

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

WRIT PETITION NO. 5470 OF 2017

The State of Maharashtra and ors. ...Petitioners

Versus

- | | | |
|----|-------------------------|------------------------------------|
| 1] | Mr. Suryakant G. Yewale | ... Respondent
(Org. Applicant) |
| 2] | Shrikant K. Patil | ...Respondents |

Mr. O.M. Kulkarni, AAGP for the State/Petitioners.

Mr. A.G. Damle, Sr. Advocate i/b Mr. P.P. Raul for the Respondent No.1.

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

DATE : 13th MARCH 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 petitioners – State of Maharashtra questions the judgment and order dated 31st March 2017 made by the Maharashtra Administrative Tribunal (MAT), Mumbai

allowing respondent No.1/original applicant's O.A. No.286 of 2016. By O.A. No. 286 of 2016, the respondent No.1/original applicant had questioned the transfer/posting orders dated 19th March 2016 and 4th October 2016, by which, respondent No.1/original applicant was transferred/posted from Indapur to Nagpur Division. The MAT, by the impugned judgment and order dated 31st March 2017 has virtually set aside the two transfer/posting orders and directed respondent No.1/original applicant to be posted as Tehsildar at Indapur.

4] Mr. Kulkarni, learned AAGP for the State, submits that by order dated 19th March 2016, respondent No.1 was merely replaced by a Probationary Deputy Collector and in absence of breach of any statutory rule or *mala fides*, the MAT, ought not to have interfered with such posting order dated 19th March 2016. Mr. Kulkarni submits that on 28th March 2016, respondent No.1 was placed under suspension pending enquiry into the very serious charges, *inter alia*, of assisting the sand mining mafia. The charge-sheet was also eventually issued to respondent No.1. The suspension was revoked on 3rd October 2016. However, in compliance with

the G.R. dated 20th April 2013, which requires that a suspended employee on reinstatement should not ordinarily be posted at the same place where the charges relate, respondent No.1, by order dated 4th October 2016 was posted at Nagpur Division. Mr. Kulkarni submits that the impugned judgment and order dated 31st March 2017 sets aside the posting order dated 4th October 2016 without even adverting to, much less, taking into consideration the G.R. dated 20th April 2013. Mr. Kulkarni submits that the impugned judgment and order made by the MAT is vitiated for failure to taking into consideration the relevant and vital material in the form of G.R. dated 20th April 2013.

5] Mr. Kulkarni submits that even otherwise, taking into consideration the administrative exigencies and the charges framed against respondent No.1, the interest of administration would suffer, if respondent No.1 is reposted at Indapur. Mr. Kulkarni submits that since respondent No.1 had raised the issue of his daughter's health, the petitioners – State, offered to post respondent No.1 at any one of the five places in Pune, Solapur and Sangli. Mr.Kulkarni submits that respondent No.1 is, however,

adamant upon reposting at Indapur, despite the fact that an enquiry is pending against respondent No.1 in the matter of his alleged links with sand extraction mafia. Mr. Kulkarni submits that the petitioners have adopted a very fair approach in the matter. However, respondent No.1, by insisting upon reposting at Indapur itself, is failing to reciprocate. Mr. Kulkarni submits that the MAT has clearly exceeded its jurisdiction in making the impugned order and in any case, since the impugned order, completely ignores the G.R. dated 20th April 2013, the same is liable to be set aside.

6] Mr. Kulkarni submits that in another matter, i.e., O.A. No. 1069 of 2015, the MAT, has taken cognizance of the G.R. dated 20th April 2013 and on such basis, declined to interfere with the transfer/posting made consistent with the G.R. dated 20th April 2013. Mr. Kulkarni submits that the view taken in the impugned judgment and order is at variance with the view taken by the MAT in the judgment and order dated 13th January 2016 made in O.A. No. 1069 of 2015. Mr. Kulkarni submits that this is an additional ground, which warrants interference with the impugned

judgment and order made by the MAT.

7] Mr. Damle, learned senior advocate for respondent No.1/original applicant, submits that the transfer order dated 19th March 2016, by which, respondent No.1 was posted out of Indapur was *ex facie* without jurisdiction. He submits that this was a mid-term transfer or in any case a transfer prior to respondent No.1 completing his prescribed tenure. He submits that the transfer was contrary to the statute and the pre-conditions for such mid-term transfer were never complied with. Mr. Damle submits that the MAT has quite rightly interfered with the transfer order dated 19th March 2016 and there is no case made out to interfere with the impugned judgment and order made by the MAT.

8] Mr. Damle submits that the transfer order dated 4th October 2016 is really consequential to the transfer order dated 19th March 2016. Since, the transfer order dated 19th March 2016 was rightly set aside by the MAT, as a consequence, the transfer order dated 4th October 2016 must also fall, as has held by the MAT in the impugned judgment and order. Mr. Damle submits that it is obligatory

upon the petitioners - State to post respondent No.1 at Indapur and only thereafter, if any grounds exist, then, respondent No.1 can be moved out of Indapur and that too, after compliance with the procedure prescribed under the law, but not otherwise.

9] Mr. Damle submits that without prejudice that the transfer / posting order dated 4th October 2016 is not inconsistent with the G.R. dated 20th April 2013, upon which the petitioners - State place such excessive reliance. He submits that the transfer/posting order dated 4th October 2016 purports to transfer/post respondent No.1 at Nagpur Division, when the G.R., contemplates posting in some nearby districts. Mr. Damle submits that the charges leveled against respondent No.1 are false and respondent No.1 will establish the falsity of the charges in the inquiry proceeding. Mr. Damle submits that any transfer on account of disciplinary proceedings, is stigmatic and punitive.

10] Finally, Mr. Damle submits that respondent No.1's daughter suffers from Epilepsy and since she has settled

down in Indapur, it will neither be fair nor proper to require respondent No.1 to move out of Indapur even before respondent No.1 completes his tenure at Indapur. Mr.Damle submits that there is absolutely no error in the view taken by the MAT and therefore, the present petition may be dismissed with costs.

11] The rival contentions now fall for our determination.

12] Respondent No.1/original applicant was appointed as Naib Tehsildar on or about 31st August 2004. Thereafter on 28th February 2013, respondent No.1 was promoted as a Tehsildar. By order dated 12th June 2015, respondent No.1 was transferred from Nagpur Division to Pune Division posted as Tehsildar at Indapur.

13] By order dated 19th March 2016, Probationary Dy. Collector was posted at Indapur for the purpose of training. Accordingly, respondent No.1 was moved out of Indapur for the period during which the Probationary Dy. Collector was to remain posted at Indapur.

14] Respondent No.1, however, filed O.A. No. 286 of 2016 to question the transfer/posting order dated 19th March 2016. Although, respondent No.1 secured no interim relief from the MAT, respondent No.1 refused to move out of Indapur despite the transfer/posting order dated 19th March 2016.

15] On 28th March 2016, respondent No.1 was placed under suspension pending inquiry. On 22nd September 2016, a charge-sheet has been served upon respondent No.1, in which, several charges have been enumerated. The charge-sheet alleges that respondent No.1, during his tenure at Indapur between 12th June 2015 and 23rd March 2016 failed to take any steps to prevent illegal and unauthorised sand extraction and transportation despite several directions to take action. The charge-sheet alleges that respondent No.1 avoided discharge of duties in relation to unauthorised sand extraction and transportation. The charge-sheet alleges that respondent No.1 made incorrect orders, failed to comply notices, left headquarters without permission and indulged into insubordination. The details of various charges have been

set out in the charge-sheet and the annexures appended to the charge-sheet.

16] Upon conclusion of the training period of Probationary Dy. Collector, in the normal course, it is possible that respondent No.1 would have been reposted at Indapur, However, the suspension order dated 28th March 2016 intervened and in compliance with the G.R. dated 20th April 2013, respondent No.1 by order dated 4th October 2016 had to be posted at Nagpur Division.

17] Respondent No.1 amended Original Application No. 286 of 2016 so as to challenge the transfer/posting order dated 4th October 2016. Despite the very specific defence raised by the petitioners- State that the transfer/posting order dated 4th October 2016 was made in the light of G.R. dated 20th April 2013, the MAT, by the impugned judgment and order, has set aside the transfer / posting order dated 4th October 2016 without even adverting to, much less, taking into consideration the G.R. dated 20th April 2013. We find that the MAT has failed to take into consideration most relevant and vital material in the context of challenge to

transfer/posting order dated 4th October 2016 and this is clearly a good ground to interfere with the impugned judgment and order made by the MAT.

18] The transfer/posting order dated 19th March 2016, it appears, was only a temporary measure. This transfer/posting was to operate only for the period during which the Probationary Dy. Collector was to remain posted at Indapur for purposes of training. In such circumstances, there was no good reason to interfere with the transfer/posting order dated 19th March 2016. In any case, the order dated 19th March 2016 stood subsumed by the subsequent transfer/posting order dated 4th October 2016 and the real issue pending before the MAT in O.A. No. 286 of 2016 was the legality and validity of the transfer / posting order dated 4th October 2016.

19] The legality and validity of the transfer / posting order dated 4th October 2016 had to be examined in the light of G.R. dated 20th April 2013, since, it was the case of the petitioners – State that the transfer / posting order dated 4th October 2016 is relatable almost entirely to the G.R.

dated 20th April 2013. Admittedly, respondent No.1 had not challenged the legality or validity of the G.R. dated 20th April 2013, even though, respondent No.1, did amend O.A. No. 286 of 2016 in order to incorporate to challenge the transfer / posting order dated 4th October 2016. Therefore, the only issue before the MAT was whether the transfer / posting order dated 4th October 2016 was consistent with or *intra vires* the G.R. dated 20th April 2013. Despite this being the only issue, the MAT, has proceeded to set aside the transfer / posting order dated 4th October 2016 without even advertng to the G.R. dated 20th April 2013. This is a serious jurisdictional error, which warrants interference with the impugned judgment and order.

20] The G.R. dated 20th April 2013 *inter alia* provides that when a Government servant is reinstated post his suspension pending an inquiry, such Government servant, should not be posted in the district to which the charges pertain. The G.R. provides that on reinstatement pending inquiry, the Government officer concerned should normally be placed in some other district. The reason for the G.R. and the directions therein is quite obvious. If, such

Government officer, is placed at same station, then possibility of tampering with evidence or obstructing the free and fair conduct of inquiry cannot be ruled out. The transfer / posting order dated 4th October 2016 in the present case is entirely consistent with the directions in the G.R. dated 20th April 2013. Since the respondent had not questioned to the legality and validity of the G.R. dated 20th April 2013, the MAT, was not at all justified in interfering with the transfer / posting order dated 4th October 2016, without even bothering to advert to, much less, considering the G.R. dated 20th April 2013.

21] From the nature of charges levelled against respondent No.1, it is obvious that the decision of the petitioners – State to post respondent No.1 at some place other than Indapur, is, in public interest. There was absolutely nothing arbitrary, unreasonable or *mala fide* in transfer / posting order dated 4th October 2016. In the absence of all these, the MAT, was not at all justified in interfering with the transfer / posting order dated 4th October 2016.

22] Insofar as the health issue of respondent No.1's daughter is concerned, we must say that the petitioners – State had adopted most reasonable approach. No sooner this court enquired from learned AAGP as to whether respondent No.1 can be considered for posting at some place close to Indapur rather than at Nagpur Division, learned AAGP, placed on record written instructions dated 21st February 2018. In the written instructions, it is stated that respondent No.1, can be posted at either of the following five places :

- (i) Joint District Supply Officer, Solapur;
- (ii) Tehsildar (Municipal Administration)
Divisional Commissioner Office, Pune;
- (iii) Joint District Supply Officer, Sangli;
- (iv) Tehsildar (Rehabilitation) Sangli; and
- (v) Tehsildar (General) Sangli.

23] Mr. Kulkarni, learned AAGP submits that much better facilities are available at Pune, Solapur and Sangli as compared to Indapur and therefore, there is no basis for respondent No.1 to insist upon a posting at Indapur, which

is a much smaller place as compared to Pune, Solapur and Sangli. Mr. Kulkarni submits that in case respondent No.1 within a period of ten days opts for posting at any of the aforesaid places/postings, the petitioners - State will consider such request of respondent No.1, even after the impugned judgment and order made by the MAT is set aside.

24] Despite the aforesaid offer on behalf of the State, which we regard as quite fair and reasonable, respondent No.1 appears to insist upon posting at Indapur itself. As noted earlier, there is an inquiry pending against respondent No.1 which relates to inaction in the matters of unauthorised sand extraction and transportation. From the charge-sheet, it appears that allegation against respondent No.1 is inaction against the sand extraction mafia. In these circumstances, even *de hors* directions in the G.R. dated 20th April 2013, we cannot say that there is anything unreasonable on the part of the petitioners - State posting respondent No.1 at a place other than Indapur. No Government Officer can claim any vested right of posting at any particular place, notwithstanding the exigencies of

the administration. We also fail to understand the insistence on the part of respondent No.1 for a posting at Indapur itself when, there is merit in the contention of Mr. Kulkarni that better medical facilities will be available at places like Pune, Solapur or Sangli. In fact the Indapur is equidistant from Pune and Solapur.

25] For all the aforesaid reasons, we quash and set aside the impugned judgment and order dated 31st March 2017 and restore the transfer/posting order dated 4th October 2016, which has already subsumed earlier transfer/posting order dated 19th March 2016. However, we grant 15 days time to respondent No.1 to intimate to the petitioners - State as to whether respondent No.1 is willing to accept posting at any one of the five posts/places indicated in paragraph 22 above. If, respondent No.1, within 15 days from today, intimates to the petitioners - State, his willingness to be posted at any one of the five places as aforesaid, the petitioners - State, consistent with its offer, will, in supersession of transfer / posting order dated 4th October 2016, transfer and post respondent No.1 accordingly. However, if within 15 days, respondent No.1

fails to respond or give any intimation to the petitioners – State (in writing), then, the transfer / posting order dated 4th October 2016 will stand.

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

27] All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)