

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

WRIT PETITION NO. 1026 OF 2023

Mrs. Varsha Mahesh Ghughari,
Age : 53 years, Occu. Service,
(as Executive Engineer, P.W.D. Dhule),
R/o. 3, Nagai Colony, Deopur, Dhule.

...Petitioner

Versus

- 1] The State of Maharashtra,
Through its Addl. Chief Secretary,
Public Works Department,
M.S., Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai.
- 2] The Chief Engineer,
Public Works Region,
Nashik, Govind Nagar,
Nashik.
- 3] The Superintending Engineer,
Public Works Division,
Dhule.
- 4] Mr. Ravindra Ratan Patil,
Executive Engineer,
Public Works Department,
Dhule Municipal Corporation,
Dist. Dhule.

...RESPONDENTS

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Ms Preeti R. Wankhede – Advocate for the petitioner
Mr. A. S. Shinde – AGP for respondent/State
Ms Suchita A. Dhongade – Advocate for respondent no. 4

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**CORAM : MANGESH S. PATIL
AND
S. G. CHAPALGAONKAR, JJ.**

ARGUMENTS CONCLUDED ON : 06.06.2023
JUDGMENT PRONOUNCED ON : 05.07.2023

JUDGMENT [Per S. G. Chapalgaonkar, J.] : -

1. The petitioner approaches this Court under Article 226 of the Constitution of India, challenging the order dated 13 January 2023 passed by the Maharashtra Administrative Tribunal in Original Application No. 1161 of 2022, by which mid-term and mid-tenure transfer order dated 28 December 2022 issued by respondent no. 1 – State of Maharashtra through its Addl. Chief Secretary has been confirmed.

2. The petitioner contends that she entered in the service of the Government of Maharashtra in its Public Works Department as an Assistant Engineer. Thereafter, she was promoted to the post of Executive Engineer and as such, posted at Public Works Department, Dhule, since 07 August 2020. Before the petitioner could complete her normal tenure of three years, as per provisions of Section 3(1) and 4(1) of the Transfers Act, by order dated 28 December 2022, she has been transferred to the post of Executive Engineer under the establishment of Dhule Municipal Corporation by way of mid-term and mid-tenure transfer. The petitioner challenged the said order before the Maharashtra Administrative Tribunal, bench at Aurangabad, by filing Original Application No. 1161 of 2022, however, it came to be dismissed.

3. Ms Preeti R. Wankhede, learned advocate for the petitioner, would submit that impugned transfer order is unjust, arbitrary and *mala fide*. She would submit that the petitioner was not due for her transfer and could not have been transferred in violation of the provisions of Section 3(1) and 4(1) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 [hereinafter referred to as “Transfers Act”]. She would submit that the respondent nos. 1 to 3 failed to adhere to the principles of natural justice while effecting the transfer. She would further urge that the object of her transfer was only to accommodate the respondent no. 4 who exerted political influence to secure the choice posting at PWD Dhule. As such, she alleges that the impugned action is tainted with *mala fides*.

4. She would further submit that the consent of the petitioner was necessary before sending her on deputation in view of Rule 36 of Maharashtra Civil Services Rules, 1981 as well as the procedure as prescribed under Government Resolution dated 17th December, 2016. Apparently, said procedure is not adhered to by the respondent authorities, hence, the order impugned is contrary to the rules prescribed. She would further urge that the Maharashtra Administrative Tribunal did not consider the above aspects while deciding the Original Application.

5. Ms Wankhede would further submit that the respondents are trying to justify the action by projecting that the transfer of petitioner has been effected in the interest of the administration since there were many complaints against her. She would point out that the petitioner was never offered opportunity of hearing as regards so-called complaints against her. She would further urge that the respondent no. 4 had requested for transfer on her post. His request was then recommended by Member of Legislative Assembly (in short “MLA”). On such development, a farce is made regarding so-called complaints received against the petitioner and a false story has been cooked up against her, to make out some reason for transferring her to make a way for choice posting of the respondent no. 4.

6. Ms Wankhede relying upon the judgments of the Supreme Court of India in the matters of **Somesh Tiwari Versus Union of India & Ors.** reported in 2009 (2) SCC 592 and Judgement of Madras High Court in case of **P. Karunakaran v. The Union of India and others** reported in (2014) 4 ServLR 62, submits that if the transfer is based on complaint, the petitioner ought to have been given an opportunity of being heard and in absence of such an opportunity, the transfer order cannot be sustained in law. She would further rely upon the judgment in the case of **State of Punjab and others vs. Inder Singh and others**

reported in (1997) 8 SCC 372, to submit that without the consent of the petitioner, she should not have been deputed to the Municipal Corporation particularly by flouting the prescribed norms.

7. Mr. A. S. Shinde, learned AGP for respondent nos. 1 to 3 and Mrs. Suchita Dhongade for respondent no. 4 supported the transfer order as well as the order passed by the Maharashtra Administrative Tribunal. Mr. Shinde would urge that the re-appreciation of evidence is not the job of this court while exercising the jurisdiction under Article 226 of the Constitution of India. The Tribunal has applied its mind to all the contentions raised on behalf of the petitioner and recorded elaborate reasons for not entertaining the Original Application and refused to interfere in the impugned transfer order. He would submit that the petitioner failed to bring on record material to demonstrate *mala fides* on the part of the respondent – authorities. Further, there is nothing to show that the mandatory provisions of law have been violated. He would further submit that there cannot be any dispute that the authority to transfer the services of the petitioner vested with respondents. He would point out that the Civil Services Board, upon consideration of the various aspects of the matter, recommended transfer of the petitioner and the recommendation has been approved by the Hon'ble Chief Minister. In that view of the matter, no interference can be made in the impugned orders.

8. Before we proceed to consider the submissions advanced on behalf of the respective parties, it would be appropriate to refer to the parameters of jurisdiction to be exercised by the writ court in the matters relating to transfer of the employees. The Supreme Court of India in the matter of National Hydroelectric Power Corporation Ltd. Versus Shri. Bhagwan and another reported in (2001) 8 SCC 574 observed in paragraph no. 5 thus :

“5. It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.....”

9. Similarly, in case of State Bank of India Versus Anjan Sanyal and others reported in (2001) 5 SCC 508, the Hon'ble Supreme Court of India has observed in paragraph no. 4, which reads thus :

“4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the

court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.....”

10. The material on record clearly suggests that the respondent-authorities had received the complaints against the petitioner which were signed by subordinate officers and staff working at Public Works Department, Dhule. The administration at the office was hampered to a large extent. On receiving such complaint, the proposal was routed for transfer of the petitioner through Civil Services Board, which is having authority to recommend the transfers. The recommendation of the Board has been approved by the highest State Authority and then only the petitioner has been transferred giving the reasons of administrative exigency. No flaw has been pointed out in the procedure adopted by the respondents in effecting the transfer.

11. So far as the submissions on behalf of the petitioner that the consent of respective department was not obtained before deputing the petitioner, the Maharashtra Administrative Tribunal has considered the procedure underlined in the Government Resolution dated 17 December 2016, 16 February 2018 and 03 December 2020 and recorded a finding that obtaining consent of the petitioner would not be mandatory or relevant. The Tribunal has further noted that previously the petitioner herself had consented for her deputation on the post of

Executive Engineer at Dhule Municipal Corporation and the post has always been filled in by deputation of the officers from the department of the State Government. Even it is observed that by Government Resolution dated 03 December 2020, the post of Executive Engineer, Dhule Municipal Corporation, is declared to be 'deputation post'. It is, therefore, apparent that the objection of the petitioner has been dealt with by the Tribunal and which it has rejected after assigning valid reason.

12. The contention of the petitioner that the transfer order is *mala fide* and effected with an intention to accommodate the respondent no. 4, has been dealt with in the order of the Tribunal. It is specifically observed that the transfer order was effected on recommendation of the Civil Services Board and such recommendations are approved by the highest State authorities i.e. the Minister of Public Works Department as well as the Hon'ble Chief Minister of the Maharashtra State. No *mala fides* are attributed against the authorities, who are empowered to effect the transfers. Merely because the respondent no. 4 had shown his interest to be posted at Public Works Department, Dhule and the recommendation was made by the local MLA, itself would not constitute *mala fides* against the respondent authorities. Therefore, the objection in this regard is liable to be rejected. The Tribunal has recorded a finding based on material that the

transfer order has been given effect only to overcome the exceptional circumstances leading to maladministration at PWD office arising out of the reluctance shown by entire subordinate staff working under petitioner.

13. We have considered the law laid down by the Supreme Court in the matter of Somesh Tiwari (supra) and also in the matter of P. Karunakumar (supra) by Madras High Court. We agree with the reasons recorded by the Tribunal to distinguish the so judgments. For the aforesaid reasons, we do not find that any case is made out to interfere in the impugned order in exercise of the writ jurisdiction. Hence, Writ Petition is dismissed.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE