

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

WRIT PETITION NO. 7443 OF 2017

The Director (Training) Vocational Education and Training Maharashtra State & Anr.	...Petitioners
Versus	
Mrs. Jyoti Shivaji Bade & Ors.	...Respondents

Mr. N. C. Walimbe – AGP for State – Petitioners.
Mr. M. D. Lonkar i/b. Ms Leena Patil for Respondent No. 1.

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

DATE : 19 JUNE 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the petitioners and the learned counsel for the respondent no. 1.

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 23rd December 2015 made by the Maharashtra

Administrative Tribunal allowing Original Application No. 525 of 2015 instituted by the respondent no. 1. The MAT by the impugned judgment and order, has quashed the petitioners order dated 17th November 2014 and directed the Superintendent of Police, Ahmednagar, to relieve the respondent no. 1 and has further directed the Secretary, Higher & Technical Education to allow the respondent no. 1 to join as a junior clerk with continuity of service. There is no dispute that the directions in the impugned order stands complied with though, Mr. Walimbe, the learned AGP has stated that such compliance was in pursuance of the orders made by the MAT on 16th February 2016 in contempt application no. 7 of 2016 taken out by the respondent no. 1.

4] Mr. Walimbe, the learned AGP is quite right in his submission that merely because the directions in the impugned judgment and order have been complied with, the petitioners are not barred from challenging such directions. If ultimately, such directions are found to be unjustified, it is within the province of this Court to interfere with such directions and thereafter direct restoration of

status quo ante. Therefore, it is not possible to dismiss this petition at the threshold on the ground of maintainability urged by Mr. Lonkar, the learned counsel for the respondent no. 1.

5] Mr. Walimbe, the learned AGP submits that this is a case of transfer *outside the cadre* and therefore, there has to be strict compliance with the GR dated 3rd June 2011, which deals with the issue of transfer *outside the cadre* and on basis of mutual requests by employees. He submits that one of the conditions is that the two departments or the two cadre controlling authorities must consent for such transfer. He submits that in the present case, the Directorate of Vocational Education and Training, where the respondent no. 1 desired transfer had not specifically consented to such transfer. Mr. Walimbe therefore submits that the MAT erred in ordering such transfer.

6] Mr. Walimbe further pointed out that the respondent no. 1 belongs to the category of N.T. (D) category, the position to which she seeks transfer is a vacancy in the open category. This according to Mr. Walimbe, is another

good reason not to direct the transfer. He submits that since MAT has not properly considered this aspect, the impugned judgment and order warrants interference.

7] Mr. Lonkar, the learned counsel for the respondent no. 1 submits that both the cadre controlling authorities have, in terms, consented to the transfer and this is quite evident from the material on record. He submits that even though the respondent no.1 belongs to N.T (D) category, she was selected and appointed as a lady police constable in the open category. Therefore, Mr. Lonkar submits that there can be absolutely no difficulty in transferring the respondent no. 1 to the post of junior clerk, assuming that the vacancy was indeed a vacancy in the open category. Mr. Lonkar submits that in a situation of this nature, the nature of vacancy is quite irrelevant. Mr. Lonkar points out that the respondent no. 1, as a police constable was in the grade pay of Rs.2,000/- and the grade pay of a junior clerk is only Rs.1,900/-. He submits that the respondent no. 1 opted for this transfer because her husband was posted at Industrial Training Institute, Malegaon, and it was in the interest of all concerned that the respondent no. 1 and her husband

reside and serve at one and the same place. Mr. Lonkar submits that the MAT has examined the matter in details and there is absolutely no error, much less, any jurisdictional error so as to warrant interference.

8] Rival contentions now fall for our determination.

9] The respondent no. 1, a lady police constable at Ahmednagar applied for cadre transfer which is permissible in terms of GR dated 3rd June 2011. The reason for seeking such cadre transfer was that the husband of the respondent no. 1 was working as a Instructor at ITI Malegaon and the respondent no. 1 would then be able to work at the same place as that of her husband. The record bears out that the grade pay of a lady police constable is Rs.2,000/- but that of a junior clerk, to which, the respondent no. 1 applied to be transferred is only Rs.1,900/-. This means that the respondent no. 1 agreed to a transfer in a lower pay scale.

10] For a considerable period, no action was taken on the request of the respondent no.1 for such cadre transfer. The respondent no. 1 was therefore constrained to institute OA

No. 739 of 2013 which was disposed of by order dated 13th March 2014 directing the petitioners to take a decision within two months. It is only thereafter that the petitioners by order dated 17th November 2014 informed the respondent no.1 that her request for cadre transfer cannot be considered for the following two reasons (a) that cadres of police constable and junior clerks are different, the grade pay of posts are different and selection process for the two posts are different; (b) that there are surplus employees in Directorate of Vocational Education and Training who are required to be absorbed.

11] The MAT, quite rightly, has found that both the reasons assigned were untenable. In this case, the respondent no.1 had applied for *cadre transfer* or *out of cadre transfer*, which is permissible in terms of GR dated 3rd June 2011. Such a request cannot obviously be denied on the ground that the two posts belong to a different cadre or have different grades of pay. No doubt, an employee cannot seek for *out of cadre* transfer to a post having a higher grade of pay. However, there is no bar to an employee seeking out of *cadre transfer* to a post having a lower grade of pay. The

second reason was also factually not found to be correct by the MAT. In fact, no contentions were advanced in support of the two reasons stated in the order dated 17th November 2014 by which the request of the respondent no. 1 for *out of cadre* transfer was rejected. Instead, separate set of reasons were pressed in service by the petitioners both before the MAT as well as this Court. Ordinarily in matters of this nature, orders have to be defended on the basis of the reasons set out therein. There is no question of supplementing such reasons by filing affidavits or otherwise.

12] Be that as it may, even the reasons now stated are untenable. From the record, it cannot be said that there was no consent as such from the Directorate of Vocational Education and Training. No doubt, the documents indicate that the consent was subject to availability of vacancy. The MAT has satisfied itself from the record that there were vacancies and therefore, we are not in a position to uphold the contentions now raised on behalf of the petitioners.

13] The MAT has also accepted the case of the respondent

no.1 that though she belongs to NT (D) category, she was recruited as a police constable to the open category. Since vacancy of junior clerk is in the open category, there is no reason to deny the request of the respondent no. 1 for posting to the said vacancy.

14] There is no jurisdictional error or perversity in the impugned judgment and order so as to warrant interference. The MAT has taken into consideration all the aspects of the matter while granting relief to the respondent no. 1, a lady constable who has sacrificed the benefit of higher grade pay, only so that she can work in the power post of junior work and reside with her family members. In such circumstances, there is no case made out to interfere with the impugned judgment and order which promotes substantial justice.

15] This petition is dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)