

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2696 OF 2018**

Pradeep s/o. Babulal Pawar ...Petitioner
Versus
The State of Maharashtra and ors. ...Respondents

Mr. S.B. Talekar h/f. Talekar & Associates for the Petitioner.
Mr. C.P. Yadav, AGP for Respondent Nos.1 to 4-State.

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

DATE OF RESERVING THE JUDGMENT : 20th JUNE 2018.
DATE OF PRONOUNCING THE JUDGMENT : 22nd JUNE 2018.

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 29.01.2018 made by the Maharashtra Administrative Tribunal (MAT), Mumbai dismissing the petitioner's O.A. No. 429 of 2017 seeking posting as a Block Development Officer at Bhiwandi or Kalyan in the light of the proviso to Rule 12 of the Revenue Division Allotment Rules 2015 and for all consequential service benefits.

4] In the O.A. instituted by the petitioner before the MAT, the relief applied for by the petitioner was in the following terms, which have been incorporated in the impugned judgment and order of the MAT.

“(a) By a suitable order/direction this Hon'ble Tribunal may be pleased to hold and declare that as illegal and bad in law the order dated 12.5.2017 passed by the Respondent to the extent to which the same has failed to consider the request of the Petitioner for modified posting order on promotion as Block Development Officer from Panchayat Samiti, Roha, Dist-Raigad to the vacant post of the Block Development Officer, Panchayat Samiti, Bhiwandi, Dist-Thane/Block Development Officer, Panchayat Simiti, Kalyan, Dist-Thane in the light of the proviso to Rule 12 of the Revenue Division Allotment by way of promotion etc. Rules 2015 as amended on 16.7.2015 and accordingly the Petitioner be granted all the consequential service benefits, as if the impugned order had not been passed.

(b) By a suitable order/direction, this Hon'ble Tribunal may be pleased to set aside the order dated 11.1.2017 passed by the Respondent (Exhibit-A) to the extent of posting of the Petitioner on promotion to Panchayat Samiti, Roha, Dist-Raigad as Block Development Officer and instead the Respondent be directed to post the Petitioner on request in vacant post of the Block Development Officer, Panchayat Samiti, Bhiwandi, Dist-Thane/ the Block Development Officer, Panchayat Simiti, Kalyan, Dist-Thane as per the proviso to Rule 12 of the Revenue Division Allotment by way of promotion etc. Rules 2015 as amended on 16.7.2015 and accordingly the Petitioner be granted all the consequential service benefits, as if the impugned order had not been passed.”

5] Mr. S.B. Talekar, learned counsel for the petitioner, has taken us through the various documents on record in order to submit that Civil Services Board (CSB) in the present case, had clearly recommended the posting of the petitioner at Dahanu. However, the Minister concerned, without record of any reasons, has overruled the CSB and posted the petitioner at Roha. Mr. Talekar submits that the petitioner's wife is a Government servant at Bhiwandi and therefore, in terms of Rule 12 of the Revenue Division Allotment Rules 2015 (2015 Rules), the petitioner was entitled to opt for and has opted for posting at the location where his wife had been posted, i.e., Dahanu. In breach of the provisions of Rule 12 of 2015 Rules and further, in breach of the ruling of the Hon'ble Supreme Court in case of ***T.S.R. Subramanian and ors vs. Union of India and ors. - (2013) 15 SCC 732***, the petitioner has been denied posting at Dahanu or in the alternative at such other places as indicated by the petitioner in the prayer clause to the the O.A. filed before the MAT.

6] Mr. Talekar, in particular, emphasized that though the political executive may be entitled to overrule the

recommendation of the CSB, the same has to be for reasons recorded in writing, which would ensure good governance, transparency and accountability in governmental function. Since, in the present case, the Ministry concerned has not recorded for reasons to overrule or disagree with the recommendation made by the CSB, the posting on the basis of such disagreement is *ex facie*, null and void.

7] Mr. Talekar submitted that in the recommendations of the CSB and the notings in the matter of postings dated 11.01.2017 (Exhibit-N to the paperbook). There is some overwriting, fabrication and manipulation. This submission was possibly in the context of prayer clause (E) of the writ petition.

8] Mr. Talekar submits that for all the aforesaid reasons, the impugned judgment and order of the MAT warrants interference.

9] Mr. C.P.Yadav, learned AGP for the respondent - State, submits that there is no jurisdictional error or perversity in the view taken by the MAT. He submits that the petitioner

has served for over 25 years in the Division of Thane and by this petition, the petitioner despite availing promotion, seeks to continue at Thane or near Thane itself. He submits that in order to consider the proposal for the petitioner's promotion, options were called from the petitioner for allotment of the Revenue Division. The petitioner opted for Konkan Division and accordingly, has been posted at Roha, which is in Konkan Division itself. Mr. Yadav points out that Rule 12 of 2015 Rules seek options for change Revenue Division and not for options in the matter of postings, within one and the same division. He submits that Rule 12 of 2015 Rules clearly does not apply in the present case.

10] Mr. Yadav submits that allegations of fabrication and manipulation are absolutely baseless. He submits that there are ample reasons on record as to why the petitioner's request for posting at Bhiwandi or Dahanu could not be considered. He submits that there is no breach of 2015 Rules or the law laid down in the case of *T.S.R. Subramanian (supra)*.

11] Mr. Yadav points out that the petitioner and his wife residing at Kalyan. The petitioner's wife is posted at Bhiwandi, which is about 116 km away from Dahanu. The road distance between Kalyan to Dahanu is 124 kms. In these circumstances, there is no merit in the claim for posting at the same place at which his spouse is posted. For all these reasons, Mr Yadav submits that the present petition be dismissed.

12] The rival contentions now fall for our consideration.

13] The petitioner in the present petition has applied for reliefs much in excess of what he had applied for in the O.A. before the MAT. This is evident from the prayer clauses in this writ petition which read as follows:

“A. To hold and declare that the G.R. dated 19.11.2016, nominating the Chief Minister or Minister of the concerned Department or the Head of the Department, as the case may be as appointing authority and conferring unbridled powers on them issued by the Deputy Secretary (Service), General Administrative Department, State of Maharashtra, Mantralaya, Mumbai is ultra vires Articles 14 and 16 of Constitution of India;

B. To quash and set aside the judgment and order dated 29.01.2018 in OA No. 429 of 2017 passed by the Maharashtra Administrative Tribunal, Mumbai;

C. To quash the impugned order dated 11.01.2017 posting the Petitioner as Block Development Officer, Panchayat Samiti, Roha dist - Raigad issued by Deputy Secretary in the General Administration Department, Maharashtra State, Mumbai by issuing a writ of certiorari, or any other appropriate writ, order or direction as the case may be;

D. To direct respondents Nos. 1-4 to post the petitioner as Block Development Officer, Panchayat Samiti Dahanu, district-Palghar or Kalyan or Bhiwandi dist-Thane at the time of general transfers in May/June 2018 by issuing writ of mandamus or any other writ or appropriate writ, order or direction as the case may be;

E. To direct the Respondent No. 1 to 4 to forward the copy of the proposal of the note put up for approval of the Secretary and Hon'ble Minister, RDD, Maharashtra State, Mumbai (Exh) to the forensic science laboratory, Mumbai and obtain the opinion of forensic science laboratory and handwriting expert so as to verify and find out whether the font of the first five columns and last column i.e. the 6th column is by the same typewriter/computer and whether the ink used for scoring the words "accepted" and the ink used by the Desk Officer, Shri. Shendge who had put up Note for approval.

F. To grant ad interim injunction restraining the Respondents No. 1 to 4 division subordinate and superior from transferring Block Development Officers from One Panchayat Samiti to another in the State of Maharashtra pending hearing and final disclosure of this petition.

G. To grant any other relief to which the Petitioner is entitled."

14] Ordinarily, in considering the issue of judicial review of the orders made by the MAT, we are loathe to consider the

prayers for additional reliefs, since such reliefs were never applied for before the MAT and the MAT had no opportunity to consider such reliefs. From the perusal of the impugned judgment and order of the MAT, it is quite clear that only limited reliefs referred to earlier had been applied for and pressed before the MAT.

15] To the credit of Mr. Talekar, learned counsel for the petitioner, we must note that the learned counsel did not make any submission with regard to prayer clause (A) or for that matter even prayer clause (E), except that some submission was made in the matter of manipulation and fabrication. In our jurisdiction under Article 226/227 of the Constitution of India, we do not deem it appropriate to enter into arena of disputed questions of fact, which, in any case are not very relevant for the determination of the issues in the present petition.

16] The claim based upon Rule 12 of the Revenue Division Allotment for appointment by nomination and promotion to the post of Group "A" and Group "B (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015

deserves no acceptance. Rule 12, which is transcribed in the paragraph 5 of the affidavit-in-reply filed by respondent-State, on a plain reading, applies after completion of service of one year in the allotted Revenue Division. This Rule contemplates that an officer may apply for change in the Revenue Division on the grounds referred to in the Rule itself. This Rule, does not apply at the stage of initial posting itself.

17] The affidavit filed on behalf of the respondent - State states that the petitioner has been working in the Thane District since more than 25 years on different Group "C" and Group "D" posts. Since, there was a proposal to consider the petitioner for promotion to Group "A" post, the petitioner was called upon to give his options for the Revenue Division of his choice of allotment. The option invited was not for posting in a particular Revenue Division, but for allotment of Revenue Division itself.

18] The petitioner chose for Konkan Revenue Division and there is no dispute that the petitioner on promotion was posted as Block Development Officer at Panchayat Samiti,

Roha, District- Raigad, which is very much in Konkan Division.

19] In paragraph 33 of *T.S.R. Subramanian (supra)*, upon which, considerable reliance is placed by Mr. Talekar. The Hon'ble Supreme Court has held that though views of CSB consisting of high-ranking in-service officers, should be overruled by the political executive, this must be by recording reasons which will ensure more governance, transparency and accountability in governmental functions.

20] Now the record indicates that the petitioner had served for more than 25 years in Thane District. Obviously, therefore, there was no question of retaining in the area of Thane District. Insofar as the posting at Bhiwandi or Kalyan or Dahanu are concerned, cogent reasons are evident from the affidavit filed on behalf of the respondents - State. In particular, such reasons, can be seen in paragraphs 25,29,30,34,35 and 36 of the affidavit-in-reply. Further, in matters of this nature, the petitioner cannot claim as a matter of right, much less, a vested right for posting at a position of his choice.

21] Insofar as the posting of the spouses at the same

station is concerned, Rule 12 of 2015 Rules does contemplate request in this regard. However, as noted earlier, Rule 12 cannot apply at the stage initial posting. Besides, in the context of this issue, averments in paragraph 25 of the affidavit-in-reply are relevant and the same read as follows:

"25. With Reference to the para no.21 of the petition, I say that, petitioner's wife is working at Public Health Centre, Vajreshwari, Bhiwandi, district Thane which is nearly 116 km away from Dahanu. The petitioner's and his wife's residence is at Kalyan. I say that by road a distance between Kalyan to Dahanu is 131 km and distance between Kalyan to Roha is 124 kms. (the distance mentioned herein is taken from Google) It shows that present posting of the petitioner is at nearly the same distance as that of Dahanu, from his residence. Moreover, by train both the places are at nearly equal distance, i.e. around 90 kms and hence Petitioner's contention is misconceived."

22] The MAT has already observed that the petitioner has made allegations of malice and *mala fides*, but the same were not made good by the petitioner.

23] For all the aforesaid reasons, we see no good grounds to interfere with the impugned judgment and order. Accordingly, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)