

Jvs.

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

**PUBLIC INTEREST LITIGATION NO. 11 OF 2024**

|                                            |   |                    |
|--------------------------------------------|---|--------------------|
| <b>Ankur Prabhakar Patil</b>               | } | <b>Petitioner</b>  |
| <b>versus</b>                              |   |                    |
| <b>The State of Maharashtra &amp; Ors.</b> | } | <b>Respondents</b> |

Mr. Raj Awasthi i/b. Mr. V. Shukla & Associates for petitioner.

Ms. Sangeeta Shinde, APP for respondents 1 to 4 (State).

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &  
AMIT BORKAR, J.**

**DATE: 4<sup>th</sup> SEPTEMBER 2024**

**ORAL JUDGMENT:**

- 1.** Heard learned counsel for the petitioner and the learned APP for the State respondents.
- 2.** Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the Court proceeds to decide the PIL petition finally.
- 3.** By instituting the proceedings of this PIL petition, the petitioner has assailed the validity of an office order dated 23<sup>rd</sup> March 2021 issued by the Joint Commissioner of Police (Administration), Mumbai, whereby certain police officers of the rank of Police Inspectors, Assistant Police Inspectors and Police Sub-Inspectors have been transferred from their respective places of posting to some other places within the Mumbai Police Commissionerate.

**4.** Impeaching the impugned office order dated 23<sup>rd</sup> March 2021, it has been argued by learned counsel for the petitioner that the said transfer order is in the teeth of the provisions contained in section 22N of the Maharashtra Police Act, 1951 (hereinafter referred to as "the Police Act"), as amended w.e.f. 16<sup>th</sup> February 2015. He has also argued that the provisions contained in section 22N of the Police Act provide for normal tenure of all categories of police officers on completion of which the concerned police officers are to be necessarily transferred. It is his submission that since while passing the impugned transfer order dated 23<sup>rd</sup> March 2021 the police officers have been retained within the Mumbai Police Commissionerate even after completion of their normal tenure as defined in section 22N of the Police Act, the order is unlawful being in complete derogation and violation of the statutory provisions contained in section 22N of the Police Act.

**5.** Drawing our attention to section 22(1)(d), it has been argued by learned counsel for the petitioner that the said provision provides that the police officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector shall have normal tenure of six years at the Commissionerate other than Mumbai and eight years at Mumbai Commissionerate. He has further submitted that, thus, in terms of what has been mandated in section 22N(1)(d) of the Police Act, if an officer of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector has completed a tenure of eight years in Mumbai Commissionerate, he has to be necessarily transferred out of Mumbai Commissionerate, whereas, by the impugned order dated 23<sup>rd</sup> March 2021, various

officers of the said ranks, though have completed eight years' tenure in Mumbai Commissionerate, yet they have again been posted on transfer not outside the Mumbai Police Commissionerate, but in the police establishments within Mumbai Police Commissionerate.

**6.** Elaborating further, learned counsel representing the petitioner has stated that the occurrence of the word "shall" in section 22N(1)(d) of the Police Act makes it mandatory that the officers of the rank as described therein will have a tenure for a period of eight years in Mumbai Commissionerate and not beyond that, which, according to the learned counsel for the petitioner, means once eight years' term is completed by the police officer in terms of section 22N(1)(d) of the Police Act, he has to be mandatorily transferred out of Mumbai Commissionerate.

**7.** It is also argued by learned counsel for the petitioner that the Director General of police has been seeking information regarding transfers on completion of minimum tenure of police officers as per section 22N of the Police Act and all the Police Commissionerates and other establishments have been furnishing this information to the Director General of Police, however, the Police Commissionerate at Mumbai has not been furnishing such information, which, according to the learned counsel for the petitioner, makes the impugned action on the part of the Mumbai Police Commissionerate a suspect.

**8.** Lastly, learned counsel for the petitioner relies upon the definition of the phrase "General Transfer" occurring in section 2(6A) of the Police Act, according to which, general transfer would mean posting of a police personnel in the police force

from one post, office or department to another post, office or department in the month of April and May of every year, after completion of normal tenure as mentioned in sub-section (1) of section 22N of the Police Act. On that basis, it is his submission that once normal tenure is complete, general transfer is to be necessarily taken recourse to in every case.

**9.** In his prayer, it has, thus, been urged by learned counsel for the petitioner that it is not only that the impugned order dated 23<sup>rd</sup> March 2021 may be quashed, but also that a direction be issued to the authorities concerned to follow the mandate as provided by section 22N of the Police Act.

**10.** On the other hand, the learned APP has opposed the prayers made in the PIL petition and has submitted that the office order dated 23<sup>rd</sup> March 2021 does not contravene any of the provisions contained in section 22N of the Police Act; rather the same has been passed in exercise of the powers vested in the competent authority to make mid-term transfers of any police personnel of the police force on account of administrative exigencies and in public interest. In her submissions, she has urged that the PIL petition be dismissed at its threshold.

**11.** Having considered the rival submissions of learned counsel for the respective parties and having gone through the records available before us on this PIL petition, we are not convinced with the submissions made by learned counsel for the petitioner that the impugned transfer order dated 23<sup>rd</sup> March 2021 in any manner contravenes the provisions of section 22N of the Police Act in general and those of section 22N(1)(d) of the Police Act in particular. The reason for us to arrive at the said conclusion is that the scheme of section 22N of the Police Act, which provides

for normal tenure of police personnel, is an umbrella or protection statutorily made available to the police personnel for securing their normal tenure at a particular place in a particular post. The apparent reason for making such provision is to avoid the police personnel from being subjected to frequent transfers and also to strengthen the work of the police force in a particular area/police station. Accordingly, section 22N is to be construed for the purpose for which it appears to have been enacted and the purpose, as already observed above, is to secure the normal tenure of a police personnel. Section 22N, in our opinion, thus, creates or vests a right in the police personnel to remain posted during the normal tenure as prescribed in the said provision so that such police personnel are not subjected to transfer before completion of normal tenure.

**12.** The only exception available for mid-term transfer, i.e., transfer before completion of the normal tenure as prescribed in section 22N of the Police Act is that the competent authority in the public interest and on account of administrative exigencies can also effectuate mid-term transfer of any police personnel of the police force. However, the provisions contained in sub-section (2) of section 22N of the Police Act have to be taken recourse to in a very rare circumstances and normally, as per the mandate of section 22N of the Police Act, the tenure of police personnel of his posting is to be respected and honoured. Accordingly, in our opinion, the provisions contained in section 22N of the Police Act are to safeguard the interest of the police personnel, however, such a protection made available to the police personnel under section 22N of the Police Act cannot be construed to mean that after completion of the normal tenure as

prescribed in the said provision, the police officers are to be necessarily transferred.

**13.** Submission made in this regard by learned counsel for the petitioner emphasizing upon occurrence of the word “shall” in section 22(1)(d) of the Police Act is also misplaced. The occurrence of the word “shall” in the said provision only makes it mandatory that the normal tenure of police officers prescribed therein has to be observed only in terms of the section 22N of the Police Act.

**14.** Even otherwise, it is widely understood and well settled that transfer is an incidence of service. The employee has a transferable liability if he occupies a transferable post. Transfer can be taken recourse to by an employer or the competent authority to safeguard the general interest of administration and therefore, subject to statutory provisions as contained in section 22N of the Police Act, in the matters relating to transfer and posting of a police personnel, adequate room needs to be given to the competent authority, however, that would not mean that the competent authority, while taking recourse to transfer of police personnel, will be exempt from the protection available to the police officers under section 22N of the Police Act.

**15.** Insofar as the submission of learned counsel for the petitioner based on the definition of the phrase “General Transfer” appearing in section 2(6A) of the Police Act is concerned, we do not find ourselves in agreement with the submission made by learned counsel for the petitioner in this regard for the simple reason that section 2(6A) only defines as to what the phrase “General Transfer” means as opposed to the meaning of another phrase, namely, “Mid-term Transfer” as per

section 2(6B) of the Police Act. The said submission is also not tenable, which is hereby rejected.

**16.** For the aforesaid reasons, we are not inclined to interfere in this PIL petition, which is hereby dismissed.

**17.** Rule, thus, stands discharged.

**18.** Costs made easy.

**(AMIT BORKAR, J.)**

**(CHIEF JUSTICE)**

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signed by  
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DASHARATH  
PANDIT  
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