



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

WRIT PETITION NO. 5911 OF 2023

Smt. Sangita d/o Daryawaji
Chandrikapure, Aged 46 years,
Occupation – Service,
R/o Plot No. 3, Chandrikapure
Layout, Godhani, Nagpur-441111.

.... PETITIONER

VERSUS

1) Zilla Parishad, Nagpur
through its Chief Executive Officer.

2) Divisional Commissioner,
Nagpur Division, Nagpur.

.... RESPONDENTS

Mr. N.S. Warulkar, Counsel for the petitioner,
Mr. Shaikh Majid, Counsel for respondent No.1,
Ms. Ritu Sharma, AGP for respondent No.2.

CORAM : A.S. CHANDURKAR
& ABHAY J. MANTRI, JJ.
DATED : 31st OCTOBER, 2023

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

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

2. The petitioner being aggrieved by the transfer order dated 24-8-2023 issued by respondent No.1 has preferred this

petition, whereby she has been transferred from Ramtek to Khat Circle, Mouda.

3. Succinctly, the facts of the case are as under :

(a) In the year 2008, the petitioner was appointed as a Supervisor under the Integrated Child Development Scheme (ICDS) at Bhivapur Project, Nagpur. Since 2019 she has been posted at Ramtek. Respondent No.1 is Zilla Parishad and Respondent No.2 is the Divisional Commissioner, Nagpur.

(b) On 08-8-2022 Zilla Parishad Member Shri Satish Dongare made a complaint to the respondents alleging that while organizing the programme at Mansar-Shitalwadi Circle the concerned officer of the Women and Child Welfare Development Department, Ramtek has neither taken him into confidence nor taken his cognizance. Thereby the concerned officer of the said department disrespected him and, therefore, he made the complaint. Pursuant to said complaint, an explanation of the petitioner was called.

(c) Thereafter, as per Government Resolution dated 15-5-2014, the Three members committee was constituted to conduct an enquiry against the petitioner. The committee has

submitted its report. On the basis of the said report, on 21-7-2023 the Deputy Commissioner, Nagpur approved the proposal for the transfer of the petitioner, and thereafter on 24-8-2023 respondent No.1 issued the impugned transfer order.

Being aggrieved by the same, the petitioner has preferred this writ petition.

4. Mr. N.S. Warulkar, learned Counsel for the petitioner vehemently argued that without giving any opportunity to the petitioner the impugned transfer order was issued. The said transfer order is contrary to the Government Resolution dated 15-5-2014. It was a midterm transfer and, therefore, respondent No.1 has to follow the guidelines given in the Government Resolution. The respondent No.1 has not followed the guidelines, hence, the impugned transfer order is bad in law and needs to be quashed and set aside. During the argument, he has invited our attention to the said Government Resolution and more particularly, Clause No.2(2) in Chapter 5 of the said Government Resolution. To buttress his submission he has relied on the judgment of the Hon'ble Apex Court in the case of ***Somesh Tiwari v. Union of India and others, (2009)2 SCC 592.***

5. Respondent No.1 resisted the petition on the ground that the impugned transfer order was passed after conducting due enquiry and in consonance with the Government Resolution dated 15-5-2014. During the enquiry, the substance was found in the allegations made in the complaint. Also, the act of the petitioner amounts to gross negligence and dereliction of her duty. The explanation given by her was not satisfactory and, therefore, issuance of the impugned transfer order by respondent No.1 is just and proper. Moreover, Respondent No.2 has granted its approval to the impugned transfer order. Hence no interference is required in it in the writ jurisdiction. In support of his contention, he has also produced a copy of the enquiry report and approval granted by respondent No.2 on record.

6. Having considered the rival submissions of the parties, the core question arises as to whether the issuance of the transfer order of the petitioner was a *bona fide* exercise of power by respondent No.1 or not.

7. It is pertinent to note that it is a settled position of law that indisputably an order of transfer is an administrative order.

There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where *inter alia* mala fide on the part of the authority has proved. *Mala fide* is of two kinds- one, malice in fact, and second, malice in law. Therefore, it would be proper to consider the above settled position of law, while considering the facts of the case.

8. On perusal of the record, at the outset, it appears that on the basis of a complaint made by one Zilla Parishad Member Mr. Satish Dongare, the enquiry was initiated against the petitioner by respondent No.1 by constituting the Three Member Committee who conducted the enquiry and submitted its report. The allegation in the complaint was that the petitioner had not informed the complainant about the organization of the programme on 08-8-2022 and thereby she disrespected him as the Zilla Parishad Member. *Per contra*, the petitioner averred that on 07-8-2022 she sent an SMS to the complainant about informing the organization of the programme on 08-8-2022, so also on 08-8-2022 she made a phone call to him and informed him about the programme. Therefore, she has denied the allegations of not

giving the information about the organization of the programme to the complainant. In the report of the Committee, it is observed that the petitioner had sent a message about the organization of the programme on 07-8-2022 as well as making a phone call to the complainant on 08-8-2022.

It is pertinent to note that bare perusal of the enquiry report, *prima facie* it seems that no substance is found in the complaint made by the Zilla Parishad Member. Furthermore it is observed that except the Zilla Parishad Member Mr. Satish Dongare, there is no complaint of any other Member of the Zilla Parishad or Panchayat Samiti against the petitioner that has been received to the concerned authorities. Also, the committee observed that there was a dispute between the petitioner and Smt. Patil, an In-charge Child Development Project Officer and, therefore, it seems that as per the Zilla Parishad Discipline and Conduct Rules, 1968 both have committed misconduct. Therefore, the Committee opined that it would be proper to transfer both of them out of the station. However, considering the said report, the petitioner has only been transferred by the impugned order. It does not appear that Smt. Patil was also transferred as per the said report. In fact, the allegations in the said complaint were

found to be untrue against the petitioner.

9. On perusal of Clause 2(2) of Chapter 5 of the Government Resolution dated 15-5-2014, it appears that if any complaint has been received against the employee and on enquiry if any substance is found in it, then only the employee can be transferred midterm or prematurely. However, *prima facie* the enquiry report does not show that substance was found in the allegations made in the said complaint. Despite the said fact, respondent No.1 has issued the impugned transfer order. The passing of the said transfer order itself shows that respondent No.1 has not considered the guidelines given in the said Government Resolution in its proper perspective and passed the impugned transfer order contrary to the provisions of the said Government Resolution. Therefore, the said conduct on the part of respondent No. 1 would attract the principle of malice of fact and law. Thus, it appears that the impugned transfer order suffers from a total non-application of mind in so far as it proceeds on the complaint of Zilla Parishad Member. Moreover, respondents Nos. 1 failed to show that it was necessary for the petitioner to give an invitation to the Zilla Parishad Member of the programme, which

was organized by the petitioner.

10. Thus, to sum up, it appears that respondent No.1 without following the guidelines given in the Government Resolution has issued the midterm transfer order of the petitioner. The said transfer order not only suffers from a total non-application of mind but also suffers from the principle of malice in fact and law. In the case at hand, it needs to be emphasised that the transfer has not been based on any administrative ground, nor have the mandatory requirements of Government Resolution dated 15-5-2014 been fulfilled. Hence, the dictum laid down in the case of *Somesh Tiwari* (supra) that “*the order in question would attract the principle of malice in law as it was not based on any factor germane to passing of an order of transfer and based on irrelevant ground that is on the allegation made against the petitioner on complaint*” is squarely applicable to the case at hand. Consequently, passing of the impugned transfer order by respondent No.1 shows that the said transfer order was not passed in a *bona fide* exercise of power by respondent No.1. Therefore, in our opinion, such transfer order is arbitrary, irrational and violates Article 14 of the Constitution of India and thus

interference is required in the impugned transfer order.

11. For the aforesaid reasons, the impugned transfer order dated 24-8-2023 transferring the petitioner from Ramtek to Khat Circle, Mouda is set aside. The Zilla Parishad shall take appropriate steps pursuant to the present order, this would not preclude the Zilla Parishad from effecting the petitioner's transfer during the routine general transfer.

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

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)

adgokar