

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

WRIT PETITION NO. 1116 OF 2018

Dr. Sushma Pednekar ...Petitioner
Versus
The State of Maharashtra and ors. ...Respondents

Mr. Parag Bhosale for the Petitioner.
Mr. N.C. Walimbe, AGP for Respondent Nos.1 to 3.
Mr.N.V. Bandiwadekar i/b Mr. Sagar A. Mane for Respondent No.4.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.
DATE : APRIL 09, 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 challenge in this petition is to the orders dated 12th October 2017 and 15th December 2017 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No.944 of 2017 instituted by respondent No.4. By the impugned orders, the MAT has set aside the transfer order

dated 21st September 2017, in terms of which, respondent No.4 (org. applicant) was transferred from B.J. Government Medical College, Pune to Rajashree Chatrapati Shahu Maharaj Government Medical College, Kolhapur and the petitioner herein, was transferred on her request from Kolhapur to Pune.

4] Mr. Parag Bhosale, learned counsel for the petitioner, submits that O.A. No. 944 of 2017 was served upon the petitioner on 10th October 2017 and was disposed of by the MAT on 12th October 2017 without afford of adequate opportunity of hearing to the petitioner. He, however, points out that respondent No.4 had suppressed the material fact that she was holding the Pune post for last 15 years and in that sense, therefore, this was nothing but a routine transfer, which did not require the statement of special reasons or exceptional circumstances. He points out that respondent No.4 also suppressed the fact that she had already been relieved in pursuance of transfer order and had taken charge at the transferred post. Mr. Bhosale submits that when the order dated 12th October 2017 was made, there was no attempt to point out all these facts. He

submits that in the review petition, all these facts were pointed out, however, the review petition has been rejected without consideration of all such facts and possibly, on the ground that the scope of review jurisdiction is extremely limited.

5] Mr. Bhosale points out that the petitioner's younger son is suffering from Haematuria, for which, treatment is not available in Kolhapur but is available in Pune. Mr. Bhosale points out that even the father-in-law of the petitioner suffers from ailments and therefore, transfer to Pune is necessary. He submits that since all these aspects have not been considered by the MAT, the impugned orders warrant interference.

6] Mr. Bandiwadkar, learned counsel for respondent No.4, submits that in terms of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (said Act), in order to effect any mid-term transfers, it is necessary that the competent authority records special reasons and demonstrates exceptional circumstances. He

points out that the transfer order does not comply with this mandatory requirement. He submits that the MAT, in fact called for record and found that the transfer was made on the basis of recommendation of a Minister. He submits that when the issue of transfer is governed by the Statute, it is incumbent that the authorities, effect transfers in accordance with the mandate of Statute, rather than relying upon extraneous matters like recommendations of a Minister. For all these reasons, Mr. Bandiwadekar submits that there is absolutely no error in the impugned orders so as to warrant interference under Articles 226 and 227 of the Constitution of India.

7] The said Act, which regulates transfers of Maharashtra Government servants at section 4, *inter alia*, provides that no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3, which, in the present case, will be a tenure of three years. Section 4(2), however, provides that the competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year. Section

4(3) provides that the authorities to actually effect the transfers. Section 4(4) provides that the transfers of Government servant shall ordinarily be made only once in the year in the month of April and May. No doubt proviso (ii) to section 4 (4) of the said Act permits mid-term transfer where competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing with the prior approval of the next higher authority.

8] In the present case, we are already in the month of April. In terms of section 4(4) of the said Act, the transfer of Government servants shall ordinarily be made only once in a year in the month of April or May. Admittedly, respondent No.4 has put-in almost 15 years of service in her present position and therefore, if a transfer is to be effected in the month of April or May, then, such a transfer, will be a routine transfer. In order to effect such a transfer, there will be no necessity for recording special reasons or demonstrating the existence of any exceptional circumstances.

9] Insofar as the petitioner is concerned, all that we can say is that it will be for the Civil Services Board and thereafter, the competent authority to consider the petitioner's representation for transfer to Pune on the reasons stated by her. We are informed that in pursuance of the impugned orders, the petitioner, is presently at Kolhapur and respondent No.4 is at Pune.

10] Taking into consideration the peculiar circumstances of the case and also the circumstance that routine transfers are due, in the month of April and May, we do not propose to address the rival contentions. Instead, in our opinion, interests of justice will be met, if the Civil Services Board and the competent authority consider the issue of transfer of the petitioner and respondent No.4 as expeditiously as possible and in any case within a period of four weeks from today.

11] Accordingly, without advertng to the rival contentions, we dispose of this petition by directing respondent Nos.1 to 3 to place the issue of transfer of the petitioner and respondent No.4 before the Civil Services

Board immediately and thereafter place the recommendation of Civil Services Board before the competent authority for necessary action. This entire exercise is to be completed within four weeks from today. The Civil Services Board and the competent authority need not be influenced by any of the observations made by the MAT, now that the issue of mid-term transfer is not relevant.

12] Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

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

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)