



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

WRIT PETITION NO.4030 OF 2023

Raju s/o Murlidhar Nagre

vs.

State of Maharashtra, through the Secretary (Transport), Home Department, Mantralaya,
Mumbai and others.

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Shri Abhay Sambre, Advocate for petitioner.

Shri Amit Madiwale, Assistant Government Pleader for respondents.

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

DATE :- 11th SEPTEMBER, 2023

P. C.

Heard.

2. The challenge raised in this writ petition is to the order dated 26.06.2023 passed by the learned Member, Maharashtra Administrative Tribunal, Nagpur in Original Application No.480 of 2023 thereby refusing to interfere in the order of transfer dated 24.05.2023 transferring the petitioner from the Regional Transport Office, Nagpur Rural to Regional Transport Office, Aurangabad.

3. It is the case of the petitioner as pleaded in the Original Application that he came to be appointed on the post of Assistant Motor Vehicle Inspector on 20.02.2013. He was promoted to the post of Motor Vehicle Inspector in 2017 and was posted at Latur. After completing his tenure at Latur, he was transferred on 10.08.2020 at the Regional Transport Office, Nagpur Rural. Having rendered satisfactory service all along, he was served with the order of transfer dated 24.05.2023 by which he was transferred to the Regional Transport Office, Aurangabad on a non-executive post.

Being aggrieved, the petitioner challenged the order transfer by approaching the Maharashtra Administrative Tribunal in Original Application No. 480 of 2023. After considering the material on record, the learned Member of the Tribunal found that after following the procedure prescribed by Section 4(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) as well as the Government Resolution dated 11.02.2015, the petitioner came to be transferred. The learned Member of the Tribunal therefore refused to interfere with the order of transfer and dismissed the original application.

4. Shri Abhay Sambre, learned counsel for the petitioner referred to the material on record and submitted that in the report submitted by the Deputy Commissioner of Police, Economic Offences Wing, Nagpur City to the Commissioner of Police, there was no specific reference to any alleged activities of the petitioner that warranted his transfer. The recommendation made was to transfer four Motor Vehicle Inspectors and two Deputy Regional Transport Officers. There was no recommendation to transfer the petitioner. The aforesaid report was dated 23.03.2023. On the basis of aforesaid report, the Commissioner of Police, Nagpur on 03.04.2023 issued a communication to the Principal Secretary, Transport and Ports, endorsing the recommendation made by the Economic Offences Wing. Since the petitioner's name was not included therein, there was no justification whatsoever to have the services of the petitioner transferred by the impugned order. Normal tenure of the petitioner was to end in

August, 2023 and shortly prior to such completion, the petitioner came to be transferred. No reasons whatsoever were indicated in the order of transfer. The procedure prescribed by the Act of 2005 had not been complied with and hence the Tribunal ought to have interfered with the order of transfer dated 24.05.2023. Assuming that the issue was considered by the Civil Services Board, it lost sight of the fact that there was no recommendation whatsoever to transfer the petitioner nor were there any allegations against him. No first information report was also lodged against him. Since there was no ground made out to transfer the petitioner prior to completion of his normal tenure of posting, a case for interference was made out. Reliance was placed on the decision in *Ramakant Baburao Kendre vs. State of Maharashtra and ors. [2012(1) Mh. L. J. 951]* to urge that the petitioner was entitled for relief as prayed for.

5. Shri Amit Madiwale, learned Assistant Government Pleader for the respondents opposed the aforesaid submissions. According to him, the petitioner was transferred after complying with all the requirements of the Act of 2005. He produced the relevant file indicating the process undertaken under the Act of 2005 that led to the transfer of the petitioner. This report was produced pursuant to the directions issued on 31.08.2023. Since the Civil Services Board recommended the transfer of the petitioner in the light of the material before it and as such transfer was approved by the superior authorities including the Hon'ble Chief Minister who was holding the portfolio of Transport, there was no reason to interfere with the order of transfer. There was no vested right with the petitioner to continue at

Nagpur and as the transfer was effected for administrative reasons, no interference was called for. The learned Assistant Government Pleader referred to the judgment of the Division Bench in **Writ Petition No.2585 of 2019** (*Dr.Soudamini S. Chaudhari vs. The State of Maharashtra and ors.*) decided on 16.12.2020 at the Principal Seat. It was thus submitted that the writ petition was liable to be dismissed.

6. We have heard the learned counsel for the parties and we have given due consideration to the rival submissions as made. The right to transfer an employee inheres in an employer and it is recognized as an exigency of service. The procedure in that regard is governed in the present case by the Act of 2005. The petitioner came to be posted from Latur to Regional Transport Office, Nagpur Rural on 10.08.2020. In normal course the petitioner could contend that he was entitled to continue at Nagpur till August, 2023. However, prior to three months for completion of normal tenure, his services were transferred on 24.05.2023. In this backdrop what requires consideration is whether the procedure prescribed by the Act of 2005 has been followed or not by the respondents.

7. Perusal of the Minutes of the proceedings before the Civil Services Board indicate that pursuant to an audio clip alleging financial irregularities in the Regional Transport Department, the Ministry of Transport directed an enquiry to be made in that regard. The Deputy Commissioner of Police, Economic Offences Wing, Nagpur City, was called upon to make such enquiry. based on which an interim report was submitted. The report was then submitted to the Ministry of Transport and the matter was then

considered by the Civil Services Board. The said Board comprising of the Principal Secretary (Transport) as well as the Commissioner of Transport, Mumbai, recommended the transfer of five Officers from the Regional Transport Office, City and Rural, Nagpur. This included the petitioner who was serving at the Regional Transport Office, Nagpur Rural. The Minutes of the Meeting dated 28.04.2023 record such recommendation. The same was then considered by the Ministry of Transport and ultimately with the approval of the Hon'ble Chief Minister, who was holding the portfolio of Ministry of Transport, the recommendations were accepted. The approval specifically records that since the normal tenure of the officers were not completed, such approval was being granted in terms of Section 4 (5) of the Act of 2005. It is on this basis that the order of transfer dated 24.05.2023 came to be issued.

8. The aforesaid proceedings indicate that there has been compliance with the requirements of Section 4 of the Act of 2005. The petitioner's transfer was recommended by the Civil Services Board and the same was approved by the superior authority being the Hon'ble Chief Minister holding the portfolio of Ministry of Transport. The finding recorded by the Tribunal that the transfer of the petitioner was effected by following such procedure is thus substantiated by the material on record. It therefore cannot be held that the petitioner has been transferred in a manner contrary to the provisions of the Act of 2005.

9. In the Original Application preferred by the petitioner except for stating that he was victimized by issuing a mid-term transfer order and the

fact that his entire service career was satisfactory, there are no allegations of mala fides to urge that as a result of such mala fide acts, he was subjected to the order of transfer. When it is found that the order of transfer has been issued after complying with the procedure prescribed notwithstanding the fact that the order of transfer was issued prior to completion of the normal tenure, in the absence of any allegations of mala fides there would hardly be any reason to interfere with the order of transfer. It being an exigency of service, the employer is the best judge to determine the place where it desires to post its employee. The ground that the petitioner's name was not recommended by the Economic Offences Wing for being transferred and that his name was subsequently included, could not be a reason for this Court to interfere in exercise of extra ordinary jurisdiction especially when the order of transfer has been issued after complying with the provisions of the Act of 2005 and there being no allegations of mala fides. The Civil Services Board having applied its mind and its recommendations having been accepted by the superior authorities, there is hardly any reason for this Court to interfere in writ jurisdiction.

10. We do not find that the Tribunal committed any error in refusing to interfere with the order of transfer. The writ petition is thus without any merit. It is accordingly dismissed with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Later on

At this stage, learned counsel appearing for the petitioner prays for continuation of the *ad-interim* order. The request is opposed by the learned Assistant Government Pleader.

The *ad-interim* order to continue for a period of two weeks from today. The same shall cease to operate automatically thereafter.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.