

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 443 OF 2019

Rajendra Vasantrya Marale .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Sujeet. D. Joshi, Advocate for the Petitioner.

Shri S. P. Tiwari, A.G.P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 21ST JANUARY, 2020.

FINAL ORDER :

. The petitioner assails the order of the Maharashtra Administrative Tribunal, Bench at Aurangabad (for short "Tribunal") rejecting original application filed by the petitioner challenging the order of transfer.

2. Mr. Joshi, the learned advocate for the petitioner strenuously contends that, the petitioner is working as a Jailor Grade – I. The petitioner was transferred on promotion to Latur on or about 04th December, 2015. On or about 06.05.2017 at the time the petitioner was discharging his duties as Jailor Grade – I, Latur, the services of the petitioner were attached to the Aurangabad Central Prison. The petitioner reported at Aurangabad Central Prison on 13.05.2017. The order dated 06.05.2017 was withdrawn pursuant to the order passed by the

Tribunal in Original Application filed by the petitioner bearing Original Application No. 556 of 2017. On or about 13th April, 2018, the transfer order was issued to the petitioner transferring the petitioner from the post of Jailor Grade – I, Latur to Aurangabad Central Prison. Aggrieved thereby the petitioner has filed Original Application No. 288 of 2018. The petitioner was granted interim protection, subsequently the original application is dismissed.

3. The learned counsel for the petitioner further contends that, the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short “Act of 2005”) have been violated. They have been followed more in breach of the provisions of Act of 2005. The petitioner has not completed his tenure at Latur. The transfer of the petitioner was mid-tenure and midterm. The procedure has not been followed. Reasons have to be recorded for transferring mid-term. No such reasons are recorded and if the transfer is mid-tenure and mid-term the sanction of the next higher authority to the appointing authority has to be obtained. The same also has not been obtained. The respondents are relying upon the record at the time of issuance of the order in the year 2017. Same is erroneous. The learned counsel further submits that, respondents are relying upon the complaint. In fact, the petitioner is ready to face the enquiry of Vishakha Committee. Instead of making enquiry into the matter, the respondents have transferred the petitioner. Same is

punitive. The respondents cannot resort to punitive action without holding enquiry. The learned counsel relies on the circular dated 11.02.2015 to substantiate his contention.

4. The learned Assistant Government Pleader for respondents/State supports the order of the Tribunal. The learned A. G. P. further submits that, the entire procedure has been followed. The learned A. G. P. submits that, the petitioner has joined at Aurangabad Central Prison.

5. It is undisputed that the tenure of the petitioner as per the provisions of the Act of 2005 would be of three years at a particular place. The petitioner was transferred to Latur in December 2015. In the interregnum, in the year 2017, the services of the petitioner were attached to Aurangabad Central Prison. Same was assailed. Thereafter, the order was withdrawn and fresh transfer order is issued under order dated 01.11.2018. The order certainly was a mid-term transfer order. The procedure as is prescribed under the Act of 2005 has to be adhered too and followed.

6. The Tribunal has observed about the adherence to the procedure. It has been observed that, the matter was placed before the Committee, so also sanction of the Hon'ble Chief Minister viz next higher authority was also obtained. The committee recommended the transfer. The same was placed before the Hon'ble Chief Minister, for which sanction was also obtained. It appears that, earlier order of the year 2017 was not

depicting any reasons, though procedure was adhered too. The Tribunal has come to the conclusion that the provisions of Sec. 4(4)(ii) and 4(5) of the Act of 2005 were resorted and followed.

7. If further appears that, the respondents considered the seriousness of the complaints. Be that as it may, the petitioner has pursuant to the interim orders completed his tenure. This Court would be concerned with the due adherence to the process adopted. The Tribunal has observed that, the process has been adopted and resorted to as contemplated under the Act of 2005.

8. Mr. Joshi, the learned counsel for the petitioner submits that, the reasons for transfer of the petitioner also do not subsist, as the lady who has made complaint is transferred from Latur to Jalna. She has requested for transfer at Aurangabad, but as vacancy is not available, she is posted at Jalna and the petitioner is transferred to Aurangabad under the impugned order.

9. The said lady according to the learned A. G. P. is transferred to Jalna and not to Aurangabad. In case said lady is also transferred to Aurangabad, then the petitioner may take up proceedings as may be permissible and if the cause subsists.

10. In the light of the above, the writ petition is disposed of. No costs.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]