impugned is in breach of the provisions of sub-section (2) of Section

22-N of the Maharashtra Police Amendment Ordinance, 2015. It is contended that the default report on which reliance is placed for directing mid-term transfer of Respondent No.1/employee does not appear to have been considered by the Police Establishment Board (“PEB”) at the Commissionerate level. It is thus contended that there was no exceptional circumstance to order mid-term transfer of Respondent No.1/employee.

5] It has been brought to our notice that there was one First Information Report lodged at the instance of Mr. Prithi Paul Singh Sethi at the concerned Police Station where Respondent No.1/employee was functioning, alleging attempt by one Mr. Kashinath Jadhav to dispossess owner of the property i.e. the complainant, by adopting unlawful means. It is alleged that the person in possession was threatened and the accused had support of one Police Sub-Inspector Birajdar. Although this aspect was within the knowledge of Respondent No.1/Senior Police Inspector, he preferred to adopt the role of a silent spectator. It is also alleged that although the legal opinion secured before registration of offence suggests lodging of cognizable offence, in order to extend benefit to the accused, offence under non-cognizable sections came to be registered. When this aspect was brought to the notice of the Senior Police Officer i.e. Additional Police Commissioner, Mumbai, he directed holding of in-house inquiry by Assistant Police Commissioner, Bhoiwada, Mumbai. A detailed inquiry has been conducted by the Assistant Police

Commissioner and the Report has been submitted indicting Respondent No.1/employee. It is categorically recorded in the inquiry report that the Senior Police Inspector has adopted casual approach and was negligent in performing his duties and functions as Senior Police Inspector. It is also recorded that the whole investigation under supervision of the Senior Police Inspector was biased and that omissions and commissions of Respondent No.1/employee have facilitated the accused to certain extent for not bringing them within the net of police enforcement agencies. The report was forwarded to the Police Commissioner, Mumbai together with comments of Additional Police Commissioner. It was proposed to hold departmental proceedings against Respondent No.1/employee and to effect his immediate transfer. It was contended before MAT that the default report has not been placed before PEB and as such the recommendations of PEB do not make any mention in respect of default report. It is observed in para 6 of the impugned judgment that the alleged misconduct on the part of Respondent No.1/employee may be quite serious, however it was required to be placed before PEB and since there is no evidence to that effect, the administrative ground which has been put forth does not appear to be sound and it does not fulfill requirements of section 22 N(2) of the Maharashtra Police Amendment Ordinance, 2015 for effecting mid-term transfer of Respondent No.1/employee. The observations made by MAT have been seriously controverted by the State Government, contending that, in fact, PEB was made aware of the report lodged against the employee. The report of in-house

investigation by Assistant Police Commissioner, communication forwarding the report of Assistant Police Commissioner by Additional Police Commissioner to the Office of Commissioner, Mumbai and the default report as such have been placed before the PEB and opening paragraph of the recommendations of PEB makes a mention in respect of documents received from Divisional Office and recommendatory report. One Mr. Pradeep Sawant who is a Member Secretary of the PEB and he has presented an affidavit in the instant Petition supporting the contention that default report was, in fact, placed before the PEB on 08/06/2016 alongwith relevant note-sheet and documents in respect of Respondent No.1's case. It is also stated that Joint Commissioner of Police (Law & Order) briefed the members of the Board on the issue relating to allegations found to have been substantiated against Respondent No.1/employee. It is further stated that being a Member Secretary of the Board, deponent has personally perused the default report, relevant note-sheet and documents concerning Respondent No.1/employee and since it was noticed that there are very serious allegations leveled against Respondent No.1 while discharging duties as an in-charge of the Police Station, a conscious decision has been taken by the Board to direct mid-term transfer of Respondent No.1/employee. It has been categorically stated that transfer of Respondent No.1/employee is in public interest as well as for meeting the administrative exigencies.

6] We are of the opinion that in view of the categorical statement

made on oath by Member Secretary of PEB, the finding recorded by MAT does not appear to be sound. The recommendations of PEB need not contain reasons in support of the recommendations. It would be sufficient if PEB, in fact, peruses documents and material in respect of the concerned employee. Subjective satisfaction arrived at by PEB and transferring authority need not be probed into in detail and reasons for arrival at conclusion need not be a matter of judicial scrutiny.

7] For the reasons recorded above, we are of the considered opinion that the order passed by MAT is unsustainable and deserves to be quashed and set aside and the same is accordingly quashed and set aside. Rule is made absolute. There shall be no order as to costs.

(A.S. GADKARI, J.)

(R. M. BORDE, J.)