

ORAL JUDGMENT (PER C. V. BHADANG, J.)

Rule, made returnable forthwith. Learned AGP waives service for respondent Nos. 1 to 4. Ms. Talekar, the learned counsel waives service for respondent No.5. The petition is heard finally by consent of the parties.

2. By this petition, the petitioner is challenging the judgment and order dated 13 July 2022 passed by the Member (J.), Maharashtra Administrative Tribunal, Bench at Aurangabad ('the Tribunal' for short), thereby allowing Original Application No.112 of 2022 filed by respondent No.5 challenging his transfer from the post of Deputy Superintendent of Police (ACB), Beed to the post of Police Inspector in the Police Training Centre (PTC), Jalna.

3. We have heard learned counsel for the parties. Perused record.

4. Respondent No.5 had filed the aforesaid original application before the Tribunal challenging both, his reduction to the post of Police Inspector as well as his transfer from ACB, Beed to PTC, Jalna. It appears that the 5th respondent had sought interim stay of the order of transfer which was refused by the Tribunal vide order dated 11 February 2022. On the same day, the 5th respondent came to be relieved from his post in ACB, Beed. However, the learned counsel for respondent No. 5 points out that the respondent No.5 has not joined at PTC, Jalna as he has applied for medical leave. She submits that now the respondent No.5 is fit to join after obtaining fitness certificate from the Medical Board. It

appears that in the meantime, the petitioner, on his own request, was transferred to the ACB, Beed in the vacant post of respondent No.5 on 25 February 2022.

5. We find that this aspect was not brought on record or to the notice of the Tribunal by respondent No.2. We find that ordinarily, it was for the respondent No.2 to have brought this subsequent development on record and if such subsequent development of the petitioner joining the vacant post in the ACB, Beed was brought on record, it would have been open for respondent No.5 to take appropriate steps to join the petitioner as party respondent before the Tribunal which has not been done.

6. The original application before the Tribunal came to be allowed by the impugned order and the respondents in the original application have been directed to re-post respondent No.5 (the applicant before the Tribunal), to his posting i.e. the post of Deputy Superintendent of Police (ACB), Beed within a period of one month.

7. Today, we are faced with the situation where the post, on which respondent No.5 has been directed to be re-posted, is already occupied by the petitioner. In such circumstances, Ms. Talekar, the learned counsel for the respondent No.5, on instructions, states that respondent No.5 shall implead the petitioner as party respondent in the original application and the Tribunal can decide the original application afresh, in accordance with law. She submits that the pleadings of the present respondent No.5 and the respondents in the original applications are already completed and, therefore, the

original application may be expedited. She thus has prayed for a remand.

8. Learned Counsel for the respondent no.5 and the learned AGP submitted that appropriate order be passed in the face of the alternate submission made on behalf of the petitioner.

9. In the circumstances, the petition is partly allowed. The impugned order is hereby set aside.

Original Application No. 112 of 2022 is restored back to the file of the Tribunal for disposal, afresh in accordance with law.

Parties to appear before the Tribunal on 10 August 2022.

10. Respondent No. 5 shall formally implead the petitioner as party respondent in the original application. If such request is made, the Tribunal shall allow the same.

11. The petitioner to file reply, if any, before the Tribunal within two weeks thereafter and the Tribunal to decide the original application as expeditiously as possible, preferably within a period of six weeks from the date of appearance of the parties.

12. Rule is partly made absolute in the aforesaid terms with no order as to costs.

SANDIPKUMAR C. MORE, J.

C. V. BHADANG, J.

JPChavan