

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

Writ Petition (WP) No. 7372 of 2019

Smt. Deepti d/o Dnyanoba Kale,
Aged about 38 years, R/o 22,
Shwetambar Apartments,
Cosmopolitan Society, Somalwada,
Wardha Road, Nagpur

.... Petitioner

// VERSUS //

1. Maharashtra Housing and Area Development Board through its Secretary, Authority Office, Gruha Nirman Bhavan, Bandra (East), Mumbai-400 051.
2. Shri Sanjay S/o Laxmikant Bhimanwar, Aged about 58 years, Occ. Retired Chief Officer, MHADA Nagpur, R/o Flat No. 104, Maharshi Sandipani Apartments, Shastri Layout, Khamla, Nagpur-400 025.
3. Smt. Usha w/o Vijay Tembhurne, Aged about 55 years, Occ. Service, R/o Mangalwari, Sadar, Nagpur.

... Respondents

Shri Anand Parchure, Advocate for the Petitioner.
Shri P.N. Kothari, Advocate for the Respondent No.1.
None for the Respondent No. 2.
Shri A.A. Naik, Advocate for the Respondent No.3.

WITH

Writ Petition (WP) No. 348 of 2021

Smt. Usha Vijay Tembhurne,
Aged about 56 years, Occ. Service,
R/o Chaitanya Apartment, Clarke
Town, Kadbi Chowk, Nagpur.

.... Petitioner

// VERSUS //

1. The Maharashtra Housing and Area Development Board, Having its office at Gruha Nirman Bhawan, Bandra (East), Mumbai 400 051.
2. The Chief Officer,
Nagpur Housing and Area Development Board, having its office at Civil Lines, Nagpur.

... Respondents

Shri A.A. Naik, Advocate for the Petitioner
Shri P.N. Kothari, Advocate for the Respondent Nos.1 and 2.

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 09 FEBRUARY 2021

JUDGMENT : (PER:- ANIL S. KILOR, J.)

Heard. **Rule.** Rule made returnable forthwith.

2. These two Writ Petitions are heard together as both are interconnected and any decision in Writ Petition No. 7372 of 2019 will have bearing on the result in Writ Petition No. 348 of 2021.

3. In Writ Petition No. 7372 of 2019 the legality and validity of the transfer order dated 30 October 2019 issued by Respondent No. 1, inter alia transferring the Petitioner from Nagpur Divisional Board of Maharashtra Housing and Area Development Board (for short “MHADA”) to its Amravati Divisional Board as an Executive Engineer, has been questioned. The Petitioner, however, despite her transfer to Amravati, continued at Nagpur in view of the ‘status quo’ order granted by this Court vide order dated 5 November 2019. The respondent No.3 (Petitioner in Writ Petition No. 348 of 2021) was posted at Nagpur on promotion, as an Executive Engineer in place of the Petitioner, but she could not join at Nagpur because of the aforesaid ‘status quo’ order, which has resulted in cancellation of her promotion order, the same is assailed in Writ Petition No. 348 of 2021.

4. We have heard the respective learned Counsel for both the parties.

5. The parties hereunder are referred to as per their respective description in the cause title of Writ Petition No. 7372 of 2019.

6. Shri Anand Parchure, the learned Counsel for the Petitioner submits that the legality of the impugned transfer order has been questioned on the following grounds, which are as follows :

6.1. The transfer is a mid-term transfer.

6.2. The mother of the Petitioner is aged 65 years who is suffering from Stage-3 cancer and is undergoing treatment from Dr. Pathak at Nagpur.

6.3. The Petitioner is facing matrimonial litigation instituted by her husband and for convenience of the Petitioner, this Court vide order dated 18 September 2019 transferred the said matter from Kolhapur to Nagpur, and presently both the cases filed to her and her husband are being tried at Nagpur.

6.4. The Petitioner has a minor son aged about 9 years who is residing with her and taking education at Nagpur.

6.5. The transfer of the Petitioner is mala fide as it was made purely with a view to accommodate the Respondent No. 3 (Petitioner in Writ Petition No. 348 of 2021), who has been working at Nagpur for the last 33 years.

6.6. A departmental inquiry is going on against the Respondent No. 3.

6.7. The Respondent No. 2 is a retired Chief Officer of MHADA, Nagpur, and has acted in collusion with Respondent No. 3, in posting her at Nagpur in place of the Petitioner.

7. Per Contra, Shri Kothari, the learned Counsel for the Respondent No. 1-MHADA submits as under:

7.1. That the transfer is an incident of service. Transfer from one place to another is generally a condition of service. Unless such order is mala fide or in violation of the rules of service, the Court should not interfere with the order of transfer.

7.2. The Petitioner has completed normal tenure of three years at Nagpur and she was due for transfer.

7.3. Denied all the adverse allegations relating to mala fide.

7.4. A ground of mid-term transfer does not survive in view of the fact that, from the last one and half years she has been working at Nagpur because of the 'status quo'.

7.5. Denied an assertion that the Respondent No. 3 has been working at Nagpur for 33 years.

7.6. Medical facilities for the mother as well as good schools are available at Amravati for the education of petitioner's son.

7.7. No departmental inquiry is pending against the Respondent No. 3, as alleged

8. Shri A.A. Naik, the learned Counsel for the Respondent No. 3 echoed the contention of the respondent No. 1 and in addition submits that because of the 'status quo' granted in favour of the Petitioner, she continued at Nagpur and consequently the Respondent No. 3 could not join at Nagpur on promotion, which resulted into cancellation of her promotion as an Executive Engineer.

9. In the case of *Gujrat Electricity Board and another Vs. Atmaram Sungomal Poshani*, the Hon'ble Supreme Court of India,¹ has observed that, transfer of a Government servant appointed to a particular cadre of transferable posts from one place to other is an incident of

¹ (1989) 2 SCC 602
C.L.Dhakate

service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the Public Administration.

10. In the instant case, the record shows that the transfer vide order dated 13 October 2019 was on administrative ground. The case of the Respondent No.1, that a qualified and experienced Executive Engineer was required to be posted at Amravati, as the Post of Executive Engineer at Amravati was lying vacant for more than one year, has not been controverted by the Petitioner. The Petitioner is also not disputing that normal period of three years at one station has been completed by her and therefore, she was/is due for transfer. It has also come on record that the Respondent No.1 transferred about 93 employees including the Petitioner from one place to another on 30 October 2019 and as such, it is not the case that the Petitioner was singled out while issuing transfer order.

11. In the case of *Union of India and others Vs. S.L. Abbas*, the Hon'ble Supreme Court of India,² held that, who should be transferred where, is a matter for the appropriate authority to decide. In the present matter, according to us the Respondent No. 1 is in the best position to assess the necessities of the administrative requirements of the situation because in the end these decisions are purely administration matters. Thus, we find the transfer of the Petitioner was on administrative ground and as is found necessitated by exigency created at Amravati.

² (1993) 4 SCC 357
C.L.Dhakate

12. In the case of *State of Uttar Pradesh and others Vs. Gobardhan Lal*, the Hon'ble Supreme Court of India,³ has observed that, transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. It is further held that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights.

13. It is further held that, allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

14. The Petitioner while alleging mala fide has pleaded that, the Petitioner was transferred with a view to accommodate the Respondent No.3, who has been working at Nagpur for last 33 years. The said action was taken as there was no vacant post at Nagpur to accommodate Respondent No.3. The Petitioner has been deliberately moved out without having regard to the difficulties faced by her.

³ (2004) 11 SCC 402
C.L.Dhakate

15. While dealing with the allegations of mala fide, it is revealed that the Respondent No.3 was at Chandrapur from the year 2010-2018 which sufficiently shows fallacy in the case of Petitioner, that the Respondent No.3 has been working at Nagpur for 33 years. Moreover, nothing has been brought on record by the petitioner to establish the allegations of mala fide made by her. Mere allegation that, to accommodate the Respondent No.3, the Petitioner has been transferred is not sufficient. The record shows that for more than one year the post of an Executive Engineer is vacant at Amravati and a qualified and competent Executive Engineer was needed on the said post and therefore, the petitioner was transferred to Amravati.

16. In the above backdrop we do not find the facts pleaded by the petitioner to establish mala fide, are based on concrete materials. Inference cannot be drawn on the basis of insinuation and vague suggestions. We have, therefore, no hesitation to hold that no material has been produced by the petitioner to arrive at a conclusion that the transfer of the petitioner is an outcome of mala fide exercise of power. Hence, we reject this contention.

17. As regards to ground of mid-term transfer, according to us it has lost its efficacy in view of the fact that the Petitioner is continued at Nagpur till date in the light of order of 'status quo' granted by this Court vide order dated 5 November 2019, and therefore this contention does not survive.

18. Though we are conscious of the law laid down by the Hon'ble Supreme Court of India in the case of *Rajendra Roy Vs. Union of India*

and another,⁴ wherein it has been observed that, the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down, we have tested the contention of the petitioner as regards her personal difficulties she allegedly would have to face.

It is undisputed that Amravati where the petitioner has been transferred, is the second big city after Nagpur in Vidarbha region and it is a District place, having good medical facilities, where the mother of the Petitioner can get good medical treatment. At the same time, the educational facilities at Amravati are modern and progressive, therefore, her minor son can get admitted in a good school. Furthermore, the time taken to travel the distance between Amravati and Nagpur is approximately two and half hours, and therefore the petitioner can attend her matrimonial cases at Nagpur whenever her presence before the court is necessary, otherwise she can take steps for transfer of said cases to Amravati. We, thus, reject the said contentions.

19. As far as the departmental inquiry is concerned, it is informed by the learned counsel for the Respondent No.1-MHADA and the Respondent No.3 that, there is no departmental inquiry pending against the Respondent No.3. According to us, even if any departmental inquiry is pending against the Respondent No.3, it is the matter between the Respondent No.1 and the Respondent No.3, but in any case on that ground the transfer of Petitioner cannot be held as illegal and she cannot be allowed to stay at Nagpur after her normal tenure at Nagpur is over. Hence, we reject the said contention.

⁴ (1993) 1 SCC 148
C.L.Dhakate

20. In view of the above referred discussion, and having found that no alleged mala fides are established or no case of violation of any rule or policy relating to transfer is pointed out, we are not inclined to interfere in the present matter.

21. Having recorded the reasons for dismissal of Writ Petition No. 7372 of 2019, the basis for cancellation of promotion order of the Respondent No.3, does not exist. In such circumstances we are of the considered view that justice would be sub-served if liberty is granted to the Respondent No.3 (Petitioner in Writ Petition No. 348 of 2021) to approach the Respondent No.1 with a request to recall the order of cancellation of promotion of the Respondent No.3, in view of this judgment.

In the light of the above discussion, we pass the following order :

ORDER

- i. The Writ Petition No. 7372 of 2019 is dismissed.
- ii. The Writ Petition No. 348 of 2021 is partly allowed and thereby the Petitioner is permitted to approach the Respondent No.1 with a request to recall the impugned order dated 31 January 2021 by making a representation.
- iii. The Respondent No.1 is directed to take decision on the representation, if any, made by the Petitioner in Writ Petition No. 348 of 2021, within a period of two weeks from the date of receipt of such representation.
- iv. The Writ Petitions are accordingly disposed of. No order as to costs.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]

At this stage, the learned Counsel for the Petitioner prays that this judgment may be kept in abeyance for three weeks so as to enable the Petitioner to approach to the higher Court.

The said request has been opposed by the learned Counsel for the Respondent Nos .1 and 3.

In the present matter as the 'status quo' is in operation since 5 November 2019, the same will continue for three weeks from the date the judgment is uploaded.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]