

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

WRIT PETITION NO. 3003/2023

Dadarao S/o Dattaraya Dolharkar,,
Aged about 48 years Occu: Service as Chief
Officer C/o Chief Officer, Municipal Council,
Yavatmal, Distt – Yavatmal.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
2. The Commissioner and Director,
Directorate of Municipal Administration, Third Floor,
GTS Building, Sir Pochkhanwala Road, Worli, Mumbai.
The Municipal Council Morshi, Tah. Morshi,
District – Amravati, through its Chief Officer.
3. The Collector, Yavatmal,
Tah. And District – Yavatmal.
4. Madhuri Murari Madavi,
Aged about 50 years, Occu. Service as Assistant
Commissioner (Group-A), C/o Office of Divisional
Commissioner, Amravati Division, Amravati.

RESPONDENTS

Shri A.A. Naik with Shri T.U. Tathod, counsel for the petitioner.
Shri A.S. Fulzele, Additional Government Pleader for the respondent nos.1 to 3.
Shri S.P. Bhandarkar, counsel for the respondent no.4.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : JUNE 13, 2023.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The challenge raised in this writ petition is to the order passed by the Maharashtra Administrative Tribunal, Nagpur in Original Application No. 944 of 2022 on 26.04.2023 thereby allowing the said Original Application and setting aside the transfer orders issued to the petitioner as well as the respondent no.4.

3. The facts in brief relevant for considering the challenge are that the petitioner herein was serving as Chief Officer, Municipal Council Karanja Lad. The respondent no.4 was serving as Chief Officer, Municipal Council, Yavatmal. The respondent no.4 was transferred from the said post as Assistant Commissioner (Group-A), Office of the Divisional Commissioner, Amravati Division, Amravati for administrative reasons on a vacant post. On account of the vacancy created by the transfer of the respondent no.4, the petitioner came to be transferred to the post of Chief Officer, Municipal Council, Yavatmal. The respondent no.4 being aggrieved by the aforesaid order of transfer filed Original Application No.944 of 2022 under Section 19 of the Administrative Tribunals Act, 1985. Initially the challenge was raised only to her order of transfer. The Original Application was then amended and the order of transfer issued to the petitioner also came to be challenged. The Tribunal refused to grant any interim relief on 21.09.2022 and rejected that prayer. Thereafter the Original Application came to be decided on 26.04.2023 and by the said

judgment the Tribunal held that the provisions of Section 4(4) and (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short, 'the Act of 2005') had not been followed while issuing the orders of transfer. Further it was held that there was no special/exceptional reason to indicate why the services of the respondent no.4 were liable to be transferred. Being aggrieved, the respondent no.4 before the Tribunal has challenged the said judgment by preferring this writ petition.

4. Shri A.A. Naik, learned counsel for the petitioner submitted that the Tribunal was not justified in interfering with the order of transfer dated 20.09.2022 especially when the requirements of Section 4 and especially sub-sections (4) and (5) of the Act of 2005 had been satisfied. Inviting attention to the recommendation of the Civil Services Board it was submitted that though the normal tenure of the respondent no.4 as Chief Officer, Yavatmal had not been completed it was found that there was a need for filling in the vacant post at the Office of the Divisional Commissioner, Amravati. It was for this reason that the transfer of the respondent no.4 was recommended on the said vacant post. Further with a view to fill in the post of Chief Officer, Yavatmal pursuant to the transfer of the respondent no.4, the petitioner was posted at her place. The normal tenure of the petitioner as Chief Officer, Karanja Lad had also not been completed. Merely because a recommendation had been made by

the Local Member of the Legislative Assembly to transfer the petitioner to Yavatmal the same would not mean that the respondent no.4 was transferred at the behest of the petitioner. There were no allegations of *mala fides* and the order of transfer had been issued for administrative exigency. The finding recorded by the Tribunal that the requirements of Section 4 of the Act of 2005 had not been satisfied was incorrect for the reason that filling a vacant post was an exception as well as justification for a mid-term transfer and further the Competent Authority had also approved the said transfer. Despite these admitted facts the Tribunal proceeded to hold otherwise and interfered with the order of transfer that was passed in accordance with the Act of 2005. By placing reliance on the decision in *State of Maharashtra & Another Versus Omprakash Ghanshyamdas Mudiraj & Another* [2009 Lab IC 1016] the learned counsel submitted that the Tribunal committed an error in interfering with the order of transfer and this Court ought to restore the order of transfer in the present writ petition.

5. Shri S.P. Bhandarkar, learned counsel for the respondent no.4 opposed the aforesaid submissions. According to him the order of transfer dated 20.09.2022 came to be issued with a view to accommodate the petitioner at Yavatmal. To ensure the petitioner's transfer to Yavatmal, the services of the respondent no.4 came to be transferred to Amravati even when there was no administrative exigency. The respondent no.4

had not completed her tenure at Yavatmal and had yet been subjected to an order of mid-term transfer. After the Tribunal refused to grant the interim relief the respondent no.4 had approached this Court in **Writ Petition No. 6137 of 2022** [*Madhuri Murari Madavi Versus The State of Maharashtra & Others*] and this Court had granted liberty to the parties to place on record supporting material before the Tribunal. After considering all such material the Tribunal was satisfied that the order of transfer as issued was not in accordance with the Act of 2005 and hence interfered with the same. Merely by stating that there was an administrative exigency it was not permissible for the State Government to have issued the orders of transfer. In that regard, the learned counsel placed reliance on the decisions in *Ramakant Baburao Kendre Versus State of Maharashtra & Another* [2012(1) Mh.L.J. 951], *S.B. Bhagwat Versus State of Maharashtra & Others* [2012(3) Mh.L.J. 197], *Kishor Shridharrao Mhaske Versus Maharashtra OBS Finance and Development Corporation, Mumbai & Others* [2013(3) Mh.L.J. 463] as well as the judgment dated 22.07.2022 in **Writ Petition No. 1568 of 2022** [*Rajendra Pandurang Chikhalkhunde Versus The State of Maharashtra & Others*] decided at the Nagpur Bench. It was thus submitted that there was no case made out to interfere with the reasoned order passed by the Tribunal.

Shri A.S. Fulzele, learned Additional Government Pleader for the respondent nos.1 to 3 relied upon the affidavit-in-reply that was filed before the Tribunal and submitted to the orders of the Court.

6. Having heard the learned counsel for the parties and having perused the documents on record we are of the view that the Tribunal committed an error in interfering with the order of transfer dated 20.09.2022 for the reasons that are stated hereunder.

It is an admitted position that neither the petitioner nor the respondent no.4 had completed their respective tenure of three years at Municipal Council, Karanja Lad and Municipal Council, Yavatmal respectively. With a view to fill in the vacant post at the Office of the Divisional Commissioner, Amravati the Civil Services Board recommended the transfer of the respondent no.4 on such vacant post. It was observed that there was a need to fill in the vacant post on priority. It further recommended that as a consequence of the transfer of the respondent no.4, the petitioner should be posted on the post from which the respondent no.4 was transferred. The Civil Services Board referred to the recommendation made by the Local Member of the Legislative Assembly in favour of the petitioner. The record further indicates that these recommendations had the approval of the Competent Authority after which the same came to be issued. In this regard in paragraph 6 of the

affidavit-in-reply filed on behalf of the State Government it has been stated as under :-

“6. It is submitted that the proposal was duly and properly considered by the Civil Services Board on 15.09.2022 and it was recommended to transfer the applicant on the post of Assistant Commissioner in order to fill up said post on priority basis. That the recommendation of Civil Services Board was put before the immediate superior authority i.e. Hon’ble Chief Minister. It is pertinent to note the Hon’ble Chief Minister has approved the recommendation for transfer of applicant. All these exceptional and special reasons have been recorded in writing for issuing impugned transfer order.”

These statements have not been countered by the respondent no.4.

7. The Tribunal has referred to the provisions of Section 4(4) and (5) of the Act of 2005 and has concluded that the said provisions had not been followed while issuing the order of transfer. Sub-section (4) of Section 4 of the Act of 2005 stipulates that though an order of transfer shall be made in the month of April or May, as an exception the transfer could be made at any time of the year if a vacant post has to be filled in. Under sub-Section (5) of Section 4 of the Act of 2005 the Competent Authority can issue an order of transfer in such circumstances with the prior approval of the immediate superior. We find that the requirements of sub-Sections (4) and (5) of Section 4 of the Act of 2005 have been duly

satisfied in the present case. The transfer of the respondent no.4 was for filling in a vacant post and the prior approval of the superior authority had been obtained. In these facts therefore there is no basis whatsoever to hold that the aforesaid statutory requirements had not been complied with. The documents placed on record substantiate the said stand taken by the respondent no.1. The finding otherwise recorded by the Tribunal is thus without any legal basis and contrary to the documents on record. The same cannot be sustained.

8. The Tribunal has given undue importance to the recommendation by the Local Member of the Legislative Assembly to the posting of the petitioner at Yavatmal. Admittedly, the respondent no.4 was serving at Yavatmal and unless she was transferred there could be no occasion to fill in that post. The respondent no.4 was transferred to the vacant post at the Office of the Commissioner, Amravati Division, Amravati. This transfer is on the recommendation of the Civil Services Board. Once it is found that the transfer of the respondent no.4 which has been made prior in time to that of the petitioner is after complying with the provisions of Section 4 of the Act of 2005, the contention that that the order of transfer was issued to accommodate the petitioner loses its significance. When the transfer of the respondent no.4 is shown to have been made in accordance with law, the Tribunal ought to have dismissed

the Original Application instead of interfering with the order of transfer. It is true that the mandatory requirement of Section 4(5) of the Act of 2005 cannot be ignored or bypassed as held in *Kishor Shridharrao Mhaske* (supra). We find that in the present case such requirement has been satisfied. Despite there being no breach of any statutory provisions, the Tribunal has chosen to interfere with the orders of transfer contrary to what has been laid down in *S.B. Bhagwat* and *Ramakant Baburao Kendre* (supra).

9. For aforesaid reasons the following order is passed:-

- I. The judgment dated 26.04.2023 passed by the Maharashtra Administrative Tribunal, Nagpur in Original Application No.944 of 2022 is quashed and set aside.
- II. The orders of transfer of the respondent no.4 and consequentially of the petitioner dated 20.09.2022 would thus revive.
- III. The parties shall act in accordance thereof.

10. Rule is made absolute in aforesaid terms with no order as to costs.

(MRS.VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

APTE

LATER ON

11. At the request of the learned counsel for the respondent no.4

the judgment would operate on the expiry of period of two weeks from today.

(MRS.VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

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