

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3811 OF 2022

Santoshkumar S/o. Trimbakrao Naikwadi

Age 44 years, Occ. Service,

R/o. Yashwant Nagar, Osmanabad,

Tq. and District Osmanabad.

...Petitioner

V/s.

1. The State of Maharashtra
through its Principal Secretary,
Social Justice and Special Assistance
Department, M. S. Mantralaya,
Mumbai.

2. Commissioner of Social Welfare,
M. S. Pune, Yashwantnagar,
Shanti Nagar, Yerwada, Pune.

3. The Chief Executive Officer,
Latur Zilla Parishad, Zilla Parishad
Office, Latur.

4. Sunil Nagesh Khamitkar
Age 43 years, Occ. Service,
R/o. 03, Saidham, Ausa Road, Latur.

...Respondents

Shri. S. S. Manale, for the Petitioner.

Shri. K. N. Lokhande, AGP for the Respondent / State.

Shri. U. B. Bondkar, for the Respondent No.3.

Shri. Shritej Surve h/f. Shri. Avinash Deshmukh, for the
Respondent No.4.

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**CORAM : C.V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.
RESERVED ON : 5 JULY 2022
PRONOUNCED ON : 1 AUGUST 2022
(By Video Conferencing)**

JUDGMENT : (Per C. V. Bhadang, J.)

. By this petition under Article 226 r/w. 227 of the Constitution of India, the Petitioner is challenging the order dated 15 March 2020 passed by the learned Member Maharashtra Administrative Tribunal, Bench at Aurangabad (Tribunal for short) in Original Application No. 507/2021. By the impugned order, the original application filed by the fourth Respondent challenging the order of his transfer dated 30 August 2021 has been allowed and the order of transfer is set aside on the ground of the transfer being in contravention of Clause 4 of the Government Resolution dated 29 July 2021.

2. The brief facts necessary for the disposal of the petition may be stated thus-

That by virtue of an order dated 30 August 2021, second Respondent had transferred the fourth Respondent from the post of District Social Welfare Officer, Zilla Parishad Latur to District Social Welfare Officer in Zilla Parishad Solapur. By a separate order of even date, the present Petitioner (the Respondent No.4

before the Tribunal) was transferred from the post of Research Officer District Caste Scrutiny Committee Usmanabad to the post of District Social Welfare Officer Latur which vacancy was created on account of the transfer of the fourth Respondent to Zilla Parishad Solapur. It may be mentioned that the Respondent No.4 was transferred to Zilla Parishad Solapur in the place of one Mr. Jadhav who was transferred to some other post on his own request.

3. The fourth Respondent filed the aforesaid original application under Section 19 of the Administrative Tribunals Act, 1985, inter alia on the ground that the transfer is malafide and effected in order to accommodate the Petitioner in Zilla Parishad Latur. It was contended that the transfer is in breach of the provisions of Section 4(4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ('2005 Act', for short) and the Government Resolutions dated 10 May 2021, 9 July 2021 and 29 July 2021. In short, it was contended that the impugned transfer on the ground of administrative exigencies is not justified and in any event, is in breach of Clause 4 of the Government Resolution dated 29 July 2021 as the transfer could not have been effected on the ground of exceptional circumstances or special reasons after displacing Mr. Jadhav from the post of District Social Welfare Officer Zilla Parishad Latur. It

was contended that such a transfer could only be effected to a post which is lying vacant.

4. The application was resisted on behalf of the Petitioner and the Respondent No.2. It was contended that the transfer is effected in compliance with the provisions of Section 4(4) and 4(5) of the 2005 Act. It was submitted that the transfer was not in order to accommodate the Petitioner in Zilla Parishad Latur. It was contended that Mr. Jadhav was transferred on request which amounts to a special reason and therefore, there is no bar for transferring the Respondent No.4 (original applicant) in Zilla Parishad Solapur. It was submitted that there were serious allegations of misconduct of defalcation as well as sexual harassment and under the Atrocities Act made against the Respondent No.4 for which, he was facing Departmental Enquiry and thus, the transfer was effected for administrative reasons / exigencies after the Civil Services Board had recommended said transfer which was approved by the Hon'ble Chief Minister. It was thus contended that there was no breach of the provisions of the 2005 Act or any Government Resolution governing the field.

5. The Tribunal on appreciation of the rival contentions, came to the conclusion that the transfer was not in breach of the provisions of Section 4(4) and 4(5) of the 2005 Act. However,

the Tribunal found that it was in breach of para 4 of the Government Resolution dated 29 July 2021 in as much as in terms of the paragraph Nos.4, 5 and 6 of the said Government Resolution, the transfer on account of special reasons could only be effected to a post which was lying vacant. The Tribunal found that the post on which the Respondent No.4 was transferred i.e. at Zilla Parishad Solapur was not vacant and was occupied by one Mr. Jadhav. It can thus be seen that the impugned order dated 30 August 2021 effecting transfer of the Petitioner and the Respondent No.4 has been quashed and set aside only on the ground of being in contravention of Clause 4 of the Government Resolution dated 29 July 2021.

5. I have heard the learned counsel for the parties. Perused record.

6. It is submitted by the learned counsel for the Petitioner that the Tribunal has held that the impugned transfer was not in breach of Section 4(4) and 4(5) of the 2005 Act. He therefore submitted that the order of transfer could not have been set aside only on the ground of alleged breach of Clause 4 of the Government Resolution dated 29 July 2021. It is submitted that the said Government Resolution was issued with the object of containing the expenditure on transfers effected during the Pandemic. It is submitted that it is nobody's case that Mr.

Santosh Jadhav was transferred from Zilla Parishad Solapur so as to accommodate the Respondent No.4. It is submitted that Santosh Jadhav was transferred on his own request and therefore, it cannot be said that the Respondent No.4 was transferred to a post which was not vacant. In short, it is submitted that there was no breach of Clause 4 of the Government Resolution dated 29 July 2021. It is submitted that at any rate the provisions of the Government Resolution cannot override that of the act which are statutory in nature and once it was held that the order of transfer was not in breach of Section 4(4) and 4(5) of the 2005 Act, the Tribunal was not justified in interfering with the same.

7. The learned counsel for the Petitioner has placed reliance on *SK Nausad Rahaman and Others Vs. Union of India*¹, *Soudamini S. Chaudhari Vs. State of Maharashtra and Ors.*², *Sanjeev Bhagwanrao Kokil Vs. State of Maharashtra and Ors.*³, *Union of India Vs. Janardhan Debanath*⁴, *V. B. Gadekar and Anr. Vs. Maharashtra Housing and Area Development Authority*⁵, *State of Maharashtra Vs. Ashok Ramchandra Kore and Anr.*⁶, *Union of India Vs. S. L. Abbas*⁷.

¹AIR 2022 SC 1494

²2021(4) ALL MR 83

³2013(1) ALL MR 40

⁴2004 AIR (SC) 1632

⁵2008(1) ALL MR 45

⁶2009(4) Mh.L.J. 163

⁷1993 AIR (SC) 2444

8. Learned Addl. Government Pleader for the Respondent / State submitted that the impugned order was made after recommendation of the Civil Services Board and has been approved by the Hon'ble Chief Minister as per Section 6 of the 2005 Act. It is submitted that there were serious allegations of misconduct including sexual harassment against the Respondent No.4 and in any case, the order of transfer was for purposes of administrative exigencies and there was nothing to suggest that in order to accommodate the Petitioner (original Respondent No.4 before the Tribunal) the transfer was made.

9. The learned counsel for the Respondent No.4 has supported the impugned order. It is submitted that the transfer could not have been effected to a post which was not vacant and was occupied by Mr. Santosh Jadhav in Zilla Parishad Solapur. It is submitted that this indicates that the transfer was not only made in breach of Clause 4 of the Government Resolution dated 29 July 2021 but in order to accommodate the Petitioner in Zilla Parishad Latur. He therefore submitted that the impugned order setting aside the transfer is legal and valid.

10. The learned counsel for the Respondent No.4 has placed reliance on *Pradeepkumar S/o. Kothiram Deshbhratar Vs. State of Maharashtra and Ors.*⁸.

⁸2011(5) Mh.L.J. 158

11. We have considered the submissions made.

12. It is undisputed that the Petitioner and the Respondent No.4 belongs to Group A category and as per Section 6, the appropriate Authority for effecting transfer was Minister in Charge in consultation with the Secretary of the concerned department. The normal tenure of the incumbent to a post is three years. It is also not in dispute that the Respondent No.4 had joined as a District Social Welfare Officer in Zilla Parishad Solapur on 24 February 2020.

13. Section 4 of the 2005 Act which is relevant for the purpose reads thus-

4. Tenure of transfer.- (1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3.

(2) The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.

(3) Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under Section 6 shall be finalised by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be ;

Provided that, any dispute in the matter of such transfers shall be decided by the Chief

Minister in consultation with the Chief Secretary.

(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May.

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.

(5) Notwithstanding anything contained in Section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior permission of the immediately preceding Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.

(Emphasis supplied)

14. In the present case, the Tribunal had held that the impugned order is not in breach of Section 4(4) and 4(5) of the said Act. Although, the learned counsel for the Respondent No.4 has also taken exception to the said finding, we do not find that the same can be accepted. Sub-section 4 of Section 4 provides that the transfers of the Government servants shall ordinarily be made only once in a year in the month of April or May. The proviso (ii) appended to sub-section 4 of Section 4 would make it

clear that where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, can effect such transfer after (i) recording the same in writing and (ii) with the prior approval of the next higher authority. As per table set out in Section 6, the appropriate authority in this case was Minister in Charge in consultation with the Secretary of the concerned Department and the next higher authority is the Hon'ble Chief Minister. It has come on record that the recommendation for such transfer was made by the Civil Services Board and has been approved by the Hon'ble Chief Minister. It can thus be seen that the Tribunal is right in holding that the order of transfer was not in breach of Section 4(4) and 4(5) of the 2005 Act.

14. It has come on record that the Respondent No.4 was facing allegations of misconduct including misappropriation in the purchase of the material made and of sexual harassment and Atrocities Act and a FIR No. 130/2021 dated 11 March 2021 was registered against him at Police Station Shivaji Nagar, Latur. There were also allegations about insubordination.

15. This takes us to the provisions of Government Resolution dated 29 July 2021.

16. Clause 4 of the Government Resolution dated 29 July 2021

shows that after completion of the exercise of general transfers, transfer for exceptional circumstances or special reasons can be made from 10 August 2021 to 30 August 2021 to the posts which are lying vacant. In other words, Clause 4 states that such transfer for exceptional circumstances or special reasons during the aforesaid period, cannot be made by shifting / transferring another officer and creating a vacancy. However, Clause 5 and 6 of the said Government Resolution make it clear that the competent transferring authority can effect such transfer after recording exceptional circumstances or special reasons and subject to prior approval of the next higher authority which in the present case is the Hon'ble Chief Minister. We have already noticed that the recommendation was made through the Civil Services Board and the same has been approved by the Hon'ble Chief Minister. In so far as Clause 4 is concerned, Mr. Santosh Jadhav was transferred from the post of District Social Welfare Officer Solapur on his own request and in that vacancy the Respondent No.4 was transferred from Zilla Parishad Latur to Zilla Parishad Solapur.

17. A perusal of the Government Resolution dated 29 July 2021 shows that it was issued in the context of the prevailing circumstances on account of the Covid 19 Pandemic and in order to limit the expenditure incurred on the transfer allowance. It was therefore resolved that the transfer for exceptional

circumstances or special reasons shall be effected to a post which is lying vacant after the completion of the exercise of general transfers. As noticed earlier, by a separate order dated 30 August 2021 (page 52 of the compilation), Mr. Santosh Jadhav was transferred on his own request from the post of District Social Welfare Officer Zilla Parishad Solapur to the post of Research Officer District Caste Scrutiny Committee at Pune.

18. This Court in *Pradeepkumar (supra)* has held that in case of premature transfer, reasons must be recorded for permitting such transfer and must be found to be in the interest of administration and cannot be only the wish or whim of any particular individual. The proposition cannot be disputed. However, we find that the decision in *Pradeepkumar (supra)* turned on its own facts.

19. Considering the object of the Government Resolution, we are unable to accept that the transfer can be interfered with for the alleged breach of Clause 4 of the Government Resolution dated 29 July 2021. More so, when the same was found to be not in breach of statutory provisions of Section 4(4) and 4(5) of the 2005 Act. Thus, we find that the petition has to succeed. The Petition is accordingly allowed. The impugned order is hereby set aside. The Original Application filed by the Respondent No.4 is hereby dismissed.

In the circumstances, there shall be no order as to costs.

20. At this stage, the learned counsel for the Respondent No.4 submits that stay may be granted to this order in order to enable the Respondent No.4 to consider further course of action.

We direct that status quo as to the present postings of the parties be maintained for a period of six weeks from today.

SANDIPKUMAR C. MORE, J. C.V. BHADANG, J.