

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2896/2020

PETITIONER:

Shri Ganesh Jairam Jagdale
Aged about 34, Occupation: Service
(presently functioning as Tahsildar
Kamptee), R/o A/P Chare, Tah. Barshi,
Distt. Solapur.

Original Respondent
No.4 before MAT

...VERSUS...

RESPONDENTS :

1. State of Maharashtra
through its Additional Chief Secretary
Revenue & forest Department
Mantralaya, Mumbai – 32.

Original Respondent
No.1 before MAT

2. The Divisional Commissioner
Nagpur Division, Old Secretariat
Building, Civil Lines, Nagpur.

Original Respondent
No.2 before MAT

3. The Collector,
Civil Lines, Nagpur.

Original Respondent
No.3 before MAT

4. Arvind Laxman Hinge
Aged about 39 years, Occupation - Service
R/o Orange City Park, New Yerkheda,
Kamptee, Tah. Kamptee, Distt. Nagpur.

Original Applicant
before MAT

Shri N.S. Khubalkar, Advocate for petitioner
Ms. N.P. Mehta, AGP for respondent nos.1 to 3
Shri D. M. Kakani, Advocate for respondent no.4

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

Judgment reserved on : 08/12/2020
Judgment pronounced on : 11/12/2020

J U D G M E N T (PER : AVINASH G. GHAROTE , J.)

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

2. The present petition lays challenge to the common judgment, delivered on 22/10/2020, by the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur in Original Application (O.A.) No.597 of 2020 (Arvind Laxman Hinge Vs. State of Maharashtra and others), in which the present petitioner was the respondent no.4. The common judgment dated 22/10/2020 is being assailed by the present petitioner to the extent it affects the petitioner.

3. The present petitioner is a permanent resident of Post : Chare, Tah. Barshi, Distt. Solapur and upon his selection by the M.P.S.C., was posted as a Naib Tahsildar at Parseoni, District Nagpur on 4/10/2012, where he worked till June, 2016. On 1/7/2016, the petitioner came to be transferred from Parseoni to Kamptee, District Nagpur on the same post as Naib Tahsildar. On 18/9/2019, the petitioner was transferred to Sindewahi, District Chandrapur on promotion as Tahsildar. It is contended that on 30/3/2020, the respondent no.4 who was working as Tahsildar, Kamptee, District Nagpur made a request for his transfer from Kamptee to Nagpur. On 9/6/2020 the petitioner also is claimed to have put in a request for his transfer from Sindewahi to Kamptee. It is contended that on 13/7/2020, the Divisional Commissioner/respondent no.2, submitted information about the request for transfer made by 29 officers to the respondent no.1. On 1/10/2020, the respondent no.1 issued an order, by which 15 persons were transferred from one place to another. By this order dated 1/10/2020 (pg.41), the petitioner herein came to be transferred as a Tahsildar from Sindewahi, District Chandrapur to Kamptee District Nagpur (on the vacancy being created due to the transfer of the respondent no.4 –

Arvind Hinge). The respondent no.4 who was then holding the post of Tahsildar Kamptee by the same order was transferred as Tahsildar, Lakhni, District Bhandara. The transfer as per this order dated 1/10/2020, was said to be on account of the request of these persons and on account of administrative ease and public interest and was made under Section 4 (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as “the Act of 2005”). This transfer order came to be challenged by several persons, one of them being respondent no.4 by way of O.A. No.597/2020. The Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur by a common judgment dated 22/10/2020, quashed and set aside the transfer order on the ground that no special case was made out and no reasons were assigned as was required under Section 4(5) of the Act of 2005 and directed the respondent no.1 to give posting to all the applicants on the posts held by them before issuing the transfer order dated 1/10/2020. It is this order of the Maharashtra Administrative Tribunal (“Tribunal’ hereinafter), which is being challenged in the present petition.

4. The challenges raised by Mr. Khubalkar, learned Counsel for the petitioner are fourfold.

(a) That the transfer was made on the request of the respondent no.4 and therefore, was not liable to be interfered by the Tribunal on account of absence of special reasons.

(b) That a false statement was made by the respondent before the Tribunal that the transfer was not on account of his request, in light of which the Tribunal ought not to have entertained the application.

(c) Relying upon the judgment in the case of *Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance & Development Corporation, Mumbai and others (Writ Petition No.5465 of 2017, decided on 7/3/2013)*, the course as indicated therein, ought to have been followed by the Tribunal.

(d) Relying upon *Gohil Vishvaraj Hanubhai and others Vs. State of Gujarat and others, 2017 (4) ALL MR 489 (S.C.)*, the Tribunal could only examine the decision making process and not the decision itself and therefore, the relief as granted of directing the respondent no.1 to give posting to all the applicants on the posts

held by them, before issuing transfer order dated 1/10/2020 could not have been granted.

5. Mr. Khubalkar, learned Counsel for the petitioner in support of his submission relies upon the transfer order dated 1/10/2020; the communication dated 13/7/2020 sent by the Divisional Commissioner/respondent no.2 to the respondent no.1 (Annexure R-4-1/pg.63/67/69) and the proposal by the Board sent by the Divisional Commissioner at page 134 of the record.

6. Mr. Khubalkar, learned Counsel for the petitioner therefore submits that the impugned judgment of the Tribunal, cannot be sustained as the same is based upon ignorance of the material on record and the position that the transfer of the respondent no.4 was made at his request and therefore, the findings by the Tribunal that there were no special reasons for the transfer recorded, were clearly without any substance and thus could not be sustained. He submits that the common judgment dated 22/10/2020 to the extent it affects the petitioner, needs to be quashed and set aside.

7. Ms. N.P. Mehta, learned Assistant Government Pleader appearing for the respondent nos.1 to 3 has supported the transfer order dated 1/10/2020. She however, submits that in pursuance to the directions of the Tribunal as contained in the judgment dated 22/10/2020, the respondent no.1 has since on 19/11/2020, issued an order, transferring the petitioner and respondent no.4 as well as all other persons affected by the judgment on the original places where they were posted prior to the transfer order dated 1/10/2020. She has tendered a copy of the order dated 19/11/2020, which is accepted and taken on record and marked as "X". She therefore submits that even otherwise the judgment of the Tribunal stands complied with.

8. Mr. Kakani, learned Counsel for the respondent no.4 submits as under :-

(a) The request made by the respondent no.4 for his transfer was from Kamptee to Nagpur and not otherwise, therefore, the order dated 1/10/2020 transferring the respondent no.4 from Kamptee to Lakhni, District Bhandara could not be said to be a transfer on the request of the respondent no.4.

(b) Since the transfer was not on request, special reasons ought to have been recorded, as it was an admitted position that the transfer was not due.

(c) The transfer was not recommended by the Civil Service Board for which he invites our attention to page 118, the minutes of the Board meeting dated 5/8/2020, and page 134 the recommendation by the respondent no.2.

(d) That the subsequent recommendation by the respondent no.2 at record page 134, was factually incorrect, as the same recommended the transfer to the place requested as a special case on administrative and public interest grounds, in which case, the transfer of the respondent no.4, ought to have been made at Nagpur and not to Lakhni.

(e) The finding by the Tribunal of absence of special reason was clearly justified by the language of Sub Section 5 of Section 4 of the Act of 2005.

Mr. Kakani, learned Counsel for the respondent no.4, therefore, submits that the judgment of the Tribunal, was correct and ought not to be disturbed and the petition therefore being devoid of any merits was required to be dismissed.

9. We have heard the learned Counsels for the parties at length. The contention of Mr. Khubalkar, learned Counsel for the petitioner that the transfer was made on the request of the respondent no.4 and therefore was not liable to be interfered with, has to be considered in the context of the request made. It is not disputed at the bar that the request made by the respondent no.4, who was holding the post of Tahsildar, Kamptee was for transfer to Nagpur and not to any other place, much less Lakhni, in light of which, it cannot be said that the respondent no.4, has put in a request for transfer to Lakhni, District Bhandara. This is borne out from the communication dated 13/7/2020 (relevant page 67), which indicates that the request put in by the respondent no.4 was for transfer to Nagpur. The entire communications relating to the proposal for transfer, proceed on a footing, that the respondent no.4 had put in a request for transfer to Lakhni, which is factually incorrect, as per the own showing of the respondent nos.1 to 3 as reflected from record page 67. That apart, the Civil Service Board which met on 5/8/2020 for considering the transfer of persons employed as Tahsildar (Class-A) clearly found that the transfer before the slated period/expiry of the tenure could only be

considered if the post is vacant and on account of administrative reasons, is required to be urgently filled up. As against this, the respondent no.2 by the communication at record page 134, in paragraph (B) in spite of the negative recommendation of the Civil Service Board, recommended the transfer of the petitioner as well as the respondent no.4 on the posts as alleged to be requested by them, as a special case on administrative grounds and public interest. Though the respondent no.2, noticed the provisions of Section 4 (5) of the Act of 2005, still the above recommendation was made. The respondent no.2 by the communication dated 13/7/2020 at record page 63, submitted the information regarding the request applications by the persons claiming transfers, to the respondent no.1. The respondent no.1 before passing the transfer order dated 1/10/2020, thus ought to have first verified, whether the application of the respondent no.4, was requesting transfer to Lakhni, District Bhandara and therefore could be considered to be falling within the term “request transfer”. This clearly, as is apparent, was not done and without considering it the application by the respondent no.4 was taken as a request application for transfer to Lakhni.

10. The provisions of Section 4 (5) of the Act of 2005 being material are reproduced as under :-

“Section 4 (5). Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of the immediately superior Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.”

(emphasis supplied)

The language of Section 4 (5) of the Act of 2005 is peremptory in as much as, if a transfer is to be effected before the completion of the tenure, either on request or otherwise, by treating it as a special case, there are two requirements to be satisfied (a) reasons to be recorded in writing (b) prior approval of the immediately superior transferring authority. In the instant case, it is an admitted position that in the meeting of the Civil Services Board, dated 5/8/2020, the transfers were not recommended, which is also reflected from the recommendation at record page 134. That being the position, before passing the order dated 1/10/2020, it was necessary for the respondent no.1 to record the reasons in writing,

for the transfer of the respondent no.4, who was yet to complete his tenure, and who had not requested for a transfer to the place where the transfer order dated 1/10/2020, transferred him. The order dated 1/10/2020, clearly does not depict any reasons for the transfer of the respondent no.4, except for the contention that it was being done on the request of the concerned employee, i.e., respondent no.4 in the present case. Thus, the order dated 1/10/2020, clearly fell foul of the requirement of Section 4 (5) of the Act of 2005 and the reasons recorded for quashing the same as found by the learned Tribunal of absence of a special reason, cannot be faulted with. Since there is nothing on record to indicate in which group as per the table in Section 6 of the Act of 2005, the respondent no.4 falls, we refrain from making any observations in this regard. It is axiomatic to say that even if a request is made by an employee, for transfer, before expiry of the duration of his tenure of a particular posting, the same cannot automatically be acted upon, but can only be considered within the parameters of Section 4(5) of the Act of 2005 and not otherwise.

11. The view which we have taken is supported by :

(i) ***Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance & Development Corporation, Mumbai and others (Writ Petition No.5465 of 2012, decided on 07/03/2013)***. The position in respect of Section 4 (5) of the Act of 2005, fell for consideration of this Court in this case, wherein upon consideration of the language of the Rule, it came to be held as under :-

“7. We are satisfied in the case in hand that there was non-observance of the statutory requirements of the Act. The mid-term or pre-mature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of the Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4 (5) of the Act cannot be ignored or bye-passed. The exceptional reasons for the special mid-term or pre-mature transfer ought to have been stated in writing. Vague, hazy and meager expression such as “on administrative ground” cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements. The impugned order of the transfer in the absence of mention of special and exceptional reasons was passed obviously in breach of the statutory obligations and suffers from the vices as above. Impugned order dated 30-05-2012 would ex facie indicate that merely

because of request made by the respondent no.3 Shri Murar, the Petitioner was sought to be transferred pre-maturely to Raigad. It is therefore unsustainable for want of even handedness or fairness to the Petitioner Government employee concerned and we therefore quash and set aside the impugned order of transfer.”

(ii) In *Purushottam s/o Govindrao Bhagwat Vs. The State of Maharashtra and others, 2012 (2) ALL MR 322*, while considering the scope and ambit of Section 4 (5) of the Act of 2005, the Court held as under :-

“10. Applying these principles, we will have to consider the provisions of Section 4 of the Act. Sub-section (1) emphatically provides that no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3. Sub-section (2) requires a competent authority to prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year. Sub-section (3) requires that the transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be. Proviso thereto requires that any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary. Sub-section (4) mandates that the transfers of Government servants

shall ordinarily be made only once in a year in the month of April or May. Proviso to Sub-section (4) permits a transfer to be made any time in the year in the circumstances stated therein. Sub-clause (i) thereof permits such a transfer to be made at any time in a year to a newly created posts or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave. Sub-clause (ii) thereof permits such a transfer at any time where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority. Sub-section (5) of Section 4, which begins with a non obstante clause, permits the competent authority, in special cases, after recording reasons in writing and with the prior approval of the immediately superior Transferring Authority mentioned in the table of section 6, to transfer a Government servant before completion of his tenure of post.”

(iii) In *Pradeepkumar Kothiram Deshbhratar Vs. State of Maharashtra and others, 2011 (5) ALL MR 580*, the Court held as under : -

“17. The provisions of 2005 Act particularly Section 4 (5), permit respondent nos.2 and 3 to transfer the petitioner even before completion of period of three years. Such transfers are treated as special cases and for that respondent nos.2 and 3 have to record reasons in writing and then with prior approval of immediate superior transferring authority mentioned in table of Section 6, the transfer can be

effected. As per table in Section 6, for the petitioner in such circumstances, competent transferring authority is Hon'ble Minister and he has to act in consultation with the Secretary of respondent no.1 department.

21.Section 4 (5) permit competent authority in special cases to transfer the petitioner after recording reasons in writing and that too with prior approval of Hon'ble Minister. Thus, Section 4(5) of the 2005 Act contemplates such premature transfers only in exceptional cases. The facts above show that request made by the President of Zilla Parishad and recommendation of Hon'ble Minister has been the only reason for treating the proposal as special case. This is not contemplated by Section 4(5) of 2005 Act and reasons to be recorded for permitting such transfers must be spelt out and must be found to be in the interest of administration. Those reasons cannot be only the wish or whim of any particular individual and such transfers cannot be ordered as special case to please the particular individual for mere asking. On the contrary, records show that respondent nos.2 and 3 have not recorded any special reasons at all. These respondents are not satisfied with relevance of reasons placed before Hon'ble Minister. Hence, they have developed a new story in an attempt to justify that transfer before this Court. We, therefore, do not find compliance of provisions of Section 4 (5) r/w Sec. 6 of 2005 Act in the present matter.”

(iv) In *Shri Santosh Machhindra Thite Vs. The State of Maharashtra & Ors., 2019 (4) ALL MR 681*, while construing the

provisions of Section 4 (5) of the Act of 2005, the Court held as under :-

“14. As stated earlier, the specific stand of the State Government is that the power of transfer is exercised by the State Government under sub-section (5) of section 4. The said power is to be exercised by the Competent Authority. Clause (b) of section 2 of the said Act of 2005 defines "Competent Authority" to mean appointing authority which includes the Transferring Authority specified in section 6. The power of transfer under sub-section (5) of section 4 is to be exercised by the Competent Authority only in special cases, after recording reasons in writing and that also with the prior approval of the immediately superior Transferring Authority (in the present case, the Hon'ble Chief Minister). According to the stand of the State Government, the power was exercised by the Hon'ble Minister as a Competent Transferring Authority within the meaning of section 6.

15. As per clause (b) of the table in section 6, the Competent Transferring Authority in case of the petitioner and second and third respondents is "the Minister in-charge in consultation with the Secretaries of the concerned Departments". We have perused the relevant pages in the file (pages 109 to 114). We find that there is nothing in the file which indicates that the Hon'ble Minister consulted the Secretaries of the concerned Departments. No such consultation has been reflected from the record and even the proposal of the Hon'ble Minister (page 113) does not refer to any such consultation with the Secretaries. In both the affidavits filed by the State Government, there is no reference to any such consultation. We have also perused the

reply filed to the original application. Even in the said reply, no stand has been taken that the Hon'ble Minister had consulted the concerned Secretaries. On the contrary, in paragraph 5 of the reply of Shri Santosh Vitthal Gawade, the specific contention is that the Hon'ble Minister of Revenue exercised the power under the said Act of 2005. Therefore, the power purportedly exercised is not in consonance with sub-section (5) of section 4 as the concerned Secretaries were not consulted. The Hon'ble Minister can exercise the powers as a Competent Transferring Authority under section 6 only after consultation with the Secretaries of the concerned Departments. Hence, the Hon'ble Minister had no power to pass orders under sub-section (5) of section 4 of the said Act without consultation with the Secretaries.”

(v) In *S.B. Bhagwat Vs. State of Maharashtra & Ors., 2012*

(3) *ALL MR 845*, relied upon by the learned Counsel for the respondent no.4, while considering Section 4 (5) of the Act of 2005, the Court held as under :-

“8.The manner in which the exercise has been carried out is patently contrary to law and in breach of the mandate of the statute. Ordinarily, a government servant cannot be transferred unless he has completed the tenure of posting. An employee who has not completed his normal tenure of three years may yet be subjected to transfer, as provided in Sub-section (5) of Section 4. Sub-section (5) of Section 4 begins with an overriding non-obstante provision, but requires that reasons have to be recorded in writing in a

special case for transferring an employee even prior to the completion of tenure. Merely calling a case a special case does not constitute a sufficient reason. The rationale why the legislature has, required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers. Indeed, the matter of transfers has been brought within a regulatory framework laid down in the statute enacted by the State legislature. Section 4(5) permits as an exceptional situation, a transfer to be carried out, notwithstanding anything contained in Section 3 or in Section 4. The exceptional power must be exercised strictly in accordance with Sub-section (5) of Section 4. It is a settled position in law that when a statutory power is conferred upon an authority to do a particular thing, that exercise has to be carried out in the manner prescribed by the statute.”

(vi) ***Ramakant Baburao Kendre Vs. State of Maharashtra and another, 2012 (1) Mh.L.J. 951***, relied upon by the learned counsel for the respondent no.4 follows what has been enunciated in ***Purushottam s/o Govindrao Bhagwat (Supra)***.

12. As regards the next contention by Mr. Khubalkar, learned Counsel for the petitioner, as recorded above, it is only to be reiterated, that the respondent no.4 had never requested for transfer to Lakhni, and therefore, the statements made in the O.A. in this

regard, have to be viewed in light of the same and thus cannot be said to be misleading, calling for a dismissal on that count alone, in light of which, the reliance by Mr. Khubalkar, learned Counsel for the petitioner upon ***K.D. Sharma Vs. Steel Authority of India Limited and others, (2008) 12 SCC 481*** which requires there to be a candid disclosure of relevant and material facts, by the party approaching the Court, failure to do which would result in dismissal of the petitioner at the threshold, without considering the merits of the claim, is clearly misplaced.

13. The next contention is that the Tribunal ought to have followed the course as indicated in the judgment in the case of ***Kishor Mhaske*** (Supra). ***Kishor Mhaske*** (Supra) was a case of mid-term transfer which came to be quashed by the Court, on account of non-compliance with the mandatory requirements of Section 4 (5) of the Act of 2005. Though it makes certain observations in the concluding para, the insistence on part of the petitioner, for the Tribunal, to have made similar observations, is without any substance, as each case has to be decided on its own

merits and the observations made in a particular case, may not hold true as of universal applicability.

14. The next contention of Mr. Khubalkar, the learned Counsel for the petitioner that the Tribunal could only examine the decision making process and not the decision itself, placing reliance upon *Gohil Vishvaraj Hanubhai* (Supra). There cannot be any quarrel with this position. However, the contention by the learned Counsel for the petitioner in this regard is also misplaced, as the Tribunal while quashing the order of transfer dated 1/10/2020 by its judgment dated 22/10/2020 has examined the process behind the transfer order dated 1/10/2020 and has noted that the transfer was not on request; it was not recommended by the Board; there were no reasons recorded in writing except that they were on request and a parroting of the phrases 'administrative reasons' and 'public interest' without specifying what these were and has rightly come to the conclusion which it has.

15. The further contention that the Tribunal ought not to have directed the respondent to give postings to all the applicants on

the posts held by them before issuing transfer order dated 1/10/2020 is clearly fallacious as the same is merely a consequential action, which ought to follow as a result of quashing of the order dated 1/10/2020 and so also to obliterate a position of uncertainty.

16. The judgment of the Tribunal is a reasoned one and in consonance with the provisions of Section 4 (5) of the Act of 2005 and does not call for any interference. The writ petition is therefore devoid of any merits and is accordingly dismissed.

Rule is discharged. No order as to costs.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE, J.)

Wadkar

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