

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6957 OF 2019

The State of Maharashtra

....Petitioner

V/s.

1. Shri. Sanjay Dinkarrao Mankar

2. Dhawal P. Antapurkar

....Respondents

ALONGWITH

WRIT PETITION NO. 5599 OF 2019

WITH

INTERIM APPLICATION NO. 3733 OF 2022

Dhawal P. Antapurkar

....Petitioner

V/s.

The State of Maharashtra

and Ors.

....Respondents

Mr. N.C. Walimbe, Assistant Government Pleader in WP-6957-2019
and for respondent in Writ Petition No. 6957/2019

Mr. Mohan Sudame i/by. Mr. Piyush Pande, Advocate for the
petitioner and for Respondent No.1 in Interim Application in Writ
Petition No. 5599-2019 and in IA.

Mr. Sanghraj Rupwate a/w. Mr. Shashikant M. Mane, Advocate for respondent no.2 in Writ Petition No.5599 of 2019 and for respondent no.1 in Writ Petition No. 6957-2019.

CORAM : S.V. GANGAPURWALA, ACTING C.J.

SANDEEP V. MARNE, J.

Judg. Resd. On : 19 January, 2023.

Judg. Pron. On : 30 January, 2023.

Judgment (Per Sandeep V. Marne, J.) :

1. Rule. Rule made returnable forthwith. By consent of the parties, taken up for final hearing.

2. Judgment and order dated 29th March, 2019 passed by Maharashtra Administrative Tribunal (Tribunal) in Original Application No. 1038 of 2018 is the subject matter of challenge in the present petition. In that Original Application, Sanjay Dinkarrao Mankar (Respondent no.1 in Writ Petition No. 6957 of 2019) had challenged order dated 20 November, 2018 by which his posting on promotion to the post of Joint Director-Boilers was changed from Nagpur to Solapur. By the order impugned in the present petition, the Tribunal has allowed the Original Application of Sanjay Dinkarrao Mankar, setting aside the order

dated 20th November, 2018 and has directed to restore his posting at Nagpur as per earlier order dated 29th September, 2018. The Tribunal has made certain adverse observations against Shri. Dhawal P. Antapurkar, Director, Steam Boilers who was impleaded as respondent no.2 in personal capacity in Original Application No. 1038/2018. This has triggered filing of Writ Petition No. 5599 of 2019 by Mr. Antapurkar challenging the impugned judgment of the Tribunal and seeking expungement and deletion of adverse findings therein.

3. Since Mr. Antapurkar (Writ Petition No. 5599 of 2019) is mainly concerned with expunction of adverse findings in the impugned judgment, we propose to treat Writ Petition No. 6957 of 2019 filed by the State Government as the lead matter by referring to the parties therein in the present Judgment, State Government as Petitioner, Mr. Mankar as Respondent No. 1 and Mr. Antapurkar as Respondent No. 2.

4. Respondent No.1 was serving as Deputy Director of Boilers (Group 'A') at Solapur. By order dated 29th September, 2018

he came to be promoted to the post of Joint Director (Group 'A') and posted at Nagpur. It is averred that the posting was granted in pursuance of recommendations of the Civil Services Board. The Respondent No.1 accordingly reported at Nagpur and assumed charge of the post of Joint Director of Boilers on 5th October, 2018. However, by letter dated 5th October, 2018 respondent no.2 informed him that his action of taking over the charge of the post of Joint Director at Nagpur was not in accordance of rules and the Respondent No.1 was reprimanded for unilaterally leaving the charge of the post of Deputy Director, Solapur and taking over the charge of Joint Director at Nagpur.

5. By order dated 20 November, 2018, the posting of the Respondent No.1 was changed from Nagpur to Solapur. He felt aggrieved by the order dated 20th November, 2018 and approached the Tribunal by filing Original Application No. 1038 of 2018. The order changing the posting from Nagpur to Solapur was assailed *inter-alia* on the ground of malice on the part of respondent no.1. By judgment and order dated 29 March, 2019, the Tribunal proceeded to allowed Original Application and set

aside the order dated 20 November, 2018 directing restoration of Respondent No.1's posting at Nagpur, granted vide order dated 29 September, 2018. Both State Government as well as Respondent No. 2 are aggrieved by the Order of the Tribunal.

6. Appearing for the petitioner, Mr. Walimbe, learned AGP would contend that the Tribunal exceeded its jurisdiction in interfering in the order of transfer in ignorance of settled principle that the scope of judicial review in the matter of transfers and posting is extremely narrow. That the Tribunal should therefore have been loath in interfering with the order of posting. He would submit that there were complaints against the Respondent No.1 during the tenure of his previous posting at Nagpur and considering that aspect, his posting was changed to Solapur. He would further contend that, Respondent No.1 committed misconduct in unilaterally leaving the charge of the post of Deputy Director at Solapur and that he was never relieved from Solapur. He unilaterally joined and took over the charge of the post of Joint Director at Nagpur.

7. Mr. Sudame, learned Counsel appearing for respondent no.2 (petitioner in Writ Petition No. 5599/2019) would question the correctness of the order passed by the Tribunal. He would invite our attention to the handwritten remarks made on order dated 29th September, 2018 endorsing grant of stay to the posting order of the Respondent No.1 at Nagpur. He would submit that the respondent no.2 had received a telephonic message conveying decision of Chief Secretary, staying the posting order at 4.00 p.m. on 4th October, 2018. That despite communication of the said stay order to the Respondent No.1, he unilaterally proceeded to take over charge of Joint Director at Nagpur and thereby committed misconduct. Mr. Sudame would contend that, he only followed the orders of the higher authorities and therefore allegations of malafide made against him by the Respondent No.1, were totally misconceived. He would question the correctness of adverse findings recorded by the Tribunal in the impugned judgment.

8. Mr. Rupwate learned Counsel appearing for the Respondent No.1, would oppose the petitions and support the

order passed by the Tribunal. He would submit that posting of Respondent No. 1 at Nagpur was as per the recommendations of the Civil Services Board and there was no reason for changing the same within short span. He would further submit that mere taking over charge of the position of Joint Director in pursuance of valid order of posting cannot be a reason for cancellation of the posting. Mr. Rupwate would seriously contend the theory of posting order being stayed on 4 October, 2018. He would submit that the Respondent No.1 was never communicated stay of the posting order. He would question the conduct of respondent no.2 in making *ex-parte* remark on the posting order and not conveying the same by written order/letter to the Respondent No.1. He would reiterate the allegations of malafide, bias and vindictive attitude of respondent no.2 raised before the Tribunal.

9. Rival contentions of the parties now fall for our consideration.

10. There is no dispute to the position that, Respondent No.1 was posted on promotion at Nagpur as Joint Director, Boilers

in pursuance of recommendations made by the Civil Services Board. It is therefore required to be presumed that the Civil Services Board must have taken into consideration all the relevant factors while recommending his posting at Nagpur. He was obliged to report to the transferred post at Nagpur in pursuance of the posting order dated 29th September, 2018. He did so and took over charge of the post at Nagpur on 5th October, 2018. Whether he followed the prescribed procedure for handing over charge of the Deputy Director at Solapur is a separate matter altogether. The same cannot have any bearing on validity of the posting order dated 29 September, 2018. We do not wish to go into the issue whether Respondent No.1 validly gave up the charge of the post of Deputy Director at Solapur. We are informed that separate disciplinary proceedings are initiated against him in that regard. We do not wish to comment on the same. Suffice it to state that the posting order dated 29 September, 2018 continued to remain valid and the Respondent No.1 was obliged to report at Nagpur within permissible joining time.

11. Now, we proceed to examine the stand of the State Government and respondent no.2, that the posting order dated 29 September, 2018 was stayed on 4 October, 2018. This contention is referable to handwritten endorsement made on the posting order dated 29 September, 2018 by respondent no.2. We fail to comprehend as to how the posting order dated 29 September, 2018 can be stayed by oral directives allegedly communicated to respondent no.2 on telephone. If the posting order was indeed intended to be stayed, such stay ought to have been granted by a written order passed by competent authority. No written order staying the posting order is placed on record before us to show that any decision was taken to stay the posting order dated 29 September, 2018. Also absent is any material to show that the alleged decision dated 4 October, 2018 was communicated to the Respondent No.1 in any manner. We therefore refuse to accept the theory of the posting order being stayed on 4th October, 2018.

12. The posting order dated 29 September, 2018 was later altered by issuing order dated 20 November, 2018, by which

Respondent No. 1 was shown to be posted as Joint Director, Boilers at Solapur. The order does not specify any reasons for doing so. The posting was modified within about two months. Now, we proceed to examine the reasons cited in the affidavit-in-reply filed by the State Government before the Tribunal to justify such change of posting. Following pleadings were raised before the Tribunal in the Affidavit in reply:

"7 With reference to contents of Paragraph No.6.3, I say that after due consideration the complaints against the Respondent No.1, during his recent tenure at Nagpur and in view of his completion of tenure at Nagpur, the Civil Services Board had recommended his posting after promotion at Solapur. Recommendation of Civil Services Board is hereto annexed and marked as EXHIBIT "R-2". Due to the seriousness of the complaints against the Respondent No.1 fact finding inquiry was initiated. In the meanwhile, the Respondent No.1 was restricted from inspecting Steam Boilers in Gondia District vide order dated 05.11.2017 which is annexed hereto and marked as EXHIBIT "R-3".

7.1. The Enquiry Officer after going through the complaints and meeting the complainants found that the complaints are of serious nature and the Respondent No.1 should be strictly warned regarding his behaviour. The report dated 16.11.2017 submitted by the fact finding authority is annexed hereto and marked as EXHIBIT "R-4". Accordingly, Director, Steam Boilers has issued a memo dated 23.02.2018 to the Respondent No.1 which is annexed hereto and marked as EXHIBIT "R-5".

7.2. However, the Government directed that the Respondent No.1 should be posted at Nagpur. Accordingly, an order of promotion cum posting dated 29.09.2018 was issued, which is annexed hereto and marked as Exhibit "D" in the O.A

7.3. Thereafter, taking into consideration the complaints against the Respondent No.1 during his tenure at Nagpur, the matter of change in the posting of the Respondent No.1 was under consideration of the Government. However, in the meanwhile the Respondent No.1 on his own without being properly relieved from his charge of Deputy Director, Steam Boiler, Solapur directly took over the charge of the post of Joint Director, Steam Boiler, Nagpur in an unauthorised manner. However, a file was submitted for orders of Government. On which the, Government decided to revise the posting of the Respondent No.1 and post him at Solapur. Accordingly revised posting order of the Respondent No.1 was issued. The said Government Resolution dated 20.11.2018 is annexed and marked as Exhibit "A" in the O.A."

13. Thus alleged complaints filed against the Respondent No.1 during his previous tenure at Nagpur and recommendations of Civil Services Board dated 7th August, 2018 were cited as reasons before the tribunal for change of Respondent No.1's posting from Nagpur to Solapur. However, the Tribunal has refused to accept the said reasons. After perusing the minutes of the Civil Services Board, as well as, fact finding report submitted

after investigating the complaints against the Respondent No.1, the Tribunal has reproduced the endorsement on the report of the Fact Finding Committee as under:

सदर प्रकरणी निनावी तक्रारी प्राप्त झाल्या आहेत. त्यामुळे साप्रविच्या दि. २५/०२/२०१५ रोजीच्या परिपत्रकातील तरतुदीनुसार निनावी पत्रांवर अधिकार कार्यवाहीची आवश्यकता नाही. तसेच पृ. ३१/पविवरील पत्रानावे श्री निवास कॅटरिंगचे श्री. जितेंद्र ठाकूर यांनी श्री. मानकर यांनी बेकायदा वॉचमनर्स वरतीच कार्यवाही केली असून श्री. मानकर यांचेविरोधात तक्रार करण्यासाठीच संचालनालयासाठीच कंत्राटी तत्वावर कंपन्यातील बायकांची कामे करणा-या कंपनीच्या सुपरवायझरने श्री ठाकूर यांना श्री. मानकर यांचेविरोधात तक्रार करण्याचा आग्रह केला होता व वारंवार दबाव टाकत होता असे नमूद केले आहे. तरीही श्री. मानकर हे योग्य पध्दीतीने काम करित असल्याने त्यांची तक्रार केली नाही व तसेच मा. प्रधान सचिवांना घडलेल्या प्रकरणाबाबत कळविले आहे. सबब सदर प्रकरणी निनावी तक्रारी व श्री. मानकर हे उत्तम काम करित असल्याबाबत अशा दोन्ही स्वरूपाची पत्रे प्राप्त झाली आहेत. तसेच प्रभारी संचालकानी काही गंभीर तक्रारींच्या अनुषंगाने श्री. मानकर यांना समज दिले असल्याचे कळविले आहे. तरी सदर प्रकरणी अधिक कार्यवाहीची आवश्यकता नाही असे वाटते. तरी आदेशार्थ सादर.'

14. The Tribunal, thereafter proceeded to examine the manner in which the change of posting was done and held as under :

"17. Now, let us see the event which leads to the change of posting. In this behalf, the perusal of record reveals that because of act of Respondent No.1 to assume charge of Joint Director, Nagpur directly without issuance of relieving order by Respondent No.2, note was again placed before the Hon'ble Minister for direction to take necessary action for the alleged misconduct of the Respondent No.1. Thus, the note dated 06.10.2018 was placed by Desk Officer for seeking direction for the action to be taken about the alleged misconduct of the Respondent No.1 for relieving the post of Solapur unilaterally and taking over the charge at Nagpur without prior approval of

Respondent No.2. On the said note, however, the Hon'ble Minister passed two line cryptic order as follows:

“श्री. स. दि. आनकर यांना सहसंचालक, सोलापुर या पदावर पदस्थापना देण्यास मान्यता असावी. ”

18. The Hon'ble Chief Minister approved the endorsement made by the Hon'ble Minister. Thus, the note placed by Desk Officer was pertaining to proposed disciplinary action for alleged misconduct, but instead of passing further orders in that regard, the order of transfer to Solapur has been passed. There is absolutely no reason recorded in the order for change in posting from Nagpur to Solapur. The order passed by Hon'ble Minister does not reflect that the posting was changed due to complaints. Had it been the reason, it would have reflected in the order, but it is not so.”

15. We have therefore no hesitation in arriving at a conclusion that the order passed by the Tribunal does not suffer from any jurisdictional error. It has considered the entire material on record while passing the impugned judgment. The posting of the Respondent No.1 was erroneously changed from Nagpur to Solapur without following proper procedure and without there being any ground to do so. One of the main factors taken into consideration for change of posting appears to be the conduct of the Respondent No.1 in unilaterally giving up the charge at Solapur and taking up the posting at Nagpur. If the Respondent

No.1 committed any misconduct in doing so, the same can be a subject matter of enquiry. However, the same can never be a ground to cancel the order of posting. The Tribunal has therefore rightly interfered with the change of posting order.

16. There is however only one aspect where we wish to interfere. True it is that the order of change of posting of the Respondent No.1 was erroneous. The same appears to have been issued in pursuance of approval given by the Hon'ble Minister. The Tribunal has however made few adverse comments on respondent no.2 (Petitioner in Writ Petition No. 5599/2019) Therefore, while dismissing Writ Petition No. 6957/2019 and upholding the order of the Tribunal, we feel that the change of posting of Respondent No. 1 need not be attributed to the conduct of Respondent No. 2. Accordingly, if any of the observations made by the Tribunal are capable of being perceived adverse to respondent no.2 (petitioner in Writ Petition No. 5599/2019) the same shall stand expunged for all purposes.

17. We accordingly proceed to pass the following Order :

- (i) Writ Petition No. 6957 of 2019 is dismissed.
- (ii) Writ petition No. 5599 of 2019 is partly allowed only to the extent that the observations of the Tribunal in its judgment and order which are adverse to Respondent No. 2 shall stand expunged for all purposes.
- (iii) The order of the Tribunal be implemented within about two weeks from today.
- (iv) Rule is discharged in Writ Petition No. 6957 of 2019 and Rule is partly made absolute to the above extent in Writ petition No. 5599 of 2019.

**NEETA
SHAILESH
SAWANT**

(SANDEEP V. MARNE, J.)

(ACTING C.J.)

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