

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

931 WRIT PETITION NO.12733 OF 2022

VIJAYKUMAR MOHANRAO SOLUNKE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS
...

932 WRIT PETITION NO.12734 OF 2022

NILKANTH APPARAO PATWARI
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS
...

Advocate for Petitioner : Mr. Manish P. Tripathi h/f. Mr. U.L. Momale
AGP for Respondent/State : Mrs. V.N. Patil-Jadhav
Advocate for Respondents 2 to 4 : Mr. U.B. Bondar
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CORAM : ARUN R. PEDNEKER, J.
DATED : 25/04/2023

PER COURT :

1. Heard the learned counsel for respective parties. Both the petitions involve similar facts and are taken together for consideration. Facts are taken from Writ Petition No. 12733/2022.
2. The petitioner is challenging the order of transfer dated 29.9.2022 issued by the respondent No. 2 – Chief Executive Officer, Zilla Parishad, Latur reposting the petitioner from village Kine (Y) Kodali, Tq. Udgir, District Latur to Panchayat Samiti Ahmedpur, Tq. Ahmedpur, District Latur.
3. The petitioner is discharging his duties as Village Development Officer after passing the transfer order by respondent No. 2 at the transferred place. The Block Development Officer, Panchayat Samiti, Udgir has issued suspension order of the petitioner dated 30.8.2022. The suspension order indicates that the petitioner had violated section 3 of the Maharashtra Zilla Parishads Districts Services (Discipline Appeal) Rules

1964 and the petitioner has misbehaved with the Block Development Officer. The explanation was called from the petitioner and the petitioner has given explanation for the same. After considering the reply of the petitioner, the charges against the petitioner were dropped and by letter dated 29.9.2022 while dropping the charges strict warning was issued to the petitioner and further directed that if the petitioner misbehaves, the petitioner will be held liable and the inquiry would be initiated against the petitioner. Thereafter, the Chief Executive Officer on the same day with reference to the show cause notice as well as the order passed of warning, issued separate and independent order against the petitioner transferring the petitioner from Latur to Ahmedpur. The petitioner is challenging the said order of transfer in this petition.

4. Mr. Tripathi, learned counsel appearing for the petitioner submits that the proceedings which were initiated against the petitioner were departmental proceedings which were dropped by the respondent No. 2 after considering the reply of the petitioner and as such, the transfer order issued on the basis of warning letter are illegal and malafide. The learned counsel for the petitioner has relied upon para No. 16 of the judgment reported as **(2009) 2 SCC 592 (Somesh Tiwari Vs. Union of India and Ors.)**, which is as under :-

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is

entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

5. The learned counsel submits that indisputably an order of transfer is an administrative order, which is ordinarily an incident of service. However, in the instant case, the transfer order itself indicates that the transfer is for the reason that the enquiry was initiated against the petitioner. The learned counsel submits that in view of the judgment cited supra, the transfer would amount to be malafied transfer.

6. Mr. Bondar, learned counsel for respondent Nos. 2 to 4 submits that the proceedings were dropped against the petitioner and strict warning was given to the petitioners and it was found more appropriate to issue transfer order against the petitioner. The learned counsel further submits that the petitioner would be due for transfer after some time. The learned counsel further submits that transfer orders are dated 29.9.2022, already six months have passed and this Court may not interfere in the order.

7. Having considered the rival submissions, the petitioners are office bearers of the Zilla Parishad employee's association. Show cause notice was issued under section 3 of the Maharashtra Zilla Parishad District Services (Discipline, Appeal) Rules and thereafter, the same was dropped by issuing strict warning letter against the petitioners. However, transfer order is issued in lieu of conducting further departmental enquiry proceedings as well as in lieu of the punishment and the same would be squarely covered within the law laid down in the case of **Somesh Tiwari** cited supra. The Hon'ble Supreme Court in the case of **Somesh Tiwari**

(supra) has held that when an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. As such, the impugned order of transfer dated 29.9.2022 in both the Writ Petition Nos. 12733/2022 and 12734/2022 issued and passed in lieu of inquiry and punishment being malafied in law is quashed and set aside.

8. However, liberty is reserved to the respondents to issue fresh transfer orders in administrative capacity if the employees/petitioners are due for transfer.

9. Petitions are allowed accordingly and disposed of.

[ARUN R. PEDNEKER J.]

ssc/