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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11740 OF 2024

The State of Maharashtra & Others Petitioners.

V/s

Smt. Pramila Vitthal Kawale & Others Respondents.

Dr. Birendra B. Saraf, Advocate General alongwith Mr. P. P. Kakade, Government Pleader alongwith Mrs. R.A. Salunkhe, Assistant Government Pleader for the petitioners-State.

Mr. Prashant Katneshwarkar, Senior Advocate instructed by Mr. Prashant Nagargoje, Advocates for respondent No.1.

Mr. Ashutosh Kumbhakoni, Senior Advocate instructed by Mr. Akshay Shinde, Advocate for respondent No.2.

Mr. S. J. Lavate, Advocate, Shri Bhupesh Singh, Law Officers to DGP, MS, Mumbai present.

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

DATE: 20th August, 2024

PC.:-

1] The State of Maharashtra through its Home Department has raised a challenge to the order dated 19/07/2024 passed by the learned Member in a batch of Original Applications that has resulted in treating the orders of transfer issued to various Police Officers in

exercise of powers under Section 22-N of the Maharashtra Police Act 1951 (fort short, “the Act of 1951) as having lost their efficacy in view of conduct of the general elections in May-June, 2024.

2] By an order dated 26/02/2024 various police officers including the 1st respondent came to be transferred in compliance of the directives issued on 21/12/2023 by the 2nd respondent – Election Commission of India. The transfer order indicates that said transfers had been effected in public interest after considering administrative exigencies in exercise of powers conferred by Section 22-N of the Act of 1951. The Tribunal has proceeded to hold that the Notification, if any, issued under Section 28-A of the Representation of the People Act, 1951 in respect of police personnel would cease to have effect upon completion of the general elections, 2024. The period from the date of such transfer till the completion of the general elections was held to be period of deemed deputation of such police personnel. Since the general elections had concluded, the police personnel were entitled to be reverted back to their respective police establishments by treating the transfer order as having perished.

3] In the context of the provisions of Section 22-N of the Act of 1951 as well as Section 28-A of the Representation of the People Act, 1951 vis-a-vis directives issued by the Election Commission of India, the matter requires consideration.

4] Issue notice to the Respondents, returnable in four weeks.

5] Advocate Mr. Prashant Nagargoje waives notice for the 1st respondent, Advocate Mr. Akshay Shinde waives notice for the 2nd respondent.

6] We have heard the learned counsel for the parties on the prayer for interim relief.

7] Dr. Birendra Saraf, the learned Advocate General on behalf of the State of Maharashtra submits that Section 22-N(2) of the Act of 1951 empowers the competent authority to make mid-term transfers of any police personnel in public interest and on account of administrative exigencies. The Election Commission of India on 21/12/2023 had issued a Directive to the Chief Secretary that he should ensure that no

officer connected directly with the elections shall be allowed to continue in the district of posting (i) if she/he is posted in her/his home district or (ii) if she/he has completed three years in that district during the last four years. In view of these directives, the orders of transfer dated 26/02/2024 came to be issued. It could not be said that the transfer orders were in the nature of “deemed deputation” as observed by the Tribunal. Notwithstanding the transfers being effected mid-term in public interest, the transfer orders were to operate for the regular tenure as prescribed. Consequence of the impugned order passed by the Tribunal would require the Home Department to again bring back the police personnel who had been transferred when, in fact, such contingency was not provided in the transfer order. On 31/07/2024 the Election Commission of India had issued fresh directives on the lines of its earlier directives dated 21/12/2023 in view of the fact that assembly elections were now scheduled sometime in November, 2024. Thus, the entire exercise that was undertaken pursuant to the earlier directives dated 21/12/2023 would be required to be again followed if the order passed by the Tribunal was implemented. In absence of any challenge being raised either to the directives issued on 21/12/2023 or 31/07/2024 by the Election

Commission of India, the power exercised by the Home Department under Section 22-N of the Act of 1951 could not be faulted. Hence, it was submitted that the impugned judgment of the Tribunal ought to be stayed during pendency of the writ petition.

8] Mr. Ashutosh Kumbhakoni, the learned Senior Advocate for the Election Commission of India supported the prayer made on behalf of the petitioners for the grant of interim relief. According to him, the transfer orders were effected in compliance of the directives dated 21/12/2023. If the order of the Tribunal was implemented, same would have a cascading effect which would undo the entire exercise that was earlier undertaken. According to him, provisions of Section 28-A of the Representation of the People Act, 1951 related to “conduct of any election” while the directives issued were with regard to “connected directly with election”. There was a marked difference in both the expressions. It was only those police personnel who were involved in the “conduct of any election” who were deemed to be on deputation with the Election Commission of India under Section 28-A.

9] Mr. Prashant Katneshwarkar, the learned Senior Advocate for the

1st respondent opposed the grant of any interim relief. At the outset, he submitted that the Election Commission of India had not challenged the order passed by the Tribunal if it was a party aggrieved by the said judgment which resulted in going behind its Directives. Referring to the Directives issued on 21/12/2023 by the Election Commission of India, he submitted that both the contingencies provided by Clause-3 thereof ought to be satisfied for a police personnel to be transferred on that basis. The 1st respondent had recently joined at Nasik City but as a result of the order of transfer she was required to be shifted immediately though she had not completed period of three years in the said district. Reference was made to the provisions of Article 324 of the Constitution of India as well as Section 28-A of the Representation of the People Act, 1951 to submit that it was only during the period when the elections were to be held that such transfer of police personnel was intended. On conclusion of the general elections, the deemed deputation would come to an end as rightly held by the Tribunal. Referring to the judgment of the Division Bench in *Smt. Jyoti Hanuman Patil vs. The Principal Secretary (Revenue) and others* in Writ Petition No.9499 of 2016 with connected writ petitions decided on 07/12/2016 it was submitted that the State Government had failed to frame any

policy in the matter despite same being required to be done. The Tribunal having considered various decisions including judgment of the Karnataka High Court in *Election Commission of India vs. State of Karnataka and others* in Writ Petition No.17123 of 2013, there was no case made out for grant of interim relief.

10] Having heard the learned counsel on the prayer for interim relief, we are satisfied that a prima facie case has been made out by the petitioners. The provisions of Section 28-A of the Representation of the People Act, 1951 which contemplate a police officer who is designated for the time being by the State Government for the conduct of any election to be deemed to be on deputation to the Election Commission for the period commencing from the date of the Notification calling for such election till declaration of results of such election. In the present case, the Directives issued by the Election Commission of India do not relate to Section 28-A of the Representation of the People Act, 1951. The impugned order of transfer indicates that same has been issued in exercise of powers under Section 22-N(2) of the Act of 1951. Prima facie, it cannot be said that such order of transfer was in the nature of “deemed deputation” so as to lose its efficacy at the conclusion of the

election. It is also to be noted that fresh Directives have been issued by the Election Commission of India on 31/07/2024 in view of the ensuing assembly elections. Permitting the impugned order passed by the Tribunal to operate would require the transferred officers to be re-posted and thereafter again be subjected to transfer in accordance with the subsequent Directives. In view of aforesaid, there shall be interim relief in terms of prayer clause-C until further orders.

11] Parties to act on the authenticated copy of this order.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]