

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

**WRIT PETITION NO. 5593 OF 2023**

Kunal s/o Satish Dinde,  
Age : 34 years, Occu. : Service,  
R/o Rahuri, Tq. Rahuri,  
Dist. Ahmednagar. .. Petitioner

**Versus**

1. The State of Maharashtra,  
Through : The Secretary,  
Agriculture Department,  
Mantralaya, Mumbai.
2. Mahatma Phule Krishi Vidyapeeth,  
Rahuri, Tq. Rahuri, Dist. Ahmednagar,  
Through : its Registrar. .. Respondents

Shri Tushar Shinde, Advocate h/f Shri C. K. Shinde, Advocate for the Petitioner.

Shri S. K. Shinde, A.G.P. for the Respondent No. 1.

Shri R. N. Dhorde, Senior Advocate along with Shri P. S. Dighe, Advocate i/by Shri V. R. Dhorde, Advocate for Respondent No. 2.

**CORAM : MANGESH S. PATIL AND  
SHAILESH P. BRAHME, JJ.**

**DATE : 19 JULY 2023.**

**JUDGMENT (Per Shailesh P. Brahme, J.) :**

. Rule. Rule returnable forthwith. With the consent of the learned counsel appearing for the respective parties taken up for final hearing..

2. The petitioner is challenging an order dated 10 May 2023,

transferring him from Rahuri to Nandurbar. It is contended that transfer is against the statutory provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'the Act' for the sake brevity and convenience).

3. It is the case of the petitioner that he was appointed as a Senior Clerk with the respondent no. 2 – Agricultural University, from 14 October 2013. Thereafter, he was transferred to Agricultural College, Dhule, where he was rendering the service from 25 November 2016 to 31 June 2017. On 26 May 2017, he was transferred to the post of Senior Clerk in the office of Controller, Mahatma Phule Agricultural University, Rahuri.

4. Considering the performance of the petitioner, he was promoted as Assistant Superintendent (Group – B) vide order dated 13 June 2022, posting him in the office at Rahuri. He was transferred by the impugned order from Rahuri to the same post in Agricultural College at Nandurbar. It was mid-tenure transfer. He is suffering grave hardship considering the medical urgency in the family. According to learned counsel, the impugned order is violative to Section 3 and Section 4 of the Act. It is pick and choose method adopted by the respondent No. 2 – Authority. Therefore, the impugned action is arbitrary and unsustainable.

5. The respondent no. 2 filed affidavit-in-reply to justify the order of transfer. It is contended that there was administrative

exigency and for special reasons the petitioner was required to be transferred. It is further contended that the petitioner is rendering service for last six years at Rahuri. There is no violation of any statutory provision. It is contended that those special reasons and the administrative exigencies have been pleaded in paragraph nos. 5 and 6 of the affidavit-in-reply. In the year 2013, new agricultural college was established at Nandurbar. It was a tribal area. A qualified experienced staff was required. Mr. Vijay Nana Gaikwad, was working as Assistant Superintendent in the Agricultural College at Nandurbar. He was transferred by order dated 19 September 2022 to Agricultural College at Pune and he was relieved. The post was vacant. The Administration and the students were the sufferers. On this background the order of transfer was issued.

6. An additional affidavit is tendered during the course of hearing by the respondent no. 2. It is submitted by learned senior counsel for respondent no. 2 that one Mr. Nitin Gorakshnath Bhelhekar, was transferred from the post of 'Senior Clerk' Agricultural College at Rahuri, to the post in the Controller Department, Agricultural University, Rahuri, which was being officiated by the petitioner. He has resumed the duties from 09 June 2023.

7. To appreciate the submissions of learned counsel for the petitioner that there is violation of the provisions of the Act, it is necessary to quote relevant sections of the Act which are as under :-

**The Maharashtra Government Servants Regulation of  
Transfers and Prevention of Delay in Discharge of  
Official Duties Act, 2005**

**1.** ....

**2.** ....

**"3.** (1) For All India Service Officers and all Groups A, B and C State Government Servants or employees, the normal tenure in a post shall be three years :

Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or Department :

Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be continued in the same Department for more than two consecutive tenures.

(2) Employees in Group D shall normally not be subjected to fixed tenure. They shall not be transferred out from the station where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them.

**4.** (1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.

(2) ...

(3) ...

(4) ...

(5) Notwithstanding anything contained in section 3 of this section, the competent authority may, in special cases, after recording reasons in writing and with the prior <sup>1</sup>[approval of the immediately superior]. Transferring Authority mentioned in the table of section 6, transfer a Government servant

before completion of his tenure of post.”

8. Considering the rival submissions advanced by the learned counsels for both the sides, we notice that the petitioner was promoted from the post of ‘Senior Clerk’ to the post of ‘Assistant Superintendent’ vide order dated 13 June 2022 with effect from 15 June 2022. Impugned order of transfer was passed on 10 May 2023. As per Section 3 sub-section 1 of the Act, before completion of tenure of three years in the post concerned, the petitioner is transferred. We, therefore, hold that the order of transfer is against Section 4 (1) of the Act.

9. The respondent No. 2 – Authority is empowered to transfer an incumbent irrespective of the provisions of Section 3 of the Act, in a special case and after recording reasons in writing and that too with the prior approval of the immediate superior. This mandate of Section 4 sub-section 5 of the Act, has not been followed by the respondent No. 2. There is absolutely no evidence on record to show that the reasons were recorded in writing and there was a prior approval of the immediate superior. The order of transfer does not reflect compliance of Section 4 sub-section 5 of the Act.

10. The respondent no. 2 stated in paragraph nos. 5 and 6 of the affidavit-in-reply, the special circumstances requiring the authority to transfer the petitioner in its mid-tenure. However, the impugned order does not reflect any reference of the special circumstances or the reasons. It is not permissible to

supplement the circumstances and the special reasons by way of affidavit for the first time before the Court. Reliance can be placed on the judgment of the Supreme Court in the case of **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others** reported in ***AIR 1978 SC 851***. The averments of paragraph nos. 5 and 6 of the affidavit-in-reply are after thought and have been made to overcome the statutory compliances of Section 4(5) of the Act.

11. There is no prior approval from the superior authority. Entire affidavit-in-reply is silent on this aspect. We, therefore, find that the impugned order is violative of Section 4(5) of the Act.

12. We find that no case is made out by the respondent No. 2 for effecting transfer within purview of Section 4(4)(i) or (ii) of the Act. For this reason also the impugned order is liable to be quashed.

13. Learned counsel for the petitioner has relied upon the judgment dated 08.11.2019 delivered by the High Court in **Writ Petition No. 10330 of 2019** in the matter of **Sachin Sadashiv Raut Vs. State of Maharashtra and another**. The present case is squarely covered by the ratio laid down in paragraph nos. 11, 12 and 13 of the said judgment. Most relevant para No. (13) is as follows :

“13. In the present case, the transfer of the petitioner is mid-term and mid-tenure transfer and except stating that it

is an administrative transfer, no reasons are recorded while transferring the petitioner during mid-term and mid-tenure. The Division Bench of this Court in a case of **Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance and Development Corporation, Mumbai and others** (supra) has observed that, mid-term or premature transfer must be effected by a reasoned order in writing and after prior approval from the competent authority concerned. It is further observed that, the mandatory requirements of the provisions under Section 4(5) of the Act 2005 cannot be ignored or bye-passed. The Division Bench of this Court in a case of **Purushottam S/o Govindrao Bhagwat Vs. The State of Maharashtra and others** (supra) has observed that, for mid-tenure transfer if no reasons are recorded, then said transfer order cannot be sustained and mid-tenure transfer is permitted only upon certain exigencies and circumstances prescribed under Section 4 of the Act 2005. The impugned transfer order does not depict any such reasons. In the light of that, the impugned transfer order is quashed and set aside."

14. Learned counsel for the respondent No. 2 relies upon the judgment in case of **State of Maharashtra Vs. Ashok Ramchandra Kore and another** reported in ***2009(4) Mh.L.J. 163***. After perusal of the judgment, we are of the view that the facts in the above case are different. In that matter, the transfer order stated that it was effected in the public interest on account of administrative exigencies. It is observed that elaborate reasons were found in the files of the government.

15. It is pertinent to note that in the case in hand, the impugned order does not show reasons howsoever in short. In the absence of the reasons in brief or in any format, the impugned order is liable to be struck down.

16. The learned Senior Counsel informs that Mr. Nitin Bhelekar has already joined the post of Assistant Superintendent in the office of Controller, Agricultural University, Rahuri, on 09 June 2023. The petitioner has already been relieved after the impugned order of transfer. The subsequent development will not legalize the action under challenge. We have found that the impugned order is illegal and therefore, the respondent no. 2 will have to take corrective measures to re-transfer the petitioner to his original position by passing appropriate orders. Besides it can be seen from the order in respect of Mr. Nitin Belhekar that it is not a transfer but it is an order of posting from the same establishment. Again, he is from the cadre of Senior Clerk, but has been given a charge of the Assistant Superintendent. Consequently this should not be an impediment in shifting him to the original post or some other post.

16. Considering the reasons assigned above, we hold that the impugned order of transfer is against statutory provisions and the same is arbitrary. We therefore, pass the following order :-

### **ORDER**

- i. The impugned order of transfer dated 10 May 2023, (Exhibit 'E') is quashed and set aside.
- ii. The respondent no. 2 shall transfer the petitioner to his original post as an 'Assistant Superintendent' at Mahatma Phule Krushi Vidyapeet Rahuri.

17. Rule is made absolute in above terms. There shall be no order as to costs.

[ SHAILESH P. BRAHME, J.]

[ MANGESH S. PATIL, J.]

*bsb/July 23*