

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3938 OF 2023
WITH
INTERIM APPLICATION NO.3163 OF 2023

Ashwini Bhimrao Sonake

...Petitioner

Versus

The Chief Conservator of Forest & Anr.

...Respondents.

...

Mr. K. B. Pedekar for the Petitioner.

Ms. R. A. Salunkhe, AGP for Respondent-State.

...

CORAM: NITIN JAMDAR &
SANDEEP V. MARNE, JJ.
DATE : 1 AUGUST 2023.

P.C.:

1. By this petition, Petitioner challenges judgment and order dated 16 December 2022 passed by the Maharashtra Administrative Tribunal (**Tribunal**) thereby dismissing the Original Application No.637 of 2022. In her Original Application, Petitioner had challenged transfer order dated 27 May 2022 by which she was transferred from the post of Forest Guard-Chincholi, Territory Barsi, Solapur District to the post of Forest Guard-Nannaj, Territory Solapur, Division Solapur.

2. Briefly stated, facts of the case are that Petitioner is working on the post of Forest Guard. By order dated 10 May 2018, she was posted as Forest Guard-Chincholi, Territory Barsi, Solapur Forest Division. On completion of three years tenure, transfer order dated 27 May 2022 was passed posting her as Forest Guard at Nannaj, Territory Solapur, Division Solapur. She challenged the transfer order dated 27 May 2022 before the Tribunal by filling Original Application No.637 of 2022. The Tribunal has proceeded to dismiss the Original Application. Petitioner is aggrieved by the order passed by the Tribunal and has filed the present petition.

3. It must be observed at the very outset that prayers made in the petition appear to be faulty. Petitioner has made following prayers in her petition.

“A) Pending hearing and final disposal of WP No. 3938 of 2023 this Hon’ble Court be pleased to stay the effect, operation and implementation of the impugned judgment and order dated 16.12.2022 in Original Application No. 637 of 2022 of Ld. Member (J) of the Hon’ble Maharashtra Administrative Tribunal Bombay.

B) By suitable order or direction this Hon’ble Court may be pleased to quash and set aside the transfer order dated 27.5.2022 and also the subsequent release order dated 1.6.2022 both of which are void ab initio since they are issued in contravention of order of the same date i.e. 27.5.2022 issued by the Additional Principal Chief Conservator of Forest (Admin) Government of Maharashtra directing not to issue any order before 30.6.2022.

C) By a suitable order the petitioners may please be allowed to

be posted at the previous place of posting i.e. Chincholi Forest Range for a period of one year or the petitioner may please be transferred either to Social Forest Barsi or Social Forestry Pandharpur as per options given by her in her letter and forwarded by her then controlling officer vide letter dated 10.5.2022 for consideration of higher authority.”

4. Thus, perusal of the prayers made in the petition would indicate that there is no substantive prayer in the petition challenging judgment and order dated 16 December 2022 passed by the Tribunal. Petitioner has merely prayed for stay to the Tribunal’s order during pendency of the present petition. We could have proceeded to dismiss the Writ Petition on account of such faulty prayers. However since we have considered submissions made by Petitioner on merits, we proceed to ignore the error in drafting prayers.

5. There is no denial to the fact that Petitioner completed three years’ tenure at Chincholi, Territory Barsi where she was posted on 10 May 2018. On completion of three years tenure, transfer order has been issued on 27 May 2022 transferring her as Forest Guard at Nannaj, Territory Solapur. On completion of tenure of three years provided for under the provisions of the Maharashtra Government Employees Regulation of Transfers and Prevention of Delay in Performing Official Duties Act, 2005 (**Transfer Act**), no ground existed for Petitioner to question the transfer order.

6. Petitioner’s grievance before the Tribunal seems to be that there she was entitled to tenure of six years under Section 3 of the

Transfer Act. The Tribunal has made reference to the judgment of this Court in **Santosh N. Dalal Vs. State of Maharashtra & Ors. (2016) 1 Mh.L.J. 45**. This Court, after interpreting provisions of Section 3 of the Transfer Act this Court held that the Provisio to Section 3 cannot be read to mean that a government servant entitled to two tenures of posting. Therefore the Tribunal has rightly rejected the Petitioner's contention that she was entitled tenure of six years at Chincholi, Territory Barsi.

7. The next submission of learned counsel appearing for the Petitioner is that the transfer order dated 27 May 2022 is in violation of the directives issued by the State Government vide Government Resolution dated 27 May 2022. He would submit that in that Government Resolution it was specifically directed that no transfers during the year 2022-23 shall be effected before 30 June 2022. He would submit that since transfer order is on 27 May 2022, the same is in violation of the Government Resolution dated 27 May 2022. We are unable to agree. The administrative instructions issued vide Government Resolution dated 27 May 2022 cannot be enforced in a Court of Law. The same are issued merely for administrative convenience and the same do not create any right in favour of a government servant. Transfers are usually effected during April-May of each year with a view to ensure that the academic careers of the children of transferred officials is not disturbed. In fact Sub-Section (4) of the Transfer Act mandates that transfers be effected during months of April or May.

8. In the present case Petitioner's transfer has been effected on 27 May 2022 in accordance with Section 4(4) of the Transfer Act after completion of three years tenure on the previous post. Therefore it cannot be stated that there is any arbitrariness in effecting Petitioner's transfer. It also appears that Petitioner did not join transferred post for substantial period of time. After issuance of the transfer order dated 27 May 2022, it appears that she had joined the post in June 2023 after more than a year. Such conduct on behalf of Petitioner does not commend us and this Court would be loathe in exercising writ jurisdiction in favour of such a litigant. The Supreme Court has disapproved conduct of government servants in not reporting at transferred place and indulging in litigation in **S. C. Saxena Vs. Union of India**, (2006) 9 SCC 583.

9. Considering the overall conspectus of the matter, we do not find that any error is committed by Tribunal in dismissing the Petitioner's Original Application. Writ Petition, being devoid of merits, is dismissed without any order as to costs.

10. With disposal of writ petition, Interim Application No.3163 of 2023 does not survive. The same stands disposed of as having become infructuous.