

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

WRIT PETITION NO. 13930 OF 2023

State of Maharashtra through the
Principal Secretary, Medical Education
and Drugs Department

... Petitioner

V/s.

Dr. Vinayak Pandurang Kale

... Respondent

Mr. N.C. Walimbe, Addl. G.P. with Mr. M.M. Pabale, AGP for the
Petitioner

Mr. Saurav Bandiwadekar for Respondent No.1

Mr. Pratik Irpatgire i/b. Manish Kelkar for the Respondent No.2

***CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.***

DATE : 07 DECEMBER 2023

P.C. :-

Heard the learned Counsel for the parties.

2. By this Petition the Petitioner – State has challenged the order passed by the Maharashtra Administrative Tribunal in Original Application No. 68 of 2023 dated 12 July 2023.

3. In the Original Application No. 68 of 2023 filed by Dr. Vinayak Pandurang Kale, the order by which he was transferred from the post of Dean, B.J. Government Medical College, Pune to the

post of Director of Maharashtra Institute of Mental Health, Pune was challenged. He had also challenged the order of the same date transferring Dr. Sanjeev Thakur from the post of Dean, Dr. V.M. Government Medical College, Solapur to the place occupied by him that is the Dean at Pune. The Tribunal by the impugned order has set aside both these orders.

4. Writ Petition No. 9093 of 2023 was filed by Dr. Sanjeev Thakur first challenging the order of the Administrative Tribunal dated 12 July 2023 and thereafter, the present Writ Petition was filed by the State challenging the same order. On 10 November 2023 the following order came to be passed in both these Petitions :-

“ Heard the learned counsel for the parties.

2. After hearing the learned counsel for the parties, we passed the following order on 9 November 2023:

“Heard the learned Counsel for the parties.

2. The Respondent No.2 – Original Applicant Dr. Kale before the Maharashtra Administrative Tribunal has challenged two order of the same date i.e. 13 February 2023. By first order Dr. Kale was transferred from the post of Dean, B.J. Government Medical College to Director, Maharashtra Institute of Mental Health, Pune. By the second order of the same date the Petitioner – Respondent No.2 in the Original Application Dr. Thakur was transferred from Solapur to the post of the Original Applicant. The Tribunal has set aside these order.

3. That there is no application made by Dr. Thakur and his transfer is on the administrative ground. According to the State, the transfer of Dr. Thakur is only a sequitur of the transfer of Dr. Kale.

4. Now, since the Tribunal has set aside the order of these transfers, the query to the State apart from other legal issues that are sought to be raised is whether it was argued before the Tribunal that Dr. Kale will be the only person who can occupy the post of the Director of Maharashtra Institute of Mental Health, Pune and if that not be so, whether some other person could have occupy the post of Director of Maharashtra Institute of Mental Health, Pune. It is the contention of the learned Counsel appearing for Dr. Kale that it is only to accommodate Dr. Thakur these orders passed.

5. Before we proceed further, the stand of the State Government be made clear on the aspect whether the State intends to proceed further with its petition or some other course of action is to be adopted.

6. Stand over to 10 November 2023.”

3. When the matter was called out for consideration today, the learned AGP informed that according to the State, Dr.Kale, is the only qualified and suitable person in the State of Maharashtra and also senior to occupy the post of Director of the Maharashtra Institute of Mental Health, Pune. This aspect is controverted by Dr.Kale. The Tribunal has also negated this contention.

4 We note that Dr. Thakur has not asked for a transfer from Solapur to Pune, and according to him, it is an administrative transfer. On Prejudice, his only contention is that since he is now being transferred to Pune, he should continue for three years. The Tribunal has recorded a finding that it is only to accommodate Dr. Thakur that Dr.Kale was shifted. The Tribunal has noted two things: first, the argument of Dr Kale that the post of Director is, in fact, a post lower than the post he is holding. Second, Dr Thakur was earlier transferred to Aurangabad, and his transfer was cancelled, and thereafter, this order was passed. The Tribunal has also noted that having found the post of transfer had lower pay, by a separate subsequent order, the pay of Dr Kale was protected. Having considered the matter and the order of the Tribunal, we *prima facie* find merit in the conclusion of the Tribunal that the order transferring Dr Kale was to bring in Dr Thakur to Pune.

5 As we list the Petition for hearing on 30 November 2023, we make it clear that there will be no stay to the order of the Tribunal in the meantime. The earlier *ad interim* order stands vacated. Let the parties join on their respective posts pursuant to the order passed by the Tribunal, which posting shall be subject to further orders to be passed.

6 The State will ensure that both parties join their respective posts, as these posts are important and cannot be kept vacant.”

5. Thereafter, both these Petitions came up for consideration on the adjourned date of 30 November 2023 wherein Writ Petition No. 9030 of 2023 filed by Dr. Sanjeev Thakur was

withdrawn by him informing the Court that there have been subsequent events. That time the State had informed that the subsequent events were that as per the order passed on 10 November 2023, the Respondent Dr. Kale has been appointed as Dean from the post he was transferred and as regard Dr. Sanjeev Thakur, his transfer to the post of Dean now does not survive because he has been transferred to some other position. Since Dr. Thakur was transferred to some other position, he had withdrawn his Petition.

6. We had adjourned the present Petition for the learned AGP to take instructions as to further course of action to be taken by the State. The learned AGP states that there are no instructions.

7. Since the Writ Petition is filed by the State of Maharashtra and that it is prosecuting the Petition, and had informed the Court of subsequent developments which have direct bearing on the controversy and that inspite of this position, even though matter was adjourned for instructions, that no instructions are given to the Office of the Government Pleader, we can only presume that the challenge also does not survive for the State of Maharashtra.

8. The Writ Petition is disposed of.

MANJUSHA DESHPANDE, J.

NITIN JAMDAR, J.