

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
(1) WRIT PETITION NO.6051 OF 2017

Mahendra s/o Eknath Mali,
age: 37 years, Occ: Service,
R/o Shrigonda, Tq. Shrigonda,
District Ahmednagar.

Petitioner

Versus

01 The State of Maharashtra,
through its Principal Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.

02 The Divisional Commissioner,
Nashik Division, Nashik.

03 The Collector, Ahmednagar,
District Ahmednagar.

04 Vandana Madhukar Kharmale,
age: 37 years, Occ: Service,
R/o At present Tahsil Office,
Parola, Tq.Parola, Dist.Jalgaon.

Respondents

Mr.R.N.Dhorde, Senior Counsel i/by Mr.Prashant Khedkar,
advocate for the petitioner.

Mr.S.B.Yawalkar, A.G.P. for Respondents No.1 to 3.

Mr.V.H.Dighe, advocate for Respondent No.4.

WITH
(2) WRIT PETITION NO. 5861 OF 2017

Deepak s/o Santosh Patil
Age 41 years, occ. service
as Tahsildar, Shevgaon
at Shevgaon, Tq. Shevgaon
Dist. Ahmednagar

Petitioner

Versus

- 01 The State of Maharashtra
Through its Principal Secretary
Revenue & Forest Department
Mantralaya, Mumbai - 32.
- 02 The Divisional Commissioner
Nasik Division, Nasik Road,
Dist. Nasik
- 03 The Collector, Ahmednagar
At Ahmednagar
- 04 Dadasaheb Raghunath Gite
age 43 years, occ. service as Tahsildar
r/o c/o Tahsil Office, Peth Surgana
Tq. Peth Surgana, Dist. Nasik

Respondents

Mr.V.D.Hon, Senior Counsel i/by Mr.D.B.Thoke, advocate for the petitioner.

Mr.S.B.Yawalkar, A.G.P. for Respondents No.1 to 3.

Mr.S.S.Wagh, advocate for Respondent No.4.

WITH

(3) WRIT PETITION NO.8069 OF 2017

- 01 The State of Maharashtra
Through its Principal Secretary
Revenue & Forest Department
Mantralaya, Mumbai - 32.
- 02 The Divisional Commissioner
Nasik Division, Nasik Road,
Dist. Nasik
- 03 The Collector, Ahmednagar
At Ahmednagar

Petitioners

Versus

Dadasaheb Raghunath Gite
age 43 years, occ. service as Tahsildar

r/o c/o Tahsil Office, Peth Surgana
Tq. Peth Surgana, Dist. Nasik

Respondents

Mr.S.B.Yawalkar, A.G.P. for petitioners.
Mr.S.S.Wagh, advocate for the Respondent.

WITH
(4) WRIT PETITION NO.8091 OF 2017

01 The State of Maharashtra
Through its Principal Secretary
Revenue & Forest Department
Mantralaya, Mumbai - 32.

02 The Divisional Commissioner
Nasik Division, Nasik Road,
Dist. Nasik

03 The Collector, Ahmednagar
At Ahmednagar

Petitioners

Versus

Smt.Vandana Madhukar Kharmale,
age 37 years, occ. Tahsildar
r/o c/o Tahsil Office, Shrigonda,
Tq. Shrigonda, Dist.Ahmednagar.

Respondents

Mr.S.B.Yawalkar, A.G.P. for petitioners.
Mr.V.H.Dighe, advocate for the Respondent.

WITH
(5) WRIT PETITION NO.8093 OF 2017

01 The State of Maharashtra
Through its Principal Secretary
Revenue & Forest Department
Mantralaya, Mumbai - 32.

02 The Divisional Commissioner
Nasik Division, Nasik Road,
Dist. Nasik

Petitioners

Dattatraya s/o Maruti Borude,
age 52 years, occ. service as Dy.
Collector, Administration,
Collector Office, Ahmednagar,
District Ahmednagar.

Respondents

WITH

(6) WRIT PETITION NO.9560 OF 2017

02 The Divisional Commissioner
Aurangabad Division, Delhi Gate,
Aurangabad.

Petitioners

Pradeep s/o Vishwambharrao Marwale,
age 52 years, occ. service as Dy. Collector,
Rehabilitation, Collector Office, Latur,
Dist. Latur.

Respondent

Mr.S.B.Yawalkar, A.G.P. for petitioners.
Mr.K.G.Patil with Mr.S.S.Wagh & V.H.Dighe, advocate for the Respondent.

CORAM : R.M.BORDE AND

A.M.DHAVALA, JJ.

Reserved on : 21st December, 2018.

Pronounced on : 04th April, 2018.

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

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The individual petitioners in Writ Petitions No.6051 of 2017 and 5861 of 2017, so also the State of Maharashtra in different petitions, are taking exception to the common order passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in Original Applications No.61/2017, 62/2017, 693/2016 and 721/2016, decided on 24.04.2017. The MAT has allowed the Original Applications and directed to quash the orders dated 20.08.2016 and 06.09.2016, impugned before the Tribunal, directing transfer of the applicants before the Tribunal. Since a common question of law and facts arise in the matter, petitions are being disposed of by a common judgment. For the sake of convenience, facts giving rise to Writ Petition No.6051 of 2017, can be recorded.

3 Petitioner Mahendra s/o Eknath Mali came to be promoted to the post of Tahsildar and was posted at Pachora, District Jalgaon on 30.05.2016. The State Election Commission issued various directions on 19.01.2016 to the State Government relating to transfers and postings of the Government officers/servants for holding free and fair elections. The State

Election Commission recommended to effect transfer of officers who have completed tenure of three years at a particular station as on 1st June 2016. It was directed that since the programme of elections for local authorities would commence in the month of November 2016 till February 2017, the officers, who would be completing three years tenure should also be transferred. It was directed that a local officer shall not be posted at the place where elections to the local authorities are scheduled to be held. The State Election Commission also issued instructions to the State Government on 18.05.2016 informing that as the elections to 26 *Zilla Parishads* and *Panchayat Samities* are scheduled to be conducted simultaneously, the local officers hailing from the concerned districts shall not be posted for performing functions relating to election.

4 Since the transfer of officers connected with the process of election was within contemplation, Respondent No.4 approached this Court by presenting Writ Petition No.8421 of 2016 apprehending their transfers by the State Government. One of the suggestions made by this Court was that the officers could be sent on deputation for some period till the elections are over and could be brought back thereafter. It was pointed out to this Court that more than 450 officers were transferred and in order to conduct elections in free and fair manner, the directions issued by the State Election Commission, requiring transfers of officers and Government servants, need to be observed. This Court, while disposing of the writ petition, placing reliance on the judgment in the matter of **Union of India Vs. Association of Democratic Reforms and another**, 2002 DGLS (SC) 548, has observed that

powers are conferred on the State Election Commission to issue directions to the State with a view to ensure holding of free and fair elections. Since, it was informed that the election process, relating to elections of Corporations, Councils, *Panchayats*, *Zilla Parishads*, *Village Panchayats*, is already set in motion, the Court deemed it appropriate to hold that the State Government and the State Election Commission are free to contemplate on the issue of transfers of officers keeping in view various aspects for consideration and frame a proper policy for future with sole objective of holding free and fair elections. The Division Bench of this Court, as such, refused to continue the interim protection and disposed of the petitions.

5 After disposal of Writ Petition No.8421 of 2016 and connected matters, the Divisional Commissioner issued orders transferring the petitioner from Parola Tahsil to Shrigonda Tahsil and Respondent No.4 from Shrigonda Tahsil to Parola Tahsil. The petitioner in Writ Petition No.6051 of 2017 presented Original Application No.658 of 2016 seeking a direction not to relieve him in view of the fact that Respondent No.4 had already presented a writ petition before this Court and stay was operating. The Maharashtra Administrative Tribunal, initially granted stay in view of the order passed by this Court in the above referred writ petition. However, after disposal of the writ petition, the Original Application presented by the petitioner came to be disposed of along with connected matters on 17.01.2017. The Divisional Commissioner immediately issued letter to the Collector on the same day directing to relieve petitioner and Respondent No.4 so as to facilitate them to report at the place of their transfers.

6 Respondent No.4, whose writ petition was dismissed by this Court, presented Original Application No.61 of 2017 so also other similarly placed officers also challenged the orders of transfer before the Maharashtra Administrative Tribunal at Aurangabad. The Maharashtra Administrative Tribunal, Aurangabad, allowed the Original Application, objecting to the transfer presented by Respondent No.4 and other Original Applications by an order dated 24.04.2017 and the said common order, passed by the Tribunal, is subjected to challenge in these petitions.

7 The Maharashtra Administrative Tribunal, while allowing the Original Application, held that the Revenue and Forest Department has regularly taken recourse to the policy of posting the Government servants for election purposes on deputation and departure from the said policy cannot be said to be fair. It is further recorded that the State Election Commission did not issue directions for transfer of the officers, however, the Election Commission merely wanted that the officer, who is posted at native place, should not discharge his duties during election period at that place and as such, has used the words “transfer / posting” in the directives, those were issued earlier. Different departments are issuing orders of deputation for specific period for specified purpose i.e. for election duty and the officers are required to be brought back after the elections are over. Referring to the judgment of this Court, the Tribunal has recorded that although the writ petitions, seeking annulment of transfer orders, were dismissed for the reason that the process of election is still continuing at the time of disposing of these petitions, the

administrative exigency does not call for continuing with the orders for indefinite period and after the cause is over. It is recorded that even the Election Commission has suggested an alternative and as such, the Tribunal has proceeded to allow the Original Application.

8 It is the contention of petitioners that the State Election Commission, in its directives dated 19.01.2016, in paragraph no.4(iii) has categorically instructed about transfer of officers and servants. The State Election Commission has instructed not to post the officers and servants who belong to the local area for election purposes. Apart from the directives of the Election Commission, it must be noted that the State Government had acted in consonance with the Maharashtra Government Servants (Regulation of Transfers and Prevention of Delay in Discharge of Official Duties) Act, 2005 (for short, "The Transfer Act".) Sub-sections 4(4) and 4(5) of the Transfer Act are relevant for consideration, which reads thus:

4(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 posts 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;

4(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.”

9 Sub-section 4(ii) of the Transfer Act prescribes that a Government servant can be transferred during midst of the term 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.

10 In the instant matter, the transfer has been effected in view of the elections to local authorities. Admittedly, some of the officers belong to the local area where the elections are scheduled to be conducted. Therefore, they were not expected to be associated with the elections at the same place, which necessitated their transfers. It is the contention of the respondents that instead of transferring the officers, the revenue and forest department ought to have issued the orders of deputation. It is also contended that the orders of transfer, in the instant matter, shall be construed as orders on deputation and since the purpose is over i.e. the elections are over, there is need to repost the officers at their original places.

11 So far as the issue of transfer of Government Servant

is concerned, it has to be tested as to whether the transfer orders are in consonance with the Transfer Act. It is contended on behalf of the State that the procedure prescribed under the Act has been followed and there is no illegality in issuing the orders of transfer. Though the order of transfer is in the midst of the term, the State Government is authorized in view of section 4(iv) to effect the transfer during midst of the term and elections to the local authorities is an exceptional circumstance requiring transfer of officers. It has also to be scrutinized as to whether there is observance of procedure prescribed under section 4(v) of the Transfer Act. The State Government has issued a resolution on 22.06.2016 delegating powers to the Commissioner of the Division to effect transfers of the officers of the cadre of Tahsildar. It is recorded in the Government Resolution that in exceptional circumstances, transfers of the Government Servants are required to be effected apart from April-May and before completion of normal tenure of two or three years. The State Government for facilitating such transfers and in exercise of powers under the second proviso to section 6 authorized the Divisional Commissioner to issue orders of transfer. It is also provided in the Government Resolution that the mandate in respect of preparing the proposals for transfers and obtaining sanction from the Civil Services Board, would be required to be observed by the Divisional Commissioner while effecting such transfer.

12 It is pointed out that the Divisional Commissioner, Nasik effected transfers of 8 Tahsildars on the ground that they are local residents of the place where the elections are within contemplation, 9 Tahsildars were transferred since they had

completed three years tenure at the same station. At the same time, 19 Tahsildars were not transferred although they were local residents and 3 Tahsildars who had completed three years tenure on the same post before February 2017 because they were not assigned any duties relating to election process.

13 Similarly, the Divisional Commissioner of Pune, transferred 9 Tahsildars on the ground they being local residents, 21 Tahsildars were transferred since they had completed three years tenure on the same post before February 2017, 3 Tahsildars were not transferred although they were local residents because they were posted in the office of Divisional Commissioner. 2 Tahsildars who had completed three years tenure on the same post before February 2017 were also not transferred because they were going to retire on attaining the age of superannuation on 30.06.2017.

14 So far as Aurangabad Division is concerned, it is reported that 11 Tahsildars were transferred since they were local residents, 16 Tahsildars were transferred since they had completed three years tenure on the same post before February 2017. One Tahsildar was not transferred although he was local resident on the ground that he was not assigned duties relating to election process. Similarly, 3 Tahsildars who had completed three years on the same post before February 2017 were also not transferred because they were going to retire on attaining the age of superannuation in June-July 2017. It is reported that one Tahsildar was under suspension.

15 So far as Nagpur Division is concerned, 4 Tahsildars were transferred they being local residents, 15 Tahsildars were transferred since they had completed three years on the same post before February, 2017. 2 Tahsildars who had completed three years on the same post before February 2017 were not transferred because one was going to retire on attaining the age of superannuation in August 2016 and one Tahsildar was working on non-executive post coupled with medical reasons.

16 So far as Konkan Division is concerned, 3 Tahsildars were transferred, they being local residents, 08 Tahsildars were transferred since they had completed three years' tenure on the same post before February-2017. 10 Tahsildars, who had completed 3 years tenure on the same post before February, 2017, were not transferred because they were assigned duties not relating to election process.

17 So far as Amravati Division is concerned, no transfers were effected on the ground that they are local residents or on account of completing 3 years on the same post before February-2017, although 16 Tahsildars were local residents and 9 Tahsildars had completed 3 years tenure on the same post before February, 2017. It is, thus, contended that transfer of the petitioner is not an isolated case but the officers of the same cadre have been transferred throughout the State. It also must be noted that the orders have been issued in observance of the provisions of Transfer Act of 2005.

18 In an affidavit-in-reply presented on behalf of the

State, it is specifically pointed out that in view of the decision of the Hon'ble Supreme Court in W.P. (Civil) No.82 of 2011, the State Government was directed to constitute a Civil Services Board for recommending transfers of Government servants. The State Government, in view of Government Resolution dated 10.07.2015, constituted a Civil Services Board for recommending transfers of Government officers to the competent authorities. Accordingly, the State Government, by way of G.R. Dated 10.07.2015, constituted a Civil Services Board consisting of Additional Commissioner as Chairman, Deputy Commissioner, Revenue as Member Secretary and Assistant Commissioner, Backward Cell as Member.

19 It is further stated that on 18.08.2016, the meeting of the Civil Services Board was held and proposals in respect of transfer of officers were placed before the Civil Services Board. The Civil Services Board was apprised of the directives issued by the Election Commission. As per usual practice, the Tahsildars, who were to be transferred before completion of their tenure, were given an option to give three preferences of districts. Considering all the relevant factors, including options given by respective Tahsildars, all the information in respect of posting of the officers as well as their preferences were placed before the Civil Services Board. The Board considered the record and issued recommendations. On consideration of recommendations of the Civil Services Board, the Divisional Commissioner has directed transfer of officers before completion of their normal tenure and in consonance with directives of the State Election Commission. It is contended that the State Government has taken a conscious decision to transfer the officers within their home district even though they had not

completed their ordinary three years tenure. It is further contended that it would not be desirable in the interest of administration to re-post them in their original position after a long duration, which will disrupt the administration. It is, thus, contended by the State that the orders impugned in these petitions, passed by the Maharashtra Administrative Tribunal, deserves to be quashed and set aside.

20 The transfer orders issued under the instructions of Election Commission can be categorised as transfers for special reasons and mid-term transfers within permissible parameters granted under Section 4(4) and 4(5) of the Transfer Act. In this context, reliance can be placed on a judgment in the matter of **Shri Shankarrao Narayanrao Jadhav Vs. State of Maharashtra & others**, 2011 (1) ALL MR 628. In paragraphs no.10 and 11 of the judgment, it is recorded thus:

“10 General transfers are issued between April and May whereas the mid term transfers are issued under the circumstances mentioned in the proviso below Section 4(4) as well as Section 4(5) of the Transfer Act. The orders issued under Section 4(5) are to be issued by recording reasons in writing and in special cases, but with the prior approval of the immediate superior transferring authority as mentioned in the Table to Section 6. The transfer orders to be issued under the instructions of the Election Commission will be the transfers for special reasons and midterm transfers.

11 So far as Content Transfer Authority is concerned, as noted earlier, the same has been defined in Section 6(1) of the Transfer Act and

the proviso below the said Section enables the Competent Transferring Authority to delegate its powers by general or special orders to any of its subordinate authority.”

21 It must be realized that transfer is an incidence of service and the Courts/Tribunals are not ordinarily expected to interfere in such orders.

22 Similarly, a proposition has been laid down by the Division Bench of this Court in the matter of **V.B.Gadekar Vs. Maharashtra Housing and Area Development Authority and another**, 2008 (2) MhLJ 640. It is observed thus:

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfers could be due to exigencies of service or due to administrative reasons.

..... The Rules give protection to an employee to stay at the place of posting for three years but this is subject to the exception that, where in the wisdom of the authority concerned, he should, for administrative and exceptional circumstances, even be transferred during that period.

23 In the instant matter, the petitioners have been displaced under special circumstances. The State Election

Commission issued directions not to post local officers for performing functions relating to elections to the local authorities. The State Government, considering the special circumstances, in observance of the procedure prescribed under the Act, has issued orders of transfer.

24 As has been stated above, the orders have been issued having due regard to the procedural safeguards provided under the Act. It also must be noted that the orders of transfer have been acted upon for more than a year. It is the contention of the State that any interference, after lapse of long duration of one year could cause administrative difficulty, which factor also deserves to be considered. It is also to be noticed that apart from petitioners, a large number of employees have been transferred in observance of the instructions issued by the State Election Commission. It cannot be considered that orders of transfer transferring large number of employees within the district on account of special circumstances, i.e. process of election, to the local authorities can be said to be *mala fide*. The orders of transfer have been issued as a result of administrative reasons and due to special circumstances and in observance of the procedure prescribed under the Act. This Court is not expected to substitute its own reasons for the satisfaction of the transferring authority. It is the contention of the respondents that the orders of transfer are issued as a result of misconstruction of the directions issued by the State Election Commission. The orders issued by the State, though direct transferring an employee, shall have to be construed as a deputation, would amount to misconstruction of record and more specifically the orders issued by the State itself. The State has

issued orders in observance of the provisions of law and the orders themselves speak of transfer of an employee. It would, therefore, be difficult to construe those orders as deputation.

25 Reliance is placed by the respondents on the judgment in the matter of **Election Commission of India and others Vs. State of Karnataka and others**, decided by the Division Bench of Karnataka High Court, 2013 CJ (Kar) 595. In paragraphs no.29 and 30 of the judgment, it is observed thus:

“29 The argument that the Election Commission, even though they chose to requisition the services of these officers from the Government for election work and if they are to be transferred and posted before the expiry of the minimum tenure, they should make a request to the State Government, which in turn should make a request to the Committee to consider their case and make recommendation and then only they can be posted, holds no water. The said rule is not meant to deal with a situation where elections are announced to the Legislative Assembly. It is not a case of transfer. It is a case of deemed deputation. The said rule is silent and therefore under Article 324 of the Constitution, the Commission has the power to issue directions to transfer and post the officials for the proper conduct of the elections.

30 In the instant case, after preliminary preparations are made for conducting elections, before issue of notification calling for the elections, the Election Commission wanted these respondents – 4 to 10 to be posted in place of applicants during the period of election. Once they are so posted, after the

issue of notification, they are deemed to be on deputation to the Election Commission, for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of results of such election and accordingly such officers shall, during that period, are subject to control, superintendence and discipline of the Election Commission. Therefore, the order passed by the Election Commission directing the State to post these officers in the place suggested by them would result in deemed deputation to the Election Commission for the aforesaid period. Once declaration of result of such elections is announced, the said deputation comes to an end and at the end of the deputation, the officers are reverted back to their parent organization (previous post held by them).

26 Relying on the observations as aforesaid, it is contended that the assignment of election duties at a particular place shall be deemed to be a deputation and after the declaration of results, the deputation comes to an end and at the end of the deputation, officers are reverted back to the parent organization.

27 In the instant matter, as has been observed by us, that the employees have been transferred in observance of Section 4(iv) and (v) of the Transfer Act. The mid-term transfers have been effected on account of special circumstances. The orders of transfers have been issued by the competent authority i.e. Commissioner of Division, who has been delegated with the powers to issue such orders under Section 6 of the Transfer Act. The cases of the petitioners were scrutinized by the Civil Services Board before recommending the transfers. Thus, the procedure

prescribed under the Act has been observed in the instant case.

28 The petitioners and others were transferred on consideration of guidelines/directives of the State Election Commission and in view of the initiation of process of election for local authorities and since the purpose for which they were shifted before completion of their normal tenure, is already over and the process of election has come to an end long back, it would be open for the State to pass appropriate orders of transfer for reposting them at an appropriate place, in observance of the procedure prescribed under the Transfer Act.

29 Apart from this, it also deserves to be considered that the orders of transfer have been given effect more than a year back and any interference, at this stage, would amount to displacement of several employees thereby creating difficulties in the administration. The orders of transfer are expected to be issued considering the administrative exigencies. However, as has been noted above, interference at this stage, would, in stead of, protecting interest of the administration, would created difficulties, as has been canvassed by the State.

30 In this view of the matter and for the reasons recorded above, according to us, orders passed by the Maharashtra Administrative Tribunal, directing to quash the orders of transfer under the impugned judgment and order dated 24.04.2017, deserves to be quashed and set aside and same is accordingly quashed and set aside. It is, however, made clear that it would be open for the State to pass appropriate orders transferring the

employees, if deemed necessary for administrative exigencies while effecting regular process in the months of April-May, 2018.

31 Rule is accordingly made absolute. There shall be no order as to costs.

A.M.DHAVALÉ
JUDGE

R.M.BORDE
JUDGE

adb