



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 11574 Of 2024

1. The D.G.P., Maharashtra
Office at Shahid Bhagatsing Marg,
Colaba, Mumbai-01.
2. The Spl. Inspector General of Police,
Nanded Range, Nanded.
3. The Superintendent of Police,
Nanded, District Nanded.

...Petitioners

Versus

1. Dr. Nitin s/o Bhaskarrao Kashikar,
Age : 47 years, Occu: Service as
Police inspector, Hingoli, District Hingoli,
R/o. House No.4/19/53/178, Banjara Colony,
Gautam Nagar, Chha. Sambhajinagar,
Dist. Chha. Sambhajinagar.
2. The Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi 110001.
3. The Chief Election Officer,
State of Maharashtra,
General Administration Department,
Office at Madam Kama Marg,
Hutatma Rajguru Chowk, Mumbai-01.

...Respondents

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Mr. N.S. Tekale, AGP for the Petitioners/State.

Mr. D.M. Shinde, Advocate for Respondent No.1.

Mr. Alok Sharma, Advocate for Respondent No.2 and 3.

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ..**
RESERVED ON : 17 OCTOBER 2024
PRONOUNCED ON : 25 OCTOBER 2024

ORDER [Per: Shailesh P. Brahme, J.] :

. Heard both the sides finally.

2. The petitioners are challenging judgment and order dated 06.05.2024 passed by learned Member of Maharashtra Administrative Tribunal, allowing the Original Application No.367/2024, thereby quashing order of transfer dated 24.02.2024, whereby respondent no.1 was transferred from Nanded to Hingoli.

3. Respondent no.1 was transferred from Parbhani to Nanded by order dated 09.06.2021. He joined at Mahur, Nanded on 30.06.2021. Thereafter, he was transferred from Mahur to the control room at Nanded vide order dated 11.01.2024 in view of Parliamentary Election of 2024. Thereafter he was transferred from Control Room at Nanded to Anti Naxal Squad i.e. C-47 vide order dated 02.02.2024. Lastly, he was transferred by impugned order dated 24.02.2024 from Nanded to Hingoli on administrative ground. Being aggrieved, respondent no.1 preferred O.A. No.367/2024 before the Tribunal.

4. Petitioners contested the application before Tribunal by

filing affidavit-in-reply. Learned AGP for the petitioners submits that order passed by the Tribunal is arbitrary and perverse. He would further submit that order of transfer was passed in consonance with guidelines of the Election Commission issued on 21.12.2023 and further instructions dated 22.02.2024. It is further submitted that respondent no.1 was to complete three years of service on 30.06.2024 and he was liable to be transferred due to ensuing elections. It is further submitted that midterm transfers are permissible in view of Section 22 (n)(2) of Bombay Police Act. It is further submitted that though respondent no.1 was posted at Anti Naxal Squad, C-47 Unit, he could have been deputed for election duties and therefore the transfer was effected.

5. Learned Counsel Mr. Alok Sharma appearing for respondent no.1 submits that it was midterm transfer and it was against the guidelines issued by the Election Commission. Respondent no.1 was working on non-executive post at Anti Naxal Squad, C-47 Unit. He was not associated with election duties. It is further submitted that the Tribunal is perfectly justified in quashing the order of transfer and no interference is called for.

6. We have heard both the sides. We have gone through the relevant documents filed by the petitioners on record as well as the papers tendered by the parties during the course of hearing.

7. The respondent no.1 was transferred to the control room at Nanded from Mahur vide order dated 11.01.2024. His post at control room was non-executive post. Thereafter he was further transferred to Anti Naxal Cell, C-47 Unit vide order dated 02.02.2024. It was also non-executive post. There is nothing on record to show that his post at C-47 Unit was concerning with the election duties or security related duties. Impugned order refers to only reason for transfer as administrative ground. As per the guidelines dated 21.12.2023, he was not connected with conduct of elections. For that purpose, paragraph no. 3 of the guidelines is not attracted. Therefore, it is inconsequential whether he was in his home district or he was rendering services for more than three years before 30.06.2024.

8. It is further relevant to notice paragraph no.5.3 of the guidelines dated 21.12.2023. The guidelines are applicable to the officers enumerated in paragraph no.5.3 who are responsible for security arrangements or deployment of police officers in a district during election time. His posting at Anti Naxal Squad C-47 Unit is functional department.

9. It is also relevant to notice the circular dated 16.02.2019 issued by Home Department. These are the norms for exempting the police officers who are not concerned with the election duties. Its annexure-1 is a list of the branches of the police department which are not concerned with election duties. Anti

Naxal Squad in a naxalite district is stated to be one such branch at serial no.13, which is not concerned with the election duties. If this is the situation then certainly respondent no.1 was not liable to be transferred.

10. We do not find that learned Member of the Tribunal has committed any error of jurisdiction or perversity in allowing the application. He has taken a plausible view.

11. We do not propose to go into the submissions of learned AGP as to whether midterm transfer is permissible as per the provisions of Bombay Police Act. Once the branch of respondent no.1 was not concerned with election duties and he was on non-executive and functional post, he should not have been transferred.

12. For the reasons stated above, we find no merit in the petition. The writ petition is dismissed.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE