

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14469 OF 2018

The State of Maharashtra through the
Secretary

....Petitioner

Versus

Ravindra Anandrao Kadampatil & anr.

...Respondents

Mr. Yatin S. Khochare, AGP for the State/Petitioner.

Mr. N. V. Bandiwadekar, a/w Mr. Vinayak Kumbhar, for
Respondent no.1

Mr. Nitin P. Deshpande, for Respondent no.2.

CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ

DATED: 3rd January, 2019

PC:-

1. The Petitioner - State has approached this Court being aggrieved by the judgment and order passed by the learned Maharashtra Administrative Tribunal in Original Application No.832 of 2018 ('OA', for short), thereby allowing the OA filed by Respondent no.1 and setting aside the order transferring the original applicant from the post of Deputy Commissioner, Establishment, Pune to Planning.

2. Mr. Khochare, the learned AGP on behalf of the State submits that the original applicant has been transferred in the same office. He submits that in the present case what has happened is that, the original applicant has been given the work

of Deputy Commissioner, Social Welfare, Planning instead of Deputy Commissioner, Social Welfare, Establishment. He submits that such a change of posting at same place would not come within the ambit of transfer. The learned Counsel in this respect relied on the judgment of Division Bench of this Court in Shri Rajendra Kalal vs. The State of Maharashtra in Writ Petition No.8898 of 2010, dated 30th November, 2010. The learned AGP further submits that there are various complaints against the functioning of the original applicant and as such, it was found appropriate on administrative ground to transfer him. He, therefore, submits that the impugned order passed by the learned Tribunal needs to be set aside.

3. Mr. Deshpande, the learned Counsel for Respondent no.2, submits that the learned Tribunal after taking into consideration the facts of the case, has passed the impugned order and as such, no interference is warranted. Mr. Bandiwadekar supports the case of the Petitioner.

4. In normal circumstances, this Court would not interfere with the transfer in the same office from one Department to other Department. However, if the facts in the present case are considered, it would reveal that the transfer has been done only

in order to accommodate Respondent no.2 herein on the post of Deputy Commissioner, Establishment.

5. The learned Tribunal has found that, though it is the case of the State that the transfer has been done taking into consideration the complaints against the original applicant, in the Minutes of Meeting of Civil Services Board, the reason that is mentioned is, on the administrative ground. As such, contention of the State that same was done by taking into consideration the complaints, did not weigh with the learned Tribunal.

6. The learned Tribunal, in paragraph 26, has in detail recorded the conduct of the officers of the State in showing undue favour in favour of Respondent no.2. It has been found by the learned Tribunal that the order is issued on 06th September, 2018, in which the Commissioner has been directed to issue relieving order of the officers under transfer. It has further been found that though at the relevant time, Respondent no.2 was posted at Aurangabad and was present in the office on 10th September, 2018, he had received the transfer and movement order in the office of one Assistant Commissioner, Establishment and was directed to join on the said post on the very same day. The permission was also granted by the Commissioner on the

same day, but Respondent no.2 has joined his posting on the next day i.e. 11th September, 2018 at 10.30 am.

7. Taking into consideration the factual scenario, which has been recorded by the learned Tribunal in paragraph 26, we find that the learned Tribunal was justified in coming to the conclusion that entire exercise was done in order to favour Respondent no.2.

8. In so far as the judgment of the Division Bench in *Shri Rajendra Kalal (supra)* is concerned, the learned AGP is justified in relying on the same judgment. However, what about succinctly described by the Hon'ble Apex Court in the case of *The Regional Manager and Another vs. Pawan Kumar Dubey*¹, it could be thus seen that, as observed by the Hon'ble Apex Court as slight distinction in the facts of the application of the same law may result in diagonally opposite conclusion.

9. The factors of malafide action to favour someone were not considered by the Division Bench of this Court in the case of *Rajendra Kala (supra)*, whereas in the present case, the learned Tribunal on the basis of the entire factual situation has come to the conclusion that the transfer was nothing else but an attempt to favour Respondent no.2.

1(1976) 3 SCC 334.

10. In so far as the contention with regard to the complaints against the original applicant is concerned, if the complaints are serious enough, nobody precludes the employer from initiation departmental proceedings against such an employee. If the gravity of the situation exists, the employer is not prevented from suspending such an employee during the pendency of the enquiry. However, in the present case, it has been rightly pointed out by the learned Tribunal that the same appears to be by way of after thought.

11. In that view of the matter, we do not find any case for interference. The Petition is, therefore, rejected.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]