

jvs

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

WRIT PETITION NO. 12589 OF 2022

Mr. Rakesh Vasant Salunke	}	Petitioner
Versus		
The Commissioner of State	}	
Excise and Anr.	}	Respondents

Mr. Jayendra D. Khairnar for the petitioner.

Mr. B. V. Samant, AGP for State.

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

DATE: JANUARY 2, 2023

P.C.:

1. The petitioner assails the order passed by the Maharashtra Administrative Tribunal, Mumbai (hereafter referred to as "the Tribunal"). The petitioner was suspended from service. The petitioner challenged the suspension before the Tribunal by filing Original Application No. 593 of 2022. The Tribunal set aside the suspension order and further directed to reinstate the petitioner on any suitable post, as it deems fit, including non-executive post within two weeks from the date of the order. The petitioner assails the direction directing to reinstate the petitioner on any suitable post and not reinstating him on the post at his present headquarter at Mumbai.

2. The learned counsel for the petitioner strenuously contends that the petitioner was transferred as Sub-Inspector

at Mumbai only prior to two months of his suspension. After the order is passed by the Tribunal, the petitioner is directed to be posted at Ahmednagar. The same would amount to transfer and it is not in consonance with the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. The learned counsel further submits that the transfer could not have taken place prior to six years. The petitioner is entitled to be retained at a particular place for six years. The learned counsel, to substantiate his contention, relies upon the judgment of the Madhya Pradesh High Court in the case of **Kendriya Vidyalaya Sangthan and Ors. vs. Dr. R. K. Shastri and Ors.**, reported in (2006) SLR 428 and another judgment of the learned Single Judge of Chhattisgarh High Court in case of **Kamleshwar Toppo vs. State of C. G. and Ors.**, reported in 2017 Lab IC 3045.

3. The learned AGP submits that it was in public interest that the petitioner was transferred to Ahmednagar. The FIR is lodged against the petitioner for offences involving moral turpitude under sections 354, 509 and 506 of Indian Penal Code. The said criminal proceedings are pending.

4. We have considered the submissions. The Tribunal has set aside the suspension and directed reinstatement on any suitable post, including non-executive post. In the case of **Kendra Vidyalaya Sangthan** (supra) relied upon by the petitioner, the Division Bench of the Madhya Pradesh High Court has observed that the station of posting immediately before suspension would be the headquarter vis-a-vis the suspended employee, unless the competent authority changes the headquarter of the suspended employee in public interest.

5. It would appear that the charges against the petitioner involve offences of moral turpitude. The criminal case is pending. The Tribunal has not committed any error while passing the impugned order, inasmuch as, the petitioner is sent at a distinct place than the place where the alleged offence is committed.

6. The Apex Court in the case of **Ajay Kumar Choudhary vs. Union of India and Ors.**, reported in (2015) 7 SCC 291 has also observed that the Government is free to transfer the concerned person to any department in any of its offices within or outside the State so as to sever any local and personal contact that he may have and which he may misuse for obstructing the investigation against him.

7. Considering the gravity and the nature of offences alleged against the petitioner, the Tribunal has not committed any error in passing the impugned order. The writ petition as such is dismissed. No costs.

8. In case the legitimate salary is due and payable to the petitioner by the respondents, then, the respondents shall pay the legitimate salary due and payable to the petitioner.

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