

RAMESHWAR
LAXMAN
DILWALE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2288 OF 2024

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Date: 2024.12.13
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Ujwal Arun Vaidya .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

...
Mr. Mihir Desai, Senior Advocate with Mr. Ratan L. Adhe,
Advocate for the petitioner.

Mr. N. C. Walimbe, Additional Government Pleader with Mr. N. K.
Rajpurohit, Assistant Government Pleader for the respondent
nos.1 to 4.

Dr. Abhinav Chandrachud with Ms. Unnati Ghia, Mr. Datta
Mane, Advocates for the respondent no.5.

...

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 11th DECEMBER, 2024.

P.C. :

1. The challenge raised in this writ petition is to the order dated 23/11/2023 passed by the Maharashtra Administrative Tribunal (for short, 'the Tribunal') dismissing Original Application No.1240 of 2023. In the said proceedings, the petitioner had challenged the order of transfer dated 25/09/2023 by which she was transferred from the post of Deputy Superintendent of Police, Anti-Corruption Prevention Department, Satara to the post of Assistant Commissioner State Intelligence Department Mumbai.

2. Mr. Mihir Desai, learned Senior Advocate for the petitioner submitted that while transferring the petitioner on 25/09/2023 the transferring authority failed to act in accordance with the Circulars dated 07/10/2016 and 08/11/2017. In the said Circulars, the procedure to be followed while effecting such transfers was enumerated. It was pointed out that on 26/05/2023 the petitioner had made a complaint to the Hon'ble Minister of Home with regard to the conduct of the respondent no.5 and the harassment caused to the petitioner in that regard. Though an enquiry was held and a report dated 07/07/2023 came to be submitted to the Superintendent of Police, the Police Establishment Board, (for short, 'PEB') in its meetings held on 17/07/2023 and 18/09/2023 instead recommended the petitioner's transfer. The complaints made by the petitioner were not enquired into any further and on the contrary the complaints made against the petitioner were acted upon. A communication dated 27/09/2022 had been issued by the Additional Superintendent of the Police to the Director General of Police in the matter of transfer of the petitioner. The Officer who had issued the said communication was also a Member of the PEB. The issuance of a press-note by the petitioner was made the basis for her transfer without any justification. The fact that the respondent

no.5 was seeking to have himself posted in place of the petitioner was evident from the fact that the Original Application preferred by the petitioner was dismissed by the Tribunal on 23/11/2023 and on the next day, the respondent no.5 was transferred on the post held by the petitioner. The Tribunal failed to consider these relevant aspects and declined to interfere with the order of transfer. Since the order of transfer was punitive in nature and given the circumstances leading to the petitioner's transfer, it was submitted that this Court may interfere with the order passed by the Tribunal and set aside the transfer order.

3. Mr. N. K. Rajpurohit, learned Assistant Government Pleader supported the order passed by the Tribunal. According to him, under the provisions of Section 22N (2) of the Maharashtra Police Act, 1951 (for short, 'Act of 1951'), it was permissible to transfer an Officer midterm. The same was however required to be done after placing the matter before the PEB. He submitted that the requirements of Circulars dated 07/10/2016 and 08/11/2017 had been duly followed. The statement of the petitioner was duly recorded and she was given full opportunity in that regard. There were no allegations of malafide made by the petitioner and the Tribunal rightly refused to interfere with the order of transfer. To

support his submissions, the learned counsel placed reliance on the decisions in *State of Maharashtra through The Additional Chief Secretary, Home Department and Another Vs. Siddharth Krushnarao Kasbe and Another*, 2017 SCC OnLine Bom 6927, *State of U. P. and Others Vs. Gobardhan Lal*, (2004) 11 SCC 402, *Union of India and Others Vs. S. L. Abbas*, (1993) 4 SCC 357 and *Shilpi Bose and Others Vs. State of Bihar and Others*, 1991 Supp (2) SCC 659 and submitted that there was no case made out to interfere in exercise of writ jurisdiction.

Dr. Abhinav Chandrachud, learned counsel appearing for the respondent no.5 also opposed the writ petition. He submitted that if the impugned order of transfer was set aside, the respondent no.5 would be directly affected as he had been posted in place of the petitioner. He too submitted that there was no case made out to interfere in exercise of writ jurisdiction.

4. We have heard the learned counsel for the parties at length and we have perused the documentary material on record. Section 22N (2) of the Act of 1951 empowers the Competent Authority to effect a midterm transfer of any Police Personnel in exceptional cases in public interest and on account of administrative exigencies. The petitioner by an order dated 03/01/2023 came to

be transferred from the Anti-Corruption Department Mumbai to the Anti-Corruption Department, Satara. Since the petitioner was thereafter transferred on 25/09/2023 from Satara to Mumbai, which transfer order has been effected midterm, it would be necessary to examine whether a case in that regard has been made out by the Competent Authority. Before doing so, it may only be stated that transfer being an incident of service, unless the same is shown to be an outcome of malafide exercise of power or has been effected in violation of any statutory provision or has been issued by an Authority not competent to do so, the Court would be slow to interfere with such order of transfer. It is only if an exceptional case is made out that interference is warranted.

5. The Deputy Inspector of General of Police (Establishment) has issued Circulars dated 07/10/2016 and 08/11/2017 in the matter of midterm transfer of Police Officers. The same contemplate holding of a preliminary enquiry in case a midterm transfer to be effected. With a view to comply with the principles of natural justice, an opportunity to the Police Officer to be transferred has to be given. The report thereafter with all relevant documents is required to be placed before the PEB. In this regard, it is seen that initially the proposal of the petitioner's transfer was

considered by the PEB on 17/07/2023. It has referred to the observations made by the Competent Court in the offence registered vide FIR No.223 of 2023 and the conduct of investigation by the petitioner. The fact that the petitioner had apologised for the error committed in not obtaining the signature of panch witnesses on the arrest memo has been referred to. The PEB further considered the issue of the petitioner's transfer in the subsequent meeting held on 18/09/2023. Various instances involving the petitioner have been taken into consideration and on that basis, in exercise of power conferred by Section 22N (2) of the Act of 1951 a recommendation for the petitioner's transfer was unanimously made by all six members of the PEB. It is on this basis that the petitioner came to be transferred on 25/09/2023 by taking recourse to the aforesaid statutory provisions.

6. From the material on record, we do not find that the procedure laid down by the Circulars dated 07/10/2016 and 08/11/2017 has not been complied with. The petitioner's statement came to be recorded on 03/07/2023 after which her transfer was recommended. It therefore cannot be said that the transfer of the petitioner is without complying with the requirements of Section 22N (5) of the Act of 1951 or by not

complying with the modalities prescribed by the aforesaid Circulars. The decision making process leading to the petitioner's transfer therefore cannot be said to be illegal.

7. Coming to the reasons for the petitioner's transfer, we are of the view that the discretion in this regard vests with the PEB. The same comprises of Senior Officials of the Home Department as well as the Police Establishment. Once it is found that there was sufficient material placed before the PEB on the basis of which it proceeded to recommend the petitioner's transfer, it would not be expedient for the Court to go into the sufficiency of the grounds for transfer. Ultimately transfer being an incident of service, it is for the employer to exercise such discretion in a fair manner. We do not find that the PEB has acted in an arbitrary or unfair manner while recommending the petitioner's transfer.

8. Though it was urged on behalf of the petitioner that her transfer was a punitive act penalising her for complaints made against her, we do not find that the order of transfer is in any manner punitive. The complaint made by the petitioner as well as the material against her has been taken into consideration by the PEB before recommending her transfer. The Tribunal having

considered all relevant material and having found that no case was made out to interfere with the order of transfer, we are not inclined to take a different view of the matter. It may be stated that there are no allegations of malafide made by the petitioner while assailing the order of transfer. In any event, the petitioner has accepted the order of transfer and has joined at the place of transfer. We therefore do not find any case made out for this Court to interfere in exercise of writ jurisdiction under Article 226 of the Constitution of India. The writ petition stands dismissed with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]