

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 211 OF 2015

Nitendrasingh K. Patil

...Petitioner

Versus

The Deputy Inspector

General of Police and ors.

...Respondents

Mr. Chaitanya Pendse for the Petitioner.

Mr.N.C. Walimbe, AGP for Respondent Nos.1 to 3/ State.

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

DATE : 25th APRIL 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

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

3] The challenge in this petition is to the judgment and order dated 26th November 2014 made by the Maharashtra Administrative Tribunal (MAT), Mumbai dismissing the petitioner's O.A. No. 78 of 2014 questioning his transfer vide order dated 16th January 2014 from Thane to Parbhani.

4] Mr. Pendse, learned counsel for the petitioner, submits that the transfer order dated 16th January 2014 was a mid tenure transfer and therefore, the same was governed by section 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (said Act). He submits that the competent authority to issue a mid tenure transfer order is the concerned Minister, who has to act in consultation with the concerned Secretary. He points out that in the present case, the Minister concerned would be Home Minister and the Secretary concerned would be Home Secretary or the Chief Secretary. He points out that the transfer order in the present case was issued by the Dy. Inspector of General of Police and this order was later on corrected to indicate that the same has been issued by the Additional Director General of Police. He submits that neither all these authorities were competent to issue a mid tenure transfer and therefore, the impugned transfer order is clearly without jurisdiction, null and void.

5] Mr. Pendse, without prejudice to the aforesaid contentions, submitted that the petitioner was placed

under suspension on account of pending criminal prosecution. He submits that the petitioner was ultimately exonerated and the competent authorities, in pursuance of directions of the MAT, also made an order for treating the petitioner's period of suspension as period spent on duty. Mr. Pendse pointed out that the petitioner was posted at Thane when he was placed under suspension. Mr. Pendse, therefore, submits that consequent upon revocation of suspension and a direction that the petitioner's suspension period be treated as duty period, the respondents were bound to reinstate the petitioner at Thane itself. Mr. Pendse submits that reinstating the petitioner at Parbhani is nothing but a guise to find some justification in the mid tenure transfer which respondent Nos.1 and 2 were not even competent to order. For this reason also Mr. Pendse submits that the impugned judgment and order as also the impugned transfer order is liable to be set aside.

6] Mr. Walimbe, learned AGP for the respondents, submits that the impugned order is not to be considered as the order of transfer at all, much less, an order of mid tenure transfer. He submits that it is true that the

petitioner was placed under suspension when he was posted at Thane. However, Mr. Walimbe submits that after suspension is revoked, the petitioner has no right to insist upon reinstatement at the post from which he was suspended. He submits that in fact, the respondents were well within their rights to post the petitioner at Parbhani and there is absolutely no jurisdictional error in the view taken by the MAT so as to warrant interference under Articles 226 and 227 of the Constitution of India.

7] The rival contentions now fall for our determination.

8] The main issue involved in this petition is to whether the impugned transfer order dated 16th January 2014 can at all be regarded as a transfer order for the purposes of the said Act. The material on record, which has been considered in substantial details by the MAT indicates that the petitioner was placed under suspension pending criminal prosecution. Ultimately, the suspension was revoked and the petitioner was posted at Parbhani vide order dated 16th January 2014. Prior to this, by order dated 1st June 2012, upon his reinstatement in service, the

petitioner had been posted at Nagpur. This order was, however, challenged by the petitioner before this court. This court, declined to entertain this writ petition, since, the petitioner had alternate remedy available before the MAT. The petitioner accordingly, instituted an O.A. before the MAT. Before the same could be disposed of, the respondents withdrew the transfer order dated 1st June 2012 and by the impugned order dated 16th January 2014, posted the petitioner at Parbhani.

9] The petitioner's contention that consequent upon the revocation of suspension, the petitioner has an unequivocal right to be posted at the same place, from where the petitioner was suspended, does not appear to have any backing on any statute or executive instructions. In any case, taking into consideration the facts that the petitioner was suspended on 20th November 2007, there is no question of the petitioner insisting upon any reinstatement at Thane and that too, as a matter of right.

10] Since, this is basically, a case of the petitioner being posted to an appropriate place consequent upon

revocation of his suspension, we do not think that the view taken by the MAT that this is not in the strict sense, a transfer as contemplated by the said Act, warrants any interference in exercise of our extraordinary jurisdiction. Since, this is not a case of transfer in the strict sense, but only a case of posting, there is no question of applicability of section 4 of the said Act. The MAT, in this case, has quite correctly appreciated the facts and circumstances and there is really no case made out to warrant interference.

11] For all the aforesaid reasons, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)