

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

WRIT PETITION NO. 3792 OF 2021

Prataprao Rangnath Sawade

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Sambhaji S. Tope, Advocate for the Petitioner.

Mr. S. G. Karlekar, AGP for Respondent Nos. 1 and 2.

Mr. A. R. Devakate, Advocate for Respondent No. 3.

**CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATED : 28th JULY, 2021.

PER COURT:-

. We have heard Mr. Tope, learned counsel for the petitioner, the learned A.G.P for respondent Nos. 1 and 2 and Mr. Devakate, learned counsel for respondent No. 3.

2. The petitioner assails the judgment and order passed by the Maharashtra Administrative Tribunal in the Original Application filed by the respondent No. 3 challenging the order of transfer.

3. It would appear that the present petitioner was working as Project Director, Zilla Parishad, Parbhani and the present respondent No. 3 was working as Additional C.E.O., Zilla Parishad, Jalna. Under

the impugned order the respondent No. 3 is transferred as a Project Director, District Rural Development Agency, Zilla Parishad, Jalna and the petitioner is transferred as Additional C.E.O., Zilla Parishad, Jalna. The Tribunal under the impugned judgment set aside the transfer orders. Aggrieved thereby, the present petition.

4. Mr. Tope, learned counsel for the petitioner submits that the entire procedure has been adhered while transferring the petitioner and the respondent No. 3. The petitioner would be retiring from the service on or about September 2022. When the petitioner is on the verge of the retirement, the request of the petitioner for transfer is required to be considered. There was complaint against the present respondent No. 3. The petitioner has already joined at Jalna as Additional C.E.O., Zilla Parishad and is working there for almost a year. The petitioner has shifted his family at the transferred place. The respondent No. 3 has also joined at the transferred place. After a lapse of one year, no purpose would be served in again dislodging the petitioner and respondent No. 3. The Tribunal failed to consider that the sanction of the next higher authority was also obtained. All the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as 'Transfer Act') have been complied with.

The respondent No. 3 has also given the preference. In view of that, the Tribunal ought not to have interfered with the order of transfer. The learned counsel for the petitioner has relied upon the judgment of the Apex Court in a case of *Nagorao Shivaji Chavan (Dr.) Vs. Sunil Purushottam Bhamre and others (Dr.)* reported in *2019 (13) SCC 788*. The learned counsel also relies upon another judgment of the Apex Court in a case of *Union of India & Ors. Vs. H. N. Kirtania* reported in *1989 AIR 1774*. The reliance is also placed on the judgment of the Apex Court in a case of *Union of India and Another Vs. Deepak Niranjana Nath Pandit* reported in *2020 (3) SCC 404*.

5. We have also heard the learned A.G.P. for respondent Nos. 1 and 2.

6. Mr. Devakate, learned counsel for respondent No. 3 supports the judgment of the Tribunal and submits that order of transfer is arbitrary against the said norms. The transfer of respondent No. 3 is mid tenure and mid term transfer. The Tribunal has rightly considered all the facets of the matter and has rightly passed the order quashing the transfer orders. The ground of complaint against the petitioner has been raked up in the original proceedings. No such complaint exist against the respondent No. 3, nor any notice to that effect was ever issued to the respondent No. 3.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. We are not swayed away by the fact that the Member of Legislative Assembly had recommended the transfer of respondent No. 3, in absence of complaint on record.

9. There cannot be a dispute that the transfer of the respondent No. 3 is mid tenure transfer as contemplated under Section 4 (5) of the Transfer Act. Much emphasis is laid by the petitioner and the Government that there is a complaint against respondent No. 3. The nature of complaint, its gravity nor any enquiry conducted against the respondent No. 3 is placed on record. A casual statement is made about the complaint against the respondent No. 3 without placing anything on record. We would have appreciated, if, the petitioner at his request is transferred at a vacant post, but could not have dislodged the present respondent No. 3 from her posting as the respondent No. 3 has not completed her tenure at the said post.

10. The Court certainly is loath in interfering with the orders of transfer, but if the order of transfer is against the statutory provisions and arbitrary, then the Court certainly has a right to intervene.

11. In the present case, admittedly the transfer of the present

respondent No. 3 is a mid tenure transfer. The present respondent No. 3 has joined as Additional C.E.O., Jalna in June 2019 and within a span of three (03) months is transferred from the said place. The same is irrational and arbitrary. Arbitrariness is an antithesis to the rule of law, justice, equity, fair play and good conscious. An arbitrary order cannot be sustained.

12. The Tribunal has not committed any error in passing the impugned judgment.

13. We grant four (04) weeks time to the petitioner to vacate the post of Additional C.E.O., Zilla Parishad, Jalna. It is submitted that the petitioner is in zone of promotion. If the petitioner is promoted he can be transferred to other place by the Government on available vacant post. If the petitioner is not transferred to any other promotional post within this period of four (04) weeks, then the petitioner can be re-posted at his original post at Parbhani, in case, the said post is vacant.

14. It is for the Government to take appropriate steps and transfer the petitioner to his original or any other vacant post which according to the Government would be available.

15. At the end of four (04) weeks the respondent No. 3 shall be

allowed to join as Additional C.E.O., Jalna immediately.

16. Writ petition accordingly is disposed of. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.