



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

WRIT PETITION NO. 3995 OF 2023

Rajendra Gyanoba Kore,
Aged about 52 years, Occ.- Service,
R/o Office of District Library Officer,
Tahsil Chowk, Yavatmal, District
Yavatmal.

.... PETITIONER

VERSUS

1) The State of Maharashtra,
Secretary, Department of Higher
and Technical Education Mantralaya,
Mumbai – 32.

2) Director of Libraries,
Maharashtra State, Town Hall,
Mumbai – 01.

.... RESPONDENTS

Mr. G.N. Khanzode, Counsel for the petitioner,
Mr. N.R. Rode, AGP for the respondents.

CORAM : A.S. CHANDURKAR
& ABHAY J. MANTRI, JJ.

DATED : 9th NOVEMBER 2023

ORAL JUDGMENT : (PER : ABHAY J. MANTRI, J.)

Heard. **Rule.** Rule made returnable forthwith.

2. The petitioner being aggrieved by the common judgment and order dated 16-6-2023 passed by the learned

Maharashtra Administrative Tribunal (for short the “Tribunal”) to the extent of order in Original Application No.45/2023 has preferred this petition, whereby the order dated 05-1-2023 transferring him from Yavatmal to Dapoli was challenged, has been dismissed.

3. In the year 2010, the petitioner was appointed as District Librarian and posted at Beed. Thereafter the petitioner was posted at various places and lastly, he was posted at Yavatmal. On 05-1-2023 respondent No.2 issued an order and thereby petitioner was transferred and accommodated from the post of District Librarian, Yavatmal to Technical Assistant at Dapoli. Being aggrieved by the said order, the petitioner had preferred Original Application No.45/2023 before the learned Tribunal. The learned Tribunal vide order dated 11-1-2023 directed the respondents to maintain the *status quo* till further orders. After hearing the parties, the learned Tribunal dismissed the original application on 16-6-2023. Being aggrieved by the said judgment and order, the petitioner has preferred this writ petition.

4. The respondents have filed an affidavit-in-reply and thereby contended that as per the Government Resolution dated

16-12-2022, posts of District Librarian in Seven districts have been abolished and therefore respondent No.2 has issued an order dated 05-1-2023 whereby petitioner was accommodated on the post of the Technical Assistant in Class III cadre at Dapoli, which was vacant and available. It is further contended that the learned Tribunal granted a *status quo* order on 11-1-2023, however, prior to that on 10-1-2023 the petitioner was relieved. Pursuant to the Government Resolution dated 16-12-2022 the department has issued the fresh staffing pattern. The petitioner was working on the post of District Librarian in the Class III cadre. Since the abolition of the said post and the non-availability of the said post at Chandrapur in the cadre of the District Librarian, the petitioner was required to accommodate and place at the equivalent post in the cadre of the District Librarian. Hence, the petitioner was posted at Dapoli where the post of Technical Assistant in Class III cadre was vacant and available.

It is further averred that the order dated 05-01-2023 was not a transfer order. In fact, it was an accommodation of the employees, as the post on which the petitioner was working was abolished and was not available in Chandrapur District. Therefore,

the respondents contended that the petitioner is not entitled to any relief as prayed in the writ petition.

5. Mr. G.N. Khanzode, learned Counsel for the petitioner has argued that by order dated 05-1-2023, the petitioner was transferred from Yavatmal to Dapoli and without following the transfer policy as well as they have not complied with the provisions of Sections 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”) and, therefore, the impugned transfer order issued in violation of the said provisions. The learned Tribunal has failed to consider the said fact and dismissed the original application. The learned Counsel further submits that as per the guidelines in the Government Resolution dated 09-4-2018, the husband and wife have to be posted in one district, however, the petitioner was transferred to Dapoli. The learned Counsel further canvassed that the issuance of the transfer order by respondent No.2 is illegal and bad in law. Lastly, the learned Counsel has submitted that due to the filing of the original application, *mala fide*ly the respondents have transferred the petitioner to Dapoli from Yavatmal.

Therefore, he has submitted that issuance of the said transfer order as well as dismissing the original application by the learned Tribunal are bad in law and not sustainable in the eyes of law. Therefore, he has prayed for setting aside the same.

6. Per contra, Mr. N.R. Rode, the learned Assistant Government Pleader has vehemently argued that the order dated 05-1-2023 is not a transfer order, but due to the abolition of the post of District Librarian and as the equivalent post in the same cadre was not available at Yavatmal, the petitioner was accommodated at Dapoli where the Technical Assistant post i.e. equivalent to the District Librarian was available and, therefore, he has submitted that the petitioner is not entitled to any relief. He has further submitted that the petitioner has not challenged the Government Resolution dated 16-12-2022 by which the post of District Librarian was abolished and, therefore, the petitioner is not entitled to the relief as prayed in the petition. Hence, he has prayed for the dismissal of the petition.

7. Having heard the rival contentions of the learned Counsel for the parties and on perusal of the record more

particularly, the transfer order dated 05-1-2023, at the outset, it appears that vide Government Resolution dated 16-12-2022 seven posts in the cadre of District Librarian in Seven Districts were abolished. Therefore, seven employees in the said cadre were posted at different places where the post to the same cadre of the District Librarian was available. On perusal of the said order, it appears that it is not a midterm transfer, but it seems that due to the abolition of the posts of District Librarian, the petitioner was accommodated and posted at Dapoli where the equivalent post in Class III cadre was available. The petitioner is not disputing that the said post is not equivalent to the post of District Librarian. His only grievance is that the respondents have neither complied with the provisions of Sections 4 and 5 of the Act while issuing the order dated 05.01.23 nor followed the guidelines given in the Government Resolution dated 09-4-2018. However, it appears that the petitioner was not transferred, but due to the abolition of the post of District Librarian, he was accommodated and posted at Dapoli in Class III cadre. Therefore, we do not find any substance in the arguments made by the learned Counsel for the petitioner contending that the respondents have not followed the mandate of Sections 4 and 5 of the Act as well as the guidelines given in

the Government Resolution dated 09-4-2018. Furthermore, it is pertinent to note that despite the transfer order, the petitioner has not joined Dapoli.

8. Perused the impugned order of the learned Tribunal. Wherein, it is observed that due to the issuance of the Government Resolution dated 16-12-2022, the post of District Librarian in Class III cadre at Nagpur, Bhandara, Chandrapur, Yavatmal, Wardha, Akola, and Buldhana are abolished. Therefore, all the employees were accommodated and posted to the places where the posts equivalent in Class III cadre were available and, therefore, the order dated 05-1-2023 is just, legal, and proper. The learned Tribunal has rightly considered the facts of the case in its proper perspective. We do not find any illegality or perversity in the impugned judgment and order. Therefore no interference is warranted in the said order in writ jurisdiction.

9. It appears that as per the Government Resolution dated 09-4-2018, the husband and wife have to be posted in one district and, therefore, we are of the opinion that liberty can be granted to the petitioner to apply for transfer as per the guidelines

given in the Government Resolution dated 09-4-2018 before the respondent-authority after joining at Dapoli and in that case, respondent-authority will consider the same in accordance with the law.

10. For the aforesaid reason, we do not find any substance in the contention of the petitioner. Hence, the petition is dismissed with no order as to costs.

It is made clear that the petitioner is at liberty to move the application/representation before the respondent-authority as per the guidelines in the Government Resolution dated 09-4-2018 after his joining and the same will be considered by the respondent-authority in accordance with law.

11. Rule stands discharged.

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)