

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4783 OF 2022

Maruti Mahadeo Kakad,
Age : 51 years,
Occupation : Service as Executive Engineer,
Presently working as Assistant Chief Engineer
(Mech.), Under Chief Engineer, P.W. Region,
Aurangabad.
R/o Flat No.14, Indraprastha, A Wing,
Dargah Road, Opp. CIIGMA Hospital,
Aurangabad.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through the Principal Secretary,
Water Resources Department,
Madam Kama Marg,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai-400032.
2. The State of Maharashtra.
Through the Principal Secretary,
Public Works Department, 4th Floor,
Madam Kama Marg,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai-400032.
3. The Chief Engineer,
P.W. Region, Padampura,
Aurangabad.
4. Shri Vaijanath Apparao Galande,
Executive Engineer,
Mechanical Division No.2,
Padampura, Aurangabad.

...RESPONDENTS

...
Shri A.S. Deshpande, Advocate for the petitioner.
Shri S.G. Sangle, AGP for Respondent Nos.1 to 3.
Shri A.S. Deshmukh, Advocate for Respondent No.4.
...

**CORAM : RAVINDRA V. GHUGE
&
SANDIPKUMAR C. MORE, JJ.**

Reserved on :- 10th June, 2022

Pronounced on :- 30th June, 2022

JUDGMENT (*Per Ravindra V. Ghuge, J.*) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By this petition, the petitioner has put forth prayer clause B as under :-

“B) *The orders of transfer dated 30.08.2021 at Exh.G colly. effected mid-term as well as mid-tenure, in contravention of the provisions of Sec. 4 (4) & Sec. 4(5) of the Transfer Act, 2005 may kindly be quashed and set aside and the petitioner be allowed to continue to perform the duties as Assistant Chief Engineer (Mech.) in the office of the Chief Engineer, P.W. Region, Aurangabad by quashing the decision rendered by the Administrative Tribunal dated 05.04.2022 in O.A. No.531 of 2021 at Exh. R.”*

3. The petitioner had approached the Maharashtra Administrative Tribunal (hereinafter referred to as “the Tribunal”) for challenging the transfer orders dated 30.08.2021 in respect of himself and co-employees Shri Abdul Javed Abdul Wahed Kazi and Shri Vaijanath Apparao Galande, in Original Application No.531/2021. The petitioner was working as the Executive Engineer (Mechanical). Both the co-employees were similarly situated. He was transferred from the post of the Assistant Chief Engineer (Mechanical), PWD Regional Division, Mumbai as the Executive Engineer, Tembhu Lift Irrigation, Mechanical and Electrical, Ogalewadi, Taluka Karad, District Satara. Shri Kazi was transferred from the post of the Assistant Chief Engineer (Mechanical), PWD Regional Division, Aurangabad as the Executive Engineer, Mechanical Division, Konkan Region, Alore, Ratnagiri. Shri Galande was transferred from the post of the Executive Engineer, Mechanical Division No.2, Aurangabad to the post of the Assistant Chief Engineer (Mechanical), PWD Regional Division, Aurangabad in place of Shri Kazi.

4. The learned Tribunal has extensively dealt with the Original Application filed by the petitioner and has delivered an

exhaustive judgment.

5. The petitioner was transferred on 31.05.2018 from Aurangabad to Mumbai. Thereafter, by order dated 30.08.2021, he was transferred from Mumbai to Oglewadi, which was impugned before the Tribunal. Prior to 30.08.2021, the petitioner approached the Public Works Department (PWD) at Mumbai and admittedly, on his request, he received the transfer order dated 06.08.2021 from Mumbai to Aurangabad. It is quite obvious from the record that the employer of the petitioner i.e. Water Resources Department (WRD), was not aware of the PWD having transferred the petitioner to Aurangabad. The record would indicate that the employer- Water Resources Department appears to have been kept in the dark by the PWD. The Tribunal has dealt with this issue and has come to the conclusion that this transfer from Mumbai to Aurangabad effected by the PWD was without authority and was non-est.

6. We have independently considered the record in the light of the submissions of the parties. The learned advocate for the petitioner has strenuously canvassed that such transfer at the behest of the PWD, who is admittedly not the employer of the petitioner, was also done in many cases and was not unusual. We

are of the view that “two wrongs do not make one right”.

7. Two issues were emphatically canvassed before the Tribunal as well as before this Court viz. (a) that the petitioner was already transferred from Mumbai to Aurangabad and hence, there was no question of transferring him from Mumbai to Oglewadi, Karad and (b) that his impugned transfer fell in a special category and therefore, the Honourable Chief Minister could not have transferred him by delegating his power to his subordinate.

8. The petitioner has relied upon Section 6 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short, “the Transfer Act”), which reads as under :-

“6. Transferring Authority.

The Government servants specified on column (1) of the table hereunder may be transferred by the Transferring Authority specified against such Government servants in column (2) of the table.

Table

<i>Groups of Government Servants (1)</i>	<i>Competent Transferring Authority (2)</i>
<i>(a) Officers of all India Services, all Officers of State Services in Group “A” having pay-scale of Rs. 10,650-15,850 and above.</i>	<i>Chief Minister</i>

<i>(b) All officers of State Services in Group “A” having pay-scales less than Rs.10,650-15,850/- (and all Gazetted Officers) in Group “B”.</i>	<i>Minister-in-charge in consultation with Secretaries of the concerned Departments.</i>
<i>(c) All Non Gazetted employees in Group B and C.</i>	<i>Heads of Departments</i>
<i>(d) All employees in Group D.</i>	<i>Regional Heads of Departments.</i>

Provided that, in respect of officers in entry (b) in the table working at the Divisional or District level, the Divisional Head shall be competent to transfer such officers within the Division, and the District Head shall be competent to transfer such officers within the District:

Provided further that, the Competent Transferring Authority specified in the table may, by general or special order, delegate its powers under this section to any of its subordinate authority.”

9. It is undisputed that the petitioner was appointed by the Water Resource Department. Respondent No.4 was also appointed by the WRD. In 2018, the petitioner was transferred to Mumbai. The PWD had no power within the scheme of law to transfer him vide order dated 06.08.2021 to Aurangabad. The Government Resolution dated 29.07.2021 indicates that due to the covid pandemic, not only that the transfers were curtailed, but it also empowered the Government to effect transfers in such unprecedented circumstances upto 30.08.2021. The WRD, oblivious of the petitioner having orchestrated a request transfer

on 06.08.2021 at Aurangabad at the hands of the PWD, issued the impugned transfer order to the petitioner. The petitioner does not dispute that the Secretary had the delegated powers to transfer him as well as respondent No.4. Therefore, the contention that he was transferred within one month without the sanction of the Honourable Chief Minister, is a fallacious submission as the WRD was not even aware of the transfer of the petitioner by the PWD at Aurangabad on 06.08.2021.

10. It is equally undisputed that the petitioner gave his willingness to work under the PWD, since he desired to be transferred to Mumbai on a vacant post of the Assistant CE (MECH), Mumbai Region, PWD. Therefore, he was accommodated at Mumbai vide transfer order dated 31.05.2018. This would not mean that he was posted on a deputation as the said transfer order does not indicate anything about deputation. Nevertheless, this would not empower the PWD to consider the personal request of the petitioner and transfer him to Aurangabad by keeping the WRD in the dark.

11. In the transfers of high ranking officers like the petitioner upto 31.08.2021, the petitioner was transferred from Mumbai to Taluka Karad, District Satara on the vacant post of

the Executive Engineer. His anxiety that, as he has a kidney ailment and he is a recipient of kidney transplant, that he would not receive proper medical attention, is put to rest in view of the fact that Krishna Medical Hospital at Karad is a highly reputed medical facility.

12. We find that the learned Tribunal has dealt with each and every contention of the petitioner and has assigned reasons in a detailed judgment. Details as regards the departments in which the contesting parties were working and their transfers leading to the filing of the original application by the petitioner before the learned Tribunal, have been analyzed. We agree with the conclusions of the Tribunal that his transfer by the PWD to Aurangabad on 06.08.2021 was non-est and unsustainable. As such, the continuance of the petitioner at Aurangabad is in itself an unauthorized performance of duties at Aurangabad, though we do not wish to hold that his duties discharged at Aurangabad could be ignored. However, his continuance at Aurangabad even today is unsustainable.

13. In similar circumstances, the learned Tribunal at Mumbai has delivered a judgment on 17.02.2022 in Original Application No.874/2021 filed by *Shri Abdul Javed Abdul*

Wahed Kazi vs. The State of Maharashtra and another. The Tribunal placed reliance upon several judgments of the Honourable Apex Court and recorded its reasons for refusing to recognize a transfer by a different department (PWD), in paragraphs 10 to 17 as under :-

“10. *Indisputably, Applicant's parent department is Respondent No.1 – WRD. Initially, by transfer order dated 31.05.2018 issued by his parent department, he was transferred from Nanded to Aurangabad as Assistant Chief Engineer, PWD. As such, the Applicant works under the control of WRD but by order dated 31.05.2018, he was transferred in PWD on the post of Assistant Chief Engineer, Aurangabad. He had completed normal tenure of 3 years in general transfers of 2021. When he was due for transfer, he made representation dated 10.02.2021 (Page No.21 of P.B.) addressed to Respondent No.2 – Additional Chief Secretary, PWD requesting for transfer to Mumbai on the ground of medical treatment of his father. Indeed, the Applicant being under the control of Respondent No.1 – WRD, his representation ought to have been forwarded to Respondent No.1 – WRD for necessary orders. Here, Respondent No.2 – PWD committed error by accepting his representation and giving him posting at Mumbai. Undoubtedly, the said transfer order was preceded by minutes of CSB and File Noting under the signature of Additional Chief Secretary, PWD and the same was approved by Minister of the Department. Indeed, the Respondent No.1 at that time ought to have realized that parent department of the Applicant being Respondent No.1 – WRD, it had no competency or jurisdiction to transfer*

the Applicant. Be that as it may, the fact remains that Respondent No.2 – PWD was not at all competent to transfer the Applicant to Mumbai. This being the position, the transfer order dated 06.08.2021 passed by Respondent No.2 – PWD has to be treated as non-est in the eye of law.

11. *The submission advanced by learned Advocate for the Applicant that in view of communication of transfer order dated 06.08.2021 to Respondent No.1 – WRD, it had knowledge and acquiesced to transfer order issued by Respondent No.2 – PWD on 06.08.2021 is totally unpalatable. Mere forwarding of transfer order dated 06.08.2021 to Respondent No.1 – WRD cannot be construed that transfer order dated 06.08.2021 was in consultation or concurrence with Respondent No.1 – WRD. True, the perusal of transfer order dated 06.08.2021 reveals that the copy of transfer order issued by Respondent No.2 – PWD was forwarded to Respondent No.1 – WRD and noticing the same, the Respondent No.1 – WRD ought to have rectified the mistake immediately. However, Respondent No.1 – WRD took remedial measure after about three weeks by issuance of order dated 30.08.2021. Suffice to say, there was no such consultation of concurrence with WRD before transferring the Applicant by Respondent No.2 – PWD. In other words, the Respondent No.2 – PWD had exceeded its authority and usurped the jurisdiction of Respondent No.1 – WRD by issuance of transfer order dated 06.08.2021 which will have to be termed as non-est in the eye of law.*
12. *Once transfer order dated 06.08.2021 issued by Respondent NO.2 – PWD found non-est in law, consequent to it, such order cannot confer any right upon the Applicant to claim 3 years' tenure in Mumbai on the basis of said order.*

This being the position, the transfer order dated 30.08.2021 issued by Respondent No.1 – WRD as a remedial measure and which is in the nature of rectification of mistake done by PWD, the transfer order dated 30.08.2021 cannot be termed mid-term or midtenure transfer. Resultantly, the question of making out a special case and compliance of Section 4(5) of ‘Transfer Act 2005’ which inter-alia provides for approval of next preceding competent authority (Hon’ble Chief Minister) does not survive. As such, the submission advanced by the learned Advocate for the Applicant that transfer order dated 30.08.2021 is mid-term and mid-tenure transfer and bad in law for want of approval of Hon’ble Chief Minister is totally misconceived.

13. *Apart, even assuming for a moment that it is mid-term and midtenure transfer, in that event also, the said order being issued to rectify grave error committed by Respondent No.2 – PWD in issuing transfer order dated 06.08.2021, such action of remedial measure will have to be construed as a special case in service jurisprudence. What can be construed as a special case as contemplated under Section 4(5) of ‘Transfer Act 2005’ would depend upon facts of each case and it is not possible to reduce it into straight-jacket formula. There could be diverse consideration on the basis of which, it could be termed as a special case. Therefore, in my considered opinion, even the test of special case will have to be said satisfied. In this behalf, material to note that there is specific file noting which preceded approval of transfer order dated 30.08.2021 that Respondent No.2 – PWD had transferred the Applicant by order dated 06.08.2021 though Applicant belongs to Respondent No.1 – WRD.*

14. *Insofar as approval to transfer order dated*

30.08.2021 is concerned, it is admittedly approved by Minister Incharge of WRD having empowered in view of Notification dated 25.04.2016. By this Notification, the powers of special transfer under Section 4(5) are delegated to Minister, WRD. Indeed, in the present case, as stated above, the transfer order dated 30.08.2021 cannot be construed mid-term or mid-tenure transfer, since it was by way of rectification of mistake committed by Respondent NO.2- PWD. In terms of G.R. dated 29.07.2021, the deadline for issuance of general transfers was extended upto 09.08.2021 on account of Covid-19 pandemic situation, since general transfers could not be effected in May, 2021 as required to be effected under the provisions of 'Transfer Act 2005'. By the said G.R, the deadline for issuance of general transfers were extended upto 09.08.2021 and for special transfers, time limit was fixed up to 30.08.2021. It is in this context, the transfer order dated 30.08.2021 has been issued by WRD with the approval of Minister, WRD on the basis of delegation of powers as permitted under Section 6 of 'Transfer Act 2005'.

- 15. The learned Advocate for the Applicant tried to contend that there could be no delegation of power for special transfers to any other authority and the powers of general transfers only can be delegated. However, in the present case, the perusal of record, particularly File Noting reveals that Hon'ble Chief Minister himself has delegated his power to Minister, WRD. It is in pursuance of it, Notification dated 25.04.2016 has been issued thereby confirming powers of general transfers upon Principal Secretary and powers of special transfers are delegated to Minister, WRD.*
- 16. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision rendered by this Tribunal in*

O.A.No.528/2021 [Dattatray B. Mundhe Vs. State of Maharashtra] decided on 27.08.2021 and O.A.No.539/2019 [Ajay M. More Vs. Superintending Engineer & Ors.] decided on 17.10.2019 to bolster up his contention that delegation of power for mid-term transfer is illegal.

17. *The issue of legality of Notification dated 25.04.2016 is indeed not open to challenge in view of decision of Hon'ble High Court in Writ Petition No.3318/2017 [Bharat Shingade Vs. State of Maharashtra & Ors.] decided on 17.04.2017. In that case, one Shri D.B. Pande filed O.A. before MAT, Aurangabad Bench inter-alia contending that he was transferred mid-term and mid-tenure. The Department opposed O.A. on the ground that transfer was necessitated and it was approved by Minister in pursuance of Notification dated 25.04.2016. The Tribunal quashed the transfer order with the finding that it is against the provisions of 'Transfer Act 2005' and malafide. When matter was taken up before Hon'ble High Court, the order passed by MAT was quashed and transfer was upheld. In this Judgment, the legality of Notification dated 25.04.2016 was also challenged before Hon'ble High Court which were turned down. The Hon'ble High Court held that since Hon'ble Minister has delegated his powers to Minister as per Notification dated 25.04.2016, the transfer order held legal. This is the same Notification dated 25.04.2016 on the basis of which Respondent No.1 – WRD issued transfer order dated 30.08.2021. Therefore, the decisions rendered in O.A.No.528/2001 and 539/2019 are of no help to the Applicant."*

14. It has been specifically canvassed that the impugned transfer orders are against the Transfer Act. The learned advocate

Shri Deshpande has vehemently contended that transferring an employee for administrative reasons is a special circumstance and the power to do so is a special power vested in the Honourable Chief Minister and which cannot be delegated. We find that there is, however, no pleading about this aspect either in the original application or in the present Writ Petition.

15. Though the learned Advocate for the petitioner has contended that transferring a senior officer within the extended period of transfer upto 31.08.2021 is a special power which cannot be delegated by the Honourable Chief Minister, we do not find the said submission worthy of consideration since there is no such specific exemption in Section 6 of the Transfer Act.

16. Insofar as the delegation of powers by the Honourable Chief Minister, an identical situation arose in Writ Petition No.3318/2017 filed by ***Shri Bharat Ramkisan Shingade vs. The State of Maharashtra*** along with two connected matters. This Court (Coram : S.V. Gangapurwala and Sangitrao S. Patil, JJ) has delivered the judgment on 17.04.2017 specifically dealing with the powers of the Honourable Chief Minister in delegating his authority. It was held that once such powers are delegated, the delegatee is actually exercising the powers vested in the

Honourable Chief Minister and a specific concurrence of the Honourable Chief Minister is not required.

17. For the sake of clarity, we are reproducing the conclusions in ***Bharat Shingade (supra)*** from paragraphs 15 to 21 as under :-

“15. Here, it would be worthwhile to reproduce paragraph 9 of the judgment in the case of Ashok Ramchandra Kore and Anr. (supra), enumerating the guiding principles laid down by the Hon'ble the Supreme Court in various judgments.

“i) The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of mala fides. (Mrs. Shilpi Bose & ors. Vs. State of Bihar & ors.) 10, 1990 DGLS (soft) 696 : 1991 (Supp.2) SCC 659 : A.I.R. 1991 SC 532.

ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. (Shilpi Boses's case (supra).

iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by mala fides and is made in violation of any statutory provisions, the court cannot interfere with it. (Union of India & Ors. Vs. S.L. Abbas) 11, 1993 DGLS (soft) 409: 1993 (4) SCC 357 : A.I.R. 1993 SC 2444.

iv) Transfer of an employee is not only an incidence inherent in the terms

of the 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. (State of Uttar Pradesh & Ors. Vs. Gobardhan Lal) 12, 2004 DGLS (soft) 190: 2004 (11) SCC 402 : AIR 2004 SC 2165.

v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legally enforceable rights unless it is shown to be vitiated by mala fides or made in violation of any statutory provision and so long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments (Gobardhan Lal's case (supra).

vi) The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of mala fides when made must be such as to inspire confidence in the court or based on concrete materials. (Gobardhan Lal's case (supra).

vii) Allegation of mala fides should not be entertained on the mere making of it or on consideration borne out of conjectures or surmises. (Gobardhan Lal's case (supra).

viii) Except for strong & convincing reasons no interference could ordinarily be made with an order of transfer. (Gobardhan Lal's case (supra).”

16. *In paragraph 8 of the judgment in the case of Sanjeev Bhagwanrao Kokil (supra), this Court while considering the scope of powers of the Courts to interfere in the transfer orders, has observed as under:*

“The statutory authorities having applied themselves to the issues mentioned in the proposal and having thought it appropriate to transfer the petitioner as a special case and in exceptional circumstances, it would certainly qualify the test laid down in Section 4(4) proviso (ii) and/or 4(5) of the Act. That is the subjective satisfaction of the concerned authorities. Sufficiency of the material considered by the Authorities for recording their satisfaction, cannot be the basis for the Court to doubt their wisdom.”

17. *The above referred settled legal position makes it clear that the scope of the powers of the Tribunal or the Courts to interfere in the transfer orders is very limited. In the present case, a detail proposal for transfer of Shri Pande and two other Executive Engineers, was prepared giving specific reasons which necessitated the transfer of Shri Pande. The submission note containing the said proposal was approved by the Principal Secretary of the Department, who was the Competent Transferring Authority, in view of the Notification dated 25th April, 2016. The signing of the said submission note by the Principal Secretary itself indicates that he agreed with the contents of the said proposal. The said proposal was then approved by the Hon'ble Minister, who was delegated with the powers of the Hon'ble the Chief Minister, as per the Notification dated 25th April, 2016 and as such, was empowered to*

approve the proposal for transfer of Shri Pande and two other Executive Engineers, being the immediate superior of the Principal Secretary, in view of the provisions of sub-sections (4) (ii) and (5) of Section 4 of the Transfer Act. Considering the reasons given in the submission note for transfer of Shri Pande, it cannot be said that the transfer of Shri Pande was effected with malafide intention.

18. *In the case of Omprakash Ghanshyamdas Mudiraj and anr. (supra), it has been observed in paragraph 13 as under :*

“We find that by now the law is settled on the issue of interference in transfer orders. No Government servant or employee has any legal right to be posted forever at any one particular place or place of his choice since transfer is not only an incidence but a condition of service, necessarily in public interest and in aid of efficiency in the public administration. Unless an order of transfer is shown to be outcome of mala fide exercise or stated to be in violation of statutory provisions, normally the Courts or Tribunals would not interfere as a matter of routine.”

19. *Considering the above referred legal position on the scope of powers of the Tribunal or the Court to interfere in the transfer orders, we are of the view that the transfer of Shri Pande has been effected by following the proper procedure laid down in sub-sections (4) (ii) and (5) of Section 4 of the Transfer Act. The said transfer cannot be said to have been effected by malafide exercise of powers. Though earlier the Civil Services Board had not recommended transfer of Shri Pande, since he was not due for transfer and was due for retirement on 30th April, 2017, considering the special reasons given in*

the submission note dated 1st December, 2016 as also in the endorsement of the Hon'ble Minister, the transfer of Shri Pande from one Division to another at the same station i.e. at Parbhani, cannot be said to be unjustifiable. The events subsequent to the passing of the transfer order i.e. relieving Shri Pande when he was on leave, etc. as have been agitated by Shri Deshpande, the learned Advocate, in our view, are not relevant, particularly when we found that the transfer order has been passed by following due procedure and is not tainted with malafides. No prejudice can be said to have been caused to Shri Pande by such transfer.

20. *The Tribunal did not consider the facts of the case in proper perspective. The Tribunal should not have doubted the reasons given by the Principal Secretary and the Hon'ble Minister for transfer of Shri Pande, from one Division to another at Parbhani. The Tribunal did not consider the above referred legal position, which clarifies the limited scope of powers of the Tribunal in interfering with the transfer orders. In the circumstances, the reasons given by the Tribunal, while setting aside the transfer order of Shri Pande, cannot be upheld. In the result, we pass the following order.*

21. *The writ petitions are allowed. The impugned judgment and order dated 8th March, 2017 passed by the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad in Original Application No.1 of 2017, is quashed and set aside. The impugned transfer order dated 30th December, 2016 is restored."*

18. Considering the facts and circumstances as recorded

hereinabove, we do not find that the transfer of the petitioner or respondent No.4, involves malafide intentions of the State Government.

19. In view of the above and in the light of the law laid down by the Honourable Supreme Court in *Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477]* and *Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682]*, the impugned judgment of the Tribunal cannot be held to be perverse or illegal. This Writ Petition is dismissed. Rule is discharged.

kps (SANDIPKUMAR C. MORE, J.) (RAVINDRA V. GHUGE, J.)