

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1828 OF 2017**

Mukund Murlidhar Dhus		Petitioner
Vs.		
The Maharashtra State Road Transport Corporation and others		Respondents

Mr. Arshad Shaikh i/b Mr. S. M. Shettigar for the Petitioner
Mr. Yashodeep Deshmukh for the Respondent

**CORAM : NARESH H. PATIL &
Z. A. HAQ, JJ.
DATE : 24th AUGUST 2017.**

P.C.

1 Heard.

2 Rule. Rule made returnable forthwith.

3 The petitioner employee has challenged the order dated 09/11/2015 issued by the respondent no. 4/Deputy General Manager transferring the petitioner from Central Office Mumbai to Palghar Division. The petitioner has also challenged the charge-sheet issued by respondent no. 4/Deputy General Manager on 11/03/2016.

4 The petitioner is in employment of the respondent/employer since 1982 and in due course is given promotion and came to be promoted as

Establishment Supervisor on 24/07/2013. The petitioner came to be transferred on administrative grounds by order dated 09/11/2015. As the petitioner felt that the transfer order was illegal and in breach of the policy of the respondent/employer, the petitioner made representation dated 09/12/2015 requesting that the transfer order be cancelled. The petitioner did not report for duty at Palghar i.e. the place where he is transferred. Charge-sheet dated 11/03/2016 came to be issued calling upon the explanation on four charges framed against the petitioner.

5 The learned advocate appearing for the petitioner submits that the transfer order is issued at the behest of Hon'ble Minister who happens to be the Chairman of the Corporation, as the petitioner did not follow his directions regarding personal work. It is further submitted that the transfer order is in breach of clause 8 (b) of the Regulations governing the transfer of employees working with respondent/Corporation. The contention of the petitioner is that the petitioner is promoted as Establishment Supervisor on 24/07/2013 and as per clause 8 (b) of the Regulations, the petitioner could not have been transferred for a period of 3 years from 24/07/2013. It is further submitted that the procedure laid down as per clause 8 (b) of the Regulations is also not followed in as much as the petitioner was not asked to give options for 3 places of his choice and the transfer order is not issued in March/April as contemplated by clause 8 (b) of the Regulations. It is contended that 6 persons

are working at the Central Office at Mumbai since long, much prior to the petitioner being promoted as Establishment Officer and in normal course, the person who has been working at the Central Office Mumbai for longest period should have been transferred. It is submitted that the transfer of the petitioner is on administrative grounds, however, there is nothing on record to show that the transfer of the petitioner is on administrative grounds. According to the petitioner, charge-sheet is issued only because the petitioner has not abided by the transfer order and as the transfer order is illegal and is required to be quashed, the charge-sheet also is required to be quashed.

The learned advocate for the petitioner submitted that the impugned transfer order is bad in law and is violative of the guarantee enshrined under Articles 14 & 16 of the Constitution of India in as much as the petitioner is discriminated and is transferred in breach of the Regulations of the respondent/corporation.

6 To support his arguments, the learned advocate has relied on the following Judgments:

Ramadhar Pandey Vs. State of U.P. and others¹

E. P. Royappa Vs. State of T. N. and another²

Mohammad Thekkethil Vs. The Director of Panchayats and Ors³

Dr. P. Damodaran Vs. State of Kerala⁴

¹ [1993 AIR SCW 2581]

² [AIR 1974 SUPREME COURT 555]

³ [1982 LAB I.C. 1238]

⁴ 1982 LAB I.C. 251]

7 The learned Advocate for the respondent submitted that the allegations made by the petitioner against the Hon'ble Minister (Chairman of the Corporation) are baseless and as the Hon'ble Minister is not impleaded as party to the petition, the legality and veracity of the allegations made by the petitioner cannot be gone into. It is submitted that the transfer order was issued on 09/11/2015 and as the petitioner remained absent without giving any application seeking leave, notices were given to him on 02/12/2015, 08/12/2015 and 01/02/2016 calling upon the petitioner to resume duty at Palghar but the petitioner failed to report on duty and therefore charge-sheet came to be issued on 11/03/2016. It is submitted that letters were sent to the petitioner on 18/05/2016, 08/06/2016, 21/06/2016, 13/07/2016, 20/07/2016 and 27/07/2016 by registered post and by e-mail informing the petitioner the dates on which the inquiry initiated against him was scheduled, however, the petitioner did not attend the inquiry and therefore, inquiry has proceeded and is at the stage of issuance of show cause notice to the petitioner calling upon his explanation regarding the punishment proposed against the petitioner. It is submitted that the petitioner will be attaining the age of superannuation and will be retired on 31/08/2017. It is prayed that in these circumstances, the petition be dismissed and the respondent may be permitted to proceed with the departmental inquiry.

8 After hearing the learned advocate for the respective parties and examining the documents placed on the record of the petition, we find that the

challenge raised by the petitioner to the transfer order does not require consideration at this stage. The transfer order is dated 09/11/2015. As the petitioner had not reported on duty and had not submitted any application seeking leave, respondent/Corporation issued charge-sheet on 11/03/2016, calling for explanation of the petitioner in the matter. After about 3 and half months of issuance of charge-sheet, the petitioner has filed the petition and has challenged the transfer order as well as the charge-sheet. As recorded earlier, undisputedly, the petitioner will be attaining the age of superannuation on 31/08/2017. In these facts, the challenge to the transfer order is rendered infructuous by efflux of time. Not only this, we feel that it would not be appropriate to examine the legality of the transfer order as inquiry is initiated against the petitioner and amongst various charges framed against the petitioner, one of the charge is that he has not reported on duty at the place where he is transferred and has disobeyed the order of management. The learned advocate for the respondent/Corporation has submitted that the departmental inquiry is on the verge of conclusion and is at the stage of issuance of show cause notice calling upon explanation of the petitioner on the point of imposition of punishment.

9 In the facts of the case, we are not inclined to interfere in the matter in the extra-ordinary writ jurisdiction. The challenges raised by the petitioner in this petition are left open to be considered by Appropriate Authority/Forum in

appropriate proceedings.

10 In view of our conclusions, the proposition laid down in the Judgments relied upon by the learned advocate for the petitioner are of no assistance to the petitioner.

Writ petition is dismissed. In the circumstances, the parties to bear their own costs.

[Z. A. HAQ, J.]

[NARESH H. PATIL, J.]