

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.329 OF 2020

Dr. Pramod J. JaiswalPetitioner
Versus
The Union of India Through Secretary
Ministry of Health & Family Welfare & Ors.Respondents

Mr. S.V. Marne i/by Ms Priyanka Mehndiratta, Advocate for the Petitioner.
Mr. A.D. Shetty a/w. N.P. Shimpi, Advocate for Respondent Nos.1 to 3.

**CORAM : RANJIT MORE &
SURENDRA P. TAVADE, JJ.**

DATE : 16th JANUARY, 2020.

P. C. :

1. Heard learned counsel appearing on behalf of the respective parties.
2. The presence of respondent No.4 may not be necessary for the disposal of this petition since we do not propose to disturb his transfer order.
3. By filing this petition under Article 226 of the Constitution of India, the petitioner is challenging the order dated 20.12.2019 passed by the Central Administrative Tribunal, Mumbai. By the said order, the Original Application filed by the petitioner bearing Original Application No.563 of 2018 was disposed of with a direction to respondent Nos.1 to 4 to consider the petitioner's representation dated 28.08.2018 and to pass appropriate order within a period of three weeks from the date of order and to communicate the same to the petitioner.
4. The petitioner was appointed as Medical Officer-Ayurveda on

09.11.1998 at Pune. He was thereafter promoted to various posts and before the last transfer order, he was working as Chief Medical Officer (NFSG). By the transfer order dated 24.08.2018, the petitioner was transferred from Pune to Nagpur. In place of petitioner, respondent No.4 was transferred from Nagpur to Pune. This order was challenged by the petitioner by filing Original Application No.563 of 2018. By the interim order dated 11.09.2018, the CAT has directed respondent Nos.1 to 3 not to take any coercive measures against the petitioner and to maintain status quo till the next date of hearing. The said interim order remained in force till final disposal of Original Application No.563 of 2018. As a matter of fact, before passing the impugned order, respondent No.4 had already joined in place of petitioner at Pune and though this fact was also pointed out before the CAT, the interim order came to be passed by the CAT. That being the fact-situation, three doctors, including the petitioner and respondent No.4 were working at Pune as against the two sanctioned posts.

5. The transfer order dated 24.08.2018 was challenged by the petitioner on various grounds *inter alia* that it is effected only to accommodate respondent No.4 and hardships of the petitioner have not been considered by the CAT.

6. The CAT having considered all the aspects refused to interfere in the impugned transfer order. The respondents were further directed to consider petitioner's representation dated 28.08.2018 and to pass orders on his request and pleadings of personal hardships, within three weeks from the date of impugned order and to communicate the same to the petitioner.

The petitioner was also directed to immediately report at Nagpur.

7. We have gone through the impugned order passed by the CAT and we do not find any error apparent on the face of record to interfere in the impugned order. Therefore, we are not inclined to disturb that order.

8. Mr. Marne, learned counsel for the petitioner, however, submitted that the petitioner was transferred midterm; at the time of transfer, his daughter was taking education in 10th Std; the petitioner is a single parent as his wife, who is also doctor is posted at UNICEF. He further submitted that now his daughter has passed 10th Std. and studying for 11th Std. in Rajiv Gandhi Academy of e-Learning, Pune. He further submitted that his daughter has also admitted in PACE IITIAN's PACE EDUCATION PVT. LTD. as she wants to take admission in IIT. For the purpose of admission in PACE, the petitioner has deposited an amount of Rs.3.5 Lacs out of Rs.5 Lacs.

9. Mr. Mane, learned counsel for the petitioner requested that at least petitioner should be posted at Pune and he should not be disturbed for the period of one year till his daughter completes 12th Std. i.e. till the month of February 2021.

10. After the arguments advanced by the learned counsel for the petitioner, day before yesterday i.e. on 14th January, 2020 we orally directed Mr. Shetty, learned counsel for respondent Nos.1 to 3, to take instructions, whether the petitioner can be accommodated at Pune for the period of one year considering his hardships. Mr. Shetty has taken instructions from the

officer concerned and submitted that since there are only two sanctioned posts available at Pune, the petitioner cannot be accommodated.

11. The Petitioner is a single parent as his wife, who also is a doctor, is posted at UNICEF, is not disputed by the Respondents. At the relevant time, the Petitioner's daughter was admitted in 10th standard is also not disputed by the Respondents. At present, the Petitioner's daughter is prosecuting her studies in Rajiv Gandhi Academy of E-learning, Pune and PACE IITIAN'S PACE EDUCATION PRIVATE LIMITED, is also not disputed by the Respondents. An amount of Rs.3.5 lakh out of 5 lakh is paid by the Petitioner is also not disputed by the Respondents.

12. As a matter of fact, subsequent to the interim order dated 11th September 2018 passed by the CAT, three CMOs including the Petitioner were working at Pune and this position continued till the impugned order dated 20th December 2019 is passed.

13. Admittedly, there are only two posts of CMOs, against which three CMOs were working at Pune for the period of 15 months. In our opinion, in view of the interim order passed by the CAT, Respondent Nos.1 to 3 ought to have sent Respondent No.4 back to Nagpur from where was transferred to Pune. Respondent Nos.1 to 3 however permitted Respondent No.4 to work at Pune.

14. In above circumstances, in our opinion, the interest of justice would be sub-served if the Petitioner is retained at Pune till the Petitioner's daughter completes her 12th standard education, i.e., upto 14th March 2021

subject to the Petitioner's filing an undertaking that he will report for duties at Nagpur on 15th March 2021, as per the impugned transfer order.

15. In the light of above, we pass following order :

∴ ORDER ∴

[1] Writ petition is disposed of.

[2] Respondent No. 1 to 3 are directed to retain the Petitioner as Chief Medical Officer at Pune (NFSC) till 14th March 2021.

[3] On 15th March 2021, the Petitioner shall report at Nagpur as per the transfer order which is impugned before the CAT as well as before this Court.

[SURENDRA P. TAVADE, J.]

[RANJIT MORE, J.]