

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 87 OF 2018**

Smt. Kalpana Rangnath Inamdar	.. Petitioner
Vs.	
The State of Maharashtra & Ors.	.. Respondents

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Mr. Hamed Kadiani i/b Ms. Shilpa Modki Advocate for
Petitioner

Ms. Nisha Mehra AGP for Respondent Nos. 1 to 3

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**CORAM : NARESH H. PATIL, C.J. &
N.M. JAMDAR, J.**

DATED : MARCH 11, 2019

ORAL ORDER [PER NARESH H. PATIL, C.J.]:

1. The petitioner seeks to raise challenge to transfer order dated 24 March 2017 passed by the State Government transferring Mr. Tukaram Mundhe, the then Commissioner of Navi Mumbai Municipal Corporation, Navi Mumbai. Admittedly, the transfer order has already come into effect.

The petitioner further seeks to reinstate Mr. Tukaram Mundhe and direct the Civil Service Board to provide for reasons for transfer of Mr. Tukaram Mundhe's premature transfer. The petitioner also prayed for other reliefs.

2. After placing reliance on Rule 4 of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005, the counsel for the petitioner submits that the impugned order of transfer is contrary to the judgment of the Apex Court and the Rules framed in this behalf. Paragraphs 13 and 31 of the judgment of the Apex Court in *T.S.R. Subramanian & Others Vs. Union of India and Others*¹ which are referred to, are reproduced below:

“B. FIXED TENURE:

13. Various Committees have also recommended and highlighted the necessity of providing fixed tenure for a civil servant so as to ensure stability and efficiency of administration. The Central Staffing Scheme, 1996, highlighted the necessity of a fixed tenure to provide certain degree of stability to the administration. Reference in this regard may be made to paras 17.01, 17.02, 17.03, 17.12 and 17.13 and the same are extracted hereinbelow for easy reference:

“17.01 The fixed tenure of deputation of posting under the Central Government is the

¹ [(2013) 15 SCC 732

heart of the Central Staffing Scheme. Rotation between the Centre and the States, Central Ministries and parent cadres, and headquarters and the field, provide a certain degree of pragmatism to policy formulation and programme implementation from the Central Ministries. Based on the experience gained so far, the periods of tenure at the different levels have been prescribed as under:-

- i Under Secretary 3 years
- ii Deputy Secretary 4 years
- iii Director 5 years
- iv Joint Secretary 5 years

17.02 An officer holding the post of Joint Secretary or equivalent, when appointed to a post under the Government of India at the level of Additional Secretary, would have a tenure of 3 years from the date of appointment as Additional Secretary subject to a minimum of 5 years and maximum of 7 years of combined tenure as Joint Secretary.

Additional Secretary. Where an officer remains on leave (either from the Centre or from his Cadre authority or both) on the expiry of his tenure as Joint Secretary till his appointment as Additional Secretary, the leave period shall be counted as tenure deputation. Additional Secretary 4 years, except for cases covered under the previous heading.

Secretary No fixed tenure.

17.03 Every Officer shall revert at the end of his tenure as indicated above on the exact date of his completing his tenure. He will, however, have a choice to revert to his cadre on the 31st May previous to the date of the end of his tenure in case personal grounds such as children's education etc., necessitate such reversion. No extension after completion of the full tenure would be allowed.

17.12 (a) Officers of the Indian Foreign Service appointed to posts under the Central Staffing Scheme would have a tenure of three years.

(b) They shall not normally be relieved, except with the approval of the appointments Committee of the Cabinet from a Central Staffing Scheme post before their tenure.

17.13 No lateral shifts of officers from one Ministry / Deptt. to another will normally be considered. However, in the case of Private Secretary to Ministers the policy followed would be :-

(a) The redeployment of a Private Secretary in the same Ministry / Department as Deputy Secretary or Director is discouraged.

(b) The Private Secretary (to Minister) who has been empanelled for holding post of Joint Secretary at the Centre should also not be considered for relocation in the same Ministry / Deptt. and the officer should be posted to some other Ministry / Deptt.

31. We therefore, direct the Union State Governments and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil servants, within a period of three months.”

3. The counsel for the petitioner therefore, submits that moral of Government Officers is seriously affected when the premature transfers are effected, particularly, in cases of Officers who are found to be discharging duties to the best of their ability and in the larger public interest.

4. The learned Additional Government Pleader for the State raised a preliminary objection that Public Interest Litigation of this nature in respect of service of civil servant shall not be entertained. The transfer in question was effected in the year 2017, therefore, there is no requirement for the reasons into a transfer which is already effected.

5. We have perused the judgment and the relevant Rules placed before us. The transfer orders are given effect to. The question whether the concerned officer was discharging duties taking risk in public interest by proactive approach to the public issues, need not be gone into in the present proceeding. However, in view the observations made by the Apex Court in the aforesaid decision and the directions issued therein, the transfers prior to the completion of tenure of service of various other civil servants, should be in accordance with the procedure

established by law and the matter is for the State to regulate accordingly.

6. In view of the subsequent development i.e. the transfer has come into effect, we are not inclined to entertain the Public Interest Petition. This Public Interest Petition is accordingly disposed of.

N.M.JAMDAR, J.

CHIEF JUSTICE