

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6454 OF 2019

**The Principal Secretary, Home Department
and Anr. ... Petitioners**

Vs

Mr.Sandeep Sukhanand Jadhav and Anr. ... Respondents

Mr.Y.S.Khochare, AGP for the Petitioner
(State).

Mr.N.V.Bandiwadekar a/w Mr.Ashwin
Sakolkar for Respondent No.1.

Mr.D.P.Adsule a/w D.B.Khaire for
Respondent No.2.

**CORAM :- S. C. DHARMADHIKARI &
G.S.PATEL, JJ.**

DATE :- JUNE 21, 2019

P.C. :-

1. After hearing both sides and perusing the writ petition together with its annexures, we are of the firm opinion that the Maharashtra Administrative Tribunal ought not to have disturbed the arrangements and carved out by virtue of the Transfer Order dated 9th April, 2019.

2. The applicant before the Maharashtra Administrative

Tribunal in Original Application No.383 of 2019 is one Sandeep S. Jadhav, who is the first respondent to this petition. It is claimed by the petitioner that by virtue of the order dated 9th April, 2019, the transfer and postings were effected purely for administrative reasons and to meet the exigency of service.

3. The argument is that by virtue of such interim orders, the functioning of the department is adversely affected.

4. It is clear that the matter may have a chequered history, but when it comes to the transfer and postings, none can claim an absolute right. There has to be a justifiable ground to interfere with and stay the order of transfer. Today, the Maharashtra Administrative Tribunal has passed an order virtually allowing the original application at an interim stage. For all these reasons, it is stated that the impugned order of the Maharashtra Administrative Tribunal be set aside.

5. On the previous occasion, we had heard both sides and impressed upon the petitioner's advocate to report to the Court, the arrangement made by them. The order of 10th June, 2019 reads as under :-

“1 The State is challenging an order passed by the Maharashtra Administrative Tribunal in Original Application No.383 of 2018. The order dated 26th April, 2019, suspends the implementation and operation of an order of 10th April, 2019.

2 The applicant to this Original Application is one Sandeep S. Jadhav. The petitioner before us is the State of Maharashtra and the Government Pleader states that the Principal Secretary and the Directorate General are aggrieved by this direction because the first respondent, after obtaining this relief from the Maharashtra Administrative Tribunal, has proceeded to upset the postings and appointments made.

3 It is stated that the first respondent joined the Police Department as Deputy Superintendent of Police on 23rd May, 2005 and was promoted to the post of Additional Superintendent of Police on 24th February, 2014. He was transferred from the post of Deputy Commissioner, State Intelligence Department, Mumbai to the post of Additional Superintendent of Police (Rural) and he joined that post on 10th August, 2018. There was a criminal case and after criminal case ended at the stage of trial, but there was an Appeal preferred, the argument is that the Sessions Court has stayed the conviction and sentence imposed by the Judicial Magistrate First Class, Ahmednagar. The Criminal Appeal preferred by the first respondent is also pending. However, there was an order passed and that is of appointment of the second respondent to this petition. He has been posted on transfer to the post of the petitioner.

4 In the morning session, we inquired as to where the first respondent (original applicant to the petition) has been shifted and whether in Pune city itself. The matter was placed post recess to enable the learned AGP to take instructions.

5 The learned AGP states that presently the first respondent to this petition has not been posted anywhere in Pune, but further details about the posting order would be obtained. We are most unhappy with this situation because we do not allow high ranking officials like the first respondent to draw salary, perquisites and other benefits despite not reporting to

work anywhere. We also do not allow their superiors to continue such suspension for everything is at the cost of public exchequer.

6 Let, therefore, the posting orders be issued before the next date. The matter is posted on Tuesday 18th June, 2019, under the caption "For Passing Orders".

6. After this order was passed, today we are informed that the first respondent to this petition has been proposed to be posted at Pune. He would be posted as the Deputy Commissioner of Police (State Intelligence). However, this arrangement is not acceptable to the first respondent/original applicant.

7. It is in these circumstances that we have perused the order under challenge. The Tribunal proceeds on the footing that the reason for transfer of one Vivek Patil in place of the original applicant/first respondent before us is a judgment and order of the Judicial Magistrate, First Class, Jamkhed. On 27th March, 2019, by the judgment and order, the first respondent was convicted for an offence punishable under Section 323 read with Section 34 of the Indian Penal Code and sentenced to suffer simple imprisonment for three months and fine of Rs.Five Hundred was imposed. The accused applied for suspension of sentence as well as for grant of bail. The sentence was suspended and he was released on bail. The accused also filed Criminal

Appeal No.79 of 2019 in Sessions Court, Ahmednagar and the learned Additional Sessions Judge stayed the sentence as well as the conviction by order dated 10th April, 2019. The Tribunal feels that once the first respondent was placed under suspension, that later on the criminal trial concluding, but Appeal pending, the nature of the order therein presently does not pose any difficulty for him in his career. The conviction also stands stayed. The first respondent had challenged his suspension from service by filing Original Application No.387 of 2019. Once the conviction was stayed, the suspension also came to be stayed.

8. However, in the subject Original Application No.383 of 2019, all that the learned Member of the Tribunal feels is because the counsel of the first respondent pressed interim relief on account of stay of the suspension and the checkered history noted above, the transfer should be stayed.

9. The reasoning in the Tribunal's order with greatest respect is strange. It has not referred to any materials other than the orders of the learned Sessions Judge. The Tribunal has not referred to the background in which the conviction came to be recorded. The Tribunal has referred to the order of the suspension being stayed.

10. To our mind, the suspension followed the criminal trial, the conviction and sentence therein. That an Appeal was filed and the criminal appeal is pending, but during its pendency, the conviction and the sentence having been suspended does not mean that the conviction stands wiped out. The entire order of the Judicial Magistrate First Class would have to be set aside. It is then alone that the conviction and sentence goes, not otherwise. We do not think that on such a reasoning alone, an interim order of nature would have been passed. An order of transfer would not have been interfered with unless there is prima facie proof of malafides or arbitrariness or perversity writ large on the face of it. There was absolutely no prima facie material brought on record to that effect and still the impugned order has been passed.

11. Before us, the only apprehension expressed is that if the first respondent is displaced and some other officer has been brought in his place, the first respondent should have received another posting order. In other words, the consequential posting of the first respondent should also have been directed and ordered. That is not directed. We have ensured that as well, but the first respondent insists on going back to the place from where

he was transferred. Presently, he stands relieved from the same. In the above circumstances and in the absence of clear prima facie case of the above nature and balance of convenience being in favour of the first respondent, the order of stay of order could not have been passed by the Maharashtra Administrative Tribunal. Once it is passed without adhering to the fundamental principles noted above, we cannot sustain it. The impugned order is, therefore, quashed and set aside.

12. Now, the Original Application No.383 of 2019 shall be decided on its own merits and in accordance with law.

13. We clarify that we have only quashed and set aside an interim order in the Original Application. Our order and any observations therein shall not influence the Maharashtra Administrative Tribunal while deciding the Original Application finally. All contentions of both sides are kept open. Equally, the Tribunal should decide the Original Application uninfluenced by the observations in the order under challenge. That having been set aside, the matter must be decided on the available material and by applying the settled legal principles.

14. The writ petition stands disposed of accordingly.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)