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

948 WRIT PETITION NO. 3810 OF 2018

THE STATE OF MAHARASHTRA & Anr. ..PETITIONERS

VERSUS

MANIK PRABHAKAR SANGALE & Ors. ..RESPONDENTS

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Dr. Sahebarao G. Nandedkar, Advocate for
Petitioners.

Mr. N. T. Bhagat, AGP for Respondents-State.

Mr. V. J. Dighe and Mr. Shriniwas V. Wagh,
Advocates for Respondent Nos.1 to 3.

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

DATED : 8th JUNE, 2018.

PER COURT:-

1. Mr. Bhagat, learned AGP submits that the Maharashtra Administrative Tribunal while allowing the original application filed by the present respondent no.1 has failed to consider that the present petitioner had followed the procedure as is required under the transfer act, scrupulously, as the post at Aurangabad was vacant. Considering the administrative exigency, the respondent no.1 was transferred. Though, the same is mid tenure transfer, there would not be any blanket bar for transfer of such person in administrative exigency and all the provisions have been complied with. The Civil Services Board has consciously taken decision

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to transfer the present respondent no.1 and the same was duly accepted by the Competent Authority. This factor needs to be considered. Section 4(5) of the transfer act permits the competent authority to transfer an employee prior to the tenure by prior approval. The same has been taken.

2. Mr. Dighe, learned counsel for respondents supports the order and submits that the petitioner was transferred to Dhule on July 2016 and one order on 5.8.2017 was issued, transferring him to Aurangabad. Whereas, there were many persons in the near vicinity of Aurangabad, who were occupying the post for more than 4-5 years.

3. We have considered the submissions, it is not disputed, even by the petitioner that the transfer of the respondent no.1 is mid tenure transfer almost within one year and two months the petitioner is transferred. The Tribunal has observed thus:

"The copy of the proceeding (document 'X') would show that at sr. no.4 - Dr. Anjali Ashok Deshpande, at sr. no.8 Dr. Gopal Vasudevrao Bhagat and at sr. no.19 Dr. J. R. Nimbhore etc. had not only completed their period of 3 years', but were at the same post for a period of more than 4 to 5 years. Specifically Dr. Anjali Ashok Deshpande is working at Beedkin since 5.7.2010. However, all these officers, without request for their side and without any reason as can be seen from the noting, were retained at the same places.

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Not only this, but also at page no.11 of the said proceedings one would find that at sr. no.44 Dr. M. J. Aathar, who has completed 2 years' at Parbhani had in fact made a request for his transfer on the vacant post to which the present applicant is posted. Thus, having completed 2 years at Parbhani, Dr. Aathar had in fact requested for his transfer to the said vacant post, however, same was rejected for the reasons "not eligible for transfer and therefore request rejected"

The aforesaid observation of the Tribunal would show that there are many persons who have completed more than 4-5 years, but have been retained on their original post and even Dr. M. J. Aathar had made a request for transfer at Aurangabad, who had completed 2 year at Parbhani, but the same was rejected for the reasons "not eligible for transfer and therefore request rejected". Whereas, the tenure of the petitioner at Dhule was even less than the tenure of Dr. Aathar.

4. The Tribunal has considered the relevant aspects of the matter and rightly passed the order.

5. Even otherwise, now post at Dhule would become vacant as per the impugned transfer order because the person who was transferred in place of the petitioner has stood retired.

6. Considering the aforesaid aspects of the matter, no case for interference is made out.

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7. Writ Petition is disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/June-18