



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

WRIT PETITION NO.6564 OF 2024

Ashish Prabhu Pawar -Vs-The State of Maharashtra and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. G.G.Bade, counsel for the petitioner/s.
Mr.N.R.Patil, AGP for respondent Nos.1 to 3.

**CORAM: NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.**
DATE : 12th NOVEMBER, 2024.

1. Heard.
2. The learned Assistant Government Pleader submits that the State has no intention to file reply in the matter and this Court can go with the matter on merits.
3. Feeling aggrieved by the transfer order dated 25/09/2024, whereby the petitioner, who was occupying the post of Deputy Chief Executive Officer, Zilla Parishad, Buldhana came to be transferred on the post of Block Development Officer, Panchayat Samiti, Pusad, approached the Maharashtra Administrative Tribunal through Original Application No. 974 of 2024.
4. The Tribunal initially informed to have granted interim relief in favour of the petitioner, however, vide impugned order 23/10/2024, dismissed the Original

Application with the following observation:

“The Government has decided to transfer the applicant. It is for the Government to conduct the Election fairly and smoothly as per Clause (III) of the guidelines issued by the Election Commission of India. The employee, who has completed three years of period or having Home District, shall be transferred. Hence, the applicant was due for transfer his name was recommended for transfer by the Civil Services Board. It is also mentioned in the recommendation that as per direction of the Government, he be transferred and posted as a Block Development Officer. Hence, the impugned transfer order is perfectly legal and correct. Hence, the O.A. is dismissed with no order as to costs.”

5. The writ petition was initially heard on 29.10.2024 in the vacation and this Court having noticed that the transfer order issued by the State Government goes contrary to the Clause 6(iii) of Instructions dated 31.07.2024, issued by the Election Commission of India , stayed the transfer order by way of ad-interim relief .

6. The learned counsel for the petitioner has invited our attention to the order dated 24.05.2022 of the District Election Officer i.e. Collector, Buldhana, whereby the petitioner came to be promoted to the post of Deputy Chief Executive Officer. The petitioner thereafter came to be appointed vide order dated 07.08.2024 as a Zonal Officer for discharging election duties of the Legislative Assembly Elections, 2024. According to the learned counsel for the petitioner by virtue of he being appointed as a Zonal Officer, he cannot be subjected to the transfer in

view of the clause 6 (iii) of the Instructions dated 31.07.2024 issued by the Election Commission of India. The said Clause (iii) of the aforesaid instructions reads thus:-

"(iii) The officers appointed as Sector Officer/Zonal Magistrate involved in election duties are not covered under these instructions. However, the observers, CEO/DEOs and Ros should keep a close watch on their conduct to ensure that they are fair and non-partisan in the performance of their duties."

7. In addition to above, it is claimed that the petitioner cannot be subjected to transfer in view of the further instructions. According to the learned counsel for the petitioner, the aforesaid instructions are based on the guidelines in the form of Instruction No.47, issued by the Election Commission of India, wherein under Clause 5 it is specifically provided that Block Development Officers and the Officers of the Local Bodies, who are entrusted with the election work cannot be subjected to transfer.

8. It is claimed that the Tribunal while passing the impugned order has failed to consider both these aspects viz. (a) that the petitioner was appointed as a Zonal Officer so as to discharge the election duties and there is an embargo by virtue of the instructions issued by Election Commission of India on 31.07.2024 under Clause 6(iii) referred above not to transfer the Zonal Officer.

9. As against above, the learned Assistant Government Pleader would urge that the instructions dated 31.07.2024 are required to be read in entirety and not in part. He would claim that Clause 6(iii) has to be read along with Clause 3 and 4 of the aforesaid instructions dated 31.07.2024 and in such an eventuality, the order of the Tribunal dismissing the original application is quite justified. It is claimed that so as to conduct the elections in free and fair manner, it is necessary and in the interest of democratic set up to effect the transfer of the petitioner, he having rendered service since 2016 in the very same district viz. Buldhana. As such, learned Assistant Government Pleader would urge that the petition is liable to be dismissed.

10. Learned Assistant Government Pleader would further invite our attention to pleadings in para 10 of the affidavit-in-reply placed before the Administrative Tribunal, as according to him, administrative exigency prompted the State Government to affect the transfer of the petitioner so as to report compliance of the directives of the Chief Election Officer, Maharashtra issued vide order dated 30.07.2024. According to him, the Chief Election Officer, Maharashtra has instructed to fill the vacant posts, which are notified as Assistant Returning Officer and Assistant

Electrol Registration Officer. He would claim that the post of Block Development Officer, Panchayat Samiti, Pusad is notified as Assistant Returning Officer and Assistant Electrol Registration Officer. That being so, the State Government is justified in effecting the transfer.

11. If we appreciate the aforesaid submissions, the fact remains that the instructions of the Election Commission of India are of 31.07.2024, whereas the instructions of Chief Election Officer, Maharashtra is of 30.07.2024 i.e. a day prior to the instructions issued by the Election Commission of India. The fact remains that the order impugned passed by the State Government by effecting the transfer of the petitioner has reference to the instructions dated 31.07.2024 so also the instructions dated 30.07.2024.

12. In such an eventuality, if we consider the very status of the petitioner being notified as that of Zonal Officer by virtue of the order of the Election Officer, the fact remains that the petitioner is informed to have been entrusted with the election duty and it was incumbent on the part of the State Government to seek permission of the Election Commission to effect the transfer of the petitioner by discharging him from Election Duty in Buldhana District and to entrust the election duty in Yavatmal District.

13. The instructions issued by the Election Commission of India puts an embargo on the transfer of the petitioner, whereas the State Election Commission though has issued instructions to fill the post, that by itself cannot be read to mean that the petitioner can be relieved from his election duty in Buldhana District and can be entrusted with the election duty in Yavatmal District. It is not the case of the respondent-state that other than the petitioner, no other similarly situated or posted Officers are available for posting there so as to discharge the election duty in Pusad, District Yavatmal.

14. As such, it cannot be justified from the record that the respondent-State has effected the transfer so as to cater the need as has been created by virtue of the Instructions issued by the State Election Commission on 30.07.2024.

15. Apart from above, the directions dated 30.07.2024 cannot be read to mean that the State Election Commission has directed the State Government to act contrary to the directions of the Election Commission of India issued on 31.07.2024.

16. For the aforesaid reasons, in our opinion, the order impugned transferring the petitioner and the order passed by the Maharashtra Administrative Tribunal cannot

be said to be sustainable as the same goes contrary to the directives of the Election Commission of India.

17. That being so, the petition stands allowed in terms of prayer clause (i). No costs.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)