

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

WRIT PETITION NO. 1641 OF 2020

(STATE OF MAHARASHTRA, THR. HOME DEPT. & 2 OTH...VS..PRASHANT RAMESHWAR SWAMI & ANR)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms Nivedita Mehta, A.G.P. for Petitioners.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : AUGUST 06, 2021.

1. Heard.
2. This petition seeks to challenge the legality and correctness of the judgment and order passed by Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur on 14th August 2019. By this judgment and order, the Tribunal has quashed and set aside the transfer order of the petitioner dated 11th July 2019.
3. Respondent No.1, a Sub-Divisional Police Officer, was earlier posted at Karmala Sub-Division, Solapur (Rural). He was there w.e.f. 11th June 2016 till he was relieved from that post in the year 2019 by virtue of his transfer order dated 13th February 2019. The transfer order dated 13th February 2019 directed the respondent to join at his new place of posting which was Sironcha Sub-Division, Gadchiroli District. The respondent joined there on 18th March 2019 and since then, he is working there as Sub-Divisional Police Officer.

4. On 11th July 2019 another order was issued whereby the respondent was transferred from Sironcha Sub-Division to State Control Room, Mumbai. This order was challenged by the respondent before the Maharashtra Administrative Tribunal, Nagpur. The Maharashtra Administrative Tribunal, by the impugned order, allowed the application filed by the respondent and quashed and set aside the transfer order dated 11th July 2019. Being aggrieved by the same, now the State is before us in this petition.

5. We have heard the learned A.G.P. for the petitioners and we have also gone through the impugned judgment and order. Though it is contended by the learned A.G.P. that the impugned judgment and order are perverse and do not take into consideration appropriately the provisions contained in Section 22N, in particular the proviso to sub-section (1) of Section 22N of the Maharashtra Police Act, laying down that the State Government may transfer any police personnel prior to completion of his normal tenure under the circumstances mentioned in Clauses (a) to (e) of the proviso, one of which is a circumstance of pendency of the disciplinary proceedings or disciplinary proceedings being in contemplation against the police personnel, we are of the view that the contention so made on behalf of the State is not tenable in the facts and circumstances of the case and therefore, not acceptable to this Court.

6. The facts and circumstances of the case, without any dispute, show that the departmental enquiry proceedings were initiated against the respondent No.1 sometime in April-May 2019. The first charge-sheet was served upon the respondent on 25th April 2019 and the second was served upon him on 23rd May 2019. The allegations in both the charge-sheets were in respect of the misconduct allegedly committed by the respondent No.1 while working at Karmala Sub-Division, District : Solapur. These charge-sheets were not issued to the respondent No.1 for any alleged misconduct committed by the respondent No.1 while working as Sub-Divisional Police Officer, Sironcha Sub-Division, Gadchiroli. So, the ground that the disciplinary enquiry proceedings were in contemplation against the respondent is not relevant insofar as it had its impact on the working of the respondent No.1 as Sub-Divisional Police Officer at Sironcha Sub-Division. Of course, it did have its nexus and impact on his working as Sub-Divisional Police Officer, Karmala Sub-Division, Solapur. But the respondent No.1 had already been removed from Sub-Division, Karmala when he was transferred to Sironcha Sub-Division vide transfer order dated 13th February 2019. Therefore, no reliance on the proviso to sub-section (1) of Section 22N of the Maharashtra Police Act could have been placed by the petitioners, but they did make an attempt to do so. But, such an attempt was negated by the Administrative Tribunal by giving cogent reasons.

7. The Administrative Tribunal has referred to the minutes of meeting of the Police Establishment Board No.1 which recommended the transfer of in all 114 Police Officers to several places across the State. These minutes of meeting, it is seen from the impugned judgment and order, have been considered by the Tribunal and it has expressed an opinion that it was not possible for the Tribunal to accept that the Police Establishment Board examined individual cases of all the officers for their mid-term transfers. On the contrary, it found that the respondents failed to demonstrate before it that any special material was placed before the Police Establishment Board No.1 for its consideration. So, the finding recorded in the impugned judgment and order is that even the minutes of meeting of the Police Establishment Board recommending transfers of in all 114 Police Officers, which include the impugned transfer order dated 11th July 2019, insofar as it affected the right of the petitioner, did not justify the impugned order.

8. The finding so recorded and the opinion so expressed by the Maharashtra Administrative Tribunal are based upon the material available on record and it does not seem that the finding so recorded has been reached by considering any irrelevant material or ignoring some relevant material. As such, we find no perversity in the impugned judgment and order.

9. Apart from what is noted above, we are also of the view that the impugned judgment and order incorporate a view of the Maharashtra Administrative Tribunal which is possible and therefore, even if another view is possible, it would not be open for this Court, in exercise of its power of judicial review, to substitute its own view for the view already taken by the Administrative Tribunal, which is a possible view, though we do not entertain any other view.

10. In the circumstances, we are of the opinion that this petition cannot be entertained and it is **dismissed** summarily. No costs.

(ANIL S.KILOR,J)

(SUNIL B. SHUKRE,J)

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