

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

WRIT PETITION NO. 1554 OF 2018

Dr. Nagorao Shivaji Chavan
Age : 50 years, oucc.: Govt. service
as District Civil Surgeon,
Civil Hospital, Jalgaon.
R/o Civil Surgeon's Bunglow,
Mahabal Road, Jalgaon.

Petitioner.

Versus

1. Dr. Sunil Purushottam Bhamre
Age : 53 years, occu.: govt. servant
R/o Akash Ganga Society, Near
Jadhav Diagnostic Centre,
Mumbai Naka, Behind Dwarka,
Bhabha Nagar, Nashik.
2. The State of Maharashtra
Through its Principal Secretary,
Public Health Department,
Mantralaya, Mumbai – 32.
3. The Director of Health Services,
Arogya Bhavan, Opposite C.S.T.,
Mumbai.
4. The Deputy Director of Health
Services, Nashik Region,
Nashik.

Respondents.

Mr. R.S. Deshmukh, Advocate for the petitioner.
Mr. V.H. Dighe with Mr. Srinivas S. Wagh, Advocates for
respondent No.1.
Mr. S.B. Yawalkar, A.G.P. for the State/respondent Nos.2 to 4.

**CORAM : S.V. GANGAPURWALA &
SUNIL K.KOTWAL,JJ.**

Reserved on : 2nd August 2018.

Pronounced on : 5th September 2018.

JUDGMENT : (PER SUNIL K. KOTWAL, J.)

1. Rule. Rule is made returnable forthwith and with the consent of learned Counsel for the parties, the petition is taken up for final disposal at this stage.

2. By filing this Writ Petition, the petitioner has challenged the order passed by the Maharashtra Administrative Tribunal (hereinafter referred to as the "Tribunal") in Original Application No.542 of 2017 filed by respondent No.1 challenging his transfer order dated 05.08.2017 under which the respondent No.1 was transferred from the post of District Civil Surgeon, Civil Hospital, Jalgaon to the post of Assistant Director of AIDS Control Society, Wadala, Mumbai. Under the same transfer order the petitioner was also transferred from the post of Civil Surgeon, Civil Hospital, Beed to the post of District Civil Surgeon, Civil Hospital, Jalgaon.

3. Learned Counsel for the petitioner submits that after hearing both the parties, Original Application No.542 of 2017 was allowed on 01.02.2018 and the Tribunal quashed the impugned order dated 05.08.2017. According to the learned Counsel for the petitioner, the order passed by the Tribunal is against the settled principles of law, equity, justice and good conscious. The Tribunal ought to have dismissed the Original Application for the reason that

there was sufficient material on record which was sufficient to make out the reasons for mid-tenure transfer of respondent No.1 in compliance with Section 4 (5) of the Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for brevity "Transfer Act, 2005). He submits that the order passed by the Tribunal is bad in law which resulted into unnecessary harassment of the petitioner, who has already joined at Jalgaon Office on 07.08.2017 and who is now holding the post of District Civil Surgeon, Civil Hospital, Jalgaon. He placed reliance on the case of **"Sanjeev Kokil Vs.State of Maharashtra and others"** reported in **[2014 (7) Bom.C.R. 148]**.

4. Learned Counsel for respondent No.1, on the other hand, supports the judgment passed by the Tribunal and submits that respondent No.1 had just completed one year tenure, and therefore, in view of Section 4 of the Transfer Act-2005, he cannot be transferred unless special reasons are recorded in writing by the Competent Authority or unless the Competent Authority is satisfied that the transfer is essential due to exceptional circumstances.

5. Learned Additional Government Pleader for respondent Nos.2 to 4 assailed the order of Tribunal on the ground that transfer of respondent No.1 is recommended by Civil Services Board which is formed by the Government Resolution dated 17.04.2017. He submits that there were some complaints against the present

respondent No.1, and therefore, he was transferred though he has not completed his usual tenure of three years. He has placed reliance on the judgment of this Court dated 08.06.2018 passed in **Writ Petition No.3810/2018 (State of Maharashtra Vs. Manik Prabhakar Sangale and others)**.

6. It is to be noted that in the State of Maharashtra after enactment of Transfer Act, 2005 the transfer of the Government servants are streamlined and Government Servant cannot be transferred at the sweet will of the higher Authorities. In the present matter, sub-sections 4 and 5 of Section 4 of the Transfer Act, 2005 are relevant, which read as under :-

“4. Tenure of transfer.

- (4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May.

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

- (i) to the newly created post or to the post which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave.
- (ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.
- (5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior [approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post".

7. A bare glance of Section 4 (4) & (5) of the Transfer Act, 2005 makes it clear that unless special reasons are recorded or unless exceptional circumstances are made out and unless after recording the reasons, prior approval of next Higher Authority is obtained, the Government servant cannot be transferred before completion of his tenure of post. In the case at hand, respondent No.1 was transferred to Jalgaon before completion of his tenure of three years. Though the learned Counsel for the petitioner submits that there were complaints against respondent No.1, it cannot be ignored that mere receipts of some complaints against respondent No.1, exceptional circumstances or special reasons for transfer cannot be made out, as mandated under sub-sections 4 and 5 of Section 4 of the Transfer Act, 2005. Thus, obviously the transfer of respondent No.1 was the absolute breach of mandates imposed under Section 4 (4) & (5) of the Transfer Act, 2005. Thus, the impugned order passed by the Tribunal is just, proper and needs no interference.

8. Before parting with the judgment, we must make it clear that in the case of “**Sanjeev Kohli**” (supra), the Division Bench of this Court was dealing with the subjective satisfaction of the Authorities to find out, whether there was a special case or exceptional circumstances according to the provisions of the Transfer Act, 2005. So also, the case of State of Maharashtra Vs.

“Manik Sangle” (supra) is distinguishable on facts, because in that case some Government Servants were retained on the post beyond the period of tenure and some were transferred before completion of the tenure.

9. In the result, we hold that the petition being devoid of merits, deserves to be dismissed.

10. Writ Petition is dismissed. Rule is discharged. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

11. At this stage, learned Counsel for the petitioner seeks continuation of the interim relief for a period of six weeks. Mr. Dighe, the learned Counsel for respondent No.1 opposes the said request on the ground that the interim relief was not granted on merits.

12. Considering the fact that the interim relief is operating since February 2018, the same is continued for a further period of three weeks from today.

13. Needless to state that on lapse of three weeks, interim order passed by this Court shall come to an end.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE