

jvs

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2884 OF 2021

Shri. Sushil Trimbakrao Morale	}	Petitioner
Versus		
The Sub-Divisional Officer cum	}	
Sub-Divisional Magistrate, Vasai	}	
and Ors.	}	Respondents

Ms. Madhavi Ayyappan with Ms. Amruta Kharade and Ms. Gayatri K. i/b. Talekar and Associates for the petitioner.

Mr. M. M. Pabale, AGP for State.

Dr. Abhinav Chandrachud with Mr. Datta Mane and Mr. Maruti Sarkar for respondent no. 4.

**CORAM: S. V. GANGAPURWALA, Act.CJ.&
SANDEEP V. MARNE, J.**

DATE: JANUARY 4, 2023

P.C.:

1. The petitioner assails the order passed by the Maharashtra Administrative Tribunal (hereafter "the Tribunal", for short). The Tribunal, under the impugned order, has partly allowed the original application of the petitioner. The Tribunal cancelled the transfer order of the petitioner, but at the same time, did not interfere with the transfer order of respondent no. 4. The petitioner assails the same.

2. Ms. Ayyappan, learned advocate for the petitioner strenuously contends that the petitioner is senior to respondent no. 4. The preference given by the petitioner

ought to have been considered on priority. The authorities have favoured respondent no. 4. The petitioner was initially posted at Sajja Khaniwade. In the interregnum, the petitioner was suspended. The suspension of the petitioner was revoked. The petitioner was posted thereafter at Sajja Sopara. The petitioner challenged the same before the Tribunal by filing an original application. Though the Tribunal did not pass orders with regard to transfer on the ground that vacancy was not available at Khaniwade, the Tribunal directed authorities to consider the case of the petitioner for transfer as and when vacancy arises. According to the learned advocate for the petitioner, in the year 2018, a request was made by the petitioner for transfer as the post at Khaniwade was vacant. The petitioner requested for transfer at the vacant posts at Pelhar, Waliv, Khaniwade or Shirsad. However, none of the said places were considered and respondent no. 4 was transferred at Pelhar. Though the Tribunal set aside the transfer order of the petitioner, the Tribunal did not pass a further order for transferring the petitioner at the preferred place. The learned advocate submits that the same is discriminative. The Government Resolution dated 9th April 2018 is not adhered to.

3. Mr. Pabale, learned AGP submits that in fact, amongst all the places, Sopara is most modern place. It has got better connectivity. Even railway station is near to Sopara and all these places are at the distance of 10 to 15 kms.

4. Dr. Chandrachud, learned advocate for respondent no. 4 submits that no illegality has been committed. Rules have been adhered to. No question of favoritism arises.

5. It would appear that the petitioner had challenged his transfer to Sopara by filing an original application bearing No. 1094 of 2017. The said transfer order was not interfered with by the Tribunal while disposing of the original application. The Tribunal observed that the authorities may consider the representation as and when there is vacancy. The Tribunal further ordered that the applicant cannot claim that he needs to be posted at the same place. Thereafter, it seems that the petitioner worked at Sopara. The petitioner has completed six years at Sopara.

6. The learned AGP submits that in April-May, 2023, general transfers would take place. The petitioner would be eligible for transfer in April-May, 2023. It also appears that the petitioner has given a letter on 19th April 2022 seeking transfer at Talathi Sajja Waliv or Talathi Sajja Sasunnavghar. The said application of the petitioner can be considered by the respondents during the general order of transfer to be effectuated in April-May, 2023. As observed above and represented by the learned AGP that the petitioner will be eligible for transfer when general transfer order will be effectuated in April-May, 2023. In that event, the request of the petitioner certainly can be considered adhering to the Government Resolution dated 9th April 2018. The respondents shall certainly take a decision on the application of the petitioner for transfer at Talathi Sajja Waliv or Talathi Sajja Sasunnavghar on its own merits during the general transfers to be effectuated in April-May, 2023.

7. With the aforesaid observations, the writ petition is disposed of. No costs.

8. The prayer of the petitioner to frame rules with regard to the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 is kept open. The petitioner may agitate it in an appropriate case.

(SANDEEP V. MARNE, J.) (ACTING CHIEF JUSTICE)

SALUNKE
J V

Digitally signed
by SALUNKE J V
Date: 2023.01.04
19:46:15 +0530