



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2604 OF 2024

1. Dr. Prashant S/o Lalitrao Patil,
Age about 60 years, Occ. Service,
R/o. B1, HIG, MHADA, Sugat Nagar,
Nari Ring Road, Nagpur 440 014

..... **PETITIONER**

...V E R S U S...

1. The State of Maharashtra,
Through its Principal Secretary,
Medical Education and Drugs
Department,
G.T. Hospital Campus
Mumbai 400 001.

2. The Commissioner,
Directorate of Medical Education
and Research,
St. George Hospital Campus,
Mumbai 400 001

3. Dean,
Government Medical College &
Hospital,
Medical Square, Nagpur

4. Maharashtra Public Service Commission,
Through its Secretary,
Trishool Gold Field, Plot No. 34,
In front of Sarovarvihar,
Sector 11, CBD Belapur,
New Mumbai, Fort – 400 614

5. Dr. Milind Suryakant Vyawahare,
Age about 52 yrs, Occ. Service,
R/o. Plot No. 28, Suryamala
Dattatraya Nagar, Near Datta Mandir,
Nagpur 440 024

(who has joined in place of the petitioner)

.....**RESPONDENTS**

Mr. S.S. Vodeltel, Advocate h/f Mr. S.S. Wahane, Advocate for the petitioner.

Mr. D.V. Chavan, Government Pleader for respondent Nos. 1 to 3.

Mr. Abhijeet Deshpande, Advocate for respondent No. 4.

Mr. Rohit Joshi, Advocate for respondent No. 5.

CORAM:- BHARATI DANGRE & ABHAY J. MANTRI, JJ.

DATE : 24.09.2024

JUDGMENT (Per : Abhay J. Mantri, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally, by consent of learned counsel for the parties.

2. The petitioner has assailed the judgment and order dated 12.04.2024, passed by the learned Member (J) of the Maharashtra Administrative Tribunal, Nagpur (for short, "*the Tribunal*"), in Original Application No. 136/2024, which dismissed the application filed by the petitioner challenging his transfer from G.M.C.H., Nagpur to G.M.C., Ratnagiri, vide order dated 09.02.2024, issued by respondent No.1.

3. **FACTUAL MATRIX :-**

On 11.03.1993, the petitioner was appointed as a Lecturer (Medicine) and posted at respondent No. 3 Government

Medical College and Hospital, Nagpur (for short, “*GMCH, Nagpur*”). Thereafter, he was promoted and transferred from time to time, and lastly, on 27.07.2016, he was promoted to the post of Professor (Medicine) at *GMC, Nagpur*, from 30.09.2020.

By transfer order dated 09.02.2024, he came to be transferred to Government Medical College and Hospital, Ratnagiri (For short- “*GMC, Ratnagiri*”), and the Deputy Secretary of the Government of Maharashtra relieved him on the same day.

Being aggrieved by the transfer order, the petitioner approached the Tribunal on the ground that the said transfer was a midterm transfer and effected to accommodate respondent No. 5, the brother-in-law of a prominent political figure and was passed with malafide intention, rendering transfer arbitrary and illegal.

4. On considering the rival contentions and perusal of the record, the Tribunal passed an order, dismissing the petitioner's application by holding that the petitioner has failed to establish the malafides and, therefore, is not entitled to the relief as claimed.

5. **SUBMISSIONS**

(i) **On behalf of the Petitioner :-**

(a) Mr. Voditel, the learned Counsel for the petitioner, has vehemently contended that the transfer order was issued mid-term and was issued with malafide intention to accommodate respondent No. 5, brother-in-law of the Cabinet Minister of the State of Maharashtra. The mid-term transfer order has been passed contrary to the norms in the G.R. dated 11.02.2015, and therefore, on this ground alone, the petitioner is entitled to the relief as claimed.

(b) He further argued that the transfer order amounts to punishment to the petitioner since it was issued for accommodating respondent No.5. It is also urged that Respondent No. 1 acted in a biased manner to accommodate Respondent No. 5. It has also canvassed that the Respondent No. 4 Maharashtra Public Service Commission (“MPSC”) has recommended the name of Respondent No. 5 for the post of Professor (Medicine) in the category of economically weaker Section and after his recommendation, he was appointed by respondent No.1 and hence, the said order was, per se, illegal as he definitely does not belong to the class or category of the Economically Weaker Section.

(c) To substantiate his contentions, he has drawn our attention to Sections 4, 4(ii) and 4(5) of The Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "*the Act of 2005*") and propounded that the respondent authority passed the order contrary to the mandate laid down in the said sections as well as violated the norms of Government Resolution dated 11.02.2015 and therefore, the impugned order is passed under the colourable exercise of powers with malafide intention. The Tribunal had not considered the same and dismissed the application, which is not sustainable in the eyes of the law. Therefore, he urged to allow the petition.

(ii) On behalf of the Respondents 1 to 3: -

(a) *Per contra*, Mr. Rao, the learned Assistant Government Pleader for respondents Nos. 1 to 3, strenuously argued that the transfer order passed by the respondent authority is based on administrative exigency and by following the provisions of Sections 4 and 5 of the Act. The transfer order was passed as per the recommendation of the Civil Services Board. Therefore, it cannot be said that the order is arbitrary, illegal, or contrary to the provisions of the law.

(b) Our attention is invited to the Minutes of Meeting dated 18.01.2024 held by the Service Commission Board and Mr. Rao has urged that the Board, after considering the fact that a new Government Medical College was opened at Ratnagiri, where one post for a Professor in Medicine was vacant, considered the recommendations of the Dean to transfer the petitioner to GMC, Ratnagiri, by following due process of law. Hence, it cannot be said that the order was passed midterm with malafide intention.

Mr. Rao submits that the petitioner failed to establish the malafides on the part of Respondent No. 1. On the contrary, the respondent authority was justified in transferring him to Ratnagiri, as he had completed a three-year tenure at Nagpur. Therefore, the impugned order passed by the Tribunal is just and proper.

Reliance is also placed on the judgment in the case of *Pubi Lombi Vs. State of Arunachal Pradesh and Others (2024) SCC OnLine 279* ("*Pubi Lombi*") to submit that in view of the law laid down in the aforesaid judgment, no interference is required in the impugned order, and he has prayed for dismissal of the petition.

(iii) **On behalf of the Respondents 5. :-**

(a) Mr. Joshi, learned Counsel for respondent No. 5, has adopted the argument of the learned Assistant Government Pleader and submitted that the impugned order is just and proper and requires no interference in the writ jurisdiction.

6. **Question of law posed for consideration:**

We have appreciated the rival submissions and perused the impugned order, material placed on record, and the precedents relied upon by the parties. Having considered the rival submissions, the short question falls for our consideration is :-

“Whether the issuance of transfer order dated 09.02.2024 is in violation of statutory provisions of the Act of 2005 or vitiated on account of malafide intention to accommodate respondent No.5?

7. **ANALYSIS & CONCLUSION:-**

To ascertain the controversy between the parties, we must delve into the background of the facts.

It can be inferred from the averment in the petition that from 30.07.2001 to 27.07.2016, and then from 30.09.2020 till the issuance of the transfer order, i.e. 09.02.2024, the petitioner was

posted at GMC, Nagpur. It is pertinent to note that as per Section 3 and sub-section (1) of Section 4 of the Act of 2005, the tenure of posting of the Government Servant shall ordinarily be three years, which the petitioner completed on 29.09.2023. Further, while passing the transfer order, the respondent authority has referred to the provisions of Section 4(4)(ii) and Section 4(5) of the Act. In the wake of the above, it would be relevant to reproduce the provisions contained in Sections 3 and 4 of the Act of 2005, which reads thus:

Sec. 3. - Tenure of Posting.

(1) *For all India Service Officers and all Group A, B and C State Government Servants or employees, **the normal tenure in a post shall be three years.***

Provided that,

Provided further that.....

(2) Employees in Group D shall

Section 4. Tenure of transfer:

(1) No Government servant shall ordinarily be transferred unless **he has completed his tenure of posting as provided in section 3.**

(2).....

(3).....

(4) The transfer of Government servants shall ordinarily be made only once in a year in the month of April or May:

Provided that, transfer may be made any time in the year in circumstances as specified below, namely:-

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority;

(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior [approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.

Furthermore, in consonance with the above rules, the Government of Maharashtra issued G. R. on 11/02/2015.

8. Considering the rival submissions of learned Counsel for the parties, firstly, we must delve into the law and principles laid down in the matter of transfer.

The Hon'ble Apex Court, after considering various decisions in the case of ***Pubi Lombi*** (*supra*), has pronounced upon the scope of interference in the matter of transfer and in *Paragraphs Nos. 9 to 11*, observed thus:

"9. In the case of Union of India v. S.L. Abbas (1993) 4 SCC 357, it is clearly observed by this Court that the scope of judicial review is only available when there is a clear violation of statutory provision or the transfer is persuaded by malafide, non-observation of executive instructions does not confer a legally enforceable right to an employee holding a transferable post. The relevant paragraph reads as under:

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject....."

10. Further, following the footsteps of S.L. Abbas (supra), this Court, in the case of Union of India v. N.P. Thomas, 1993 Supp (1) SCC 704 held

that interference by the Court in an order of transfer on the instance of an employee holding a transferrable post without any violation of statutory provision is not permissible.

11. This Court further curtailed the scope of judicial review in the case of N.K. Singh v. Union of India, (1994) 6 SCC 98, holding that the person challenging the transfer ought to prove on facts that such transfer is prejudicial to the public interest. It was further reiterated that interference is only justified in a case of malafide or infraction of any professed norm or principle. Moreover, in the cases where the career prospects of a person challenging transfer remain unaffected and no detriment is caused, interference to the transfer must be eschewed. It is further held that the evidence requires to prove such transfer is prejudicial and in absence thereof interference is not warranted. The law reiterated by this Court is reproduced, in the following words: -

“9. Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to the public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer. Accordingly, this aspect requires consideration at the outset.

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“23.Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers, and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in the public interest, to the departmental heads subject to the limited judicial scrutiny indicated.”

“24. ...Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by courts should be rare, only when a judicially manageable and permissible ground is made out. This litigation was ill-advised.”

9. A bare perusal of the aforesaid dictum reveals that -

- (i) The scope of judicial review is only available when there is a clear violation of statutory provisions or the transfer is actuated with malafides;

In view of the aforesaid settled law, it would be proper to scrutinise the facts of the present case.

10. Having gone through the above provisions, more particularly Section 3 and sub-section (1) of Section 4, and G.R. dated 11/02/2015, clearly depict that the tenure of the Government Servant is ordinarily *three years in one place*. *Likewise*, as per sub-clause 5 of sub-Sections 4,4(ii) and 5, if the Authority is satisfied that the transfer of Government Servant is essential due to exceptional circumstances or after recording the special reasons in writing and after obtaining prior approval of the next higher authority, the transfer can be effected at any time before completion of his tenure of post.

11. Undisputedly, in the case at hand, the petitioner completed three years of service at GMC, Nagpur, on 29.09.2023 and was due for transfer. Secondly, the record denotes that the petitioner was posted at Nagpur for more than 18 years of his tenure of service.

The main thrust of the argument is that the transfer was midterm to accommodate respondent No. 5, and, therefore, the order is illegal, arbitrary, and issued by using a colourable exercise of power with malafide intention. However, despite his lengthy argument, Mr. Voditel has failed to point out that the petitioner was transferred arbitrarily with malafide intention.

On the contrary, it seems that the respondent authority, by following the due procedure prescribed under Section 4 of the Act by obtaining necessary approval from the next higher authority, has issued the transfer order to fill up a vacant post at the newly opened Medical College, Ratnagiri. This fact can be deduced from the Minutes of Meeting of the Civil Service Board, held on 18.01.2024. Therefore, the transfer order cannot be said to be issued with malafide intention. Thus, the petitioner has failed to establish malafides on the part of the respondents in issuing the impugned transfer order; hence, in our view, the law laid down by the Apex Court in the case of ***Pubi Lombi*** (supra) is squarely applicable in the case at hand.

12. Perusal of the impugned order reveals that the Tribunal has considered the grievance of the petitioner and, in the light of the law laid down by the Apex Court in the case of ***Pubi Lombi***

(supra), held that the petitioner has failed to establish the malafides and therefore, dismissed the Original Application thereby confirming the transfer order by a well-reasoned order.

We do not find any illegality or perversity in the impugned order to interfere in the writ jurisdiction of this Court.

13. CONCLUSION:

The sum and substance of the above discussion is that the petitioner was due for transfer from 01.10.2023. Besides, he served at GMC, Nagpur, for more than 18 years. Since in the year 2023, a new GMC was opened at Ratnagiri and the post of Professor (Medicine) was vacant there, to fill up the said post, respondent authority, by following the mandate laid down in Section 4 of the Act, by obtaining necessary approval from next higher authority, transferred the petitioner at Ratnagiri.

14. *Furthermore*, the transfer order was passed as per the recommendation of the Civil Services Board. Thus, it seems that the allegation of malafide is entirely unfounded. In addition, the petitioner has made several allegations about the transfer and posting of respondent No. 5, including his eligibility to occupy the post. However, the petitioner has miserably failed to establish the

malafides.

As a result, we find that the said transfer was essential for administrative exigencies in exceptional circumstances and, as a special case, to fill the vacant post at GMC, Ratnagiri. In the light of the above, in our opinion, as per the dictum laid down in the case of *Pubi Lombi*, we do not find merit in the petition justifying interference in the exercise of the writ jurisdiction.

15. In the wake of the above, since the judgment and order passed by the Tribunal is found to be well-reasoned and justified, no interference is called for. As such, the petition, being bereft of merit, stands dismissed with no order as to costs.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE, J.)