

28 June 2023.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 7679 OF 2023**

Shri. Prashant S/O. Subhash Bedse

....Petitioner

V/s.

The State of Maharashtra & Ors.

....Respondents

Mr. Satish Talekar along with Ms. Madhavi Ayappan i/by. Talekar & Associates, Advocate for the Petitioner.

Mr. N.K. Rajpurohit, AGP for State-Respondent no.1.

Mr. Sanjay Kshirsagar, Advocate for Respondent no.3.

CORAM : DHIRAJ SINGH THAKUR, &**SANDEEP V. MARNE, JJ.****Date : 28 June 2023.****ORDER** (*Per Sandeep V. Marne J*)

1. Interim orders dated 19 June 2023 and 20 June 2023 passed by the Maharashtra Administrative Tribunal (**Tribunal**) in Original Application No. 688 of 2023 are subject matter of challenge in the present petition. By its interim orders, the Tribunal has stayed the transfer order dated 16 June 2023 by which Petitioner was transferred and posted as Tehsildar, Khed in place of

28 June 2023.

Respondent no.3. The Tribunal has further directed Respondent no.3 to join as Tehsildar, Khed from where she was transferred out. By further order dated 20 June 2023, the Tribunal has held that the transfer order is not only required to be stayed but is required to be given antedated effect. The Tribunal has directed Petitioner to join his previous posting as Tehsildar-Mohol, District-Solapur.

2. Brief facts of the case are that, Petitioner was earlier functioning as Tehsildar, Mohol, District-Solapur since 20 September 2021. Respondent no.3 was functioning as Tehsildar, Khed since 18 December 2020. On 16 June 2023, the State Government issued order transferring Petitioner from the post of Tehsildar, Mohol, District-Solapur and posted him as Tehsildar, Khed, District-Pune against the vacancy created on account of proposed transfer of Respondent no.3. Thus Respondent no.3 was neither transferred nor given specific posting. The order dated 16 June 2023 was restricted to Petitioner alone. Petitioner was relieved from the post of Tehsildar, Mohol on 16 June 2023 itself and joined on the post of Tehsildar, Khed on the same day. It appears that since Respondent no.3 was not available for handing over the charge, Petitioner resumed the charge on the post of Tehsildar, Khed *ex-parte* on 16 June 2023.

3. Aggrieved by Petitioner's transfer in her place, Respondent no.3 instituted Original Application No.688/2023 challenging the order dated 16 June 2023. When the OA came up

28 June 2023.

before the Tribunal on 19 June 2023, appearance on by an advocate was erroneously recorded on behalf of Petitioner. The Tribunal perused the file noting approving transfer of Petitioner by the Chief Minister and arrived at a conclusion that no reasons were recorded for passing order dated 16 June 2023. The Tribunal also noticed that similar transfer orders were issued by the Revenue Minister and the Chief Minister without recording reasons and in violation of the provisions of the Maharashtra Government Servant Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (**Transfer Act**). The Tribunal therefore proceeded to pass interim order dated 19 June 2023 staying transfer order dated 16 June 2023 until further orders and directed Respondent no.3 to join as 'Tehsildar, Collector Officer, Court Naka, Thane'. Since there was error in the order dated 19 June 2023 in describing the post against which Respondent no.3 was to join, he moved an application for speaking to minutes of the order on 20 June 2023. The Tribunal corrected the error in recording appearance of an Advocate for the Petitioner and observed that none had appeared for Petitioner on 19 June 2023. The Tribunal further corrected the post against which Respondent no.3 was directed to join from 'Tehsildar, Collector Office, Court Naka, Thane' to 'Tehsildar, Khed'. It appears that on 20 June 2023, a motion was also made on behalf of Petitioner for vacating the stay order of 19 June 2023. The

28 June 2023.

Tribunal recorded the statement made on behalf of Petitioner that he had joined the post of Tehsildar, Khed on 16 June 2023. The Tribunal therefore directed Respondent no.3 to serve copy of the OA to Petitioner. The Tribunal held that the order of transfer was grossly illegal and therefore was not only required to be stayed but deserved to be given *antedated* effect. The Tribunal took note of the fact that no one was posted at previous place of posting of Petitioner at Mohol and therefore directed Petitioner to join as Tehsildar, Mohol. The interim orders passed by the Tribunal on 19 June 2023 and 20 June 2023 are subject matters of challenge in the present petition.

4. Appearing for Petitioner, Mr. Talekar the learned Counsel would submit that the Tribunal could not have passed *ex-parte* order of stay without service of copy of the OA on petitioner. He would rely upon the provisions of Section 24 of the Administrative Tribunals Act, 1985 (**Act of 1985**) in support of the contention that the Tribunal cannot pass an interim order without service of copy of OA to the party against whom interim order is sought. In support of this contention, he would rely upon the judgment of this Court in the **State of Maharashtra V/s. Vinay Mohan Lal**, 2005 SCC Online Bom.745 and judgment of the Apex Court in **AIIMS V/s. Sanjiv Chaturvedi and Others** (2020) 17 SCC 602. He would further submit that if law provides for consideration of prayer for interim stay only after service of copy of the O.A. on other side,

28 June 2023.

the Tribunal cannot take departure from the procedure established under Statute and in this regard would rely upon judgment of the Apex Court in **Union of India and Others V/s. Mahendra Singh**, 2022 SCC Online 909.

5. Mr. Talekar would further submit that in matters of transfer, the Tribunal could not have granted interim injunction and would rely upon the judgment of the Apex Court in **Public Services Tribunal, Bar Association V/s. State of U.P. and Another**, (2003) 4 SCC 104. That the transfer order dated 16 June 2023 was acted upon as Petitioner took over charge of the post of Tehsildar on 16 June 2023 itself. That once the transfer order was acted upon, grant of interim relief by uprooting Petitioner from that post would be akin to grant of final relief. In support of this contention, he would rely upon judgment of the Apex Court in **State of U.P. and Others V/s. Ram Sukhi Devi** (2005) 9 SCC 733. That the transfer order dated 16 June 2023 specifically directed that the Petitioner stood relieved *ex-parte* from his post of Tehsildar, Mohol and was directed to report at the place of transfer before 19 June 2023. That Respondent no.3 deliberately avoided handing over charge of the post of Tehsildar, Khed to Petitioner on 16 June 2023 and that therefore Petitioner cannot be blamed for taking over charge of the post in absence of Respondent no.3. They would pray for setting aside the interim orders passed by the Tribunal.

6. *Per-contra*, Mr. Kshirsagar learned Counsel appearing for Respondent no.3 would oppose the petition and support the

28 June 2023.

orders passed by the Tribunal. Relying on provisions of the Transfer Act, he would submit that the provisions are sacrosanct. He would place reliance on the judgment of the Division Bench of this Court in **S.B. Bhagwat vs. State of Maharashtra**, 2012 (3) Mh. L. J. 197 in support of his contention that recording of reasons for curtailment of tenure under Section 4(5) of the Transfer Act is held to be mandatory. That the Tribunal has itself perused the file and has noticed non-recording of reasons for effecting Petitioner's transfer. He would further submit that the act of Petitioner in unilaterally joining the post of Tehsildar, Khed was in violation of Rule 31 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981.

7. Mr. Kshirsagar would further submit that the Tribunal has arrived at the conclusion that there is a strong merit in the case warranting grant of *status-quo ante*. That Respondent no.3 is sought to be moved out from the post before completion of her tenure. No posting is granted to her and that she is made to wait for posting for accommodating Petitioner. That no other Officer has been posted as Tehsildar, Mohol and that therefore no prejudice would be caused if Petitioner is made to work as Tehsildar, Mohol during pendency of the OA.

8. So far as allegation of violation of provisions of Section 24 of the Act of 1985 is concerned, Mr. Kshirsagar would submit that

28 June 2023.

Petitioner's Advocate did appear before the Tribunal on 20 June 2023 and the interim order has been confirmed and modified after hearing his Advocate. He would urge that the interim arrangement made by the Tribunal, in the facts and circumstances of the case, deserves to be continued till 17 July 2023 when the OA is posted for hearing.

9. We have also heard Mr. Rajpurohit, the learned AGP appearing for the State Government.

10. Two points that arise for our consideration are (i) whether the Tribunal is justified in granting *ex parte* interim stay against Petitioner and (ii) whether grant of interim stay of *status quo ante* is warranted in facts and circumstances of the case.

11. We first proceed to decide Mr. Talekar's objection about grant of *ex-parte* interim stay by the Tribunal to the transfer order. Reliance is placed on the provisions of Section 24 of the Administrative Tribunals Act, 1985 which reads thus :

24. CONDITIONS AS TO MAKING OF INTERIM ORDERS –

Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless –

(a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and

(b) opportunity is given to such party to be heard in the matter :

28 June 2023.

Provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim orders as an exceptional measure if it is satisfied for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order.

12. Thus under Section 24 of the Act, no interim order can be made by the Tribunal without service of copy of the OA to the party against whom the application is made and without providing an opportunity to such party to be heard in the matter. The Proviso however makes an exception where the Tribunal is empowered to dispense with the requirement of service of copy and hearing opportunity as an exceptional measure by recording reasons in writing that grant of *ex-parte* interim order is necessary for preventing any loss caused to the applicant which cannot be adequately compensated.

13. This Court had an occasion to consider the provisions of Section 24 of the Administrative Tribunals Act. In *State of Maharashtra V.s. Vinay Mohan Lal* (supra), this Court held in para-10 as under :

“10. It is the mandate of the statute that no interim order shall be made on, or in any proceedings relating to, an application unless copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and opportunity is given to such party to be heard in the matter. Admittedly, the order staying the transfer of respondent No. 1 is

28 June 2023.

an ex parte order. The Tribunal, of course, in exceptional circumstances, may dispense with the requirement of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money. The Tribunal has not recorded any reasons in its order, as required by Section 24 of the Act. The learned Advocate General submitted that orders of the Tribunal dated 1st June, 2005 and 17th June, 2005 are contrary to the statutory provision and the settled position of law, as has been crystallised in number of judgments of the Apex Court and this Court. We would like to recapitulate the ratio of some of the judgments of the Apex Court and then determine whether the impugned order staying the transfer order is in consonance with the settled position of law.”

14. The Supreme Court in *AIIMS V/s. Sanjiv Chaturvedi* (supra) has dealt with the provisions of Section 24 of the Act and held as under :

“55. Section 24 of the Act limits the power to pass interim order whether by way of injunction, stay or otherwise by imposing conditions on the exercise of such power. No interim order is to be made unless copies of the application along with documents in support of the plea for interim order are furnished to the party against whom such application is made and opportunity to be heard is given to such party. The aforesaid condition can only be dispensed with in exceptional cases, if the Tribunal is satisfied, for reasons to be recorded in writing, that it is necessary to pass an interim order for preventing any loss to the applicant which cannot adequately be compensated in money. The interim order, in such case is to be of maximum duration of fourteen days unless the requirements of sub-sections (a) and (b) are complied with, before the expiry of fourteen days and the interim order is extended.”

15. The Division Bench of this Court, (to which one of us (*Sandeep V. Marne, J.* was a party), in **Union of India V/s. Vijay**

28 June 2023.

Walia (Writ Petition No. 5820/2023 decided on 26 April), has held in para-13 and 14 as under:

“13. Petitioners have objected to passing of ex-parte orders of stay to transfer by the Tribunal. In this regard Mr. Shetty has placed reliance on judgment of Division Bench this court in Vinay Mohan Lal (supra). This court held in paragraph No.9 and 10 of the judgment as under;

14. Though we do not propose to lay down an absolute proposition that the Tribunal cannot pass ad-interim ex-parte orders, considering the facts and circumstances of the present case, where representations of Respondent against transfer orders were rejected by passing speaking orders on 10th May 2022, 26th September 2022 and 27th October 2022, it would have been in the fitness of the things if the Tribunal had heard petitioners before passing ad-interim/final orders in Original Application Nos.181 of 2022 (Ahmadabad), 997 of 2022 and 895 of 2022.”

16. Having considered the law expounded by the Apex Court and by this Court with regard to powers of the Tribunal to pass *ex-parte* interim orders, we proceed to examine whether the Tribunal could have dispensed with the requirements of Clauses (a) and (b) of Section 24 of the Act in the present case.

17. It appears that in the Order dated 19 June 2023, appearance of an advocate for Petitioner was erroneously reflected. By its order dated 20 June 2023, the Tribunal has corrected the error by clarifying that none had appeared for the Petitioner on 19 June 2023. Thus, when the OA was heard on 19 June 2023, Petitioner was not

28 June 2023.

served with a copy thereof. However, Petitioner is not the only Respondent in the OA. State Government was served with copy of the OA, before it was taken up for hearing on 19 July 2023. The State Government in fact produced the file containing approval for Petitioner's transfer. So *qua* the State Government, requirements of clauses (a) and (b) of Section 24 of the Act of 1985 were fulfilled. Petitioner contends that he is the party against whom the interim order was sought. The transfer order is issued by the State Government and Petitioner is a beneficiary of the same. While deciding correctness of transfer order, Petitioner may get adversely affected and hence he is impleaded as a party Respondent to the OA. It is however the State Government who has taken a decision to effect transfers, and it is the Government who will have to justify the reasons for such transfer. An officer does not have a right to be posted on a particular post. Therefore, in matters of transfer, unlike seniority or promotion, the issue of violation of any vested right of beneficiary of transfer would not arise. Therefore, mere impleadment of beneficiary of transfer as party Respondent to proceedings challenging Applicant's own transfer/posting, would not necessarily mean that the proceedings are directed mainly against such beneficiary. The transferring authority has to ultimately justify the transfer order. The beneficiary of transfer is not privy to the decision making process and is not in a position to justify the reasons for transfer. As observed above, the transferring authority was both served with copy of the OA as well as heard while passing interim stay order. Therefore, it is difficult to hold that Petitioner is the

28 June 2023.

main party against whom interim order was sought. As observed earlier, the requirements of clauses (a) and (b) of Section 24 of the Act of 1985 are fulfilled *qua* the transferring authority. Also of relevance is the fact that the possible prejudice caused to Petitioner on account of non-grant of opportunity of hearing is mitigated to some extent by considering submissions made on his behalf on 20 June 2023. It is also required to be seen that beyond pointing out to the Tribunal that he had already taken over charge of the post, Petitioner had nothing more to submit before the Tribunal as he is not privy to the reasons for issuance of transfer order. Whether *status quo ante* could be granted after noticing the factum of Petitioner taking over the charge of the post is something which is being discussed in latter part of this Order. Therefore, in the facts and circumstances of the case, we are not inclined to interfere with the impugned orders on the ground of Petitioner's contention of violation of provisions of Section 24 of the Act of 1985 *qua* him.

18. Now we proceed to examine the second issue as to whether interim order of *status quo ante* was warranted in the facts and circumstances of the present case. Paras-6, 7 and 8 of the interim order dated 19 June 2023 reads as under:

“6. Tribunal has come across other three O.As wherein similar orders are passed by the Hon'ble Minister for Revenue and Hon'ble Chief Minister on the same day and the orders are violative of the entire procedure prescribed under ROT Act. At this juncture Tribunal points out that the Respondent-State to take note of the ratio laid down in the case of T.S.R. Subramanian & Ors. Vs. Union of India & Ors., W.P. (Civil) 82/2011 & Ors. Is always to be kept in mind.

28 June 2023.

7. Considered the submissions. Learned counsel for the applicant has made out a case for grant of urgent interim relief.

8. In view of the above the impugned order dated 16.6.2023 is stayed until further orders and the applicant is hereby directed to join as Tahsildar, Collector Office, Court Naka, Thane from where he is transferred.

19. Paras-6 and 7 of the order dated 20 June 2023 read as under:

“6. Applicant is directed serve copy of the Original Application to Respondent no.3. Considered the submissions. The order of transferring the applicant mid-term, mid tenure without reasoned order and without approval of the Civil Services Board shows that the order is grossly illegal. Such order of transfer is grossly illegal and it is required not only to be stayed but it is to be given the ante dated effect. Respondent no.3 also shall not be without work or without posting and therefore Respondent no.3 shall join the post of Tahsildar, Mohal, Dist-Solapur, as the order of transfer is found prima-facie, illegal.

7. In view of the above, Respondent-State, is directed to implement the order of this Tribunal with immediate effect.”

20. Thus, impugned orders have the effect of granting interim mandatory injunction.

21. We had an occasion to deal with somewhat similar order passed by the Tribunal in the case **Rajendra s/o. Maruti Najan V/s. The State of Maharashtra & Anr.** (Writ Petition No.7677/2023) decided on 26 June 2023. In that case, we have considered the scope of grant of interim mandatory injunction and after considering the law on the subject, it is held as under:

“10. We have already reproduced the interim order passed by the Tribunal. It has ‘directed’ Respondent No. 2 to start

28 June 2023.

working on the post from 20 June 2023. The order is thus in the nature of interim mandatory injunction.

11. The principles governing grant of interim mandatory injunction have been discussed by the Apex Court in **Dorab Cawasji Warden v. Coomi Sorab Warden**, (1990) 2 SCC 117 at page 126.

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

(emphasis supplied)

12. The judgment in **Dorab Kawasji Warden** (supra) is followed by the Apex Court in its decision in **Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan**, (2013) 9 SCC 221, in which it is held:

28 June 2023.

18. There is yet another dimension to the issues arising in the present appeal. The interim relief granted to the plaintiffs by the appellate Bench of the High Court in the present case is a mandatory direction to hand over possession to the plaintiffs. **Grant of mandatory interim relief requires the highest degree of satisfaction of the court; much higher than a case involving grant of prohibitory injunction. It is, indeed, a rare power,** the governing principles whereof would hardly require a reiteration inasmuch as the same which had been evolved by this Court in *Dorab Cawasji Warden v. Coomi Sorab Warden* [(1990) 2 SCC 117] has come to be firmly embedded in our jurisprudence.

(emphasis supplied)

13. In **Kishore Kumar Khaitan v. Praveen Kumar Singh**, (2006) 3 SCC 312 the Apex Court once again dealt with the aspect of issuance of mandatory interim injunction and has held as under:

“6. **An interim mandatory injunction is not a remedy that is easily granted.** It is an order that is passed only in circumstances which are clear and the prima facie materials clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction. Keeping this principle in mind, it is necessary to see whether in the case on hand, the Additional District Judge was justified in passing the interim order of injunction.

emphasis supplied)

14. In **Samir Narain Bhojwani v. Aurora Properties & Investments**, (2018) 17 SCC 203, the Apex Court has reiterated the principle expounded in *Dorab Kawasji Warden* (supra) and has held:

“24. The nature of order passed against the appellant is undeniably a mandatory order at an interlocutory stage. There is marked distinction between moulding of relief and granting mandatory relief at an interlocutory stage. As regards the latter, that can be granted only to restore the status quo and not to establish a new set of things differing from the state which existed at the date when the suit was instituted. This Court in *Dorab Cawasji Warden v. Coomi Sorab Warden*, has had occasion to consider the circumstances warranting grant of interlocutory mandatory injunction.

28 June 2023.

25. The Court, amongst others, rested its exposition on the dictum in Halsbury's Laws of England, 4th Edn., Vol. 24, Para 948, which reads thus:

“948. Mandatory injunctions on interlocutory applications.—A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, such as where, on receipt of notice that an injunction is about to be applied for, the defendant hurries on the work in respect of which complaint is made so that when he receives notice of an interim injunction it is completed, a mandatory injunction will be granted on an interlocutory application.”

26. The principle expounded in this decision has been consistently followed by this Court. It is well established that an interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie material clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction. [See *Metro Marins v. Bonus Watch Co. (P) Ltd.*, *Kishore Kumar Khaitan v. Praveen Kumar Singh and Purshottam Vishandas Rahejav. Shrichand Vishandas Raheja*]

15. Having considered the sound exposition of law by the Apex Court on powers of Courts to grant interim mandatory injunction, we now proceed to examine whether any case was made out by Respondent No. 2 in his Original Application for grant of interim mandatory injunction in the form of a ‘direction’ to him to ‘start working from tomorrow on his post’.

16. It must be borne in mind that Respondent No. 2 has not been transferred to any particular post. Until 16 June 2023, he continued to be posted as Tahsildar (Revenue), Collector Office, Pune. On account of Order dated 16 June 2023 posting Petitioner on that post, Respondent No. 2 has been rendered without any post. Though in ordinary course of things, such a course of action in keeping an officer without posting ought to have been avoided by the State Government, this is something which need not be gone into at this stage. Suffice it to observe that Respondent No. 2 has not been transferred out of Pune. He is now without posting, but will be entitled to draw salary and allowances. At

28 June 2023.

this juncture atleast, he is not required to move out of Pune causing any inconvenience to himself or to his family members. Since Respondent No. 2 has not been transferred to any post or station, there would ideally not be any reason for him feel aggrieved.

17. However Respondent No. 2 is aggrieved by posting of Petitioner on his post. This essentially means that Respondent No. 2 wishes hold the post of Tahsildar (Revenue), Collector Office, Pune. He also challenges Petitioner's transfer contending that Petitioner was not due for being transferred or posted as Tahsildar (Revenue), Collector Office, Pune. It is well settled law that a Government Official cannot demand posting against a particular post. True it is that under the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (**Transfer Act**), a tenure of 3 years on a post is ordinarily provided to State Government Officers. There are however exceptions under which the normal tenure can be curtailed. Whether reasons existed for curtailment of tenure of Respondent No. 2 and whether curtailment of his tenure by just about 6 months (having completed tenure two and half years) are the issues which the Tribunal would consider at the time of final disposal of the OA.

18. However, considering the facts and circumstances of the case and after applying the principles expounded by the Apex Court for grant of interim mandatory injunction, we are of the view that this is not a case where a strong case (higher than a *prima facie* case) has been made out or any serious/irreparable injury would be caused to Respondent No. 2 or that the balance of convenience is so strongly tilted in favour of Respondent No. 2 that the Tribunal could have granted interim mandatory injunction. The discretion vested in the Tribunal for grant of interim mandatory injunction is required to be exercised in rare cases and not in routine manner in which it is exercised in the present case. Petitioner had taken over charge of the post on 19 June 2023 by the time Tribunal took up OA of Respondent No. 2 for hearing, the last non-contested status was that Petitioner was functioning on the transferred post. The Tribunal was aware that the transfer/posting order was already acted upon. In such circumstances, the Tribunal could have called for responses from Respondents before it and proceeded to decide the OA in an expeditious manner rather than embarking upon exercise of removal of Petitioner and restoration of Respondent No. 2 on the post, which relief could only be granted at final hearing of the case.

22. The fact circumstances in ***Rajendra Najan*** (supra) are almost similar to the present case where the transferred officer had taken over

28 June 2023.

charge of the post and the transfer order was already acted upon. The requirements for grant of interim mandatory injunction as specified in ***Dorab Cawasji Warden*** (supra) are thus not satisfied in the present case as well. The situation is not irreversible. If Respondent No. 3 succeeds in her OA, she can be directed to be posted back as Tehsildar-Khed, where she has been functioning for the last two and half years. We are therefore of the view that no case was made out for grant of interim mandatory injunction in the present case as well.

23. In ***Public Services Tribunal Bar Association*** (supra), the Apex Court has held that transfer being an incident of service, an order of transfer should ordinarily not be stayed by way of interim order. The Apex Court held in paras-37 and 38 as under :

“37. Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the Courts. This Court consistently has been taking a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner.

38. From the abovequoted decisions, it is evident that this Court has consistently been of the view that by way of an interim order the order of suspension, termination, dismissal and transfer etc. should not be stayed during the pendency of the proceedings in the court.”

(emphasis supplied)

24. In the present case, the transfer order was acted upon by Petitioner joining the post of Tehsildar, Khed on 16 June 2023 itself. Respondent no.3 has not been granted any other posting and therefore she was not required to do any positive act in pursuance of the transfer order, beyond handing over her charge. Thus, both for

28 June 2023.

Petitioner as well as for Respondent No. 3, the transfer was acted upon. In that view of the matter, grant of *status-quo ante* would virtually mean grant of final relief in the O.A. In ***State of Uttar Pradesh V/s. Sukhi Devi*** (supra), the Apex Court has held as under :

“8. To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the Government Order dated 26.10.1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage.....”

25. Mr. Kshirsagar has strenuously contended that the action of the Petitioner in unilaterally taking over the charge of the post of Tehsildar, Khed is in violation of Rule 31 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. We need not at this stage go into the nitty-gritties of procedure to be followed for handing over-taking over charge under the Rules. Suffice it to observe at this stage that the transfer order itself relieved the Petitioner *ex-parte* on 16 June 2023. He was directed to join the transferred post on or before 19 June 2023. He was accordingly relieved from the post of Tehsildar-Mohon on 16 June 2023. If he was not to join the transferred post immediately, he would have to run a risk of remaining unauthorisedly absent. He therefore reported for duty as Tehsildar, Khed on 16 June 2023. The transfer order was thus acted upon. We need not, at this juncture, go into the issue whether he was justified in taking over charge of the transferred post on 16 June 2023

28 June 2023.

itself. In any case, not much importance needs to be given to the alleged overenthusiasm exhibited by Petitioner in taking charge of the post on 16 June 2023 as he was otherwise required to take the same 'on or before' 19 June 2023. Therefore even if he was to wait for a day or two to take over the charge as Tehsildar-Khed, we would have done so by the time the OA was heard in the afternoon session on 19 June 2023. Therefore the manner in which Petitioner took over charge of the post is inconsequential for determining the issue as to whether grant of *status quo ante* was warranted.

26. Mr. Kshirsagar has also relied upon judgment of the Division Bench of this Court in ***S.B. Bhagwat*** (supra), in support of his contention that transfer order issued in violation of transfer is *ex-facie* illegal and is bound to be stayed. No doubt, this court has emphasized the need to record reasons for curtailing the statutory tenure of an official. However this is something which would be considered by the Tribunal at the time of final hearing of the Original Application. We are not considering the merits of transfer order at this stage. Infact, on account of submissions made on behalf of Respondent no.3, we had summoned the file containing approval for Petitioner's transfer. However, since we are not going into the merits of contentions raised in the Original Application, which is pending before the Tribunal, we are not recording any finding about the legality of the transfer order and all questions in that regard are left open.

28 June 2023.

27. In the result, we are of the view that the impugned interim orders dated 19 June 2023 and 20 June 2023 passed in O.A. 688/2023 cannot be sustained and are set aside. Petitioner has taken over charge of the post of Tehsildar, Khed on 16 June 2023 and shall continue to function on that post till decision of the Original Application, which is posted for hearing on 17 July 2023. Parties shall cooperate with the Tribunal for expeditious hearing of the OA. The Tribunal shall not be influenced by the findings recorded in this order and shall proceed to decide the OA on its own merits. With the above observations, the Writ Petition is disposed of.

(SANDEEP V. MARNE, J.)

(DHIRAJ SINGH THAKUR, J.)