

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

WRIT PETITION NO. 10330 OF 2019

Sachin S/o Sadashiv Raut,
Age : 33 Years, Occu. : Service,
R/o 12/3, Laxmi Colony,
Sairam Nagar, Bhist Baugh,
Savedi, Ahmednagar

.. Petitioner

Versus

1. The State of Maharashtra,
Through : The Secretary,
Agriculture Department,
Mantralaya, Mumbai.
2. Mahatma Phule Krishi Vidyapeeth,
Rahuri, Tq. Rahuri, Dist. Ahmednagar,
Through : Its Registrar. .. Respondents

Shri C. K. Shinde, Advocate for the Petitioner.

Shri S. B. Narwade, A.G.P. for the Respondent No. 1.

Shri M. N. Navandar, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

CLOSED FOR JUDGMENT ON : 26.09.2019

JUDGMENT PRONOUNCED ON : 08.11.2019

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner is challenging the order transferring the petitioner from Mahatma Phule Krishi Vidyapeeth, Rahuri (for short "M.P.K.V.") to Agricultural College, Dhule.

3. Mr. Shinde, the learned advocate for the petitioner strenuously contends that, the petitioner joined service on 03rd February, 2014 as a clerk in Research Centre of M.P.K.V. at Savali-Vihir, Tq. Rahata. On or about 01.07.2015, the petitioner was transferred from Savali Vihir to M.P.K.V. Rahuri. On or about 17.07.2018, the respondent No. 2 transferred the petitioner from Fruit Research Project, M.P.K.V. Rahuri to the office of University Engineer, M.P.K.V. Rahuri. Under order dated 01.08.2019, the respondent No. 2 transferred the petitioner from the office of University Engineer, M.P.K.V. Rahuri to Agricultural College, Dhule.

4. The learned advocate for the petitioner contends that, the impugned transfer order is bad in law on following grounds :

- i. The impugned transfer is mid-term.
- ii. It is a frequent transfer causing inconvenience to the petitioner and his family members.
- iii. There is no administrative exigency.
- iv. The distance between the two destinations is more than 220 Kms.
- v. The procedure of preparing the list of the employees due for transfer is not followed.
- vi. The policy of pick and choose has been adopted.

- vii. There are number of employees who have completed more than 10 years at M.P.K.V. Rahuri have been retained. The order is thus, unjust, arbitrary and illegal and contrary to the norms governing transfer of employees.

5. The learned advocate further submits that, as the petitioner is in Class – C category, he is entitled to remain at one place for two tenures. One tenure consists of three years. No special reasons are assigned for mid-term and mid-tenure transfer. On that count also the transfer is bad in law. The learned advocate relies on the judgment of the Division Bench of this Court in the case of Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance and Development Corporation, Mumbai and others reported in *2013(3) Mh.L.J. 463* and another judgment of this Court in a case of Purushottam S/o Govindrao Bhagwat Vs. The State of Maharashtra and others reported in *2012(2) All M.R. 322*.

6. Mr. Navandar, the learned advocate for the respondent No. 2 submits that, the petitioner does not have right to challenge the transfer order. The impugned transfer order is made for administrative reasons and is not in violation of any statutory rule, nor malafides can be attributed to the respondent No. 2. A government servant holding a transferable post has no vested right to remain and posted at one place. After issuance of transfer order, the petitioner has been relieved by the University Engineer M.P.K.V. Rahuri on 02.08.2019. The transfer is condition of service under the Government Departments, the

Respondent No. 2/University has agricultural colleges in ten districts in the State of Maharashtra. The transfers and other administrative work is carried out from the university. The learned counsel submits that, in view of necessity and propriety of work, the services of petitioner were required at College of Agriculture at Dhule and, therefore, the petitioner has been transferred. Not only, the petitioner is transferred, but many other clerks have been transferred and also persons from different categories are transferred. The order of transfer is not arbitrary, nor suffers from malafides. The learned advocate relies on the judgment of the Apex Court in a case of Shilpi Bose (Mrs.) and others Vs. State of Bihar and others reported in *AIR 1991 SC 532*. He also relies on the judgment of the Division Bench of this Court in a case of V. B. Gadekar, Deputy Engineer, Konkan Housing and Area Development Board Vs. Maharashtra Housing and Area Development Authority (MHADA) and State of Maharashtra reported in *2008(2) Mh.L.J. 640*.

7. We have considered submissions canvassed by the learned counsel for respective parties.

8. Both the learned counsel accept that, the provisions of the Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as to the “Act 2005”) apply.

9. Section 3 of the Act 2005 provides the tenure of posting. Sub Section 1 of Section 3 of the Act 2005 provides that for a

Group A, B and C State Government Servants or employees, the normal tenure in a post shall be three years. Proviso to sub section 1 of Section 3 of the Act 2005 further clarifies that, if an employee is in non secretariat services, in Group – C, such employee shall be transferred from the post held on his completion of two full tenures at that office or department to another office or Department. Section 4 of the Act 2005 requires that, no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3.

10. In the present case, admittedly, the petitioner is a Class – III (Group - C) employee. He is in a non secretariat service. As such, he has right to complete two full tenures at the office. The petitioner, it appears is transferred on 01.07.2015 from Savali Vihir, Tq. Rahata to M.P.K.V. Rahuri. His two full terms would be completed on 30th June, 2021. We may not consider at this stage the transfer order dated 17.07.2018 from one department to another at M.P.K.V. Rahuri.

11. In the light of the above, it would be clear that the transfer of the petitioner is mid-tenure transfer. Sub Section 4 of Section 4 of the Act 2005 further provides that, the transfers of Government servants shall ordinarily be made only once in a year in the month of April or May. Proviso to Sub Section 4 of Section 4 of the Act 2005 permits transfers to be made at any time in the year, but the same is circumscribed by Clause (i) and (ii) to the proviso of Sub Section 4 of Section 4 of the Act 2005 i.

e. if the transfer is to the newly created post or the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave and 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, the transfer is not only mid-tenure transfer, but is also a mid-term transfer. In case the transfer is mid-term transfer, the permission of the next higher authority is required to be taken by the competent authority and reasons are to be recorded.

13. In the present case, the transfer of the petitioner is mid-term and mid-tenure transfer and except stating that it is an administrative transfer, no reasons are recorded while transferring the petitioner during mid-term and mid-tenure. The Division Bench of this Court in a case of Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance and Development Corporation, Mumbai and others (supra) has observed that, mid-term or premature transfer must be effected by a reasoned order in writing and after prior approval from the competent authority concerned. It is further observed that, the mandatory requirements of the provisions under Section 4(5) of the Act 2005 cannot be ignored or bye-passed. The Division Bench of this Court in a case of Purushottam S/o Govindrao Bhagwat Vs. The State of

Maharashtra and others (supra) has observed that, for mid-tenure transfer if no reasons are recorded, then said transfer order cannot be sustained and mid-tenure transfer is permitted only upon certain exigencies and circumstances prescribed under Section 4 of the Act 2005. The impugned transfer order does not depict any such reasons. In the light of that, the impugned transfer order is quashed and set aside.

14. Rule accordingly made absolute in above terms. No costs.

[ANIL S. KILOR, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct. 19