

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6471 OF 2018**

Smt. Lochana R. Ghodke	...Petitioner
Versus	
The State of Maharashtra	...Respondent

Appearances:

Mr. Ambadas V. Chatuphale for the Petitioner.

Mr. C.P. Yadav, AGP for the Respondent - State.

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

DATE OF RESERVING THE JUDGMENT	: 16 th JULY 2018.
DATE OF PRONOUNCING THE JUDGMENT	: 24 th JULY 2018.

JUDGEMENT:

- 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 4.5.2018 made by the Maharashtra Administrative Tribunal (MAT), Mumbai dismissing O.A. No. 311 of 2018 instituted by the petitioner questioning the order dated 3.4.2018, by which, the petitioner, Dy. Director, Health Services came to be transferred from Nashik to Mumbai.

4] Mr. Chatuphale, learned counsel for the petitioner, submits that the impugned transfer order is punitive and therefore, could not have been effected unless the petitioner was found to be guilty in a duly constituted departmental enquiry. He relies on a decision dated 17.12.2014 in Writ Petition No. 9781 of 2014 (***State of Maharashtra and ors. vs. Dr. (Ms) Padmashri S. Bainade***) to submit that the punitive transfers or transfers of which the foundation is some alleged guilt, cannot be effected without due compliance to the principles of natural justice and fair play.

5] Mr. Chatuphale submits that the petitioner is quite unnecessarily sought to be linked with the incident dated 14.2.2017 when 7 people expired on account of consumption of spurious liquor secured from the canteen of Civil Hospital, Ahmednagar. Mr. Chatuphale submits that an Enquiry Committee was constituted on 15.2.2017 comprising Dr. B.D. Pawar and Shri. Mahesh Botle and the petitioner to visit the site and submit a detailed report. However, on 17.2.2017, the report was submitted only by Dr. B.D. Pawar and Mr. Mahesh Botle, keeping the petitioner

away. Mr. Chatuphale submits that the petitioner has reasons to believe that this was on the basis of some telephonic instructions to the two Members to dissociate the petitioner from the proceedings of the Committee. The petitioner, nevertheless, on the basis of telephonic instructions from the Director of Health Services submitted her own report on the incident on 22.2.2017.

6] Mr. Chatuphale submits that some preliminary enquiry is said to have been held, in which, there are some adverse observations against the petitioner. He points out that there was no compliance with the principles of natural justice, insofar as the making of the preliminary enquiry report was concerned. He points out that based upon the incident of 14.2.2017 and the preliminary enquiry report, the impugned transfer order came to be made. He submits that the transfer order is clearly punitive, mala fide and contrary to the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, (said Act). He points out that there are neither any exceptional circumstances or special reasons so as to effect mid tenure transfer of the petitioner.

7] For all the aforesaid reasons, Mr. Chatuphale submits that the impugned judgment and order is liable to be set aside.

8] Mr. C.P. Yadav, learned AGP for the respondent – State, defence the impugned order made by the MAT. He submits that the purpose of preliminary enquiry is only to decide whether any grounds exist to hold a departmental enquiry and therefore, there is no question of complying with rules and regulations which apply to a proper departmental enquiry. He submits that since exceptional circumstances emerged in the course of preliminary enquiry in relation to the incident of 14.2.2017, the impugned transfer order came to be issued. He submits that the special reasons are reflected in the records. He submits that the transfer order is not at all punitive and therefore, the ruling in *Dr.Padmashri Bainade (supra)* is inapplicable. For all these reasons, Mr. Yadav submits that this petition may be dismissed.

9] The rival contentions now fall for our determination.

10] From the perusal of the impugned transfer order as well as the record, it is not possible to conclude that the impugned transfer order is punitive or that the foundation of impugned transfer order is the guilt of the petitioner insofar as the incident of 14.2.2017 is concerned.

11] The said Act, no doubt, provides that transfers of Government servants shall ordinarily be made only once in a year in the month of April or May. However, the said Act also provides that mid-term or mid-tenure transfers can be made where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.

12] In the present case, a serious incident had taken place on 14.2.2017, in which 7 persons died on account of consumption of spurious liquor. A preliminary enquiry was held in this matter and certain observations have been made therein with regard to the alleged role of the petitioner, which would have some bearing on the incident. The observations relate more to inaction on the part of the

petitioner. Such observations, being preliminary in nature, obviously, cannot be taken as proved or established. If ultimately, departmental enquiry is held against the petitioner, we are sure, the petitioner will be afforded every possibility of opportunity in the course of same. Therefore, at this stage, even we do not deem it appropriate to comment one way or other upon the observations in the preliminary enquiry report.

13] However, we agree with the MAT that the observations in the report, in the facts and circumstances of the present case, are quite sufficient to make out a case for existence of exceptional circumstances or that such observations constitutes special reason for effecting mid-term or mid – tenure transfers.

14] This is not a case where the petitioner is transferred from Nashik to Mumbai as and by way of any punishment. The transfer is in the context not only of preliminary observations in the preliminary enquiry report, but also so that the departmental investigations in relation to the incident of 14.2.2017 can be undertaken in a effective

manner. In the exigencies of such a situation, the power of transfer has been exercised and there is nothing mala fide in the impugned transfer order. In case of *Dr. Padmashri Bainade (supra)*, the Division Bench of this court had come to the conclusion that the transfer order, was made in order to punish the officer concerned. In these circumstances, the transfer order was interfered with. Since that is not the position in the present case, the decision in the case of *Dr. Padmashri Bainade (supra)* will not assist the petitioner.

15] The MAT has considered the entire material on record in substantial details and there is neither any jurisdictional error nor any perversity pointed out by the petitioner. Accordingly, we see no good ground to interfere with the impugned judgment and order. This petition is therefore, dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

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by Dinesh
Sadanand Sherla
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2018.07.24
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