

(1)

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

WRIT PETITION NO.10239 OF 2021

Kishor s/o Malayya Sandry,
Age : 56 years, Occu. Dy. Engineer
r/o Plot no.99, Sundar Nagar,
Near Saibaba Mandir, Nanded
Tq. And Dist. Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Chief Secretary
Water Supply Department
Mantralaya, Mumbai
2. The Chief Administrative Officer
Maharashtra Jeevan Pradhikaran
Cidco Bhavan (South Wing),
IIIrd floor, Belapur,
Navi Mumbai 400614
3. The Divisional Commissioner,
Divisional Commissioner office
Aurangabad Division Aurangabad
4. The Chief Executive Officer
Zilla Parishad, Nanded,
District Nanded
5. The Superintendent Engineer
Maharashtra Jeevan Pradhikaran
Circle office, Chandrapur
District Chandrapur
6. The Executive Engineer
Zilla Parishad Nanded
District Nanded

..RESPONDENTS

(2)

Mr. A. D. Namde , Advocate for petitioner;
Mr. S.R. Yadav-Lonikar, A.G.P. for respondent no.1;
Mr. A.G. Vasmatkar, Advocate for respondent nos.2 & 5;
Mr. S.B. Pulkundwar, Advocate for respondent nos.4 & 6

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 4th March, 2022

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

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

2. The petitioner has put-forth prayer clauses (B), (C) and (D) as under-

“(B) By issue of writ of certiorari or writ or order in the like nature quashed and set aside the impugned order passed by Chief Administrative officer, Maharashtra Jeevan Pradhikaran on dated 27.8.2021.

(C) Pending hearing and final disposal of this writ petition, execution, operation and implementation the impugned order passed by Chief Administrative officer Maharashtra Jeevan Pradhikaran on dated 27.8.2021 may kindly be stayed and the petitioner may be permitted to resume his duties as Deputy Engineer Rural Water Supply

(3)

Sub-division Kinwat District Nanded and for that purpose issue necessary directions.

(D) Pending hearing and final disposal of this writ petition, the respondent no.2 and 4 may kindly be directed to consider the application/representation submitted by the petitioner on dated 26.8.2021 within 7 days or stipulated time.”

3. On 16.9.2021, when we had issued notice in this matter, a statement was made before us by the learned Advocate for the Zilla Parishad that the petitioner is already relieved on 7.9.2021, pursuant to his transfer order dated 27.8.2021. Considering the said statement, this Court did not grant ad interim protection to the petitioner.

4. The strenuous submissions of the learned Advocate for the petitioner can be summarized as under:-

- a) The petitioner joined service with respondent no.2 Maharashtra Jeevan Pradhikaran as a Junior Engineer in 1985.
- b) He was promoted as a Sectional Engineer in 1990.

(4)

- c) He was promoted as Deputy Engineer in 2008.
- d) In 2014, he was deputed to the Zilla Parishad, Hingoli which indicates that the Zilla Parishad is not his employer. The Maharashtra Jeevan Pradhikaran then again sent him on deputation to Zilla Parishad Gram Vikas Pani Purvatha Department at Aundha Nagnath where he worked from 13.8.2020.
- e) He was deputed to Zilla Parishad, Nanded by the Maharashtra Jeevan Pradhikaran on 31.8.2020 and since then, the petitioner is working as Deputy Engineer in the Rural Water Supply Division, Kinwat, District Nanded in the Nanded Zilla Parishad.
- f) From 9.9.2020 to 7.9.2021, the Maharashtra Jeevan Pradhikaran moved him to Zilla Parishad Gramin Pani Purvatha Vibhag, Kinwat, on deputation .
- g) By the transfer order dated 27.8.2021, the Maharashtra Jeevan Pradhikaran moved the petitioner to Maharashtra Jeevan Pradhikaran Mandal at Chandrapur.
- h) His tenure at Kallamnuri was for a period of 1 year and 7 months, at Zilla Parishad, Hingoli for 2 years and 10 months, at

(5)

Aundha Nagnath for 22 days, at Kinwat for 1 year and now he is shifted to Chandrapur when he is due to retire in October, 2013.

i) Vide Government Resolution dated 9.7.2021, the mandate of completing the general transfers is restricted upto 31.7.2021.

j) For special transfers, the period for effecting transfers was from 31.8.2021 to 14.8.2021. The petitioner was transferred vide order dated 27.8.2021 which is 13 days beyond the limit for effecting special transfers. This has been done on the basis of a Government Resolution dated 29.7.2021 extending the limit to 31.8.2021.

k) The transfer of the petitioner is not on account of any special reasons, but on account of administrative exigencies.

l) After he got a wind of his probable transfer at the behest of the members of the Zilla Parishad, he had applied on 26.8.2021 to the Honourable Minister in-charge of the portfolio of the Water Supply and Sanitation, Mantralaya. One day later, he has been issued with the transfer order when he had put in only 11 months at Zilla Parishad, Kinwat on deputation.

(6)

5. The learned Advocate representing the Maharashtra Jeevan Pradhikaran respondent no.2 submits that there are several allegations against the petitioner. He was issued with a charge-sheet on 21.5.2018. An Enquiry Officer is yet to be appointed. The petitioner has tendered his reply to the charges. The enquiry is yet to be initiated. Though the transfer of the petitioner is not stated to be for special reasons, administrative exigencies can be termed as special reasons. There are no mala fides against the petitioner. No member of any Zilla Parishad has exerted any pressure to cause his transfer. He relies upon the affidavit-in-reply in which it is admitted that the preliminary inquiry report of the Executive Engineer with regard to the allegations made against the petitioner prior to the issuance of the charge-sheet, gives a clean chit to the petitioner.

6. It is contended in the affidavit that Section 66 of the Maharashtra Jeevan Pradhikaran Act, 1976 empowers respondent no.2 to frame its Regulations in respect of the service matters of its employees. If an employee is to be transferred, the approval of the Government is to be taken and such Transfer Regulations have been published after approval in the Official Gazette dated 4.6.2014. The Maharashtra Jeevan Pradhikaran Employees Regulations of Transfer

(7)

Rules, 2013 applies to the petitioner. The transfer of the petitioner has been effected by the Chief Administrative Officer after taking approval of the Competent Authority.

7. It is then submitted that the petitioner is not serious about his work. Allegations of non performance of the assigned tasks are levelled against him. There is no improvement in his work. The Chief Executive Officer, Zilla Parishad, Nanded sent a communication to the Member Secretary of the Water Supply Department, Mantralaya, Mumbai recommending the transfer of the petitioner. The Desk Officer, Water Supply Department forwarded the communication to the Member Secretary, Maharashtra Jeevan Pradhikaran for necessary action. The allegations set out in the charge-sheet, clause (I) to (vii), read (verbatim) as under:-

“i) A meeting of deputy engineer and all branch engineers/junior engineer was arranged on 22/05/2021, the petitioner without giving any intimation remained absent for the said meeting, therefore the review of Kinwat Sub-Division could not be taken.

ii) Report regarding Ashram School of Kinwat Taluka not submitted.

(8)

iii) The report of Gram-Panchayat Wanola was called however the same is not submitted.

iv) The Assistant Collector has given a surprise visit at that, time the petitioner was absent and could not be contacted on his cell phone.

v) A budgetary provision of 85 lakhs was made for Rural Water Supply Kinwat, Sub-Division for the year 2020-21 however, as the Deputy Engineer did not submit the proposal within time therefore, the funds could not be spent. This shown inefficiency of the petitioner.

vi) Complaints were also received regarding absence and improper functioning.

vii) A news item was also published in daily newspaper on 25/05/2021.”

8. It is then submitted that there are allegations of irregularities, misappropriation and misbehaviour levelled against the petitioner and yet there is no improvement. Rule 6 (1) specifies the Competent Authority under the Transfer Rules, 2013 and Rule 4 (4) (ii) gives power to the Competent Authority to transfer an employee on satisfaction that the transfer is essential due to exceptional

(9)

circumstances or special reasons. Such transfer is after considering the Government Resolution dated 16.2.2018 and the policy/terms and conditions applicable to a Government employee who is on deputation. Paragraph 5 (D) (5) indicates that if any employee has indulged in any irregularity, misconduct and misappropriation on deputation, the foreign employer can recommend to the parent authority for repatriation of the employee before completion of the deputation tenure.

9. Considering the above, the question that crops up is what was the deputation tenure of the petitioner when the employer contends that the transfer is permissible prior to the completion of the deputation tenure. In his first deputation at Kallamnuri which does not specify any period, he worked for 1 year and 7 months. In his next deputation to Hingoli, he worked for 2 years and 10 months. His deputation at Aundha Nagnath was for 22 days. His deputation at Kinwat is 1 year. As such, it is apparent that the employer was tossing around the petitioner on the pretext of deputation from one place to another, notwithstanding the fact that he had expressed a desire to remain at Kinwat till his retirement . It is apparent that the petitioner was uncertain of his future since he was just being tossed

around at the will of his employer.

10. The next issue would be whether the transfer of the petitioner could be said to be for special reasons or only due to administrative exigencies. There is no dispute that he could be transferred till 31.8.2021 for administrative exigencies. We, however, do not find any administrative exigencies in the reply of the employer. What we find is a host of allegations having been levelled upon him viz. he did not attend one meeting on 22.5.2021, he did not submit a report regarding an Ashram school, Kinwat; the Assistant Collector gave a surprise visit and the petitioner was absent, he did not submit a proposal within time and therefore, budgetary provision of Rs.85 Lakh from Rural Water Supply, Kinwat Sub-Division had to be returned, there are complaints about his absence and improper functioning and a news item was published in a daily newspaper, etc. Such allegations would neither convince us that the employer had a right to transfer him under the circumstances in which he has been transferred, nor has any specific provision been cited before us which permits a transfer on allegations.

11. The petitioner was served with a charge-sheet on 21.5.2018 and it is the employer who has kept the proceedings in cold storage. Besides issuance of a charge-sheet and the reply filed by the petitioner, there has been no progress with reference to the charge-sheet. Even an Enquiry Officer has not been appointed. It is almost 3 years and 10 months past the issuance of the charge-sheet. If the petitioner was indeed a bad employee, there was no embargo on the employer to initiate disciplinary action against him. Without doing so, without claiming that the transfer is for special reasons, passing of such a transfer as being a part of administrative exigencies, would not sustain the transfer.

12. He could be transferred under Rule 4 (4) (ii) of the 2013 Transfer Rules only if it was indicated that his transfer is due to special reasons and exceptional circumstances, which are terms having wide meaning. The transfer order issued to the petitioner indicates that there is a vacancy at the employer's office in Chandrapur and in clause (4) of the impugned order, it has been stated that his transfer is due to administrative reasons.

(12)

13. In view of the above, when the employer could have investigated into the charges levelled upon the petitioner by conducting disciplinary proceedings in accordance with the prescribed procedure, transferring the petitioner without stating it to be a transfer on account of special reasons or exceptional circumstances and branding it to be a transfer due to administrative exigencies, would not be permissible under Rule 4 (4) (ii) of the Transfer Rules.

14. Since we are quashing and setting aside the transfer order, the learned Counsel for the petitioner prayed for salary for the period 7.9.2021 onwards.

15. Having heard the learned Counsel for the respective sides on the above prayer, we have referred to Rule 29 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981 which reads as under:-

“29. Overstayal.-A Government servant who does not join his post within his joining time is entitled to no pay or leave salary after the end of the joining time. Willful absence from duty after the expiry of joining time may be treated as misbehaviour for the purpose of Rule 27 of Maharashtra Civil Services (General

Conditions of Services) Rules 1981.”

16. In the instant case, the petitioner has admittedly not joined at the place of transfer. He has been relieved and this Court has not granted him any protection or interim relief. He should have reported for duties. Had it been the case that the petitioner had applied for extension of joining time and if that request would have been accepted by the employer, the prayer of the petitioner for salary could have been considered. In the absence of the same and since Rule 29, not only prohibits payment of salary, but, considers such act to be a misbehaviour, we find that it would not be appropriate to grant salary for this period.

17. We can visualize that if after setting aside the transfer order after a long period, by way of an illustration : a year or two years or may be five years, payment of salary to an employee who has refused to join despite the Court having not granted ‘stay’ to the transfer or protection to the petitioner, would not only tax the State Exchequer, but is likely to encourage indiscipline for the reason that employees would refuse to join duties though the Court has not stayed the transfer and if the transfer is finally set aside after a period of viz.

three years, five years or ten years, they would claim salary without working. They cannot be rewarded with wages for their deliberate and wilful absence from duties. If this is done, such transferred employees would refuse to join the place of transfer on the pretext of the pendency of litigation though no relief has been granted by the Court.

18. In view of the above, this petition is partly allowed. The impugned transfer order dated 27.8.2021 is quashed and set aside with the following directions:-

- a) The petitioner would not be entitled for the wages from 7.9.2021 till he joins his place from where he was transferred, i.e. Kinwat, District Nanded.
- b) He is willing to report for duties on 15.3.2022.
- c) After the petitioner reports at Kinwat, which is his posting on deputation, the employer is at liberty to follow the prescribed procedure either for continuing him on deputation or pass any appropriate order as may be permissible in law.
- d) The employer can proceed with the disciplinary proceedings in

accordance with law.

19. Rule is made partly absolute in above terms. No order as to costs.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

amj