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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9984 OF 2019

The State of Maharashtra & Anr	}	Petitioners
versus		
Anuradha Subhash Dhumal	}	Respondent

**WITH
WRIT PETITION NO. 9838 OF 2019**

The State of Maharashtra & Anr.	}	Petitioners
versus		
Rajendra Damodar Nanaware	}	Respondent

**WITH
WRIT PETITION NO. 9992 OF 2019**

The State of Maharashtra & Anr.	}	Petitioners
versus		
Geetanjali Rajendra Jadhav	}	Respondent

**WITH
WRIT PETITION NO. 9989 OF 2019**

The State of Maharashtra & Anr.	}	Petitioners
versus		
Naresh Anandrao Balsane	}	Respondent

**WITH
WRIT PETITION NO. 9993 OF 2019**

The State of Maharashtra & Anr.	}	Petitioners
versus		
Nilesh Namdev Palave	}	Respondent

**WITH
WRIT PETITION NO. 9990 OF 2019**

The State of Maharashtra & Anr.	}	Petitioners
versus		
Rupali Suresh Chandgude	}	Respondent

**WITH
WRIT PETITION NO. 9987 OF 2019**

The State of Maharashtra & Anr.	}	Petitioners
versus		
Rakesh Dnyanoba Kachare	}	Respondent

**WITH
WRIT PETITION NO. 9988 OF 2019**

The State of Maharashtra & Anr.	}	Petitioners
versus		
Kavita Vijay Nalawade	}	Respondent

**WITH
WRIT PETITION NO. 9991 OF 2019**

The State of Maharashtra & Anr.	}	Petitioners
versus		
Sachin Bhau Kadam	}	Respondent

**WITH
WRIT PETITION NO. 9994 OF 2019**

The State of Maharashtra & Anr.	}	Petitioners
versus		
Sandip Prakash Gaikwad	}	Respondent

**WITH
WRIT PETITION NO. 9986 OF 2019**

The State of Maharashtra & Anr.	}	Petitioners
versus		
Supriya Nitin Shewale	}	Respondent

Mr. A. Y. Sakhare, Senior Advocate a/w Mr. N. K. Rajpurohit for petitioners.

Mr. Ram S. Apte, Senior Advocate i/by Mr. Vivek S. Salunke for respondent in WP/9984/2019, WP/9989/2019, WP/9990/2019, WP/9987/2019, WP/9991/2019 & WP/9986/2019.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- SEPTEMBER 1, 2021

ORAL JUDGMENT [Per DIPANKAR DATTA, CJ]: -

1. By a common judgment and order dated August 9, 2019, the Member (Judicial) of the Maharashtra Administrative Tribunal, Mumbai (hereinafter "the Tribunal", for short) disposed of 12 (twelve) original applications. The common order of transfer assailed in such original applications by the original applicants were set aside, with a direction upon the respondents in the original applications to reinstate the original applicants on the posts they were transferred from within two weeks from that date. The respondents before the Tribunal (hereafter "the State", for short) have questioned such common judgment and order in all these writ petitions.

2. The original applicants before the Tribunal being the respondents in the writ petitions (hereafter "original applicants", for short) are police constables attached to the Police Commissionerate, Pune. At the material time, the original applicants were posted at the Social Security Cell of the Crime Branch of such Commissionerate. By an order dated

May 31, 2019 issued by the Commissioner of Police, Pune, all the original applicants stood transferred to various police stations within the jurisdiction of the Police Commissionerate, Pune. None of the original applicants, however, were given postings on transfer beyond a radius of 15 kms. from the Crime Branch office. The primary contention of the original applicants was that they had not completed their normal tenure of five years at the Crime Branch and that the impugned transfers had been issued in contravention of the provisions of sub-section (1)(b) read with sub-section (2) of section 22N of the Maharashtra Police Act, 1951, as amended (hereinafter "the 1951 Act" for short). According to them, such transfers were mid-term transfers as defined in section 2(6B) of the 1951 Act and since the jurisdictional fact upon the existence whereof such mid-term transfers could be ordered was absent, the impugned transfer orders were void *ab initio*. One other subsidiary contention raised by the original applicants was that their transfers were ordered based on the recommendations of the Police Establishment Board (hereafter "the Board", for short) but such Board had not been validly constituted in terms of the 1951 Act.

3. Having read the impugned judgment and order of the

Tribunal, we note three features. First, the contention that the impugned mid-term transfers ordered by the Commissioner of Police, Pune were in contravention of the 1951 Act, found favour with the Tribunal and succeeded. Secondly, although the original applicants had questioned the constitution of the Board, on whose recommendation the transfers were ordered, such point was not raised in course of hearing before the Tribunal and, therefore, the Tribunal did not pronounce its decision on such point. However, thirdly, the Tribunal assigned an additional reason for interdicting the impugned orders of the transfer. Such reasoning was based on certain documents which were tendered across the bar by the learned advocate for the original applicants, the contents whereof were not disputed by the learned Presenting Officer representing the State on a clear misconception of facts. We shall refer to this aspect at a later part of this judgment.

4. It is not in dispute that in pursuance of the impugned orders of transfer the original applicants had reported to the police stations where they had been transferred. Despite their success before the Tribunal, they could not obtain the benefit of the impugned judgment and order of the Tribunal because ad-interim relief was granted on September 11, 2019 by a co-

ordinate Bench of this Court, which has continued till this date.

5. Since section 22N of the 1951 Act was the sheet-anchor of the original applicants' primary contention, we need to read such provision. Section 22N, to the extent relevant for the present purpose, reads thus: -

"22N. Normal tenure of Police Personnel, and Competent Authority.- (1) Police Officers in the Police Force shall have a normal tenure as mentioned below, subject to the promotion or superannuation: -

- (a)
- (b) for Police Constabulary a normal tenure shall be of five years at one place of posting;
- (c)
- (d)
- (e)

The Competent Authority for the general transfer shall be as follows, namely: -

Police Personnel	Competent Authority
(a) Officers of the Indian Police ... Service.	Chief Minister
(b) Maharashtra Police Service Officers of and above the rank Of Deputy Superintendent of Police.	... Home Minister
(c) Officers up to Police Inspector	(a)Police Establishment Board No.2.

(b) Police Establishment Board at Range Level

(c) Police Establishment Board at Commissionerate Level.

[(d) Police Establishment Board at District Level

(e) Police Establishment Board at The Level of Specialized Agency]:

Provided that, the State Government may transfer any Police Personnel prior to the completion of his normal tenure, if, -

(a) disciplinary proceedings are instituted or contemplated against the Police Personnel; or

(b) the Police Personnel is convicted by a court of law; or

(c) there are allegations of corruption against the Police Personnel; or

(d) the Police Personnel is otherwise incapacitated from discharging his responsibility; or

(e) the Police Personnel is guilty of dereliction of duty.

(2) In addition to the grounds mentioned in subsection (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall made mid-term transfer of any Police Personnel of the Police Force."

6. Since the original applicants had also relied on section 2(6A) and 2(6B) defining "General Transfer" and "Mid-term Transfer", such provisions are also quoted below: -

"2. Definitions. - In this Act, unless there is anything repugnant in the subject or context, -

(6A) "General Transfer" means posting of a Police Personnel in the Police Force from one post, office or Department to another post, office or Department in the month of April and May of every year, after completion of normal tenure as mentioned in sub-section (1) of section 22N;

(6B) "Mid-term Transfer" means transfer of a Police Personnel in the Police Force other than the General Transfer."

7. The plinth of the original applicants' claims before the Tribunal was this. They were transferred and posted at the Crime Branch of the Police Commissionerate, Pune on diverse dates between 27th September, 2014 and 27th July 2018; thus, none of them had completed the normal tenure of five years in the Crime Branch as on May 31, 2019. Relying on sections 2(6A), 2(6B) read with section 22N of the 1951 Act, it was, accordingly, their contention that they could not have been transferred prior to completion of normal tenure of five years. Alternatively, they contended that even if it were conceded that the Commissioner of Police had the power to

effect mid-term transfers, the same could not have been effected without all the circumstances specified in section 22N(2) of the 1951 Act, i.e., exceptional cases, public interest and administrative exigencies, being satisfied. Drawing our attention to the order dated May 31, 2019 issued by the Commissioner of Police, Pune, it was contended by Mr. Apte, learned senior counsel for the original applicants that absolutely no reason as to the special reasons/circumstances justifying the transfer of the original applicants prior to completion of the normal tenure of posting can be discerned.

8. However, in the midst of the hearing, our attention was drawn by Mr. Sakhare, learned senior counsel appearing for the State, to the minutes of meeting of the Board dated May 31, 2019 that preceded the impugned orders of transfer. Relevant portion thereof (translated version in English) reads as follows: -

“On perusing the service records of the employees working in the Social Security Branch, majority of the employees have received number of prizes for their skill and performance. Further, on perusing their confidential reports for last three years, it has been found that the remarks of all the employees are of the grading viz. very good and outstanding.

From this it is found that, the said employees use all this knowledge viz. the informers in their branch and their network of gathering confidential information for

taking effective action on unlawful activities in Social Security Branch.

The Establishment Boards felt that if the said police personnel are appointed at the Police Station level then, it would help in taking action against the unlawful activities at the Police Station level and also in preventing the same and it would be helpful for the safety of the weaker sections in the society such as women, children and senior citizens etc. and for maintaining the public order. Hence, as per the provisions in Section 22(N)(1) in the Maharashtra Police Act, 1951 available to the Police Establishment Board i.e. both the criteria viz. 1) Public Interest and 2) on account of Administrative Exigency (in English in the original and emphasis supplied by us), to give appointment to/transfer of all the police personnel attached to Social Security Branch to different Police Stations, the decision has been taken unanimously to transfer them to the places as shown against their respective names."

9. Referring to such minutes, Mr. Sakhare contends that sufficient justification was available on record for transferring the original applicants and the Tribunal fell in error and acted wholly in excess of jurisdiction by substituting its opinion for the opinion of the Board, as if it were exercising appellate powers.

10. While the contention of Mr. Sakhare has been that the orders of transfer were perfectly legal and valid and the impugned judgment and order merits interdiction, Mr. Apte contends that the orders of transfer were flawed for the reasons as assigned by the Tribunal and, therefore, the writ

petitions ought to be dismissed.

11. It is placed on record that both Mr. Sakhare and Mr. Apte have placed before us multiple authorities on the point of (il)legality and (in)validity of transfer orders passed by the competent authority invoking the provisions of the 1951 Act as well as the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter "the 2005 Act" for short) in support of their respective contentions. We do not propose to refer to all such authorities, except a couple of them, since the issue raised in these writ petitions can be decided on the basis of our interpretation of the relevant provisions of the 1951 Act read with the 2005 Act.

12. Transfer in relation to service would generally mean a change of place of employment within an organization. Since it is an incident of public service, consent of the employee is not required. In most organizations, transfer is regulated by administrative instructions or policy guidelines. In the State of Maharashtra, so far as Government employees are concerned, transfers are guided and regulated by the provisions of the 2005 Act. Transfers of police personnel, however, are regulated by the amended provisions of the 1951 Act, the

amendments having been necessitated by reason of the decision of the Supreme Court reported in **(2006) 8 SCC 1** (Prakash Singh & Ors. Vs. Union of India & Ors.). Since two kinds of transfer are defined in the 1951 Act, we need to seek guidance from the statutory provisions for deciding the contentious issue raised in these writ petitions. It is also considered appropriate to remind ourselves at this juncture that the 1951 Act was enacted to amalgamate various Police Forces into one common Police Force and, *inter alia*, binds the police personnel employed across the State in their performance of functions and the State Government in the exercise of its powers. Section 3 of the 1951 Act ordains that there shall be one Police Force for the whole of the State of Maharashtra and such force shall include every police officer referred to in clause (6) of section 2. Although the original applicants are not covered by clause (6), they are indeed police personnel as defined in clause (11A) of section 2. Therefore, the provisions of the 1951 Act would apply to all police personnel appointed thereunder and attached either to various Police Commissionerate area or beyond forming part of the Police Force of the State.

13. As can be seen from the extract of section 22N supra, sub-section (1)(b) of the 1951 Act ordains that for the police constabulary, which includes constables, a normal tenure shall be five years at one place of posting (emphasis supplied). “General Transfer”, in section 2(6A), emphasizes posting of police personnel in the Police Force from one post, office or Department to another post, office or Department after completion of normal tenure as mentioned in sub-section (1) of section 22N (emphasis supplied). Such provisions, as of necessity, need to be juxtaposed with the relevant provisions of the 2005 Act, viz. sections (3)(1) and (4)(1), and read to gather the legislative intent. So read, what was intended by the legislature by the words “at one place of posting” would clearly be evident. Section 3(1) of the 2005 Act ordains that for all groups of State Government servants or employees, viz. Groups A, B, C and D, the normal tenure in a post (emphasis supplied) shall be three years, with section 2(g) defining “post” as “the job or seat of duty to which a Government servant is assigned or posted”. While in the 2005 Act the legislature has used the words “in a post”, i.e., the job assigned or the seat of duty, significantly, while incorporating amendments in the 1951 Act, the expression used is “at one

place of posting". Such expression, quite obviously, was used to carve out a distinction between police personnel serving under a Police Commissionerate, which necessarily would exercise jurisdiction over a specified "place" as defined in section 2(8), and those who are posted beyond a Police Commissionerate area but is part of the State Police Force. While, ordinarily, the place of employment of a police constable attached to a Police Commissionerate is not likely to change even with change of posting, a change of posting for a member of the State Police Force could entail a change of place of posting. The expression "place of posting", therefore, assumes importance in the present context. The legislature while amending the 1951 Act and incorporating amendment in section 22N therein in 2015 has designedly not ordained normal tenure of five years on one post bearing in mind police personnel attached to Police Commissionerate area. Therefore, the distinction between normal tenure of five years at one place of posting [as in section 22N(1)(b)] and the normal tenure in a post shall be three years as in section 3(1) of the 2005 Act has to be borne in mind, which leaves no manner of doubt that the original applicants do not have semblance of any right to claim that once posted at the Crime

Branch, they cannot be moved or shifted until they complete the normal tenure of five years. "Post" has been defined in section 2 (11B) of the 1951 Act. Such definition is not similar to the definition of "post" in the 2005 Act. Thus, posting of the original applicants at the Crime Branch is neither a job assigned nor a seat of duty so as to provide a protective umbrella from transfer prior to the normal tenure. Had the constables like the original petitioners been governed by an enactment having similar provisions such as the 2005 Act, the legal position would have been different and they could claim protection from transfer. Notably, the jurisdiction of the Police Commissionerate, Pune, extends to the whole of the city of Pune, which would be the "place" of "posting" referred to in section 22N(1)(b) of the 1951 Act. Therefore, so long as a police constable is not shifted out of Pune, he cannot derive any assistance from section 22N(1)(b) to contend that if he is posted on a particular seat of duty or a job is assigned to him, he cannot be transferred. However, we may not be misunderstood to have laid down the law by our interpretative exercise of the relevant statutory provision that a member of the police constabulary could be made to discharge duties from different posts in the city of Pune by subjecting him to

frequent transfers. If a constable is so subjected, any alleged arbitrary decision resulting in frequent transfers could be made the subject matter of challenge on available grounds of judicial review.

14. Our interpretation of section 22N(1)(b) of the 1951 Act accords with the co-ordinate Bench decision of this Court reported in 2019 (3) Mh.L.J. 851 **[Ashok S/o Rangnath Barde Vs. State of Maharashtra & Ors.]**, decided by the Aurangabad Bench. It has been held there as follows: -

“16. *** The place of posting has, therefore, to mean that a particular town or city, whereat an incumbent is posted irrespective of the fact of he having served with very many branches of the same department at various places in the same town or city.”

15. We, thus, hold that the original applicants' primary contention based on section 22(1)(b) and section 22N(2) read with sections 2(6A) and 2(6B) is devoid of merit.

16. However, we are conscious that our interpretation of the relevant statutory provisions, as delineated above, would render the transfer of the original applicants to be “General Transfer” within the meaning of section 2(6A) of the 1951 Act although, at all material times, the State proceeded on the premise that the original applicants were being subjected to mid-term transfers, as defined in section 2(6B) thereof. Be

that as it may, nothing turns on it because there cannot be any estoppel against the statute. Any misinterpretation of the statutory provisions by the administrative authorities cannot be fatal for such authorities when the legislative intent is clear, the interpretation of the relevant statute, as made, does not do violence to the scheme of the statute and the power is not shown to be otherwise non-existent.

17. Having interpreted the law which, admittedly, was not examined by the Tribunal for lack of appropriate assistance, we now proceed to consider Mr. Apte's argument that the State had proceeded to transfer the original applicants mid-term and that such decision was taken without recording the requisite satisfaction; and that, the Tribunal was not in error in reaching the conclusion it did. Frankly, this submission has not impressed us at all. It is true that the order of the Commissioner of Police, Pune dated May 31, 2019 does not record any reason; however, sight cannot be lost of the minutes of the Board meeting extracted supra. Although the Tribunal has taken exception to such minutes by recording that the ground for transfer is not sustainable, we are afraid, such a finding is clearly not tenable. In terms of the provisions of the 1951 Act, it is the Board to decide on transfers and

postings of police personnel like the original applicants. The final judge whether to transfer police personnel or not, on facts, therefore, is the Board. Although it was urged in the original applications that the Board was improperly constituted, it was not pressed further before the Tribunal as well as before us. The original applicants while they were posted at the Crime Branch had acquitted themselves creditably. Based on such performances on their part, the Board formed an opinion that the services of the original applicants should be utilized in the police stations where maintenance of law and order is the paramount duty. The opinion formed by the Board of the requirement of the original applicants to be posted at police stations has to be regarded as a judgment of belief, that is, a belief or a conviction resulting from consideration of materials as to what it thought, or perceived, would advance the cause of public interest or administrative exigency best having regard to prevailing circumstances. If a public authority has to form an opinion and its opinion is to govern the subjects, such opinion must be formed on such reasons and grounds as the public authority seems relevant and material. An opinion, which is a judgment of belief based on certain reasons/grounds, could at

times reflect a subjective satisfaction but even such satisfaction has to be based on objective criteria, meaning thereby, application of mind to pertinent and proximate matters only, and excluding the irrelevant and the remote. The Tribunal was required to consider whether the opinion of the Board was fallible on the existence of any of the vices, that is formation of opinion not based on pertinent and proximate matters or based on irrelevant and remote factors. We do not endorse Mr. Apte's argument that all three circumstances, i.e., exceptional cases, public interest and administrative exigencies, were required to be satisfied before ordering the mid-term transfer of the original applicants. In our considered opinion, it could be on either one of the three circumstances that a mid-term transfer order could issue with the second and third circumstances being inter-related. Administrative exigency means the need or demand for running a good administration. This is intrinsically connected with public interest, whereas the first circumstance is a residuary circumstance going beyond the others to meet demands created by exceptional situations. We do not see reason to hold that there has been breach of statutory provisions in transferring the original applicants. Also, *mala*

fide exercise of power has not been whispered. None of the two available grounds based whereon an order of transfer could be legitimately and successfully challenged was present for the Tribunal to interfere. Mr. Sakhare is right in his contention that the Tribunal exceeded its jurisdiction in finding fault with the opinion of the Board, as if it were exercising appellate jurisdiction. We conclude our discussion on this point by holding that the caution sounded by the co-ordinate Bench of this Court in its decision reported in 2019 (4) Mh.L.J. 547 **[Santosh Machhindra Thite Vs. State of Maharashtra & Ors.]** cited by Mr. Apte has been duly adhered to and that the orders of the Commissioner of Police, Pune to transfer the original applicants, in furtherance of the minutes of the meeting of the Board, is unexceptionable.

18. We do not, however, consider it necessary to deal with the other decisions cited by Mr. Apte since none of them dealt with transfer of a police constable and, therefore, did not involve consideration of the provisions of the 1951 Act.

19. Before concluding, notice has to be taken of the other ground on which the Tribunal set aside the impugned orders of transfer. According to the Tribunal, several other constables were transferred in the same process by which the original

applicants were transferred. However, on the request of some of such constables, the Board had cancelled their transfer orders or had modified some of such transfer orders earlier made, which bear testimony to the lack of either public interest or administrative exigency. As has been noted earlier, documents in this behalf were tendered across the bar and the learned Presenting Officer, who was representing the State, had not disputed its contents possibly due to oversight or lack of instructions. In course of hearing Mr. Sakhare has produced relevant documentary evidence to show that either for family reasons or on medical grounds, some of the constables under orders of transfer had prayed for change of posting upon transfer and that, to the extent possible, such requests were granted. It is the specific contention of Mr. Sakhare that in none of the cases, such constables were retained at the Crime Branch. This position could not be and has not been disputed by Mr. Apte. Thus, there is no good reason to uphold the reasoning of the Tribunal in this behalf.

20. For the reasons aforesaid, we hold the impugned judgment and order of the Tribunal to be indefensible. The same stands set aside. The writ petitions are allowed, with the

result that the original applications on the file of the Tribunal stand dismissed. The parties are left to bear their own costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)

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