



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 3393 OF 2025

Dr. Varsha W/o Shivaji Lahade,
Age : 57 Years, Occ. Govt. Service,
R/o. Civil Suregon, District Civil Hospital,
Nandurbar.

.. Petitioner

VERSUS

1. The State of Maharashtra,
Through it' secretary,
Department of Public Health,
Mantralay, Mumbai-32.
2. The Under Secreatry,
Department of Public Health,
Mantralaya, Mumbai-32.
3. The Director of Public Health Services,
7th Floor, Arogya Bhavan,
Saint George Hospital Compound,
P. D. Mello Road, Mumbai.
4. The Joint Director of Health Services,
Opposite Vishrantwadi Police Station,
Alandi Road, yerwada, Pune 411006.
5. The Deputy Director of Health Services,
Nashik Division, Nashik,
Regional Referral Hospital Campus,
Shalimar, Nashik – 422001
6. The Commissioner of Health,
Saint George Hospital Compound,
P D Mello Road, Mumbai.
7. The Assistant Director (Medical),
Nashik Division, Nashik,
Regional Referral Hospital Campus,
Shalimar, nashik – 422001

... Respondents

Advocate for the Petitioner : Mr. Avinash Deshmukh i/b Adv. Ganesh Mohekar

AGP for Respondent State : Mr. S.K. Tambe

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**CORAM : S. G. MEHARE AND
SANDIPKUMAR C. MORE , JJ.**

DATED : MARCH 13, 2025

ORDER:-

1. Heard learned counsel for the petitioner and learned AGP for the respondent/ State.

2. The petitioner has approached this Court against the order refusing interim protection to the petitioner. The petitioner has impugned her transfer order, on the ground that transfer order was not communicated to her and no charge as required in the law was handed over. She was transferred midterm. Sections 4(4) & 4(5) of the Maharashtra Government Servants Regulation of Transfers & Prevention of Delay in Discharge of Official Duties Act, 2005 ('Transfers Act' for short). She claims that she has not been released till date. As the law mandates, taking over charge by another officer is illegal. The learned counsel for the petitioner has pointed out that Maharashtra Civil Services (General condition of Services) Rules, 1981. It has also been argued that charge was not taken legally. Referring to the Transfer Act, particularly Section 44(1), 44(2), it has been argued that the transfer of the petitioner does not fall under that

clause. On the contrary, it is in violation of Section 4 sub-section (5) of the said Act. Civil Services Board consists of three members. However, the Commissioner, who was member of that Board, did not sign it.

3. The document placed on record by the learned A.G.P about the process done has also been assailed. Initially the objection was raised that there was no approval of the Hon'ble Chief Minister to the transfer. On direction, the learned A.G.P has produced the same, pointing out that document the Hon'ble Chief Minister has approved the transfer as required under the Act. It has also been pointed out that the file did not reach the Hon'ble Chief Minister through channel. The office note does not bear the signature of Assistant Section Officer and Under Secretary as well as the Secretary. It was also argued that the person taking over the charge did not intimate the same to the concerned authority. In sum and substance, it has been argued that the transfer is made with ulterior motive. One of the local M.L.As. was interested to transfer the petitioner. She is due to retirement after eleven months. Relying on the papers placed on record, it has been prayed to allow the Writ Petition and grant interim protection.

4. The learned A.G.P has opposed the application, contending that transfer order was immediately communicated to the petitioner on e-mail. She was Head of the Department. However, she deliberately

did not attend the office and asked for the two days' casual leave. Her casual leave, by order dated 7.3.2025, was rejected. The officer took over the charge has accordingly informed the concerned authority, about taking over the charge. The charge was taken immediately on 5th March 2025. Therefore, it cannot be said that the petitioner is still holding the charge of Civil Surgeon, Nandurbar. He prayed to dismiss the petition.

5. The arguments advanced by the learned counsel for the petitioner are as if the matter to be decided in the appeal. While deciding the stay application, *prima facie* material is to be seen. Transfer order specifically quotes Section 44(ii) and 6 of the Transfer Act. It has been tried to distinguish between the exceptional circumstances and special circumstances. However, what were the circumstances that should be considered on merits. It would not be profitable for both sides not to comment on this crucial point to be determined on merit and to avoid the impression to be carried out by the Maharashtra Administrative Tribunal. The copy of g-mail placed on record, is dated 4th March, 2025, it was addressed to the petitioner. The letter dated 5th March, 2025 shows that the person to whom the charge was to be handed over, has joined and took over the charge. Since the petitioner was absent, there may not be other formality. The transfer of the petitioner appears to be under exceptional

circumstances. As per the order of transfer, though the third Member of the Board was not present, the majority of Members of the Board dealing with the approval to the transfers were present. Whether the absence of third person affects the rule of majority, is also to be considered on merits. It would not be appropriate to touch the merits of the matter at this juncture to protect the interest of all.

6. We have gone through the impugned order. It was detailed and well-reasoned order, and we did not *prima facie* find case and error of law in not granting the interim relief. It has been informed to us that, the matter is listed on Monday i.e. 17th March 2025, for hearing. It shows that the learned Maharashtra Administrative Tribunal is conscious about the subject and hence listed the matter at the earlier date. For the above reason, and our dissatisfaction, we reject this Writ Petition. No order as to costs.

7. In view of coming retirement of the petitioner after eleven months, the Maharashtra Administrative Tribunal, Aurangabad should endeavour to dispose of the petition subject to co-operation of both sides, at the earliest.

(SANDIPKUMAR C. MORE)
JUDGE

(S. G. MEHARE)
JUDGE

Y.S.K.