

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

WRIT PETITION NO. 11243 OF 2018

**LAXMAN KISANRAO GADEKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.N.L.Jadhav, Advocate for the petitioner
Mr.S.K.Tambe, AGP for the respondent/State
Mr.A.S.Deshmukh, Advocate for respondent No.4.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.
DATED : 09.10.2018**

P.C. :-

Respondent No.4 assails the order of transfer. The Tribunal allowed the original application aggrieved thereby the present petition.

2. Mr.N.L. Jadhav, learned counsel for the petitioner submits that the transfer has been effectuated as per the Government Resolution dated 21.11.1995. The posts of Awwal Karkoon and Circle Officer are inter changeable and these persons can be transfered on each other's posts. Considering the Government Resolution dated 21.11.1995 the transfers have been effectuated. No illegality was committed. Learned counsel submits that it is not that only respondent No.4 was transferred. By that order of transfer, 28 persons were transferred. In view of that there is no question of malafide or favoritism. The reason is also given in the transfer i.e. for administrative reasons the same is sufficient. The

learned counsel submits that transfer is not a fundamental right. There is no malafide or favoritism. The Tribunal ought not to have interfered with the order of transfer. The learned counsel relies on the judgment of the Division Bench of this court in case of Santosh Nandalal Dalal Vs. State of Maharashtra reported in 2016(1) Mh.L.J.,45. So also another judgment in a case of Komalsingh Sonusingh Pardeshi & Ors. Vs. State of Maharashtra & Ors., reported in 2006(6),Mh.L.J.,658. Thereafter no.3 State of Maharashtra & anr. Vs. Omprakash Ghanshyamdas Mudiraj & anr. reported in 2008 BCI 126 and the judgment of Apex Court in case of National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and Shiv Prakash reported in 2001(9) SRJ 503. According to the learned counsel the petitioner has already joined at his transferred place. In alternate, learned counsel submits that the petitioner be retained at that place at the transferred place till May 2019.

3. The learned AGP supports the order and submits that for administrative reason the transfer has been effectuated keeping in mind the Government Resolution dated 21.11.1995. No malafides are averred nor any favoritism has been sought. Because of the administrative exigency the transfer has been effectuated.

4. Mr.Deshmukh, learned counsel for respondent No. 4 submits that sub Section 5 of section 4 of The Maharashtra Government Servant Regulation of Transfers and Prevention of Delay in Discharge Official Duties

Act, 2005 has not been followed. No special reasons are recorded nor approval of the next superior has been obtained by effectuating mid tenure transfer. The petitioner had hardly put in 1.5 years at his place of work.

5. We have considered the submissions it is not disputed that respondent No.4 under the impugned order of transfer has been transferred within a period of 1.5 year prior to the completion of the term. It is the case of mid tenure transfer. Sub Section 5 of section 4 of the transfer reads thus:

"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 permission of the immediately preceding Competent Transferring Authority mentioned in the table of section, transfer a Government servant before completion of his tenure of post."

6. It has been observed by the Tribunal that no special reasons are recorded for effectuating mid tenure transfer nor the approval of the next superior authority has been obtained.

7. In a case of Santosh Nandlal (Supra) relied by the learned counsel for the petitioner, this Court observed that if there is nothing to infer favoritism or malafide, the Court / Tribunal is not expected to interfere in the transfer order, if the transfer is made after following aforesaid procedure. In the said

judgment the Court has laid down a caution that if the procedure is followed and no malafides are there, then the Court would not interfere. Even in case of National Hydroelectric Power Corporation Ltd. (Supra) the Apex Court observed that the Court or Tribunal cannot interfere routinely. Transfer orders passed due to the administrative exigencies unless such orders violate statutory provisions or are passed with malafide intention need not be interfered with. In the present case though malafide intention does not appear, however there is transgression of the statutory provisions. The statutory provisions are not followed. Sub section 5 of section 4 has not been adhered to and the approval of the immediately superior is not brought on record nor any special reasons are recorded.

8. The Tribunal in the aforesaid order has not committed any error.

9. The Writ Petitions as such is disposed of. No costs.

[S.M.GAVHANE, J.]

[S.V. GANGAPURWALA, J.]