

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

WRIT PETITION NO.5069 OF 2021

Rajesh s/o Rambhau Birkad

Vs.

Chief Conservator of Forests (Reg), Forest Circle Office, Amravati and others

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

Court's or Judge's orders

Mr. A. A. Naik, Advocate for petitioner.

Ms. N. P. Mehta, AGP for respondents.

CORAM : AVINASH G. GHAROTE, J.

DATE : 08/12/2021

Heard Mr. Naik, learned counsel for the petitioner.

2. The petition challenges the order dated 04.12.2021 passed by the learned Industrial Court, whereby the impugned application seeking stay of the transfer of the petitioner, has been rejected.

3. Mr. Naik, learned counsel for the petitioner, by relying upon the provisions of the **Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005** (hereinafter referred as 'of the said Act') and specifically Section 4(4) of the said Act, submits that there is a prohibition for mid term transfers, and therefore, the transfer of the petitioner effected on 06.08.2021 would run counter to the dictate of Section 4(4) of the said Act, which has not been appropriately

considered by the learned Industrial Court. He, therefore, submits that the order of transfer needs to be stayed by granting the interim application under Section 30(2) of the M.R.T.U. and P.U.L.P. Act, 1971. Reliance for the proposition is placed on ***Shriprakash Maruti Waghmare Vs. State of Maharashtra***, 2010 (2) Mh. L.J. 58 and ***Purushottam Govindrao Bhagwat Vs. State of Maharashtra***, 2011 SCC OnLine Bom 1847.

4. Ms. Mehta, learned AGP for the respondents submits that the transfer effected was a general transfer and it is not a case as if the petitioner alone has been transferred. She submits that the transfer order would indicate that 10 persons have been transferred from various areas. She further submits that the petitioner had already completed a period of around four years at the place from which the petitioner was transferred and the place of transfer, was hardly at a distance of 60 to 70 Kms from the place at which the petitioner was earlier posted, considering which, the impugned order was clearly justified.

5. It is material to note, that the transfer is not restricted to the petitioner, but is a general transfer as is indicated from the order dated 06.08.2021. That apart, it is not disputed that the distance between the place of earlier posting and the place at which the petitioner has been transferred, is hardly a distance of 60 to 70 kms.

6. It is further material to note, that Section 3 (1) of the said Act, indicates that the normal tenure in a post shall be a period of three years and during this tenure, the prohibition and restrictions as contained in Section 4 of the said Act, would apply. Holding that the prohibitions and restrictions under Section 4 would apply beyond the period of tenure, would create complications, in as much as such restrictions would stand imported in a transfer after completion of tenure. In my considered opinion, this would not be permissible considering the language of Section 3 (1) read with Section 4(1) of the said Act. In ***Purushottam*** (supra), what fell for consideration was a contention that the proviso to Sub-section 4 of Section 4 of the said Act, would permit transfer at any time, without recording reasons to the post which became vacant for any reason as indicated therein which contention was refuted. In ***Purushottam*** (supra), the distinction between the two provisos to Sub-section (4) and Sub-section (5) was also noticed by holding that a transfer due to vacancy, of the post is covered by clause (i) to proviso of Sub-section (4) while mid tenure transfer is covered by Sub-section (5), and therefore, it was held that merely to fill a vacancy a government employee cannot be transferred mid tenure unless and until the conditions of Sub-section (5) were satisfied. It is apparent, that what has been considered in the present petition, is not a mid tenure transfer, but a transfer after the tenure is completed. For the same reason, ***Shriprakash*** (supra) would also not be applicable as it considered a mid tenure transfer.

7. In view of the above discussion, I therefore, do not see merit in the petition. The same is accordingly dismissed. No costs.

8. The learned Industrial Court, however, is requested to decide the matter as early as possible, considering that the same relates to the claim of transfer by the petitioner.

JUDGE

Sarkate