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

WRIT PETITION NO. 2826 OF 2024

(Virendra s/o Devidas Dafe

Vs.

Principal Secretary Urban Development-I, Mantralaya, Mumbai & Ors.)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. A.Y. Kapgate & Mr. M.G. Rathi, Advocates for the Petitioner.
Mr. N.S. Rao, AGP for the Respondent Nos. 1 to 3 & 5/State.
Mr. S.W. Sambre, Advocate for the Respondent No.4.

CORAM: AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.

DATED : 4th APRIL, 2025

1. Heard Mr. Kapgate, learned Counsel for the Petitioner, Mr. Rao, learned AGP for the Respondent Nos. 1 to 3 and 5/State and Mr. Sambre, learned Counsel for the Respondent No.4.

2. The Petition challenges the transfer order dated 19.07.2023 (page 37), by which the Petitioner has been transferred from Amravati to Akola.

3. Mr. Kapgate, learned Counsel for the Petitioner, by inviting our attention to the transfer order dated 19.07.2023 contends, that it is sans any reason altogether, and therefore, cannot be sustained. He further invites our

attention to the judgment of the learned Maharashtra Administrative Tribunal, Nagpur (for short "MAT") dated 02.02.2024 (page 35) to submit, that except for noting the approval of the transfer by the Hon'ble Chief Minister, there are no reasons why the same has been upheld.

4. Though Mr. Rao, learned AGP for the Respondent Nos. 1 to 3 and 5/State and Mr. Sambre, learned Counsel for the Respondent No.4, tried to support the impugned judgment and the transfer order, we find, that it does not speak a single word as to the reason for transfer. That apart, though it speaks about Sections 4(4)(ii) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the "Act of 2005"), again no reason whatsoever, is spelt out why the said power is being exercised in a particular manner, specifically when Section 4(4)(ii) of the Act of 2005 mandatorily requires the recording of the reasons in writing, where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, and that too with the prior approval of the next higher authority.

5. The transfer order dated 19.07.2023, follows Section 4(4)(ii) of the Act of 2005, completely in its breach. That apart, we are constrained to note, that it is a mid-term transfer, on account of which, there was an additional necessity for the reason to be recorded for effecting such transfer. Though the transfer order dated 19.07.2023, further states that the Officers indicated therein are being transferred

on account of administrative reason/request, it does not indicate that who is being transferred on administrative reason and who is being transferred on account of request, which only adds an insult to the injury.

6. Though it is contended, that the Petitioner has joined at the place of transfer, however, considering the nature of the transfer order dated 19.07.2023, we are unable to sustain it as it is in stark violation of the above statutory mandate.

7. The learned MAT in its judgment dated 02.02.2024, unfortunately does not go into the merits or demerits of the matter or for that matter the requirement of Section 4(4)(ii) of the Act of 2005 and merely dismissed the O.A. in view of the judgment of this Court in Writ Petition No.3003/2023, which holds that if a transfer is made after complying Sections 4(4) and 4(5) of the Act of 2005, it cannot be said to be a mid-term transfer. We are, therefore, unable to agree with what has been held in para 9 and 10 of the impugned judgment, which incorrectly holds, that there is compliance of Sections 4(4) and 4(5) of the Act of 2005. The impugned judgment dated 02.02.2024, is hereby quashed and set aside and the Original Application No.818/2023 filed by the Petitioner is allowed by quashing and setting aside the transfer order dated 19.07.2023 (page 37).

8. The Respondent Nos.1 to 3 shall immediately act in consonance with this order.

9. The Petition is accordingly **allowed** in the above terms. No costs.

10. Pending application/s, if any, shall stand disposed of accordingly.

(ABHAY J. MANTRI, J.) (AVINASH G. GHAROTE, J.)

SD. Bhimte

Signed by: Mr.S.D.Bhimte
Designation: PA To Honourable Judge
Date: 07/04/2025 18:41:46