

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO.1188 OF 2023

KRISHNA EKNATHRAO GHUGE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
ADDITIONAL CHIEFSECRETARY AND OTHERS

...
Advocate for Petitioner : Mr. Deshmukh Avinash S.
AGP for Respondents/State : Mr. S.G. Karlekar
Sr. Advocate for R/4 : Mr. V.D. Sapkal i/b M.S. Taur
...

CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.
DATE : 21st February, 2023

PC. :-

1. On 01.02.2023, we had passed the following order:

“1. This matter is briefly heard. Since we find a peculiar situation as regards the petitioner not being issued with any transfer order and respondent No.4 being transferred exactly in the seat of the petitioner, that we expect the learned AGP to take instructions from the State Government as to how this issue can be resolved by following the due procedure.

2. Stand over to 10th February, 2023 for passing orders.

3. It is only till the next date and keeping in view that the status has not been changed, the status-quo existing today be maintained.”

2. We have a peculiar situation before us, in a petition wherein the petitioners seeks to challenge the order dated 24.01.2023 passed by the learned

Maharashtra Administrative Tribunal by which the Original Application filed by the present petitioner was dismissed with the observations in paragraph nos.16 and 17 re-produced below:

“16. After having considered the entire facts and circumstances in the matter, it does not appear to me that any case is made out for setting aside the impugned order. The documents on record reveal that the prescribed process for transfer of respondent no.4 has been duly followed before passing the impugned order. The respondent no.4 was without posting from 13-09-2021 and was thus required to be given posting with all priority. Accordingly, he has been transferred to the post held by the applicant. I see no irregularity or illegality in the order so passed. The applicant has failed in making out any just ground for causing interference in the said order. O.A., thus, deserves to be dismissed. It is accordingly dismissed without any order as to costs.

17. Before concluding the order, I deem it necessary to make certain observations as about the practice being followed in the matters of transfer which paves way for litigation. It appears to me that unless there are exceptional circumstances, no officer shall be kept without posting and require to suffer compulsory waiting period. In the present matter, though the impugned order has been passed on 20-09-2022, till this date the posting order of applicant has not been issued. It has come on record that out of 342 sanctioned posts of Executive Engineer (Civil), 47 posts are vacant. In the letter dated 22-09-2022 received to the office of Chief Presenting Officer from the State Government, the further particulars are provided as about the vacancies. It is not understood as to why the Government is taking so much time in giving posting to the applicant when it has posted respondent no.4 on the post held by the applicant. In the circumstances, while dismissing the present O.A. I deem it appropriate to direct the State Government to pass the necessary orders as per Clause 2 of the impugned order in regard to the posting of the present applicant within 2 weeks from the date of this order. It would be of-course open for the applicant to challenge the said order if he has any grievance about it.”

3. The petitioner is waiting for a placement order. The respondent no.4 has already been issued with a transfer order placing him in the posting

presently occupied by the petitioner at Osmanabad. The petitioner has no difficulty in joining the place of transfer, but for issuance of such an order. Respondent no.4 is eager to join the place at which he has been posted / transferred and the Government does not have the time to issue the order of transfers / posting to the petitioner.

4. The learned AGP submits that he has been instructed by the Superintendent Engineer of the Irrigation Department to seek two weeks time. We do not appreciate the said request for the reason that respondent no.4 is waiting to join at Osmanabad and who has been without any posting for 19 months. Though, he would be legally entitled to the entire salary for this whole period, since it is not his fault that he is not being granted a posting, the fact remains that he is sitting idle. The learned Tribunal had directed the State Government to pass necessary orders for transferring the present petitioner. No steps have been taken by the Government until today.

5. Considering the peculiar facts and the contentions of the parties as recorded above, this petition is disposed off with the following directions:

- (a) The respondent no.2 shall issue a transfer order to the present petitioner and shall effect service on the petitioner, on or before 04.03.2023.
- (b) The petitioner would stand relieved from Osmanabad, on 16.03.2023.

(c) If these directions are not implemented by the respondent-authorities, we would be constrained to treat the said non compliance as an act of disobedience, more so in the light of the fact that on 24.01.2023 the Tribunal had granted two weeks time to respondent no.1 to issue the posting orders to the petitioner. The original respondent no.4 would be at liberty to join from 16.03.2023.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]