



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10023 OF 2023

Manisha D/o. Siddharth Bodade,
Age : 33 years, Occu. Service as
A.N.M., at Primary Health Centre,
Rakaswada, Tq. & Dist. Nandurbar,
P.H.C. Headquarters, Rakaswada,
Tq. & Dist. Nandurbar.

....Petitioner

Versus

1. The State of Maharashtra
Through : The Secretary,
Public Health Department,
Mantralaya, Mumbai -32.
2. The Chief Executive Officer,
Zilla Parishad, Nandurbar.
3. The Block Development Officer,
Panchayat Samiti, Nandurbar,
Dist. Nandurbar.
4. The Medical Officer,
Primary Health Centre, Rakaswada,
Tq. & Dist. Nandurbar.

....Respondents.

Mr. Sujit D. Joshi, Advocate for the petitioner.

Mr. S.S. Dande, AGP for respondent No. 1/State.

Mr. Rakesh N. Jain, Advocate for respondent Nos. 2 to 4.

**CORAM : ALOK ARADHE, C.J. AND
ARUN R. PEDNEKER, J.**

Dated : March 21, 2025

ORDER :- (Per Arun R. Pedneker, J.)

1) By way of this writ petition, the petitioner is challenging the order dated 21.4.2023 passed by the respondent No. 2, transferring the petitioner from P.H.C. Rakaswada, Tq. and Dist. Nandurbar to

P.H.C. Talai, Tq. Dhadgaon, Dist. Nandurbar.

2) The facts leading to the institution of the present writ petition are summarized as under :-

On 10.06.2010, on completion of course of Auxiliary Nurse Midwife, the petitioner came to be appointed as Auxiliary Nurse Midwife (ANM) and was posted at Parivardha Sub-Centre, Tq. Shahada, District Nandurbar. In the year 2017 the petitioner came to be transferred to British Ankush Vihar P.H.C., Tq. Akkalkuwa, Dist. Nandurbar. After five years, the petitioner was transferred to P.H.C. Rakaswada, District Nandurbar.

3) It is stated that at no point of time from the year 2010 up to 2023 the petitioner had given any opportunity to her superiors to have any complaint against her. It is stated that while the petitioner was working at Rakaswada P.H.C. in the month of February, the Taluka Health Officer has informed the petitioner about the alleged incident which has taken place on 2.2.2023 at about 3.30 a.m. He informed that in the early morning at about 3.30 a.m. on 2.2.2023 one lady has attended P.H.C. Rakaswada along with some other respectable persons of the society for delivery of a pregnant lady. While the lady and other persons were at P.H.C., nobody was available at the P.H.C. to attend them and it is alleged that the petitioner was not found on duty. Accordingly, departmental enquiry was initiated against the petitioner. It is stated that during the pendency of the departmental enquiry, the petitioner was transferred

on 21.4.2024 on account of the incident dated 2.2.2023 and that her transfer is punitive in nature.

4) The learned counsel appearing for respondent Nos. 2 to 4 submits that the petitioner has joined the duties where she was transferred vide impugned order and as such, nothing survives in the present writ petition.

5) Having considered the rival submissions, we are of the considered view that while the decision of the department enquiry is pending, the petitioner ought not have been transferred for the alleged misconduct for which departmental enquiry is being conducted and thus the transfer order dated 21.4.2025 for the alleged misconduct is mala fide. In case of **Somesh Tiwari Vs. Union of India & Ors**, reported in (200()) 2 SCC 592, the Hon'ble Supreme Court while dealing with issue of mala-fide transfer, has held in para 16 as under :-

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu

of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

6) In the facts situation of this case, we hold that the impugned transfer order dated 21.4.2023 is punitive in nature and the same cannot be sustained in law in view of the judgment of Hon'ble Supreme Court in the case of **Somesh Tiwari** (supra) and as such, the same needs to be quashed. Hence, following order :-

O R D E R

1. The impugned order dated 21.04.2023 passed by respondent No. 2, transferring the petitioner from P.H.C. Rakaswada, Tq. and Dist. Nandurbar to P.H.C. Talai, Tq. Dhadgaon, Dist. Nandurbar is quashed and set aside.
2. However, liberty is reserved to the respondents to conclude the departmental enquiry proceeding and pass appropriate orders thereon.
3. The writ petition is accordingly disposed of.

(ARUN R. PEDNEKER, J.)

(CHIEF JUSTICE)

ssc/