

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2562 OF 2020

The Commissioner, State Excise Department versus Dattatray Rekhu Rathod	} } } }	Petitioner Respondent
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Mr. N. K. Rajpurohit, AGP for the petitioner (State).

Mr. Vijay S. Kurle for the respondent.

**CORAM: DIPANKAR DATTA, CJ
& V. G. BISHT, J.**

DATE: MAY 4, 2022

P.C.:

1. The facts giving rise to this writ petition have been recorded in details in the order dated 22nd October 2020, whereby Rule was issued and the impugned judgment and order of the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) dated 9th August 2019 was stayed.

2. Bereft of unnecessary details, we may once again note that the respondent no. 1 is a Police Constable attached to the Prison Department, State of Maharashtra. He has a 8 year old son, who is suffering from a heart ailment and may not be comfortable unless the respondent no. 1 is posted in a city or town which is largely pollution free. The prayer of the respondent no. 1 for transfer to the Excise Department, Government of Maharashtra was allowed by the Tribunal. The

reasons assigned in the order dated 22nd October 2020 would reveal the *prima facie* view of the Court why the Tribunal was not correct in allowing the original application and to direct that the respondent no.1 be absorbed in the Excise Department in terms of Government Resolution dated 3rd June 2011. Such Government Resolution, which was relied upon by the Tribunal, does not permit transfer from one department to the other department unless both the departments concur. This salient feature of the Government Resolution escaped the attention of the Tribunal.

3. Be that as it may, the respondent no. 1 is now agreeable to accept a posting in Solapur in the Prison Department.

4. Mr. Rajpurohit, learned AGP for the petitioner, on instructions, submits that the petitioner can be accommodated there.

5. In such view of the matter, the writ petition stands disposed of by setting aside the judgment and order under challenge. The respondent no. 2, Director General of Police, Maharashtra State, is directed to advise the Additional Director General of Police (Prison) to issue an appropriate order ensuring the posting of the respondent no. 1 in the Prison Department at Solapur within a period of a month from date of receipt of a copy of this order. Such posting may continue till such time the son of the respondent no. 1 is largely cured of the heart ailment. If, in the meanwhile, any transfer of the respondent no.1 is required to be made, the leave of this Court ought to be obtained.

6. The Rule is disposed of on the above terms. There shall be no order as to costs.

7. We may place on record that in view of the earlier order, the State of Maharashtra had expressed its willingness to accommodate the respondent no. 1 in the office of the Special Inspector General (Prison), South Region, Byculla, Mumbai, but since such posting would not be conducive for the health interest of the respondent no. 1's son, we request the Director General of Police/Additional Director General (Prison) to have such order cancelled.

(V. G. BISHT, J.)

(CHIEF JUSTICE)

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