



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

WRIT PETITION NO. 6160 OF 2023

Shalikrao s/o Devrao Usendi,
Aged about 54 years,
Occupation – Service-Executive
Engineer, PWD, Division No.2,
R/o Potegaon Road, Ram Nagar,
Tahsil and District Gadchiroli.

.... PETITIONER

VERSUS

- 1) State of Maharashtra,
through its Principal Secretary,
Department of Public Works,
Mantralaya, Mumbai – 32.
- 2) Secretary/Section Officer,
Public Works Department,
Mantralaya, Mumbai.
- 3) Superintending Engineer,
Public Works Department,
Gadchiroli, District Gadchiroli.
- 4) Mr. S.H. Sakharwarde,
Executive Engineer, Near Pandav
Polytechnic College, Nandanwan
Shrikrushna Nagar, in front of
Play Ground, Nagpur.
Presently transferred to Public
Works Department, Division–II,
Gadchiroli.

.... RESPONDENTS

Dr. R.S. Sirpurkar, Counsel for the petitioner,
Ms. N.P. Mehta, Addl. G.P. for respondent Nos.1 to 3,
Mr. A.B. Patil, Counsel for respondent No.4.

CORAM : A.S. CHANDURKAR
& ABHAY J. MANTRI, JJ.
DATED : 30th OCTOBER, 2023

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

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

2. The challenge raised in this writ petition is to the order dated 08-9-2023 passed by the Maharashtra Administration Tribunal, Nagpur (for short "*Tribunal*") in Original Application No.670/2023, thereby dismissing the said Original Application by upholding the impugned transfer order dated 30-6-2023 issued by respondent No.2-Secretary/Section Officer, Public Works Department, Mantralaya, Mumbai.

3. The petitioner is the Executive Engineer, working in the Public Work Department. Respondent No.2 is the appointing and transferring authority of the petitioner. Respondent No.3 is the superior authority of the petitioner to whom the petitioner is reporting at Gadchiroli. Respondent No.4 is also an Executive Engineer, who was transferred from the Directorate of Administration, Mumbai to the Public Works Department, Division-II, Gadchiroli at the place of the petitioner. Therefore, being aggrieved by the said order, the petitioner has preferred Original Application No. 670/2023 before the Tribunal. However,

the Tribunal, vide judgment and order dated 08-9-2023 dismissed the said Original Application. So, being aggrieved by the said order, the petitioner has preferred this writ petition.

4. Thrust of the argument of the learned Counsel for the petitioner was that the impugned order dated 30-6-2023 is violative of mandatory 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*"). It was also argued that the impugned order/approval clearly shows that the transfer was passed with ulterior motives, specifically to accommodate respondent No.4 at the place of the petitioner, which itself shows that the same was done for extraneous reasons and beyond the scope of provisions of Sections 4 and 5 of the Act and, therefore, the said order suffers from the colorable exercise of powers and violations of mandatory provisions of the Act. She has further emphasized that the Tribunal has not considered the facts on record in its proper perspective and has only given reason that the impugned order was necessitated by administrative exigencies and hence it was a special case as contemplated by sub-section (5) of Section 4 of the

Act and therefore, the said judgment and order suffers from non-application of mind and illegal thus same deserves to be quashed and set aside. To buttress her submissions, she has relied on the following citations :

- (1) *S.B. Bhagwat v. State of Maharashtra and Others*, 2012 SCC OnLine Bom. 102.
- (2) *Pradeepkumar s/o Kothiram Deshbhratar v. State of Maharashtra and others*, Writ Petition No. 2665 of 2011 decided by the Division Bench of this Court on 25-7-2011.
- (3) *Sheshrao Nagorao Umap (Dr.) v. State of Maharashtra and others*, 1984 SCC OnLine Bom. 162.

5. Per contra, Ms. N.P. Mehta learned Additional Government Pleader for respondents no. 1 to 3 has vehemently argued that the petitioner was due for transfer. However, at his request, he was retained in the same place for a further period of one year and, therefore, the provisions of Sections 4 and 5 of the Act are not applicable in the present proceedings. She supports the transfer order and the judgment and order passed by the Tribunal and contended that no illegality has been committed by the

authority, hence praying for dismissal of the writ petition. During the argument, she took us through the Government Resolutions and other documents and contended that in view of the same, no interference is required in the judgment and order passed by the Tribunal.

6. Mr. A.B. Patil, learned Counsel for respondent No.4 has strenuously argued that since 1998 the petitioner has been working in Gadchiroli district only. He has invited our attention in paragraph 3 of the affidavit-in-reply and contended that the petitioner has never worked outside the Gadchiroli district, which is his home district. He has further submitted that due to family difficulty, respondent no.4 could not join at New Mumbai and made a request to transfer him to Gadchiroli district, respondent No.2 considering his request and the request of the other incumbents passed the impugned order dated 30-6-2023 and, therefore, it cannot be said that they have violated the mandatory provisions of Sections 4 and 5 of the Act. He has also contended that the petitioner does not fulfill any of the criteria as laid down in Section 5 of the Act and, therefore, is not entitled to claim further extension of his tenure at Gadchiroli. Therefore, he has submitted that respondent No.2 by following the due procedure of

law has passed the transfer order which was confirmed by the Tribunal, and, therefore, no interference is required in this petition. In support of his submission, he has relied upon the judgment of the Division Bench of this Court in the case of *Sanjeev Bhagwanrao Kokil v. State of Maharashtra and others*, 2013(2) Mh.L.J. 107.

7. Having heard the rival arguments of the learned Counsels, at the outset, it reveals that the petitioner mainly harped on the point that respondent No.2 has not followed the provisions of Sections 4 and 5 of the Act and violated the same while passing the transfer order, in fact, the said order was not passed for administrative exigencies. Having considered the same, we would like to mention some material facts prior to discussing the rival contentions of the parties.

8. It appears from the affidavit-in-reply of respondent No.4 that from 04-8-1998 till the passing of the impugned transfer order the petitioner is working in Gadchiroli district only. The said fact was not denied by the petitioner by filing the rejoinder to the said affidavit-in-reply. Non-disputing the said fact leads to drawing adverse inferences against the petitioner in that regard.

9. Secondly, it seems that due to the corona-virus pandemic, the Government had extended the deadline for the general transfer till 10-8-2020. The petitioner was transferred from Sironcha to Gadchiroli vide order dated 07-8-2020. The said fact itself shows that prior to the said date the petitioner was transferred as per the rules, therefore he was due in the general transfer for April-May, 2023. Therefore, it cannot be said that he was not due for transfer. Furthermore, it seems that on 27-3-2023 the petitioner filed an application before the respondent authority and requested them to extend his tenure for a further period of one year at the said place. Had it been the fact that he was not due for transfer, in that case, certainly he would not have filed an application for an extension of his tenure for a further period of one year. The filing of the application itself shows that the petitioner was due for transfer and, therefore, he has moved the said application. Therefore, also it is evident that in April-May, 2023 the petitioner was due for transfer.

10. In view of the aforesaid facts, it would be proper to consider the provisions of Sections 4 and 5 of the Act, which read as under:

“4. Tenure of transfer.

(1) *No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.*

(2) *.....*

(3) *.....*

(4) *The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:*

Provided that, the transfer may be made any time in the year in the circumstances as specified below, namely:-

(i) *to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;*

(ii) *where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.*

(5) *Notwithstanding anything contained in section 3 or this section the competent authority may, in special cases, after recording reasons in writing and with the prior [approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.*

5. Extension of tenure.

1) *The tenure of posting of a Government servant or employee laid down in section 3 may be extended in exceptional cases as specified below, namely:-*

(a) *the employee due for transfer after completion of tenure at a station of posting or post has less than one year for retirement;*

(b) *the employee possesses special technical qualifications or experience for the particular job*

and a suitable replacement is not immediately available; and

- (c) the employee is working on a project that is in the last stage of completion, and his withdrawal will seriously jeopardise its timely completion.*
- (2) Notwithstanding anything contained in section 3 or any other provisions of this Act, to ensure that the Government work is not adversely affected on account of large-scale transfers of Government servants from one single Department or office, not more than thirty percent of the employees shall be transferred from any office or Department at a time, in a year.”*

11. On bare perusal of Sections 4 and 5 of the Act, it is evident that no Government Servant shall ordinarily be transferred prior to completion of his tenure of posting of three years. Also as per sub-section (5) of Section 4 of the Act, there is an exception to transfer the Government servant before completion of his tenure of posting for the reasons contended therein. However, in the case at hand it cannot be said that the petitioner was not due for transfer. But it seems that the petitioner was due for transfer, howsoever, at his request, his tenure was extended. Besides, the reasons spelled out in the application for seeking an extension of further tenure by the petitioner were not as per the mandate of section 5 of the Act. Therefore, on that count alone the petitioner is not entitled to seek relief under Sections 4 of the Act.

12. Thirdly, as per Section 5 of the Act, the tenure can be extended in three contingencies, if the employee due for transfer has less than one year of service for his retirement; second the employee possesses special technical qualifications for the particular job and third is if the employee is working on a project that is in the last stage of the completion. However, on perusal of the application submitted by the petitioner before the respondent authority does not fulfill all the three contingencies to extend his period of tenure, but he has given the reason that he is a diabetic and, therefore, for securing medical treatment he has prayed for extension of his tenure. Therefore, such extension cannot be the basis for contending that the petitioner was entitled to continue at Gadchiroli for one more year. Per contra, it seems that since 1998 he has been working in Gadchiroli District only.

13. The second ground raised by the petitioner is that the reasons stated in the minutes of the meeting dated 28-6-2023 for transferring respondent No.4 at Gadchiroli cannot be termed as a special reason or administrative exigencies to re-transfer him at Gadchiroli. The learned Counsel also invited our attention to the said minutes. It is pertinent to note that as per Section 4 of the

Act, it seems that the competent authority on satisfied that the transfer of an employee is essential due to exceptional circumstances or special reason, then after recording the reason in writing and with the prior approval of the immediate higher authority can transfer the employee before the completion of his tenure. In the case at hand, respondent No.4 filed an application before respondent No.2 and made a request that his father pass away on 11-4-2023, his old-aged mother is suffering from various ailments and nobody is there to look after her. Therefore, considering the said reason as well as the request application of other seven employees, respondent No.2 with the prior approval of its higher authority, passed the transfer order. The said fact itself shows that he has followed the mandate of Section 4 of the Act prior to issuing the said transfer order and, therefore, it cannot be said that they have violated the provisions of Section 4 of the Act. Hence, we do not find any substance in the arguments made by the learned Counsel for the petitioner in that regard.

14. Moreover, it is a settled position of law that transfer cannot be interfered with by the Court of law unless and until the transfer order is shown either *mala fide* or against the provisions of

the Act. Here though the petitioner has averred that respondent No.2-authority has violated the mandatory provisions of the Act, however, he failed to show the same from the record, also, he failed to show that respondent No.2 with *mala fide* intention has passed the impugned order.

15. In the case of *Sanjeev Bhagwanrao Kokil (supra)*, the Division Bench at the Principal Seat has observed that *the reason recorded as “for administrative reason”, can be no less an exceptional circumstance or special reason or for that matter, as a special case. Whether the reason that weighed with the Authority for arriving at subjective satisfaction would qualify it as an exceptional circumstance, or special reason, or a special case, would depend on the facts of each case.”*

16. In the judgments on which the learned Counsel for the petitioner is relying, in that case, the tenure of the petitioner was not completed and prior to completion of the same they were transferred as a special case and, therefore, in the said authorities Their Lordships have observed that *“the manner in which the power has been exercised leaves no manner of doubt that the*

exercise was carried out not in a public interest, but with a view to accommodate the request of respondent therein and, therefore, they have not fulfilled the mandate of sub-section (5) of Section 4 of the Act". However, in the case at hand, the tenure of the post of the petitioner was completed and he was due for transfer, therefore, the observations made by the said authorities are not helpful to him in support of his contentions. In the case of ***Sheshrao Nagorao Umap (Dr.) v. State of Maharashtra and others, 1984 SCC OnLine Bom. 162*** the Coordinate Bench of this Court has observed that *"the Court should not interfere with the orders of transfers, which are issued in the exigencies of service and, in the discharge of administrative or executive power. However, if the order is issued mala fide or in the colorable exercise of the power then the Court is bound to interfere since the mala fide exercise of power is not considered to be the legal exercise of power and therefore, the relief was granted in the said petition."* However, in the case at hand, the petitioner failed to show that the order was issued *mala fide* or in a colorable exercise of the power by the authorities. Per contra, it seems that the petitioner was due for transfer and since for a long period he was working in Gadchiroli district only so also respondent No.2-authority after

considering the reasons stated by respondent No.4 in the application, has passed the order and, therefore, the observations made in the said judgment are not helpful for the petitioner in support of his contentions.

17. Perused the impugned judgment and order of the Tribunal. After considering the various authorities and facts of the case, the Tribunal has held that *“when guidelines contained in the rulings mentioned above are applied to the facts of the case as spelled out in minutes of meeting dated 28-6-2023, the conclusion would be inescapable that the impugned order was necessitated by administrative exigencies and hence it was a special case as contemplated by sub-section (5) of Section 4 of the Transfer Act.”*

18. It also appears that the Tribunal has considered the provisions of Section 4 of the Act in its proper perspective and after considering the facts of the case, the observations were made in paragraph No.13 of the judgment, therefore, it cannot be said that the Tribunal has not applied its mind and impugned judgment and order suffers from perversity and illegality. Per contra, it seems that after considering the provisions of the Act and facts of the case, the Tribunal has passed the impugned judgment and

order which is just and proper, and no interference is called in the said judgment and order.

19. Having considered the aforesaid, to sum up, it seems that the petitioner failed to show that respondent No.2 with a view to accommodate respondent No.4 has passed the impugned transfer order or the impugned order suffers from the colorable exercise of power and violated the mandatory provisions of the Act. Per contra, it seems that the order passed by respondent No.2-authority is just and proper, and therefore, no interference is required in the writ jurisdiction. For the aforesaid reasons, we dismiss the writ petition.

20. Rule stands discharged. No Costs.

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)

At this stage, the learned Counsel for the petitioner prays that the interim relief that was granted by the Maharashtra Administrative Tribunal and was thereafter extended by this Court be further extended for a period of eight weeks. This request is

opposed by the learned Counsel for the respondents.

2. In the facts of the case, we do not find any reason to extend the interim order. The request is therefore rejected.

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)

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