

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1568 OF 2022

Rajendra Pandurang Chikhalkhunde,
Aged 38 years, Occu. Service
R/o Presently posted as Chief Officer,
Municipal Council, Butibori,
District Nagpur

... Petitioner

-vs-

1. The State of Maharashtra,
Through its Secretary,
Department of Urban Development,
Mantralaya, Mumbai

2. Collector, Nagpur

3. Jumaa Pyarewale,
C.O. Nagar Parishad, Wadi,
District Nagpur

... Respondents

Shri N. R. Saboo, Advocate for petitioner.

Ms K. R. Deshpande, Assistant Government Pleader for respondent Nos.1
and 2.

Respondent No.3 served.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : July 22, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the
learned counsel for the parties.

The challenge raised in this writ petition is to the order
passed by the Maharashtra Administrative Tribunal in Original
Application No.08/2022 thereby refusing to interfere in the order of
transfer that was issued to the petitioner.

2. The petitioner is holding the post of Chief Officer. He was initially serving as Chief Officer at Municipal Council, Lakhani, District Bhandara. On 22/12/2020 he was transferred from that Municipal Council to Butibori Municipal Council. Within a short period of about a year he was transferred from Butibori to Kanhan Municipal Council. Being aggrieved the petitioner challenged the aforesaid order of transfer before the Tribunal. Though the order of transfer was initially stayed by the order dated 15/02/2022, the Tribunal held that as the order of transfer as issued was in the light of directives received from the State Election Commission, no case was made out for interfering with that order. Being aggrieved the petitioner has challenged the aforesaid order.

2. The learned counsel for the petitioner submits that the order of transfer is a mid-term transfer order. The same was not recommended by the Civil Services Board. On the contrary the said Board observed that the petitioner did not complete the requisite prescribed period under Section 4(1) of the Maharashtra Government Servants' Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short, the Act of 2005). It therefore did not recommend the petitioners' transfer. The grievance is that even in absence of such recommendation, a mid-term order of transfer

has been issued. The Tribunal erroneously proceeded to assume that the mid-term transfer was on account of directives of the State Election Commission dated 22/12/2021. As per the directives only those officers who had completed the term of three years were liable to be taken into consideration for transfer. These directives infact were sought to be implemented by the State Government by calling for necessary information on 03/02/2022. This was after the issuance of the impugned transfer order dated 03/01/2022. Attention was invited to the order passed in O.A. No.10/2022 dated 04/01/2022 at the Principal Seat of the Tribunal wherein after noticing absence of reasons in the transfer file, the Tribunal proceeded to stay the order of transfer. In support of his submissions the learned counsel placed reliance on the decisions in **S. B. Bhagwat vs. State of Maharashtra and ors. 2012(3) Mh.L.J. 197** and *Kishor Shridharrao Mhaske vs. Maharashtra OBC Finance and Development Corporation, Mumbai and ors. 2013(3) Mh.L.J. 463*. He also invited attention to the judgment of the Hounourable Supreme Court in *T.S.R. Subramanian vs. Union of India and Ors. AIR 2014 (SC) 263* to urge that recommendation of the Civil Services Board ought to have been considered before transferring the petitioner. It was thus submitted that the order passed by the Tribunal was liable to be set aside.

3. The learned Assistant Government Pleader for the respondent Nos.1 and 2 supported the order passed by the Tribunal. She submitted that in absence of any malafides there was no reason to interfere with the order of transfer. The same was issued in administrative exigencies. The Tribunal after considering all relevant material refused to interfere in the order of transfer and hence the writ petition was liable to be dismissed.

4. We have heard the learned counsel for the parties and we have perused the documents on record. It is an admitted fact that on 22/12/2020 the petitioner came to be transferred to Municipal Council Butibori. Shortly on completing period of one year, another order of transfer dated 03/01/2022 has been issued. On the directions of the Urban Development Department, various proposals were placed before the Civil Services Board for considering the necessity to transfer certain Chief Officers. In the meeting dated 30/12/2021 the said Board examined the proposal of the petitioner's transfer and did not recommend the same on the ground that the petitioner had not completed the period stipulated at Butibori. Notwithstanding such observations by the Board, the order of transfer came to be issued merely by referring to administrative exigencies. Before the Tribunal, the State Government contended that the order of transfer was issued

in view of the directives of the State Election Commission. Perusal of these directives dated 22/12/2021 of the Commission require identifying such Officer to have completed period of three years on 31/03/2022 for being considered for transfer. The petitioner does not satisfy the requirement stated therein. This was the very same aspect that was considered by the Board. It is also seen that after the communication dated 03/02/2022 issued by the Additional Secretary to the Divisional Commissioner, relevant information was directed to be collected in the context of the directives of the State Election Commission issued on 22/12/2021. Admittedly the petitioner has been transferred prior thereto on 03/01/2022. In other words, the stand taken by the State Government for proposing and recommending the transfer of the petitioner was on account of directives received from the State Election Commission is not substantiated by any material on record. The material indicates otherwise. It is thus obvious that the plea of administrative exigencies that was taken by relying upon directives of the State Election Commission is not supported by any record. Thus, neither the recommendations of the Civil Services Board nor the directives issued by the State Election Commission justify the impugned order of transfer.

5. The decisions relied upon by the learned counsel for the

petitioner indicate that merely making an order of transfer would not be sufficient without reasons existing in support thereof. The mandatory provisions of Section 4(5) of the Act of 2005 have to be complied with. We find this material is lacking in the present case. The Tribunal failed to consider relevant aspects and merely proceeded on the basis that the transfer was effected on the directives of the State Election Commission without verifying the material aspects.

6. Hence for aforesaid reasons the order passed by the Tribunal in Original Application No.08/2022 dated 16/03/2022 is set aside.

The petitioner is entitled to continue to serve as Chief Officer at Municipal Council Butibori in terms of the earlier transfer order dated 22/12/2020.

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

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)