

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 202 OF 2018

Vaishali Vikrant Jadhav	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. P. S. Dani - Senior Advocate i/b. Mr. P. B. Kulkarni for
Petitioner.

Mr. O. M. Kulkarni - AAGP for Respondent Nos. 1 to 3 - State.
None for Respondent No. 4.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 07th MARCH 2018

P.C.

1] Heard the learned counsel for the parties.

2] Rule. With the consent of and at the request of the
learned counsel for the parties, Rule is made returnable
forthwith.

3] The challenge in this petition is to the judgment and
order dated 20th December 2017 made by the Maharashtra
Administrative Tribunal (MAT) in Original Application No. 404

of 2017.

4] Mr. Dani, the learned Senior Advocate for the petitioner submits that in this case the petitioner had specifically invoked the provisions of Section 22(N) of the Bombay Police Act ("said Act") which provides that the competent authority to effect the transfer of the petitioner was the Home Minister and not the Commissioner of Police. He points out that the MAT in its order dated 11th May 2017, by which interim relief was declined to the petitioner, had taken specific note of the fact that this was one of the main contentions raised by the petitioner in OA before the MAT. Further, even the impugned order, at paragraph 3 takes cognizance of this contention urged by and on behalf of the petitioner. Mr. Dani submits that however the impugned judgment and order dated 20th December 2017 almost completely glosses over this contention but proceed to decide the matter solely on the basis of the decision of this Court in ***Rajan Ramchandra Bhogale vs. State of Maharashtra (Writ Petition No. 10622 of 2013 decided on 24th December 2013)***. Mr. Dani points out that section 22(N) was amended after the decision in *Rajan*

Ramchandra Bhogale (supra) was delivered and therefore, the decision, does not consider the impact of the amendment. Mr. Dani therefore submits that the matter ought not to have been disposed of only on the basis of the decision in *Rajan Ramchandra Bhogale* (supra) and without considering the impact of the amendment to section 22(N) on the said decision. On such basis, Mr. Dani submits that this Court may remand the matter to the MAT for fresh consideration of the OA No. 404 of 2017.

5] Mr. Kulkarni, the learned AAGP for the respondent nos. 1 to 3 submits that in the present case, the provisions of section 22(N) of the said Act were not at all applicable to the case of the petitioner. He submits that this is a case of mere posting and not transfer. He therefore submits that the rulings in *Rajan Ramchandra Bhogale* (supra) as well as ***Pradip Balkrushna Lonandkar vs. State of Maharashtra & Ors. (Writ Petition No. 7554 of 2013 and other connected matters decided on 22nd November 2013)*** will apply. He submits that there is no jurisdictional error in the impugned judgment and order made by the MAT and therefore, this Court, may dismiss the

present petition.

6] For the order which we propose to make, it is not necessary to examine in details the rival contentions.

7] From the record, it does appear that one of the main grounds raised by the petitioner in OA concerns the application of section 22(N) of the said Act. This is noted by the MAT, both, in its order dated 11th May 2017 by which interim relief was declined to the petitioner, as also in the impugned judgment and order dated 20th December 2017. However, we find that in the impugned judgment and order dated 20th December 2017, there is no consideration whatsoever of the contention based upon applicability of section 22(N). Accordingly, we feel that it will be appropriate if the impugned judgment and order is set aside and the matter is remanded to the MAT for fresh consideration of OA No. 404 of 2017.

8] No doubt, upon remand, the MAT, will have to take into consideration the contention on behalf of the respondent nos. 1 to 3 that section 22(N) of the said Act is

not at all applicable because according to the respondents this is a case of mere posting and not transfer. Therefore, leaving open all contentions of all parties and without expressing any opinion on the merits of the matter, we deem it appropriate to set aside the impugned judgment and order dated 22nd December 2017 and to remand the matter to the MAT for fresh consideration on its own merits and in accordance with law. We request the MAT to dispose of the OA expeditiously and preferably within six months from the date of production of authenticated copy of this order.

9] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

10] The parties to appear before the MAT on 2nd April 2018 at 11.00 a.m. and produce authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)