

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 9939 OF 2017
WITH
CIVIL APPLICATION NO. 11856 OF 2019 IN WP/9939/2017 WITH
CIVIL APPLICATION NO. 10944 OF 2019 IN WP/9939/2017**

Sanjaykumar s/o Kisanrao Chavan,
Age: 38 years, Occu: Service,
as Junior Clerk, in Divisional Office
(Work Shop Department),
Maharashtra State Transportation Corporation,
Tq and Dist Aurangabad.

...PETITIONER

Vs.

1. The State of Maharashtra,
Through it's Secretary,
Transportation Department,
Mantralaya, Mumbai 400 032.
2. The Vice Chairman / Managing Director,
M.S.R.T.C.,
Central Office,
Dr. Anandrao Nayar Marg,
Mumbai 400 008.
3. Divisional Controller,
M.S.R.T.C.,
Aurangabad Division,
Aurangabad,
Tq and Dist Aurangabad.
4. Divisional Controller,
M.S.R.T.C.,
Sindhudurg Division,
Kankawali,
Tq and Dist Sindhudurg.

...RESPONDENTS

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Advocate for Petitioner : Shri S. R. Kolhare and Shri P. S. Kochar
AGP for Respondent No. 1 : Shri S. N. Kendre
Advocate for Respondents No. 2 to 4 : Smt. Ranjana D. Reddy

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**CORAM : SUNIL P. DESHMUKH &
B. U. DEBADWAR, JJ.**

DATE : 16th DECEMBER, 2019

ORAL JUDGMENT [PER : SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the parties finally by consent.

2. Under an order dated 8th July, 2013, petitioner had been appointed in services with respondent No. 4 – Divisional Controller, M.S.R.T.C., Sindhudurg Division, Kankawali. Before joining services, the petitioner had tendered medical fitness certificate.

3. In April, 2015 petitioner had applied to respondent No. 4 for his transfer to Aurangabad on various grounds viz., his old aged parents are residing at Aurangabad and were suffering medical problems who require medical treatment frequently. Alongwith the same, it appears that, request was also made by the petitioner stating that climatic conditions at Sindhudurg were not suitable to his health and medical certificate issued by Civil Surgeon, Sindhudurg had been produced to support his request.

4. Said request for transfer had been forwarded by Respondent No. 4 – Divisional Controller, M.S.R.T.C, Sindhudurg

Division to Deputy General Manager, Mumbai. Thereafter, under a communication dated 22nd June, 2016, petitioner had been relieved from Sindhudurg referring to communication dated 20th June, 2016.

5. Accordingly, petitioner had joined at Aurangabad on 27th June, 2016. However, it appears that thereafter under communication dated 08th July, 2017, petitioner was purportedly informed by Divisional Controller, Kankawali that his transfer to Aurangabad stands cancelled under order dated 18th July, 2016. Said communication had been challenged by petitioner in present writ petition.

6. For quite a while, after notices had been issued, no further action had been taken and suddenly on 31st August, 2019 petitioner had been issued order purporting to relieve him from Aurangabad. Said order has been taken to this Court under Civil Application No. 10944 of 2019 and the Court had directed not to give effect to the same until further orders. An application had been moved by respondent to review / recall said order. In the circumstances, the matter is coming up for hearing before the Court.

7. Learned counsel Smt. Reddy appearing for respondent Corporation submits that the transfer of petitioner had been incongruous to the regime of transfer rules as were framed by the

Corporation. She refers to communication / circular dated 04th December, 2015, annexed alongwith reply to the petition and emphasises Clause 6 thereunder, pointing out that the petitioner's case would not fit into diseases referred to under the same. She contends that petitioner had not even completed required number of minimum days of service at Sindhudurg for consideration of transfer pursuant to Clause 1 thereunder. She submits that no *mala fides* have been imputed by the petitioner. In the circumstances, the orders were passed on administrative grounds and as such were seldom liable to be faulted with. She contends that there would be an alternate efficacious remedy available under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

8. Though learned counsel for respondents has submitted so, it would appear that petitioner's request for transfer, albeit, may be as contended by the respondent is before completion of minimum tenure required for transfer while the petitioner had requested for transfer to Aurangabad and it appears that alongwith difficulties of parents', the petitioner had also urged grounds of health problems which appear to have been taken into account and accordingly proposal had been forwarded by Sindhudurg Authorities and the same appears to have been accepted and

thereupon petitioner had been relieved from Sindhudurg, enabling him to join at Aurangabad. While it appears that his transfer to Aurangabad had been cancelled soon in July, 2016 itself, the same had not been put in action immediately. Thereafter, it is only on 08th July, 2017 Kankawali Authority purportedly issued communication about the cancellation of transfer to Aurangabad. Present writ petition since then had been pending before this Court and said communication was not being acted upon.

9. It may have to be considered that there does not appear to be any particular dispute in respect of forwarding of proposal for transfer had been on account of old aged parents and their health conditions and additionally having regard to the certificate issued by Civil Surgen, Kankawali in respect of petitioner's health.

10. It appears that the same had weighed with the authority and transfer order had been issued and petitioner had been relieved from Sindhudurg. Subsequent events, about cancellation of transfer order, does not appear that had ever been communicated to petitioner or at least served on him till July, 2017. Petitioner appears to have realised about the same only in July, 2017 when Kankawali Authority had issued communication and

thereupon the petitioner had been before this Court.

11. After order cancelling transfer of petitioner or after receipt of notice of this writ petition while communication was not acted upon, suddenly on 31st August, 2019 during pendency of this petition relieving order purportedly has been issued.

12. Though learned counsel for respondent has contended that the Civil Surgeon Certificate *per se* may not depict that the climatic conditions at Sindhudurg do not suit petitioner's health, yet, the fact remains that said certificate had been forwarded for consideration to authorities while petitioner had requested for his transfer on health conditions of his old aged parents and of himself and accordingly transfer order had been passed. Thereafter, without letting petitioner an opportunity of being heard same has been cancelled.

13. It is further to be noted that circular / communication dated 4th December, 2015 would evince that a request of transfer on health condition would be available in case of certain diseases. Apparently, it does not refer to the kind of sufferance of the petitioner. However, once it has been so considered and had weighed with the authorities, while decision in respect of the same is being reconsidered, principles of natural justice are not waived and ought to have been allowed to play a fair role. Impugned

cancellation been without affording him opportunity to resist the decision of cancellation and further that though decision having been taken in the July, 2016, the same does not appear to have been acted upon till 31st August, 2019. In such a case, the actions of respondents are rendered unsustainable and deserve to be set aside.

14. Accordingly, impugned order purporting to cancel transfer of petitioner from Kankawali to Aurangabad dated 18th July, 2016 purportedly informed under communication dated 08th July, 2017 to the extent of petitioner as well as relieving order dated 31st August, 2019 are set aside. This order would not impede authority of respondents and it would be open for the authorities concerned to take appropriate decision.

15. In view of this, writ petition is disposed. Rule is made absolute in aforesaid terms.

16. In view of disposal of writ petition, Civil Applications No. 11856 of 2019 and 10944 of 2019 are also disposed of.

(B. U. DEBADWAR, J.)

(SUNIL P. DESHMUKH, J.)

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