

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.599 OF 2023

Prabhudas s/o Punayya Sadamwar, Gadchiroli

-vs-

State of Maharashtra, Thr. Secretary, Dept. of Tribal Development, Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Prakash Meghe, Advocate for petitioner.

Shri A. A. Madiwale, Assistant Government Pleader for respondents.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI JJ.

DATE : April 27, 2023

P. C.

1. Rule. Rule made returnable forthwith and heard the counsel for the parties.
2. The challenge raised in this writ petition is to the orders dated 01/12/2022 and 22/12/2022 passed by the Maharashtra Administrative Tribunal, Nagpur. By the initial order dated 01/12/2022 in the Original Application No.1169/2022 preferred by the petitioner for challenging his transfer order dated 24/11/2022 as Assistant Project Officer (Education), Integrated Tribal Development Project, Gadchiroli to Markandadeo, Tah. Chamorshi, District Gadchiroli, the Tribunal accepted the statement made on behalf of the Chief Presenting Officer that the petitioner was already relieved and hence no interim relief was granted. The petitioner thereafter filed an other application in the said proceedings seeking interim relief by

pleading that he had not been relieved on 24/11/2022. The learned Member of the Tribunal on 22/12/2022 refused to grant any interim relief on the ground that the petitioner was already relieved. The aforesaid proceedings before the Tribunal are still pending.

3. When notice was issued in the writ petition on 24/01/2023, the statement made on behalf of the petitioner that he had not been relieved from his earlier post was accepted and the position as prevailing on that day was directed to be maintained till the returnable date. On 23/02/2023 the petitioner made a grievance that he was not being permitted to work at Gadchiroli as he had not been relieved. The learned Assistant Government Pleader was directed to take instructions in that regard. Thereafter on 03/03/2023 the matter was considered and in paragraphs 3 to 5 this Court observed as under :

“ 3] On going through the order dated 2/2/2023, what becomes clear is that there is an admission on part of the respondents that the petitioner was not actually relieved from his present posting and that only his relieving order was issued on 24/11/2022, which was communicated to him on the same day by using WhatsApp application. It is doubtful if communication of any order on the personal WhatsApp application of an employee amounts to proper service of the order or not. Even if it is assumed to be the proper service, still the order by itself does not lead to actually relieving of an employee. If an employee is to be relieved from his present

posting, certain formalities are required to be completed, and these formalities include, inter alia, handing over and taking over of the charge. Until and unless these formalities are completed, it cannot be said that an employee is actually relieved from his post. That was the reason why, it appears, a statement was made on behalf of the petitioner on 24/1/2023 that he had not been relieved, and relying upon this statement, this Court directed that the position, which was prevailing as on 24/1/2023, shall be maintained till the returnable date. This order was extended by this Court until further orders on 7/2/2023.

4] *Now, by the order dated 2/2/2023, the Deputy Commissioner has, prima facie, committed breach of the order passed by this Court on 24/1/2023. Such breach can be prima facie seen to be intentional and willful on part of the Deputy Commissioner. But, the petitioner has not filed any application for initiating Contempt of Court action against Mr. D.S. Kulmethe, Deputy Commissioner, Office of Tribal Development Department, Nagpur.*

5] *We grant liberty to the petitioner to file an appropriate application for initiation of Contempt of Court action against the concerned officer. In the meanwhile, we also grant liberty to the concerned officer to make amends in the matter so as to obviate the need for initiating any contempt proceedings against him.”*

4. In the aforesaid backdrop we have heard the learned counsel for the parties. Reliance is placed on Rules 28 and 30 of the Maharashtra Civil Services (General Conditions of Services), Rules 1981 by the learned counsel for the petitioner to demonstrate that charge was not taken from him in accordance

with the Rules of 1981 while relieving him from Gadchiroli. On the other hand, learned Assistant Government Pleader has referred to communication dated 25/04/2023 addressed by the Project Officer in which it has been stated that since the petitioner was not a Class-II Officer, the procedure prescribed in the matter of handing over charge would not be applicable.

5. Prima facie, we do not find that applicability of Rules 28 and 30 to Officers who do not belong to Class-II has been excluded. The prescribed procedure in that regard will have to be followed. We do not find any material on record to indicate that on 24/11/2022 itself the petitioner was relieved from that post. On 22/11/2022, the petitioner was at Mumbai for undertaking hearing and the relieving order was communicated to him on 24/11/2022 through Whatsapp mode.
6. Considering the fact that the proceedings are still pending before the Tribunal and the limited dispute is with regard to relieving the petitioner in accordance with the prescribed procedure, the following order would meet the ends of justice since a workable arrangement would have to be made to facilitate administration of the said office.
 - (i) The petitioner shall be permitted to re-join his duties on the post of Assistant Project Officer (Education) at Gadchiroli.

- (ii) In case the respondents propose to relieve the petitioner in terms of the order of transfer dated 24/11/2022, such course is permitted to be taken after seven days of permitting the petitioner to join at the said place.
- (iii) The petitioner is at liberty to move an application for interim relief before the Tribunal in the meanwhile. If such application is made, the Tribunal is requested to consider the same as well as Original Application expeditiously and decide the same preferably by 15/06/2023.
- (iv) Keeping all points on merit open, the writ petition is disposed of. Rule accordingly. No costs.

(M. W. Chandwani, J.)

(A. S. Chandurkar, J.)

Asmita