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

REVIEW APPLICATION (CIVIL) NO.249 OF 2022
IN
WRIT PETITION NO.3811 OF 2022

SUNIL S/O NAGESH KHAMITKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

....

Mr Avinash S. Deshmukh, Advocate h/f Mr V. D. Salunke,
Advocate for petitioner;
Mr S. K. Tambe, A.G.P. for respondent Nos.1 & 2/State

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

DATE : 7th September, 2022

PER COURT:

1. This review petition is directed towards the Judgment dated 01/08/2022, pronounced by this Court (Coram : C. V. Bhadang and Sandipkumar C. More, JJ.) in Writ Petition No.3811/2022.
2. The petitioner is the original applicant before the learned Maharashtra Administrative Tribunal Bench in Original Application No.507/2021, vide which, he has challenged his transfer order dated 30/08/2021 from Latur to Solapur. He had alleged mala-fides against one Santoshkumar Trimbakrao Naikwadi, who was transferred in place of the review applicant,

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that he was interested in coming back to Latur, since he is facing a charge of misappropriation at Latur and by coming back to Latur, he intended to indulge in a cover up operation. By Judgment dated 15/03/2022, the Original Application filed by the review applicant was allowed and his transfer was set aside. Respondent No.4 in the Original Application, Santoshkumar T. Naikwadi preferred Writ Petition No.3811/2022. Vide the Judgment dated 01/08/2022, the writ petition was allowed and the Original Application filed by the review applicant, was dismissed. The Judgment of the learned Tribunal was quashed and set aside. Hence, this review application.

3. The thrust of the applicant's submission is two fold. Firstly, that Sections 4(4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "the 2005 Act") and the Government Resolutions dated 10/05/2021, 09/07/2021 and 29/07/2021, have been breached. Secondly, the review applicant, who was facing charges of 'sexual harassment and atrocity' vide first information report No.130/2021 (FIR), dated 11/03/2021, virtually stands absolved in view of the 'B' Summary report tendered by the SDPO, dated

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19/05/2021. The same has been placed before the learned Special Sessions Court at Latur. The learned Court has issued a notice to the informant victim vide order dated 01/06/2021. It is conceded that the Trial Court is seized with the matter and no further orders have been passed on the 'B' Summary Report.

4. We have considered the strenuous submissions of the learned Advocate for the review petitioner Shri. Deshmukh and we have perused the grounds formulated in the memo of the review application (I to VII), which are reproduced verbatim, as under :-

“I) This Hon’ble Court in para no. 14 of the order under review dated 01.08.2022 has observed as follows ;

“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.”

II) That, so far as the allegations of misappropriation are concerned, the so-called allegations were in the tenure of the petitioner while he was serving in the Zilla Parishad, Nanded, which has no bearing in the current assignment at Zilla Parishad, Latur. The said fact is undisputed that, there are no charges of misappropriation in the present

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tenure after the transfer of petitioner at Latur. Page No.183 of the Writ Petition may kindly be pursued for the same.

III) On the contrary, the Respondent No. 4 in his earlier term as In-charge District Social Welfare Officer has misappropriated huge funds against which a Departmental Enquiry is proposed. He is facing charges of misappropriation of funds of Rs. 135 Crores at Latur only. The petitioner recently came across the document, wherein the Respondent No. 4 is served by the Chief Executive Officer with Annexure-1 to 3 which are required for the Departmental Enquiry. He should not be posted at Latur but by order under review he will be posted at Latur.

IV) So far as the allegation of sexual harassment, there was a FIR, wherein the Investigating Officer has conducted the investigation, recorded the statements of the office colleagues of the petitioner, seized the CCTV Footage of the alleged incidence and finally it was opined that, there is no force in the allegation of asking sexual favour and therefore the Investigating Officer has submitted a 'B' Summary Report in the Special Court, Latur on 19.05.2021. The Learned Sessions Court has marked the 'B' Summary Report as SEEN. The copy of letter dated 19.05.2021, which is subsequently obtained by the petitioner as he has enquired after the order in the Writ Petition.

V) The transfer order dated 30.08.2021 reflects that, the said transfer is for Administrative Reasons. No special reasons, circumstance was assigned in the said order. However, the Respondent Authorities are making out a complete contrary stand and statement before this Hon'ble Court, which is nothing but a mockery of justice. Therefore, the transfer order is also not in accordance with the Government Resolutions, which was rightly set aside by MAT.

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VI) The legality and propriety of the Transfer order of petitioner dtd. 30.08.2021 was challenged by petitioner before Id. MAT, where Id MAT held that it is against the government resolution, however the order is reversed. By observation that there are allegations against petitioner at Nanded.

VII) The Departmental Enquiry has commenced against the Respondent No. 4 for the allegation of misappropriation at Latur, therefore again his transfer by way of the order under review at Latur will seriously prejudice the ongoing enquiry against the Respondent No. 4. Hence, there is apparent error on the face of record to allow the Writ Petition.”

5. Though the submissions of Shri Deshmukh are based on some more documents that were placed before us, we find that all these submissions were canvassed before this Court when the writ petition was considered and the said submissions have been adverted to, by this Court and dealt with in the Judgment dated 01/08/2022. The Hon’ble Supreme Court has held in **Lily Thomas and others Vs. Union of India and others, (2000) 6 Supreme Court Cases 224**, that a review petition cannot be entertained by permitting the review applicant, to practically re-argue the writ petition. The error apparent on the face of the order in the light of the facts and law, has to be pointed out.

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6. The contention of the original applicant (review applicant) is that a 'B' Summary Report has been filed and hence, the allegation made against him by a lady, of seeking sexual pleasures in order to issue an order of compassionate order, stands disproved. We would not accept these submissions, for the reasons that the 'B' Summary Report is before the learned Trial Court. A hearing on the said report is not concluded and the Trial Court is yet to pass an order of accepting the report.

7. It is strenuously canvassed that, though the reasons for transfer of the applicant are brought on record through an affidavit, which is adverted to by the High Court in paragraph No. 14 (2nd paragraph No.14), these are not recorded in the file of the applicant, when a decision to transfer him under Section 4 of the 2005 Act was arrived at. We are of the view, that the file of the applicant was considered by the Hon'ble Chief Minister. The Recommendation Application for transfer was made by the Civil Services Board and the Hon'ble Chief Minister approved the said transfer. The contention that the allegations against the applicant in the nature of indulging in misappropriation and seeking sexual favours at Latur, were not mentioned in the said file, need not be considered in a review petition, for the reasons, that the

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authorities concerned with the transfers may not have found it appropriate to record such aspects in the personal file. The said reasons were divulged to the Tribunal as well as the High Court on affidavit.

8. In view of the above, we do not find that any error apparent on the face of the order has been made out. This review application stands rejected.

9. The learned Advocate for the review applicant prays for continuation of the order passed by this Court for a further period of four weeks. This Court had directed status-quo to be maintained for a period of six weeks from 01/08/2022. The said period is to last until 12/09/2022. Considering the above reasons, this request is rejected.

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

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