

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1035 OF 2018

Sachinkumar Shivajirao Pawar .. Petitioner
Vs.
The Secretary and ors. .. Respondents

Mr.Rajiv Chavan, Senior Advocate a/w Ms.Priyanka Chavan & Mr.Rupesh Zade i/b Dhairyasheel Sutar, for the Petitioner.
Mr.Rupesh Singh a/w Mr.Pushkar Mishra, Mr.Arsh Misra i/b M.V. Kini & Co., for Respondents No. 1 to 3.
Mr.Rui Rodrigues a/w Mr.P. Khosla, for Respondent No.4.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 29th JANUARY, 2018

ORDER (PER M.S.KARNIK, J.) :

1. The petitioner's challenge in this Petition is to an order dated 11/01/2018 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (for short 'Tribunal') in MA/390/2017 & MA/672/2017 whereby the Tribunal vacated its earlier interim order granting stay to the transfer of the petitioner from Baramati, Maharashtra to Ijjatnagar, Uttar

Pradesh.

2. The petitioner approached the Tribunal with the case that he was transferred before completing minimum tenure of 5 years at Baramati. Learned Senior Counsel for the petitioner invited our attention to the transfer policy for ARS Scientists working in ARS discipline of Animal Biotechnology. The petitioner belongs to 'A' category. Learned Senior Counsel for the petitioner submitted that he was sought to be transferred only after 3 ½ years. The Tribunal on 07/06/2017 was pleased to stay the order of impugned transfer dated 20/05/2017. The matter came to be heard on 20/06/2017, 04/07/2017 & 06/09/2017 before the Tribunal during which the petitioner communicated his grievance that he was not being paid salary. MA/390/2017 was filed by the petitioner on 03/07/2017 for ordering release of his salary. Respondents filed reply to main OA on 05/10/2017 and to MA/390/2017 on 05/10/2017. MA/672/2017 was filed by the petitioner for payment of salary for the subsequent months.

3. By filing reply, respondents contended that the petitioner was relieved on 31/05/2017. The respondents urged that the petitioner suppressed the aspect regarding relieving order dated 31/05/2017 while obtaining interim orders staying the order of transfer dated 20/05/2017. The Tribunal by the impugned order was of the opinion that the petitioner had already been relieved on 31/05/2017, therefore stay on the order as a form of relief was clearly infructuous and accordingly withdrew the interim relief granted. The Tribunal has further observed that the fact about the petitioner being fully aware of the relieving order dated 31/05/2017 and the concealment of this fact shall be taken into consideration while hearing the main OA. The Tribunal thus observed that the petitioner stands relieved from his present institution from 31/05/2017.

4. Learned Senior Counsel for the petitioner assailed the order passed by the Tribunal and contended that interim order passed by the Tribunal was in operation from 07/06/2017 and the Tribunal having fixed the matter on 05/03/2018 for

final hearing, there was no need for the Tribunal to have vacated the interim order at this juncture. He submits that he admittedly is to complete the minimum tenure of 5 years at Baramati.

5. Learned Counsel for the respondents supporting the order passed by the Tribunal contends that the Tribunal has passed a reasoned order vacating the stay granted on the earlier occasion. In his submission, the Tribunal has recorded a finding that the petitioner stood relieved on 31/05/2017 which fact was suppressed while obtaining interim relief therefore, the impugned order does not call for any interference.

6. We have heard learned Counsel. The interim order staying the transfer dated 20/05/2017 was in operation since 07/06/2017. Learned Senior Counsel for the petitioner makes a categorical statement that he will not insist for payment of salary till OA is decided finally.

7. In our opinion, in the light of the statement made by the learned Senior Counsel for the petitioner that he will not insist for payment of salary and further that the interim order was continuing from 07/06/2017, in the interest of justice, we are inclined to request the Tribunal to take up OA itself for final hearing. Learned Counsel for the parties state that the pleadings are complete and the Tribunal has already listed the case for final hearing on 05/03/2018. The issues raised by the petitioner in OA, more particularly, the issue whether the respondents could have transferred the petitioner before completion of the minimum tenure of 5 years needs to be decided on merits. In the interest of justice therefore we feel that the Tribunal may hear the Misc. Applications along with main OA and interim order granted earlier can be continued in the light of the order we propose to pass.

ORDER

- i) The impugned order dated 11/01/2018 passed by the Tribunal is quashed and set aside.
- ii) The Tribunal is requested to hear and dispose of OA finally

by 05/03/2018 or within a period of 8 weeks from today.

- iii) The Tribunal to hear and decide the OA on its own merits and without being influenced by any observations made by us in our order.
- iv) The Tribunal to consider MA 390/2017 & 672/2017 on its own merits along with OA.
- v) All the contentions are kept open including the aspect of concealment of relieving order which may be taken into account while hearing the OA.
- vi) If a request for preponement of hearing is made by either of the parties, the Tribunal to consider the request if possible.

8. Writ Petition is disposed of with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)