

RAMESHWAR
LAXMAN
DILWALE

Digitally signed by
RAMESHWAR
LAXMAN DILWALE
Date: 2025.03.07
20:03:04 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2761 OF 2025

Jyoti Ramdas Deore

.. Petitioner

Vs.

The State of Maharashtra,

Through Revenue and Forest Department and Ors... Respondents

Mr. Abhijeet Desai with Mr. Vijay Singh and Mr. Karan Gajra, Ms. Daksha Punghera, Advocates, i/by Desai Legal LLP, for the Petitioner.

Mr. S.H. Kankal, Assistant Government Pleader for Respondent Nos.1 to 3.

Mr. S.B. Talekar, Advocate, i/by Talekar & Associates, for Respondent No.4.

**CORAM : A.S. CHANDURKAR &
M.M. SATHAYE, JJ**

DATE : 6TH MARCH 2025.

P.C. :

1. Heard. The challenge raised in this writ petition is to the judgment dated 24/02/2025 passed by the learned Vice Chairman, Maharashtra Administrative Tribunal in Original Application No.849 of 2024. By the said judgment, the Tribunal has allowed the Original Application preferred by the fourth respondent and has set aside the order of transfer dated 16/07/2024. The petitioner being aggrieved by the aforesaid judgment has filed this writ petition.

2. The fourth respondent is holding the post of Tahsildar. By an

order dated 16/06/2023, he was transferred from Mohol, District Solapur to Khed, District Pune. While he was serving at Khed a chargesheet was issued to him on 22/08/2023 in the departmental proceedings initiated against him. His services were subsequently placed under suspension on 11/07/2024. Shortly thereafter on 16/07/2024, the services of the petitioner came to be transferred to Khed on the post held by the fourth respondent. The fourth respondent had filed Original Application No.849 of 2024 before the Tribunal challenging the order of suspension. During pendency of the said proceedings, he amended the Original Application and also challenged the order of transfer dated 16/07/2024. The Tribunal did not interfere with the order of suspension. It however did not consider the challenge to the order of transfer and dismissed the Original Application on 29/10/2024. Being aggrieved, the order of the Tribunal was challenged by the fourth respondent by filing Writ Petition No.17325 of 2024. By the judgment dated 31/01/2025, this Court set aside the order of suspension dated 11/07/2024. The proceedings in Original Application No.849 of 2024 were however remanded to the Tribunal to decide the challenge raised to the order of transfer dated 16/07/2024.

After remand, the learned Vice Chairman while considering

the challenge to the order of transfer held that the allegations as made against the fifth respondent that he was instrumental in placing the fourth respondent under suspension and consequently seeking to transfer the petitioner on the post held by the fourth respondent were not denied. The Tribunal held the order of transfer to be malafide and on that count, the order of transfer came to be set aside.

3. Mr. Abhijeet Desai, learned counsel appearing for the petitioner submitted that the Tribunal committed an error in interfering with the order of transfer. According to him after following the procedure prescribed by Sections 4 (4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, the impugned order of transfer had been issued. He invited attention to the minutes of the meetings held on 15/03/2024 wherein the transfer of the petitioner as Tahsildar, Khed and that of the fourth respondent as Tahsildar, Wadiwale project District Pune had been approved. Though effect was not given to the order of transfer, the fact was that a decision in that regard had been arrived at after following the prescribed procedure. In view of the decision then taken, it was not found necessary to repeat the said exercise when

the impugned order of transfer came to be issued on 16/07/2024. As a result of the fourth respondent being placed under suspension, the post of Tahsildar, Khed had become vacant. The petitioner was thus posted on the said post. Referring to the Circular dated 20/04/2013 in the matter of restoring an officer placed under suspension, it was submitted that the fourth respondent was not liable to be put back on the post of Tahsildar, Khed. His lien would operate only qua the post held and not on the place of posting. He was liable to be posted on a non-executive post. To substantiate his contentions reliance was placed on the judgments in *Asif Mohd. Khan Vs. State of M. P. and others*, (2015) 4 MPLJ 406, *State of U. P. and others Vs. Gobardhan Lal*, (2004) 11 SCC 402 and *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers*, (2010) 4 SCC 785. It was further submitted that the finding recorded by the learned Vice Chairman that the order of transfer was issued in a malafide manner was without any legal basis. Only on the ground that the fifth respondent did not contest the proceedings, it was concluded that the impugned order of transfer was vitiated. It was thus submitted that the impugned judgment of the Tribunal was liable to be set aside and the order of transfer ought to be upheld.

4. Per contra, Mr. S. B. Talekar, learned counsel for the fourth respondent supported the impugned judgment. According to him, the order of suspension dated 11/07/2024 having been set aside by this Court in the earlier round of litigation, which order was not challenged, the same had attained finality. As the order of suspension was set aside the consequence was that the fourth respondent was never placed under suspension. He was therefore entitled to be put back on the post which he held prior to his suspension. For this reason, the ratio of the decisions relied upon by the learned counsel for the petitioner could not be applied to the case in hand. He further submitted that the earlier proposal to transfer the petitioner was never acted upon and it was in fact dropped as per the minutes of the said proceedings. There were no special reasons indicated in the impugned order of transfer. The fifth respondent failed to deny the specific allegations made against him and adverse inference ought to be drawn in that regard. The Tribunal was therefore justified in setting aside the order of transfer. It was thus submitted that there was no merit in the writ petition and it was liable to be dismissed.

5. Having heard the learned counsel for the parties and having considered the rival submissions, we are of the view that there is no case made out to interfere in exercise of writ jurisdiction. It is to be noticed that the services of the fourth respondent were placed under suspension on 11/07/2024. As a consequence of his suspension, the

post of Tahsildar, Khed held by him became vacant. The petitioner was transferred on the said vacant post on 16/07/2024. The order of suspension issued to the petitioner on 11/07/2024 has been set aside on 31/01/2025 in Writ Petition No.17325 of 2024. As a consequence, the order of suspension ceased to have any legal effect from 11/07/2024 itself. This would indicate that the petitioner was entitled to be put back on the post held by him prior to his suspension. The judgment of this Court dated 31/01/2025 continues to hold the field. The fourth respondent therefore is entitled to the benefit of that adjudication.

6. The only reason for transferring the petitioner on 16/07/2024 to Khed was to fill the said vacant post that was earlier held by the fourth respondent. This is evident on the reading of the order of transfer dated 16/07/2024. Once the post of Tahsildar, Khed ceases to be vacant as a result of the order of suspension being set aside, there would be no occasion for the petitioner to be transferred on the said post. It is thus clear that when the foundation of the petitioner's transfer, which is the post of Tahsildar, Khed being vacant on account of suspension of the fourth respondent, ceases to have effect, the subsequent order of transfer dated 16/07/2024 would have no basis to stand. On this ground, the order of transfer dated 16/07/2024 was liable to be set aside.

7. According to the learned Member of the Tribunal, the impugned

order of transfer was issued at the behest of the fifth respondent. As he failed to deny the allegations made against him, it was held that on the ground of non-traverse the order of transfer was liable to be quashed. Once it is found that the post on which the petitioner was transferred ceased to be vacant for enabling the petitioner to fill in the same, the order of transfer dated 16/07/2024 loses its efficacy. The impugned order passed by the Tribunal is therefore liable to be maintained on this count.

8. Hence for aforesaid reasons, we do not find any case made out to exercise discretion in favour of the petitioner. The writ petition therefore stands dismissed with no order as to costs. It would be open for the first respondent to appropriately post the petitioner as per administrative requirements since it is informed that the post held by the petitioner prior to her transfer on 16/07/2024 has been filled by transferring another officer.

9. The present order shall operate after a period of two weeks from today.

[M.M. SATHAYE, J.]

[A.S. CHANDURKAR, J.]