

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO.12617 OF 2022

KANCHAN NARAYAN WANERE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS

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Advocate for Petitioner : Mr. P.S. Dighe h/f Mr. V.R. Dhorde
AGP for Respondents 1 to 3: Mr. S.K. Tambe
Advocate for Respondent No.4 : Mr. Avinash S. Deshmukh
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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 7th FEBRUARY, 2023.**

PER COURT :-

1. On 12.12.2022, we had passed the following order:-

"1. The petitioner is aggrieved by the judgment and order dated 28.11.2022, passed by the learned Maharashtra Administrative Tribunal at Aurangabad, in Original Application No.1001/2022. The petitioner prays for staying of the impugned judgment and also the transfer order dated 11.11.2022 transferring the petitioner from the post of Civil Surgeon, Dhule to the post of Deputy Director (Monitoring and Evaluation) at Mumbai, though on a lower salary scale payable to the position of a Civil Surgeon.

2. Issue notice to the respondents, returnable on 20.12.2022, The learned AGP waives service of notice on behalf of respondent nos.1 to 3.

3. After an extensive hearing in this matter and after considering the lengthy submissions of the learned Senior

Advocate for the petitioner, the learned AGP on behalf of respondent Nos.1 to 3/State and the learned Advocate, Shri. Deshmukh on behalf of respondent no.4, prima facie, we do not find that the transfer could be faulted on any legal provision.

4. *However, what we find from the impugned transfer is that the petitioner, who was working for only nine (9) months as Civil Surgeon from 21.01.2022, has been transferred to Mumbai on the position adverted to herein above, but on a lower pay scale, in the sense, that though the petitioner would be working as Deputy Director Health Services (M & E), the pay scale has been downgraded. No perks for working at Mumbai are payable to her. Though she is to discharge duties and functions of a Deputy Director of Health Services, salary commensurate to the said post is not being paid.*

5. *We are unable to comprehend as to why the Government has taken this decision of downgrading the pay scale and making the petitioner work on the pay scale of a Civil Surgeon, notwithstanding that she is posted to work as a Deputy Director Health Services and that to in a metropolitan town like Mumbai. Though this amounts to a transfer, the petitioner is made aware that it is a temporary arrangement and she will have to vacate the position of Deputy Director Health Services, as soon as the candidates selected on promotion are posted or freshly selected candidates are appointed. It is undisputed that the petitioner is also due for promotion and is already in the zone of consideration for being promoted to the position of Deputy Director Health Services.*

6. *In view of the above, the effect and operation of the interim relief order that was passed by the learned Tribunal on 15.11.2022 and which is continued till today, would continue*

till 20.12.2022.

7. List this petition on 20.12.2022, in the urgent 'admissions category'."

2. After we considered the submissions of the learned advocates for the respective sides on 12.01.2023, we have passed the following order:-

"1. This matter was heard for quite some time.

2. It is informed that the petitioner has been shortlisted for promotion and is at Sr.No.26, thereby standing a high chance of getting promotion. In this backdrop, as the petitioner was transferred to Dhule in February 2022 and subsequently transferred to Mumbai on 11.11.2022, a further transfer out of Bombay, after getting promotion, seems to be a probability. As such, the State needs to make a statement as to whether on promotion, the petitioner would be shunted out of Bombay or if she does not succeed in getting promotion, she would be again sent back to any place as a District Civil Surgeon. Let the statement on this count be made on the next date. So also, since the candidates eligible for promotion have been short listed, it would be appropriate for the State to inform the Court as regards the probable time that would be taken to formalize the promotion.

3. Since the learned AGP submits that he can take instructions and make a statement on 19.01.2023, stand over to 19.01.2023 in the "Urgent Orders Category".

4. The ad-interim order, passed earlier, would continue till the next date."

3. Again, after considering the submissions of the litigating

parties, the following order was passed on 20.01.2023:-

"1. Today, the learned Senior Advocate submits on instructions that the petitioner makes a request, in the backdrop of her transfer on 2 occasions in a span of 10 months, that, she be allowed to remain in Dhule upto 31.05.2023 and thereafter the Government is at liberty to transfer her at any place.

2. In response to the above, the learned Advocate representing respondent No.4 submits that it has become an embarrassing situation for the said respondent. He has already been transferred out of Gevrai in November 2022. He has been relieved. Respondent No.4 joined at Dhule. However, due to the impugned orders of the Tribunal, the petitioner continued at Dhule. He attempted to join at Dhule, which is the place of his transfer, as a Civil Surgeon. Because of the interim orders of the Courts, the petitioner has not vacated the post of Civil Surgeon at Dhule. Respondent No.4 is relieved from Gevrai and not permitted to join at Dhule, thereby keeping him in suspended animation. He is also not paid his salary after being relieved. He submits that the posts of Civil Surgeon are vacant at Yawatmal and Chandrapur as per his knowledge. According to the learned AGP, on instructions, the post at Gevrai is also vacant.

3. First of all, we are surprised by the fact that though respondent No.4 is not at fault and who had joined at Dhule and could not continue due to the orders of the Tribunal and subsequent orders of the High Court, he has not been paid his monthly salary. He had obeyed the order of transfer. It is under fortuitous circumstances that he could not discharge his duties at Dhule. This would not mean that the principle of "no work - no pay" would become applicable. He is willing to work and has offered himself by reporting at Dhule. We,

therefore, direct the Government to clear the unpaid salary of respondent No.4 expeditiously.

4. *We find that quite some time has been spent in litigation and status-quo has been maintained due to which the petitioner has continued at Dhule. When the petitioner is making a statement that she would vacate her office on 01.06.2023 and is willing to work wherever transferred, the Government may consider this request coupled with the request of respondent No.4 for being accommodated at any of the vacant posts at Yawatmal and Chandrapur. We could appreciate the embarrassment suffered by respondent No.4 since he has already been relieved and he, therefore, desires to work at either of the two vacancies as indicated.*

5. *The learned AGP submits that on this count, he can not make a statement without instructions and seeks time to contact the respondents' Officers and after a conference talk, he would be able to state the view point of the Government.*

6. *In view of the above, list this petition on 03.02.2023 at 2.30 p.m.. The learned Senior Counsel submits on instructions that as the petitioner has certain difficulties in working at Mumbai, an appropriate representation would be made to the Government in the first week of May, 2023 citing the personal reasons for not being able to be posted at Mumbai. This issue is left to the Government."*

4. The learned A.G.P. has placed before us a communication dated 2.2.2023, which is taken on record and marked as "X-1" for identification. The said communication is from the Under Secretary, Public Health Department, State of Maharashtra. We have gone through the same. At the outset, we need to record our appreciation

for the efforts of the learned A.G.P. and the response of the State Government. The request of the petitioner, that she would be relieved on 01.06.2023 from the post of District Civil Surgeon, Dhule, has been accepted and she would, therefore, discharge her duties only up to 31.05.2023.

5. Insofar as the request of respondent No.4, Dr. Mahadeo Chinchole is concerned, he had volunteered to work as a District Civil Surgeon in the District Hospital at Chandrapur or Yavatmal. It is common knowledge that people are not willing to take up the assignment at Chandrapur and Gadchiroli. Respondent No.4 has expressed his willingness to work at Chandrapur. However, since he was posted as District Civil Surgeon, Dhule, in place of the petitioner and which is under the office of the Deputy Director, Health Services, Nashik Region, Nashik, that respondent No.4 is now assured of an assignment as Assistant Director (Medical) in the office of the Deputy Director, Health Services, Nashik. It is also decided by the Government that his salary, commensurate to the salary of the Assistant Director (Medical), would also be paid to him.

6. The learned advocate for the petitioner submits on instructions, that the petitioner is satisfied and this petition may be disposed off, in terms of the communication "X-1".

7. Shri Deshmukh, the learned advocate representing respondent

No.4, Dr. Chinchole, submits on instructions, that though he had actually joined at Dhule as District Civil Surgeon, under Nashik Health Division, he has only 15 months left for superannuation. He submits that now respondent No.4 will have to first join at Nashik and after the petitioner is relieved from Dhule, w.e.f. 01.06.2023, he would then have to move to Dhule, as a District Civil Surgeon. Instead of this, he may be posted as the District Civil Surgeon at Chandrapur, which is admittedly a vacant post and he may be retained at the said place till his superannuation i.e. till 31.05.2024.

9. He further submits that, his earlier application dated 25.01.2023, seeking an assignment at Chandrapur is pending. Pursuant to this order, he prays that the said application, dated 25.1.2023, be considered sympathetically and instead of compelling respondent No.4 to joint at Nashik for four months and then at Dhule for remaining 12 months, he could be posted at Chandrapur even today and he would not seek any adjustment or accommodation till his superannuation at Chandrapur, on 31.05.2024.

10. In view of the said representation, we request respondent No.1 to consider the representation of respondent No.4, Dr. Chinchole, sympathetically so as to post him at Chandrapur, which would avoid any further transfers. Needless to state, the said representation may be considered only because the post at Chandrapur is vacant. We would appreciate, if respondent No.1 considers the request of

respondent No.4, on or before 28.02.2023.

11. In view of the above, this petition is disposed off. The impugned transfer order of the petitioner would lose it's efficacy. The petitioner shall stand relieved after office hours on 31.05.2023, from the post of District Civil Surgeon, Dhule.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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