

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

WRIT PETITION NO. 1373 OF 2019

Mr. Bharat S/o. Ramkishan Shingade,
Age : 38 years, Occu. Executive Engineer,
R/o. Uppar Pravara Dam Division,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar.

.... Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai.
2. The Desk Officer,
Water Resources Department,
Mantralaya, Mumbai.
3. Smt. Sangita Rohit Jagtap,
Age : 36 years, Occu. Executive Engineer,
R/o. Uppar Pravara Dam Division,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar.

.... Respondents

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Shri. V. D. Sapkal h/f Shri. R. A. Tambe, Advocate for petitioner
Smt. A. V. Gondhalekar, AGP for respondent/State
Shri. Ajay S. Deshpande, Advocate for respondent No. 3

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

RESERVED ON : 14.03.2019

PRONOUNCED ON : 29.03.2019

ORAL JUDGMENT (PER A. M. DHAVALA, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of the learned advocates, it is taken up for final disposal at admission stage.

2. The petitioner who is an Executive Engineer assails the order of Maharashtra Administrative Tribunal, Aurangabad, dt. 25.01.2019 in Original Application No. 972 of 2018 filed by respondent No. 3 herein whereby the petitioner's transfer to Uppar Pravara Dam Division, Sangamner, was cancelled and respondent No. 3 was reposted at the same post.

3. The petitioner and respondent No. 3 are working as Executive Engineers. Respondent No.3/Sangita was promoted as Executive Engineer on 17.09.2016 and was posted at Uppar Pravara Dam Division, Sangamner on 26.09.2016. The petitioner was posted at Parbhani. By order dt. 15.12.2018, the petitioner was posted as Executive Engineer at Uppar Pravara Dam Division, Sangamner in place of respondent No. 3 whereas respondent No. 3 was transferred to Minor Irrigation Department, Sangamner. Aggrieved thereby, respondent No. 3 filed Original Application (O.A.) No. 972 of 2018 challenging the said transfer on the following grounds.

- (i) Normal period of posting at a place is of three years and she was not due for transfer.

- (ii) It was a mid-term transfer and no reasons were given for effecting mid-term transfer which is contrary to the provisions of Section 4 and 5 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for brevity hereinafter referred to as Transfer Act of 2005).
- (iii) She has also claimed that she was working wholeheartedly and efficiently and there was no complaint against her in respect of her work. The transfer of the petitioner in her place was politically motivated. She claimed that, in the same order one Rajesh Govardhane was transferred from Minor Irrigation Division, Sangamner to Nashik and the petitioner should have been posted in his place. The petitioner herein was favoured by the said transfer.

4. The petitioner therefore prayed for quashing and setting aside the judgment of the tribunal.

5. Per contra, Ajay Deshpande, learned advocate for respondent No. 3/original applicant strongly supported the impugned order of the Tribunal. He relied on Section 4(1) of the Transfer Act of 2005 and argued that there was no special reason or special case made out for midterm transfer and same was before completion of three years. There was no material to show relative competency. The Chief Engineer was working at Nashik and he had made recommendation. No prior permission of the immediately superior person as contemplated u/s 4(5) was obtained. The transfer was

made on the basis of recommendations of political persons. The Tribunal has properly appreciated the facts and has passed proper order. No interference is called for.

6. We have considered the arguments of both the parties and the documents and affidavit on record.

7. In the light of the arguments advanced, the point for our consideration is -

Whether the Tribunal committed grave error of law or did not consider the material facts necessitating interference by this Court in writ jurisdiction ?

8. The law regarding exercise of jurisdiction by this Court in writ jurisdiction and by the Administrative Tribunals in the matter of transfers is well settled.

(i) In ***State of Maharashtra Vs. Ashok Kore 2009 (4) Mh.L.J. 163***, the law laid down by the Apex Court in various Rulings is summed up as follows :-

9. The Supreme Court has on several occasions outlined the scope of the Court's power to interfere with transfer orders. It would be advantageous to sum up the observations made by the Supreme Court in the judgments to which our attention is drawn by learned counsel. Following are the guiding principles laid down by the Supreme Court.

(i) The Courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of mala fides. *Mrs. Shilpi Bose and ors. vs. State of Bihar and ors. 1991 Supp. (2) SCC 659.*

(ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. *Shilpi Bose's case (supra)*.

(iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by mala fides and is made in violation of any statutory provisions, the Court cannot interfere with it. *Union of India and ors. vs. S.L. Abbas (1993) 4 SCC 357*.

(iv) Transfer of an employee is not only an incidence inherent in the terms of the appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service, *State of Uttar Pradesh and ors. vs. Gobardhan Lal (2004) 11 SCC 402*.

(v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legally enforceable rights unless it is shown to be vitiated by mala fides or made in violation of any statutory provision and so long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments *Gobardhan Lal's case (supra)*.

(vi) The Courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of mala fides when made must be such as to inspire confidence in the Court or based on concrete materials. *Gobardhan Lal's case (supra)*.

(vii) Allegation of mala fides should not be entertained on the mere making of it or on consideration borne out of conjectures of surmises. *Gobardhan Lal's case (supra)*.

(viii) Except for strong and convincing reasons no interference could ordinarily be made with an order of transfer. *Gobardhan Lal's case (supra)*.

(ii) In **State of U.P. Vs. Ashok Kumar Saxena AIR 1998 SC 925**, it is laid down that judicial review of this Court under Art. 226 of

the Constitution in transfer matters has a limited scope. Unless the transfer is found to have been malafidely of the rules, it is not permissible for this Court to sit in appeal over the administrative decision of the executive.

(iii) In ***Pradeep Lonandkar Vs. State, Writ Petition No. 7554/2013 decided on 22nd November, 2013***, this Court at Principal Seat observed -

Suffice it to note that the Tribunal in each case must find out as to whether the Transfer Act, 2005 is attracted or not. Sometimes, an order placing an officer from one to another table within the same city may be passed and unless and until materials are produced to demonstrate and prove that it is a transfer the Tribunal is not required to find out as to whether the compliance with the provisions of the Transfer Act, 2005 has to be made.

That is plainly to protect the officers against frequent and in discriminate transfers. That is not creating a right to hold on to a particular post or job or seat.

9. It is further observed that by such orders, no prejudice is caused because there is no change of station and Head Quarter. That never intended such routine administrative transfers being termed as transfers.

10. In the light of the limited scope, we proceed to consider whether the present case is of transfer or not. Admittedly, Mr. Govardhane was transferred from Sangamner to Nashik and the petitioner was transferred from Parbhani to Sangamner. These are mid-term transfers and before completion of the tenure. These transfers would have attracted the provision of section 4(4) and 4(5) of the Transfer Act, 2005, but both of them are not making any

complaint about their transfers. While effecting such transfers, the respondent No. 3 Sangita was transferred from Uppar Pravara Dam Project at Sangamner to Minor Irrigation Department, Sangamner where Mr. Govardhane was serving and the petitioner was posted in place of respondent No.3 Sangita. Admittedly, both the departments, Uppar Pravara Dam and Minor Irrigation Department are situated in the same campus at Sangamner. Respondent No. 3 Sangita was not transferred from one place to another, but from one department to another in the same campus. In short, she is claiming a right to retain the same post in the same department under the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005.

11. In ***K. Balkrishna Rao Vs. Haji Abdulla sait AIR (1980) SC 214***, it was observed -

A definition clause, does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening clause of Section 2 of the Principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires while considering the definition under the Act.

In Pradeep Lonandkar's case, it is further observed - To our mind, therefore, the label attached or nomenclature cannot be decisive or conclusive. The Transfer Act, 2005 defines the term "transfer" in the manner referred to above essentially because an innocuous exercise in a given case and being termed as shifting an officer from one office to

another, change in assignment or job to be performed, would well amount to a transfer and may require interference if same has been done arbitrarily, malafide and frequently. It is to meet such eventuality that the Transfer Act, 2005 defines the term “transfer” in a peculiar way. It is not as if every shifting or posting order would necessarily amount to transfer.

12. In ***Ramesh Shivdas Vs. State Writ Petition No. 3301/2010 decided on October 11, 2010 by (Justice Marlapalle and U.D. Salvi)***. In para No. 8, it is held that transfer from one place to another place in the same station does not amount to transfer. Same view is taken in ***Rajesh Kalal Vs. State of Maharashtra in Writ Petition No. 8898 of 2010, Aurangabad Bench (Coram: B. H. Marlapalle & U. D. Salvi, JJ.)*** that internal transfers within the same office or at the same Head Quarter should not be treated as transfers in the normal meaning. It is held that what has been guaranteed to Government Officer under the Act is minimum tenure at a particular station or Head Quarter. Similarly, in ***Nitin Upasni Vs. State Writ Petition No. 1778/2015, this Court (Aurangabad Bench)*** observed that the petitioner was in the same city maintaining the same Head Quarters and that too after obtaining the permission of the Chief Minister, this Court in the facts declined to interfere.

13. Reliance was also placed on the judgment in ***Sanjeev Bhagwanrao Kokil Versus State of Maharashtra & Ors.*** reported in **2013 (7) Bom. C.R. 148**, wherein it was held that the exceptional circumstances contemplated u/s 4(4) and 4(5) are to the subjective satisfaction of the concerned authorities. Sufficiency considered by

the authorities for recording their satisfaction cannot be the basis for the court to doubt their wisdom. In para 20, it was observed that, Mr Pande was transferred from one division to other at Parbhani. This aspect was not properly considered by the Tribunal and hence the order was set aside.

14. In ***Ashok Rangnath Barde Versus The State of Maharashtra and others (Writ Petition No. 5320 of 2018)*** decided by this Court to which one of us (Justice S. V. Gangapurwala) was a party, in similar facts, under the Police Transfer Rules, it was observed that, if the terms “place” and “post” defined in the Act are taken in conjunction and interpreted with reference to the term “General Transfer”, it may cover the transfer from one post, office or Department to another post, office or Department at same station. If such an interpretation is resorted to, it may lead to absurd results, as has happened in the case in hand. The petitioner was first transferred to Aurangabad (Rural) Police Force in the year 2008. In 2014, he was promoted as Head Constable in the very office. On his request, he was transferred to the Traffic branch, Aurangabad in June, 2016.

15. We clarify that, the petitioner or Mr. Govardhane who were transferred from one place to another under the same order have not challenged their midterm or premature transfer and

respondent No. 3 herein who was transferred from Uppar Pravara Dam Division, Sangamner to Minor Irrigation Division, Sangamner, is alone challenging the transfer.

16. We thus find that the challenge by respondent No. 3 to the impugned order before the Tribunal was itself not maintainable. When the petitioner was changed from one department to another at the same place with no allegations of any malafides or ulterior motive in effecting such transfer, the provisions of Section 4(4) and 4(5) of the Transfer Act are not attracted. The Tribunal should not have interfered with the administrative order.

17. It is also claimed that the transfer was not with the approval of the competent authority. In the present case, the competent authority was the Hon'ble Minister of the concerned Department. The Hon'ble Chief Minister has delegated his powers to the Hon'ble Minister. There was recommendation made by the competent authority namely the Chief Engineer and the same was approved by competent authority, the Hon'ble Minister for Jal Sampada (Irrigation Department).

18. Learned Counsel Shri. Ajay Deshpande relied on the Judgment of Maharashtra Tribunal in O.A. No. 444/2017 Harishchandra Jadhav Vs. State dated 28.07.2017, even challenged the delegation of powers to the competent authority. This is totally after thought. It was not argued before the Tribunal.

19. The learned Assistant Government Pleader has produced

Government Resolution dated 25th May, 2006 whereby the powers of transfer (transfer of Class-I Officers inter district) are delegated to the Minister in consultation with the Secretary of the concerned Department by further Government Resolution dated 25.04.2016. The powers to transfer gazetted Gut-A (Block-A) Engineers from Jal Sampada were assigned to the Chief Engineers and competent authority under section 4(4) and 4(5) of the Transfer Act, 2005 is the Hon'ble Minister of the said Department. When the Chief Minister is empowered under the various Acts to exercise the powers, it would be practically impossible for him to exercise each and every power. The delegation is not only permissible but essential for orderly functioning of the administration. Apart from the fact that administrative order of Maharashtra Administrative Tribunal is not binding on this Court. We find that the facts of above case are quite different and the same is not applicable to the present set of facts.

20. The record shows that the Chief Engineer recommended transfer of the petitioner at the post held by respondent No. 3 on administrative ground. It was recorded that, the work of Nilwande project in Ahmednagar district was in good progress and since it was included in the Baliraja Sanjivani Scheme of the Central Government, it was essential to complete it within the proposed time limit. Hence, the Minister of State, Water Resources Department, had recommended the posting of the petitioner Shri. Shingade on Uppar Pravara Dam Division, Sangamner. Shri. Subhash Deshmukh, Hon'ble Minister for Cooperation, Marketing and Textile Department had also made recommendation of the petitioner but it

was not for the above referred post, it was for the post at Tembhu Lift Irrigation, Sangli. Vijay Shिवtare, the State Minister, Jalsampada has also made recommendation of the petitioner at Tembhu Project at Sangli. MLA Santosh Danve has also recommended the petitioner for his posting at Sangli. It is obvious that, the recommendations one at Sangamner and other at Sangli could not have been made at the behest of the petitioner. This shows that, the Ministers and the superior Officers had very good opinion about the efficiency of the petitioner. Shivajirao Kardile, MLA has made recommendation of the petitioner at the present post but he has given reason that the project of Nilwande Dam was to be completed within the stipulated time and therefore his services were required. In ***Mohd. Masood Ahmad Vs. State of U.P. 2007 (8) SCC 150***, it is held that all transfers on recommendations of M.L.A. are not vitiated. Not every recommendation by Member of Parliament (MP), Minister or MLA is objectionable and politically motivated. Record shows that, the petitioner was efficient and was recommended for reward and therefore he was given the specific posting as per the administrative convenience. Therefore, we do not find any substance in the contention that his posting was politically motivated.

21. It was tried to be argued that, respondent No. 3 was no less efficient. We do not want to discuss the comparative merits and demerits of the petitioner and respondent No. 3. It is subjective

satisfaction of the superiors to take appropriate decision as to who should be a better person to work at a particular post.

22. There is also no substance that transfer was effected to favour the petitioner. Generally, the employees are interested in a particular station and the petitioner could have been placed at Sangamner without disturbing the respondent No. 3. Nothing has been shown as to how the posting in Upper Pravara Dam was better than the posting in Minor Irrigation Department.

23. There is also no substance that the present posting was made without exceptional circumstances or without recording reasons. The Chief Engineer has recorded reasons and the Minister has accepted the same on administrative ground. When a note was put up and it has been approved by the superior authority, it cannot be said that the superior authority had not applied its mind and he should separately record his reasons in his own hand.

24. A government servant while accepting the post should be ready to work anywhere at any place and on any post. As per the transfer rules referred to above, once he is posted at a particular station, he should not be disturbed at least for a period of three years except in exceptional cases. It is a matter of common knowledge that, change of place of posting causes lot of inconvenience. The employee has to face the problems of accommodation, school admissions shifting of personal belongings and other disadvantages

on account of change of place of posting. The same is not the case if his posting is changed from one department to another department or from one table to another table at the same place.

25. Sections 3 and 4 of Transfer Act of 2005 are meant for protecting the employees from unnecessary harassment by change of place of work by transfer. No doubt, the word 'transfer' as defined under the Transfer Act of 2005 includes the transfer from one department to another department at the same station. But the word transfer will have different meaning in different context. The person who is transferred is entitled for joining time, transfer allowance etc. These provisions are not applicable for transfer at the same station from one department to another department. No employee can claim a right that he can enjoy a particular post only for continuous period of three years without interruption. It is the choice of employer or his superiors to decide where his services can be best utilized. Only exception will be the transfers made with ulterior motives or malafides.

26. After considering the arguments, we find that there was no malice in fact or malice in law. In fact, the change in the department of the petitioner of respondent No. 3 was not a transfer at all. There was no inconvenience or loss to respondent No. 3. Respondent No.3's no right is violated. There was no miscarriage of justice. In the

light of these facts, the Administrative Tribunal has not considered the settled case law and has unnecessarily interfered with the administrative order. The respondent No. 3 has no right to retain a particular post, and therefore, there was no cause of action. In the light of the facts, impugned order is not sustainable.

27. Hence, the Writ Petition is allowed. The order of Tribunal in Original Application No. 972 of 2018 is quashed and set aside and the Original Application No. 972 of 2018 stands dismissed. No order as to costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

28. At this stage, learned Counsel for the respondent seeks extension of order of *status-quo* for a period of eight weeks.

29. Learned Counsel for the petitioner opposes the said request.

30. Considering the fact that the order of *status-quo* was in force, the order of *status-quo* is continued for a period of three weeks from today. Needless to state that on lapse of three weeks, the order of *status-quo* granted shall stand vacated.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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