

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.544/2019**

Mr. Thomas George D'Souza,  
Aged 43 years, Service,  
R/o Langarbag, Patradevi,  
Torseem, Pernem, Goa.

... Petitioner.

Versus

1. State of Goa through  
Chief Secretary,  
Secretariat, Porvorim, Goa.

2. Shri Raju V. Gawas,  
Director of Administration,  
Directorate of Health Services,  
Government of Goa,  
Panaji – Goa.

3. The Health Officer,  
Primary Health Care Centre  
Aldona, Bardez, Goa.

4. The Director (Head of the Department)  
Directorate of Health Services,  
Campal, Panaji, Goa.

... Respondents

Shri Rohit Pednekar, Advocate for the Petitioner.

Shri Deep Shirodkar, Addl. Government Advocate for the  
Respondents.

**Coram : C.V.Bhadang &**

**Nutan D. Sardessai,JJ.**

**Reserved on: 20.09.2019.**

**Pronounced on: 07.10.2019.**

**JUDGMENT : (Per Nutan D. Sardessai, J.)**

Rule made returnable forthwith. Shri Deep Shirodkar learned Addl. Government Advocate waives service on behalf of the respondents. Heard finally by consent of parties.

2. This petition takes exception to the transfer order of the petitioner issued by the respondent No.2 as being in violation of the statutory guidelines issued by the Government of Goa, by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

3. It has been the petitioner's case that he was employed as driver with the respondent No.4 Directorate of Health Services, and till now would be completing 16 years of service with duty timings of 8 hours a day. He had initially worked at the TB hospital, Moti Dongor, Margao and was transferred to Asilo Hospital Mapusa in the year 2005 and then to the

Primary Health Centre at Casarvannem, Pernem where he worked for five years and was transferred to Colvale where he worked for two years. Once again he was transferred to Pernem where he worked for three years and he was then transferred to South Goa, Cansaulim where he worked for two years, then to Cortalim where he was working and thereafter transferred to the Primary Health Centre, Aldona in 2016 when he was sought to be transferred to Cansaulim, South Goa which was in violation of the transfer guidelines. Therefore, he had made a representation to the respondent No.4 which was however not considered and he was transferred to Cortalim, South Goa. However, this was without any notice to him and his duty hours were changed to 24 hours a day and which would affect him in his sleep and ultimately his health. He made his grievance to the head office on 16.11.2016, but no action was taken even by the respondent No.2, who continued in his post as Director (Administration) for seven years.

4. It is the case of the petitioner that he had made a number of representations regarding his service conditions to the Director of Health Services and other competent authorities but no action was taken except, to issue the transfer orders. He was therefore, constrained to approach the Human Rights Commission. Before the Commission, the respondent No.2 filed his reply and levelled false allegations.

The Human Rights Commission however, disposed off his petition on the ground that the allegations made by him related to service matter and did not disclose any violation of his human rights. He had approached the respondent No.2 to inquire about the allegations made by him in his reply before the Human Rights Commission, when, the respondent No.2 threatened him with dire consequences including having transferred him to places well beyond his imagination. He had sought for the information under the Right to Information Act and met the respondent No.2 in that connection to correct the errors in his representation but he was once again coerced to withdraw his application. In the meantime, he was served with the order of transfer dated 21.06.2019 transferring him from the northern border of the State of Goa to the village Sanguem in South Goa District which would cause him undue hardship not only disturbing his family life, but also affecting his health.

5. The order of the Director of Health Services, was contrary to the statutory transfer guidelines. Besides, it is his case that the respondent No.2 was himself transferred as the Director (Administration) in the Electricity Department and was to be relieved of his charge immediately despite which he had issued the transfer order in total abuse of his powers and without the prior approval of the Government. The action of the respondent No.2 was not only malafide but mischievous

and in gross abuse of powers. The transfer order was only to target the petitioner and therefore, in the circumstances, the impugned order was illegal, since no transfer order could be issued after 15<sup>th</sup> May. The respondent No.2 had breached the statutory guidelines in respect of the petitioner who was a group 'C' employee. The action of the respondent No. 2 was unfair, in absolute abuse of the powers and arbitrary and therefore, liable to be struck down thereby, invoking the writ jurisdiction of this Court to quash the transfer order dated 21.06.2019.

6. Heard Shri R. Pednekar, learned Advocate on behalf of the petitioner who adverted to the transfer order and submitted that the petitioner was transferred from his present post at Aldona to Sanguem in South District which was in violation of the transfer guidelines issued by the Government which required the transfer of group 'C' employees to be restricted to the same taluka of their posting whenever possible or to the nearby taluka. He also referred to the order of transfer of the respondent No.2 herein dated 20.06.2019 and pursuant to which the respondent No.2 as the Director (Administration) was transferred with immediate effect as the Director (Administration) of the Electricity Department. It was next his contention that the respondent No.2 was otherwise not the head of the department nor was there any delegation of powers to him as the head of department and in that

context, he produced the extract of the Goa Delegation of Financial Powers, 2008 to buttress his contention that in the absence of any delegation of such powers to the respondent No.2 by the Director of Health services, he could not have issued the transfer order apart from the fact that he could not have issued the same, when he himself was under the orders of immediate transfer from the said Department. He placed reliance on **Dr. Ramesh Chandra Tyagi Vs. Union of India, (1994) 2 SCC 416**, in support of his case and submitted that the order of transfer has to be quashed and set aside.

7. Shri Deep Shirodkar, learned Addl. Government Advocate, produced the Certificate of Transfer of Charge and submitted that the respondent No.2 was relieved of his post as the Director (Administration), Directorate of Health Services to the Director (Administration), Electricity Department only on 24.06.2019. There was therefore, nothing inappropriate in the respondent No.2 issuing the transfer order of the petitioner which he had done in the normal course of his duty. He invited attention to the notings in that context and submitted that pursuant thereto, there was delegation of powers and it is only with the approval of the Directorate of Health Services which was duly approved by the Health Minister that the transfer was effected and therefore, it was not open to the petitioner to question his transfer order also on the ground of want of authority in the respondent No.

2. His next contention was that the petitioner had already completed more than four years at the said post at Aldona when in the normal course, he could continue there for three years and was due for transfer in the normal course much earlier and the order of the Human Rights Commission including the reply before it, had no merits on the same and was therefore, required to be brushed aside.

8. It was his contention next that it was not only the petitioner who was transferred from one district to another, but there were others too who had been transferred pursuant to the same order and therefore, the grievance of the petitioner was without any basis. Last but not the least, it was his contention that the transfer of the employees was the prerogative of the authority concerned and that it was not a fit case, for interference. He relied in the State of **U.P. and ors. Vs. Gobardhan Lal, (2004) 11 SCC 402** in support of his contention.

9. We have considered the submissions made, the records of the proceedings, the judgments relied upon and in view thereof decide the matter accordingly.

10. In **State of U.P.** (supra), the Hon'ble Apex Court held at para 7 "It is too late in the day for any government servant to contend that once appointed or posted in a

particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as 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. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

11. In **Dr. Ramesh Chandra Tyagi** (supra), the Hon'ble Apex Court held at para 5 "Two basic questions arise, one, whether the basic transfer order passed against the appellant was valid and in accordance with law and the other if the dismissal order suffers from any infirmity. Taking up the transfer order it is undisputed that the competent authority to transfer the appellant was the Secretary of the department whereas the order was passed by the Director General. It was attempted to be defended by claiming that the power of transfer was delegated. But despite grant of time no order delegating the authority could be produced. The learned counsel appearing for Union of India had to concede that no order of delegation was on record. We are not prepared to infer delegation because there were orders on the record which indicated that subsequently the Secretary had delegated the powers. It is not delegation earlier or later which is material but whether any delegation existed on the date when the transfer order was passed. Further it is necessary to mention that the respondents having taken definite stand in the written statement that the transfer order was approved but did not produce the record in the trial court nor could they substantiate it even in this Court, there is no option but to hold that the order was not passed by the person who alone was competent to do so. The transfer order issued by the Director General, thus, being contrary to rules

was non est in the eye of law.”

12. The petitioner, who was appointed as a driver, came to be transferred pursuant to the order of transfer issued by the respondent No.2 dated 21.06.2019, which is a part of the record. It was also not singularly in dispute that the respondent No.2 who had issued the order of transfer of the petitioner was himself transferred pursuant to the Gazette Notification dated 20.06.2019 whereby he was transferred as the Director (Administration), Directorate of Health Services to the post of the Director (Administration), Electricity Department, and which order as per Government Notification was requiring complete handing over and taking over process with immediate effect and reporting compliance. The grievance of the petitioner is that the respondent No.2 despite his order of transfer and requiring him to hand over charge with immediate effect, had still issued his transfer order which was patently malafide and borne out of wrecking vengeance against the petitioner for having made representations and questioned the respondent No.2 on certain information sought for by him. However, the certificate of transfer of charge produced on record by Shri Shirodkar, learned Addl. Government Advocate for the respondents indicates that the respondent No. 2 had taken charge of his new post on transfer only during the forenoon of 24.06.2019 and which was well beyond the date of issuance of the impugned order pertaining to the petitioner. The contention therefore, on behalf of the petitioner that the respondent No. 2 did not have any authority to transfer him when he himself was under the order of transfer, cannot be accepted.

13. The next contention on behalf of the petitioner was that the respondent No. 2 was not the Head of the Department and besides, there was no delegation of powers in the respondent No. 2 as the Head of the Department and therefore, he could not have issued such an order assuming for a moment that he could still have issued the order of transfer not having been transferred till 24.06.2019. Mr. Pednekar had placed on record the Goa Delegation of Financial Powers Rules, 2008 clearly indicating who was the Head of the Department insofar as the petitioner was concerned being the Director of Health Services and not the respondent No.2 who was only the Director (Administration), Directorate of Health Services. However, the office notings produced on record reveal that there was delegation of powers to the respondent No. 2 and who had received the due approval and pursuant to which the respondent No. 2 as the Director (Administration) had issued the transfer order of the petitioner dated 21.06.2019. The contention therefore, on behalf of the petitioner that the respondent No. 2 was not seized of the powers, to order his transfer also cannot stand the test of legal scrutiny and is therefore, cannot be accepted.

14. The petitioner had otherwise referred to the representation which had been made by him to the Human Rights Commission and the reply filed by the respondent No.2. But the dismissal of the said proceedings as it pertained to the service matter and not to any matter relating to human rights violation would not stand the petitioner in good stead nor would the petitioner be benefited by relying on the reply filed before the Human Rights Commission

which has no bearing on the petition at large. The other aspect which was highlighted on behalf of the petitioner was that the transfer of the petitioner was not in accordance with the transfer guidelines which required that the transfer of the group C employees would be limited to the taluka of their present posting whenever possible or to a nearby taluka. However, the very same transfer order on which reliance has been placed by the petitioner reveals that not only the petitioner was transferred to a district beyond that of original posting, but there were atleast another two persons who were transferred out of the district pursuant to the same common transfer order of the petitioner. The petitioner had otherwise alleged malafide against respondent No.2 but which has not been reflected on the basis of the material relied on in the petition. Besides, the judgment in **Dr. Ramesh Chandra Tyagi** relied upon by the petitioner is clearly distinguishable on facts inasmuch as it is shown on material facts that the respondent No.2 did have authorisation to issue the transfer orders pursuant to the delegation of powers in that regard which had due approval of the Director of Health Services.

15. Last but not the least, the judgment in State of U.P. would squarely apply inasmuch as the Hon'ble Apex Court clearly held that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with as they do not confer any legally enforceable rights unless it is shown to be vitiated by malafides or made in violation of the statutory provisions. The petitioner has failed to show any malafides in the acts of the respondent No.2 and or that the order of transfer was made in violation of any statutory provisions. In the result,

therefore, we do not find any merit in the petition. The petition is dismissed. Rule is discharged, with no order as to costs.

**NUTAN D. SARDESSAI, J.**

**C.V.Bhadang, J.**

MF/-