

((1))

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

WRIT PETITION NO.11456 OF 2017

Ramdas s/o Marotrao Mudholkar ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Shri S.J. Salunke, Advocate for petitioner
Shri S.S. Dande, A.G.P. for State
.....

CORAM: PRASANNA B. VARALE AND
 MANISH PITALE, JJ.

DATED : 4th OCTOBER, 2018.

ORAL ORDER :

1. Heard learned counsel for the petitioner at length.
The petitioner is before this Court with his basic prayer (B) and
the same reads thus :

(B) By issuing a writ of mandamus or any other
appropriate writ, order or directions in the like
nature, the respondent Nos.1 and 2 - State
may kindly be directed to pay an exemplary
amount as compensation to the petitioner for
committing breach of his Right to Health
which forms a part of Right to Life under
Article 21 of the Constitution of India.

2. Learned counsel for the petitioner invited our attention to the document placed on record at Exhibit A. This is a certificate issued by the competent Medical Board, certifying that the petitioner is a person having 55% disability. The petitioner was appointed with the Purna Modernisation Division, Nanded, Irrigation Department as Class III Junior Clerk, Computer on 31.3.1982. The learned counsel for petitioner, in support of his prayer in the petition, placed heavy reliance on the Government Resolution dated 7.10.1987. Bare perusal of the Government Resolution dated 7.10.1987 shows that, this resolution deals with reservation of certain posts for physically challenged persons and then it states that, a request was made to the State Government that the persons having physical disability be appointed at a place near to their residential place. Considering this request, the State Government issued administrative instructions to all the Division Heads and Heads of Departments to keep in mind the difficulties of such appointees and if it is possible and meets the administrative exigencies, such persons be appointed at a place near to their residential place. It further makes clear that, in cases of transfer also such a sympathetic approach be maintained without giving a go-bye to general rules of transfer.

3. The learned counsel for the petitioner submitted that, in the year 2003, the petitioner was transferred at a place namely Hadgaon, which is at a distance of 70 Kms. away from Nanded.

Then it is submitted by the learned counsel that though there was a post available at Nanded, the petitioner was transferred to Hadgaon. The learned counsel, on a query put to the counsel that whether the petitioner raised any grievance at that point of time, the counsel submitted that the petitioner only submitted representation in the year 2006 and invited our attention to the copy of representation placed on record at Exhibit E.

4. It is stated that, the petitioner is transferred to Hadgaon and he is working at Hadgaon. It is also stated that, in spite of having a post vacant at Nanded, the petitioner is transferred to Hadgaon and as such, the petitioner is subjected to the inconvenience, physical and financial. The learned counsel, on instructions, further submitted that, the petitioner worked at Hadgaon for a period of one and a half year and he was brought back to Nanded and till date the petitioner is working at Nanded. The counsel then submits that, for that period of one and a half year, the petitioner though was posted at Hadgaon, was permitted to go to his District Headquarter.

5. It is stated in the petition that, the petitioner was required to travel from Nanded to Hadgaon twice a month and this travel caused aggravating the physical difficulties of the petitioner. Thus, it is prayed that, as the petitioner was required to travel twice in a month from Nanded to Hadgaon for a period of one and a half year, the respondents have committed breach

of their own policy under the Government Resolution dated 7.10.1987 and for the act of the authorities of State Government, the petitioner was to suffer physically and as such, the respondents No.1 and 2 be directed to pay exemplary amount of compensation for committing breach of right to health which forms a part of right to life under Article 21 of the Constitution of India.

6. On the backdrop of the above referred facts, we are of the clear opinion that, on the premises which the petitioner is proceeding, is nothing but a clear misconception of law and the petitioner himself waited for considerable period of 10 to 12 years after submitting his representation in the year 2006 and permitted the time to go on, and caused an inordinate delay for filing a petition on his assumptions and presumptions. The petitioner treats the Government Resolution of 1987 as if the mandate. At the cost of repetition, we make it clear that the perusal of Government Resolution only states that sympathetic approach be maintained to consider difficulties of the persons who are physically challenged, and as far as considering the administrative convenience, such persons be appointed at the place near their residential place. This Government Resolution cannot be treated as a mandate of law that even if there is no such place available for the Department to transfer or appoint the persons nearby their residential places such persons be

((5))

appointed or be transferred only to the place near to their residential places. Treating this convenience and sympathetic approach as a mandate is nothing but misreading of the Government Resolution and on such misreading of the resolution and the provisions of law, the petitioner is before this Court.

7. Considering all the above referred facts, we are of the opinion that the petition is meritless and deserves to be dismissed. The writ petition is accordingly dismissed.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-

Faridkhan
Mahammadkhan
Pathan

Digitally signed
by Faridkhan
Mahammadkhan
Pathan
Date:
2018.10.05
14:29:34 +0530