

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8578 OF 2019

Smt. Vidya Gaikwad
Age: Major, Occu: Service,
R/o: Chief Officer,
Municipal Corporation,
Tq. Udgir, Dist. Latur

.....Petitioner

Versus

1. The State of Maharashtra
Through its Secretary Urban
Development Department,
Mantralaya, Main building 4th floor,
Madam Kama Road Fort, Mumbai.
2. Shri Bharat Prabhakar Rathod
Age: Major, Occ. Service
R/o: Deputy Comissioner, Parbhani
Municipal Corporation, Parbhani
Dist. Parbhani.

.....Respondents

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Ms. Pradnya Talekar, Advocate for petitioner
Mr. V. D. Hon, Senior Advocate for respondent no. 1
Mr. Avinash S. Deshmukh, Advocate for respondent no. 2

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**CORAM: SUNIL P. DESHMUKH &
S. M. GAVHANE, JJ.**

DATE: 22nd August, 2019

ORAL JUDGMENT (PER – SUNIL P. DESHMUKH) :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the appearing parties.

2. At the center of this writ petition is order dated 5th March, 2019 passed by respondent no. 1 – Secretary, Urban Development Department, Mantralaya, Mumbai, transferring respondent no. 2 functioning as chief officer, municipal council, Udgir to Parbhani, as deputy commissioner, municipal corporation, Parbhani.

3. Shorn of unnecessary details, factual aspects relevant for consideration of present matter, appear to be that under order dated 11th April, 2018 respondent no. 2 had been transferred and posted as chief officer, Udgir municipal council, Udgir, District - Latur. Accordingly, he joined said post at Udgir on 12th April, 2018 and since then he had been working there. Before he could complete his normal tenure of posting at Udgir,

impugned order dated 5th March, 2019, transferring him from the post of chief officer, municipal council, Udgir to the post of deputy commissioner, municipal corporation has been passed. Said order had been challenged by respondent no. 2 before Maharashtra Administrative Tribunal, Aurangabad.

4. Respondent no. 2 had contended that his transfer is in contravention of provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "The Transfer Act, 2005") and there is no administrative exigency. It is his contention that impugned order is mid-term and mid-tenure transfer and is in violation of provisions of section 4(4) and 4(5) of the Transfer Act, 2005 and is illegal. He, additionally refers to that under directions of the State Election Commission, the post occupied by him at Udgir is notified for Loksabha election and was appointed as zonal / sector officer by the Assistant Election Returning Officer, Latur and was sent for training.

5. In response to the original application, respondent no. 1, in its reply, resisted the contentions of respondent no. 2 herein and contended that the transfer of applicant had been effected mid-term and mid-tenure pursuant to the provisions of section

4(4) and 4(5) of the Transfer Act, 2005. It has been contended that there had been serious complaints against respondent no. 2 while he was functioning as chief officer, Udgir municipal council and in view of the serious allegations and misuse of powers by respondent no. 2, competent authority submitted a proposal for his transfer from Udgir in order to avoid further misuse of powers by him and to bring normalcy in the functioning of Udgir municipal council. Said proposal was considered in the meeting of the Civil Services Board, (hereinafter referred to as "the board"), which was held on 27th February, 2019. After considering serious complaints and allegations about misuse of powers by respondent no. 2, the board recommended his transfer from the post of chief officer, Udgir municipal council to the post of deputy commissioner, Parbhani municipal corporation. Competent authority accepted the recommendation and decided to transfer respondent no. 2.

6. Competent authority may transfer a government servant when is satisfied that transfer is essential under exceptional circumstances / special reasons after recording the same in writing and with prior approval of next higher authority. The transfer of respondent no. 2 had been made in accordance with the provisions of the Transfer Act, 2005 and there is no

contravention of provisions of section 4(4) and 4(5) of the Transfer Act, 2005. Impugned order had been issued before announcement of Model Code of Conduct for the General Elections of Lok Sabha - 2019, there is no violation of the guidelines of the Election Commission of India. Transfer of respondent no. 2 before completion of his tenure, would not be faulted with.

7. Petitioner – respondent no. 2 in the original application, by filling reply, had resisted contentions of respondent no. 2 herein and had defended her case contending that transfer order had been issued by the competent authority after following provisions of law and after due compliance of the provisions of section 4(4) and 4(5) of the Transfer Act, 2005. She further contended that there had not been any request for transfer by her, however, her transfer had been caused on administrative ground and she had been posted at Udgir on the post of chief officer, municipal council. She had been relieved from Parbhani on 5th March, 2019. She joined on the post of chief officer, municipal council, Udgir on 6th March, 2019 and since then, she has been discharging her duties accordingly.

8. On behalf of respondent no. 2 – original applicant, it has been contended before Maharashtra Administrative Tribunal that

respondent no. 1 had not considered the decision under Government resolution dated 11th February, 2015 as well as undertaking given by the Chief Secretary of the Government of Maharashtra before high court at Bombay in writ petition bearing no. 8987 of 2018 in the case of *Balasaheb Vitthalrao Tidke Vs. The State of Maharashtra and anr.* It has been contended that there has been no proposal regarding transfer of respondent no. 2 and said transfer had been made by respondent no. 1 in the absence of proposal. Respondent no. 2 had been transferred on the post of petitioner though her transfer had neither been proposed nor recommended, and therefore, the same is also illegal. Reliance had been placed on the judgment delivered on 15th September, 2011 by high court at Bombay, Aurangabad bench in writ petition no. 5835 of 2011 in the case of *Purushottam Govindrao Bhagwat Vs. The State of Maharashtra and Ors.*

9. Before the tribunal, it had been submitted on behalf of respondent no. 1 that there were several complaints made against respondent no. 2 while he was functioning as chief officer, Udgir Municipal council, Udgir. One Shri Sudhakar Bhalerao, Member of Legislative Council had also lodged a complaint regarding functioning of respondent no. 2 and, accordingly, proposal of his transfer had been placed before the

board. Considering serious allegations against respondent no. 2 and nature of complaints, it had recommended transfer, which had been placed before competent authority i.e. Chief Minister and with the approval of the Chief Minister, who is also higher competent authority, impugned order had been passed under the provisions of section 4(4) and 4(5) of the Transfer Act, 2005 and there is no illegality in the impugned order.

10. On behalf of petitioner, it had been submitted that transfer took place under administrative exigency, also after following the mandatory provisions of the Transfer Act, 2005. Tribunal has little role to play and would not interfere with the transfer order and cannot substitute its opinion for that of competent authority of the State. Unless, a case of *malafides* is made out, tribunal would not interfere with transfer order. The submissions were supported with the decisions in the case of, *State of Maharashtra Vs. Ashok Ramchandra Kore and Ors.*, reported in 2009 (4) *Mh. L. J.* 163 and *Mohd. Masood Ahmad Vs. State of U.P. & Ors.*, reported in (2007)8 *SCC* 309.

11. While competent authority is empowered to transfer a government employee before completion of normal tenure and in the midst of term subject to fulfillment of requirements under section 4(4)(ii) and 4(5) of the Transfer Act, 2005, the tribunal

has observed that record regarding transfer had been produced before it. Even a short affidavit was filed by one Shri Mahesh Guruling Hanshetti working on the post of section officer in the office of urban development department, Mantralaya, Mumbai, stating that record produced before the tribunal is the only record available with the office of respondent no. 1 and the same had been endorsed before the tribunal by counsel on behalf of respondent no. 1.

12. The tribunal having scanned the material on record, has observed that indeed respondent no. 2 had hardly completed 11 months posting at Udgir and his transfer is mid-term and mid-tenure. On perusal, the tribunal found that there is absence of proposal or note prepared by the department regarding transfer of respondent no. 2 and other employees. Urban development department had put an office note dated 26th February, 2019, requisitioning meeting of the board for transfer of chief officers of group-A and group-B on recommendation and requests of peoples representatives. The tribunal even went on to observe that minutes of the meeting convened on 27th February 2019 would evince that the board had considered transfer of respondent no. 2 based on a complaint made by Shri. Sudhakar Bhalerao, Member of

Legislative Council and had recommended transfer of respondent no. 2. With reference to recommendation of the board, respondent no. 1 – urban development department prepared the proposal and submitted the same to competent authority i.e. Hon'ble Chief Minister and concomitantly also proposed transfer of present petitioner - respondent no. 2. The Hon'ble Chief Minister approved the same and transfer order had been issued.

13. From the file, the tribunal had found that letter was issued by Shri. Sudhakar Bhalerao, MLC on 27th February, 2019 and on the very day i.e. on 27th February, 2019, letter had been placed before the board complaining about work of respondent no. 2, that it was not satisfactory and as inconvenience is being caused to the public, it was requested to transfer respondent no. 2 .

14. The tribunal, thus, was impelled to observe that on 26th February, 2019, while respondent no. 1 requisitioned the meeting of the board, no complaint against the applicant – respondent no. 2 herein was received. No proposal or office note has been prepared by the concerned department, no agenda of the meeting had been prepared and a strange mode or practice had been adopted. Along side, it is also observed that there had been no proposal regarding transfer of present

petitioner nor there had been any circumstances referred to for transfer of respondent no. 2. It had also been observed that in normal course, the concerned department prepares proposal for transfer of government servants and, thereafter, fixes agenda of meeting and the same is placed before the board, however, no such procedure had been followed by respondent no. 1 while effecting transfer of the original applicant (respondent no. 2) and others.

15. It may have to be noted that the tribunal has also observed that respondent no. 1 specifically contended that there were several complaints of serious nature against respondent no. 2 herein, compelling his transfer. Despite giving several opportunities to produce material / copies of the complaints received by it against respondent no. 2, no material / copies had been produced by respondent no. 1. Suffice it to say that affidavit filed by officer of the department and its endorsement in submissions reveal that impugned transfer order issued was under a complaint by a representative of people incurring a political colour and was seen to be intercepting the undertaking given by the chief secretary of Government of Maharashtra before the high court of Bombay in the writ petition referred to above. Under the circumstances, transfer order of respondent

no. 2 from the post of chief officer, Udgir municipal council to the post of deputy commissioner, Parbhani municipal corporation has been struck down.

16. Learned counsel Ms. Pradnya Talekar appearing for the petitioner submits that the order passed by the tribunal would be untenable on several grounds. She submits, as the position would emerge from jurisprudence and several decisions of high courts and supreme court, the tribunal had a very little role to play in the matter of transfer. She submits that while there are no *malafides* attributed to transfer, tribunal seldom had jurisdiction to meddle with transfer order dated 5th March, 2019 issued by respondent no. 1 – secretary, urban development department, Mantralaya, Mumbai. She submits, even otherwise mid-term transfer of government employees in exercise of powers under the Transfer Act, 2005 is permissible. Respondent no. 2 does not make out a case that transfer had been without subsistence of circumstances therefor. She submits that failure of respondent no. 1 to produce relevant record before the tribunal would seldom contradict factual position that there were indeed several complaints against respondent no. 2.

17. She purports to submit that high ranking officer who had filed affidavit in the tribunal was member of the civil services

board. Said officer had been in receipt of complaints against respondent no. 2. This shows that, impugned transfer order is not without any material and/or reasons and not only based on MLC's letter but also is with reference to complaints to concerned officer.

18. Learned counsel for petitioner contends referring to documents annexed along with short affidavit filed in present proceedings that there were several complaints against respondent no. 2 of nonchalant and callous attitude towards regular and urgent administrative works. She also refers to the newspaper extract reporting lodging of first information report against respondent no. 2.

19. In support of submissions, she places reliance on a decision in the case of *State of Maharashtra vs. Ashok Ramchandra Kore and another* (supra), emphasizing sufficiency of reasons and under judicial review, reasons of transfer can hardly be gone into. The tribunal would not have jurisdiction to re-appreciate and verify the sufficiency of reasons. It is contention on behalf of petitioner that complaints against the original applicant – respondent no. 2 herein are compelling reasons for mid-term transfer due to administrative requirements referring to the decision in case of *Mohd. Masood Ahmad Vs. State of U.P. and others*

(supra). She purports to refer to limitations on judicial review in the matter of transfer referring to paragraphs no. 4, 7 and 8 therefrom.

20. She also refers to decision of supreme court in the case of *State of U.P. and others Vs. Gobardhan Lal*, reported in (2004) 11 Supreme Court Cases 402 and purports to contend that malafides are not to be considered on conjectures but on strong and concrete material. In this respect, she drew attention to paragraphs no. 7 and 8 therefrom.

21. Learned senior counsel Mr. V. D. Hon appearing on behalf of respondent no. 1 supporting petitioner, contends that relevant factual aspects have been considered and transfer order has been effected and implemented and position obtaining may not be disturbed. He submits that it would not be the case that respondent no.1 has no power at all to transfer a government employee mid-term.

He submits that may be, normal tenure of respondent no. 2 of three years had not been completed, however, if the circumstances warrant so, respondent no. 1 always would have power to transfer a government employee before completion of the tenure, in the midst of term, as provided under the Transfer

Act, 2005. He submits, in present case, while competent authority is satisfied that transfer of respondent no. 2 is essential under exceptional circumstances / special reasons, after recording the same in writing and with prior approval of next higher authority i.e. Chief Minister, it would not be said that such procedure had not been followed at all.

He submits that transfer of respondent no. 2 from Udgir to Parbhani is effected by following due procedure under the Transfer Act, 2005 and in emanating circumstances from difficulties in administration. Transfer order ostensibly may not be reflecting upon special reasons underlying the same but it would not be ignored that the special reasons underlying the transfer are consideration of complaints and it is not the case that same had not been adverted to before the tribunal in the affidavit filed on behalf of respondent no. 1. Accordingly, proposal for transfer of respondent no. 2 from Udgir to Parbhani had been moved. Thus, the board after going through the complaints against respondent no. 2 and verifying serious nature, had recommended transfer of respondent no. 2.

It is, therefore, urged on behalf of present respondent no. 1, that the impugned order passed by the tribunal is untenable in fact and in law.

22. Countering aforesaid submissions, learned counsel Mr. Avinash Deshmukh appearing for original applicant - respondent no. 2 herein submits that the tribunal has observed that the material on record does not depict that there is proposal prepared by the department regarding transfer of applicant i.e. present respondent no. 2, nor the same has been placed on record before the tribunal. A short affidavit by responsible officer from the urban development department at Mumbai and endorsement of the same on behalf of respondent no. 1 before tribunal shows that there is no record available in respect of transfer of respondent no. 2, save and except, transfer order of respondent no. 2 and letter dated 27th February, 2019 issued by Shri. Sudhakar Bhalerao, MLC. In such a case, parties would seldom be able to raise a stand that there had been other circumstances which had been taken into account before the transfer order is passed. It would emerge that mid-term transfer would not be authorized in the absence of compliance of provisions of the Transfer Act, 2005, particularly, sections 4(4) and 4(5) which are sought to be invoked. He submits that even as of now, proposal for transfer of respondent no. 2 has not seen light of the day nor it is the case of respondent no. 1, that any other material save letter by MLC dated 27th

February, 2019 had been placed before the tribunal. In such a scenario, the order passed by the tribunal is not liable to be faulted with on the face of record produced before the tribunal.

Learned counsel for respondent no. 2, therefore, urges not to meddle with the impugned order dated 9th July, 2019 passed in Original Application no. 216 of 2016 by the Maharashtra Administrative Tribunal.

23. In the alternative, learned counsel for petitioner requests to keep the position as had been subsisting till May, 2020, so that the possibility can be explored to accommodate respondent no. 2 to Nanded municipal corporation and Ahemadpur and Nilanga, as negation of transfer order of respondent no. 2 would impact and cause inconvenience to her.

24. While submissions are so advanced, we find lot of substance in the submissions on behalf of respondent no. 2 that before mid-term transfer order had been passed, proposal with reference to any complaint was not available before the board nor it has emerged that any material save and except letter by the MLC about the complaints had been placed before the tribunal.

Though there is reference, in affidavit filed on behalf of respondent no. 1, captioned "*submission of respondent no. 1*" that complaints, against respondent no. 2 while working as chief officer, Udgir municipal council had been received and in view of the same, competent authority submitted proposal to transfer him from Udgir municipal council, yet, proposal appears not to have formed part of record brought before the tribunal nor in this court.

May be there were complaints against respondent no. 2, it has not clearly come forth that those were placed before the board and were considered coupled with letter by MLC to be the basis of recommendation. Moreover, recommendation does not evince that it had been on the basis of complaints made apart from that of MLC.

There is no explanation or reason coming forth in respect of the undertaking given to the court in writ petition no. 8987 of 2018. It appears that reasons by the board as it may appear from its recommendations to be incongruous to the undertaking given in said writ petition.

25. In the circumstances, we do not deem it proper to meddle with order passed by the Maharashtra Administrative Tribunal. Writ petition under the circumstances is dismissed, leaving it open to the authorities if the circumstances so permit and if advised, to follow due procedure.

26. Learned counsel Ms. Pradnya Talekar, appearing for petitioner requests for continuation of interim relief for a period of three weeks, in order to enable her to approach against this order.

27. The protection would operate for a period of three weeks from today and same would cease to operate immediately after expiry of its duration.

28. Writ petition stands dismissed.

29. Rule stands discharged.

[S. M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE