



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

WRIT PETITION NO.2826 OF 2024

(Virendra s/o Devidas Dafe .vs. Principal Secretary, Urban Development-I and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A.Y. Kapgate, Advocate with Mr. M.G. Rathi, Advocate for the petitioner,
Mr. N.S. Rao, Assistant Government Pleader for respondent nos.1 to 3 and 5.

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CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATE : 29.04.2024.

1. Heard.

2. The petitioner challenged the transfer order dated 19th July, 2023 passed by the respondent no.1, whereby the petitioner, who was posted as Town Planner in the office of the Joint Director, Town Planning, Amravati Division, Amravati before the Maharashtra Administrative Tribunal in Original Application No.818/2023. The said Original Application came to be dismissed, vide impugned order dated 2nd February, 2024, as such this petition.

3. The petitioner has already informed to have joined at the transfer place and at the place of the petitioner, the respondent no.4 has already joined pursuant to the aforesaid transfer.

4. Mr. Kapgate, learned counsel appearing for the petitioner, submits that the petitioner has questioned his transfer which was effected within a period of one year and eleven months of his last posting that too at the recommendations of the local MLA before the Tribunal.

5. Apart from above, he would claim that the transfer is effected contrary to the directions of the Division Bench recorded in Writ Petition No.8987/2018 decided on 12th December, 2018 at Principal Seat in the matter of Balasaheb Vitthalrao Tidke .vs. The State of Maharashtra and another. He would claim that the recommendation of the transfer of the petitioner at the behest of the local MLA can be inferred from the minutes which were forwarded to the State Government produced at page 159 which was part of the record of transfer proceedings.

6. In addition, Mr. Kapgate would invite our attention to the fact above already existence of vacancy at Amravati, wherein some other person by name Mr. Tushar Anil Nand was accommodated. As such, he would claim that since there are already existed vacancy, the respondent no.4 could have been accommodated against the said vacancy, without effecting the transfer of the petitioner, though he has not completed the tenure. Mr. Kapgate as such would urge that the respondents have effected the transfer of the petitioner on mala fide

grounds.

7. Issue notice to the respondents, indicating that the petition shall be taken up for final disposal at the admission stage. Notice is made returnable on **14th June, 2024.**

8. Considering the aforesaid directions, we direct the learned Assistant Government Pleader to waive notice for respondent nos.1 to 3 and 5.

9. We direct the respondent nos.1 to 3 and 5 to file an affidavit on or before the returnable date and shall also produce original records pertaining to the transfer of the petitioner before this court.

10. No further adjournment on whatsoever ground shall be granted for reporting compliance of this order.

11. In case, if the order is not complied with, the court will be constrained to stay the transfer of the petitioner with further mandate to allow the petitioner to join on his earlier post.

12. It is informed by Mr. Kapgate, on instructions, that the vacant post at Amravati against which Mr. Tushar Anil Nand came to be transferred is still vacant, the court takes note of the same and we further direct the State Government to be sensitive the fact about the aforesaid

statement be taken on record.

13. Prima facie, we are satisfied in view of the submissions made by Mr. Kapgate, learned counsel appearing for the petitioner, that the action of the respondents, particularly transferring the petitioner in view of the recommendations of the local MLA, those contrary to the directions issued in Writ Petition No.8987/2018, particularly para 2 onwards.

14. There appears to be contemptuous approach on the part of the respondents in transferring the petitioner in the wake of the recommendations of the local MLA, as reflected at page 159 of the petition.

15. As such, this court shall also be considering whether the respondents can be proceeded against the Contempt of Courts Act, if not found satisfied with the explanation tendered in the reply-affidavit to be filed by the respondents.

16. Mr. N.S. Rao, learned Assistant Government Pleader, undertakes to communicate this order to the respondents-State.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)