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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2894 OF 2019

Trupti Bajirao Borate ...Petitioner
vs.
State of Maharashtra & Ors. ...Respondents

Mr.Nitin Deshpande for the Petitioner
Mr.A.B.Vagyani, G.P a/w Mr.Y.S.Khochare, AGP for the
respondent Nos.1 to 3.
Ms Drishti Shah I/b Ms Rekha Rajagopal for
respondent No.4

CORAM : A.S.OKA, &
M.S.SANKLECHA, JJ.
DATE : APRIL 4, 2019

P.C.:

1 Heard the learned counsel for the petitioner and the learned Government Pleader for the respondent Nos.1 to 3. We have also heard the learned counsel for the respondent No.4.

2 The petitioner who was the Assistant Police Inspector of Police was posted at Dehu Road Police Station on the basis of the order dated 20th February 2019 passed by the Director General of Police. An order of transfer dated 20th February 2019 was issued to the petitioner by which she was transferred from Dehu Road Police Station to Konkan Range. It is this order which was subjected to a challenge by the petitioner by filing Original Application No.170 of

2019 before the Maharashtra Administrative Tribunal. By the order impugned in this petition which is dated 27th February 2019, the prayer for interim relief was rejected by the Maharashtra Administrative Tribunal.

2 There is additional affidavit filed by the petitioner in which a contention is raised that the person who was appointed in place of the petitioner has not joined the duty.

3 The learned Government Pleader pointed out that the Police Establishment Board No.2 considered the case of the petitioner for transfer in the light of the guidelines issued by the Election Commission of India dated 16th January 2019. The learned Government Pleader on instructions states that the transfer orders dated 20th and 21st February 2019 subject matter of challenge in the Original Application will be withdrawn and the said Board will consider the case of transfer of the petitioner in the light of guidelines of the Election Commission of India. He states that if the Board comes to the conclusion that the petitioner is required to be transferred as the case of the petitioner is covered by any of the clauses in the guidelines of the Election Commission of India, the petitioner will be transferred. We accept the said statement.

4 In the light of the guidelines dated 16th January 2019 issued by the Election Commission of

India, the Board will be justified in considering whether any of the guidelines are applicable to the case of the petitioner and whether the petitioner is required to be transferred in view of the applicability of the guidelines. While doing so, a specific conclusion will have to be recorded by the Board, whether any particular clause of the guidelines is applicable to the case of the petitioner.

5 It is obvious that the case of the petitioner for transfer cannot be considered if the Board comes to the conclusion that none of the provisions of the guidelines are applicable to the petitioner.

6 We accept the statement made by the learned Government Pleader. Subject to above observations, as the impugned transfer order is being withdrawn, Original Application No.170 of 2019 filed by the petitioner before the Maharashtra Administrative Tribunal will not survive.

7 Accordingly, we pass the following order:

(I) We accept the aforesaid statements made by the learned Government Pleader on instructions;

(II) We make it clear that though the impugned orders have been withdrawn, it will be open for the Board to consider the case of the petitioner for transfer in terms of the guidelines dated 16th January 2019 issued by the Election Commission of

India and in accordance with section 22(N) of the Maharashtra Police Act, 1951;

(III) In view of the aforesaid statement and this order, even the Original Application No.170 of 2019 does not survive and even this petition will not survive. Accordingly, subject to what is observed above, this petition is disposed of;

(IV) On production of an authenticated copy of this order, the Tribunal will dispose of the pending Original Application;

(V) We make it clear that we have made no adjudication on the question whether the aforesaid guidelines are applicable to the case of the petitioner.

(M.S.SANKLECHA, J.)

(A.S.OKA, J.)