

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

WRIT PETITION NO.13212 OF 2024

Madhuri Rudresh Kangane .. Petitioner

Vs.

State of Maharashtra & Ors. .. Respondents

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Mr. Dhanajay Thoke, Advocate for the petitioner.

Mrs. Reena A. Salunkhe, AGP for the respondent-State.

Mrs. Pushpa Ganediwala with Mr. Ankit B. Rathod, Ms. Anshu Agarwal, Advocate for the respondent no.5

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

DATE : 26th SEPTEMBER, 2024.

P.C. :

1. Heard. The challenge raised in this writ petition is to the order dated 09/09/2024 passed by the Maharashtra Administrative Tribunal in Original Application No.276 of 2024. By that order, the Original Application filed by the fifth respondent raising a challenge to the order of transfer dated 28/02/2024 has been allowed and the order of transfer has been set aside. Liberty has been granted to the Police Establishment Board-PEB to pass consequential orders as regards his posting. The petitioner who was arrayed as respondent no.6 before the Tribunal is aggrieved by that order on the ground that she would be required to give way to the posting of the fifth respondent.

2. Facts relevant for considering the challenge raised are that the petitioner was serving on the post of Additional Superintendent of Police, Nashik rural. By an order dated

28/11/2023, she was transferred to an equivalent post at Lohmarg Pune. The fifth respondent on 28/02/2024 was holding the post of Deputy Commissioner of Police, Pimpri Chinchwad and he came to be posted as Police Superintendent, Maharashtra Police Academy, Nashik. The fifth respondent approached the Maharashtra Administrative Tribunal (for short, 'the Tribunal') for challenging his transfer order. An interim order was passed on 29/02/2024 in view of the ground raised by the fifth respondent that his child was suffering from Autism to the extent of 75% and in view of the provisions of the Rights of Persons with Disabilities Act, 2016 (for short, 'the Act of 2016') alongwith the Office Memorandum dated 08/10/2018 issued by the Department of Personnel and Training, Government of India, he was not liable to be transferred. The Tribunal directed the Home Department to reconsider the order of transfer dated 28/02/2024 in concurrence with the Principal Secretary and the Chief Electoral Officer, Maharashtra State in the light of the aforesaid statutory provisions and Executive instructions. The PEB however did not find any reason to modify the order of transfer dated 28/02/2024. The Tribunal thereafter considered the Original Application and held that the fifth respondent was entitled to the benefit of the provisions of Section 2(d) of the Act of 2016 and hence was not

liable to be transferred. After setting aside the order dated 28/02/2024, the Authorities were directed to re-consider the place where the fifth respondent would be posted.

3. The learned counsel for the petitioner submitted that the Tribunal was not justified in interfering with the order of transfer dated 28/02/2024. The PEB had re-considered the matter and it found that as per the directions of the Election Commission of India dated 28/12/2023, the fifth respondent ought to be transferred outside Pune Revenue District. The Tribunal ignored the recommendations of the PEB and proceeded to hold that the fifth respondent was entitled to benefit of the Office Memorandum issued by the Department of Personnel and Training. Since the fifth respondent had completed the requisite period of service in Pune District, he had been transferred. The provisions of Section 22N of the Maharashtra Police Act, 1951 had been misinterpreted by the Tribunal which committed an error in interfering with the order of transfer.

4. The learned counsel appearing for the fifth respondent supported the order passed by the Tribunal. It was submitted that the Tribunal rightly found that it was necessary to consider the Office Memorandum issued by the Ministry of Personnel and Training. The directions therein had been communicated to the

Election Commission of India and therefore it was incumbent upon the State Election Authority to act accordingly. Reference was made to Office Memorandum dated 02/02/2024 which was also issued by the Ministry of Personnel, Government of India on similar lines. Despite an opportunity being given to the PEB to re-consider the matter, it failed to take into consideration the effect of said guidelines. As the Tribunal rightly interfered with the order of transfer, there was no reason to entertain the writ petition.

The learned Assistant Government Pleader for the respondent no.1 submitted that the transfer order issued to the fifth respondent was after considering all relevant aspects.

5. Having heard the learned counsel for the parties and having perused the documents on record we do not find that the Tribunal committed any error in setting aside the order of transfer dated 28/02/2024. It is not in dispute that the son of the fifth respondent was a special child and the fifth respondent as his father was entitled to consideration of benefits flowing from the provisions of the Act of 2016. The Office Memorandum dated 08/10/2018 issued by the Department of Personnel and Training requires consideration of a “care giver” under the Act of 2016 and dilutes the criteria for transfer of such employees. By the order dated 29/02/2024, the Tribunal directed the PEB to re-consider

the impugned order of transfer. However, the PEB without referring to the Office Memorandum dated 08/10/2018 or the provisions of Act of 2016 declined to re-consider the issue. In our view given the admitted fact as regards the condition of the special child of the fifth respondent, the PEB ought to have taken into consideration the said aspect. Since it was found that the PEB failed to take into consideration relevant aspects, the Tribunal was required to interfere. The Tribunal has given cogent reasons for doing so and has referred to two decisions of this Court in paragraphs 28 and 29 of its order to justify its interference. Thereafter while setting aside the order dated 28/02/2024 it has again directed the PEB to consider the place at which the fifth respondent could be posted. The discretion to be exercised by the PEB and the Home Department has thus not been watered down. In absence of any jurisdictional error being pointed out for this Court to interfere in exercise of writ jurisdiction, we do not find any reason whatsoever to invoke writ jurisdiction.

6. Hence for aforesaid reasons, there is no case made out to interfere with the order passed by the Tribunal. The writ petition is thus dismissed with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]