

(2024) 03 BOM CK 0059
In the Bombay High Court
Case No : Writ Petition No. 3717 Of 2024

Dattatraya R. Karale

APPELLANT

Vs

Shekhar Balasaheb Genbhau And Others

RESPONDENT

Date of Decision : 20-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 226, 324

Citation : (2024) 03 BOM CK 0059

Hon'ble Judges : Devendra Kumar Upadhyaya, CJ; Arif S. Doctor, J

Bench : Division Bench

Advocate : Veerendra Tulzapurkar, Divya R. Shetty, Ashutosh Kumbhakoni, Rahul Walia, Vishwajeet V. Mohite, Dr. Birendra B. Saraf, P. P. Kakade, B. V. Samant, G. R. Raghuwanshi

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, CJ

1. Rule.

Rule is made returnable forthwith. Learned counsel for the parties have consented to take up this writ petition for final hearing as the pleadings of the respective parties before the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter referred to as "the Tribunal") are available on record of this writ petition as well.

2. Heard Mr. Tulzapurkar, learned senior counsel representing the petitioner, Dr. Birendra Saraf, learned Advocate General representing the State-respondents and Mr. Kumbhakoni, learned senior counsel representing respondent no. 1 and perused the record available before us on this writ petition.

3. This petition filed under Article 226 of the Constitution of India seeks to assail the judgment and order dated 4th March 2024 passed by the Tribunal in Original Application No. 111 of 2024, whereby the order dated 31st January 2024

transferring the petitioner from Thane to Nashik has been set aside and further, a direction has been issued to post the respondent no. 1 as Special Inspector General of Police, Nashik Range, Nashik.

4. Certain facts, which are necessary for proper adjudication of the controversy involved in this petition, which lie in narrow compass, need to be noticed.

5. By means of an order dated 31st January 2024, the petitioner was transferred from the post of Joint Commissioner of Police, Thane City to the post of Special Inspector General of Police, Nashik Range, Nashik and so far as respondent no. 1 is concerned, the said order recites that he has been transferred by the said order from the post of Special Inspector General of Police, Nashik Range, Nashik, however, the order of his posting will be issued separately. Thereafter, by means of the order dated 2nd February 2024, the respondent no. 1, who was awaiting his posting pursuant to the order dated 31st January 2024, was posted on the post of Special Inspector General of Police, Motor Transport, Pune.

6. The respondent no. 1 challenged the order dated 2nd February 2024, whereby he was posted at Pune by filing Original Application No. 111 of 2024 and subsequently, by way of amendment, also challenged the transfer order dated 31st January 2024. The Tribunal, after considering the respective cases put forth by the parties, has allowed the Original Application and quashed the order of transfer of the petitioner, dated 31st January 2024 and also quashed the said order so far as it related to the respondent no. 1, by means of the impugned judgment and order dated 4th March 2024, which is under challenge in this petition. By the impugned order, the Tribunal has also directed that the respondent no. 1 be posted as Special Inspector General of Police, Nashik Range, Nashik.

7. It is also to be noticed that respondent no. 1 was posted at Nashik on the post of Deputy Inspector General of Police on 23rd August 2021 and was promoted on 20th April 2022 as Special Inspector General of Police at the same place, i.e., Nashik itself on the upgradation of the post of the post of Deputy Inspector General. Accordingly, the respondent no. 1, before being transferred from Nashik to Pune on 2nd February 2024, already had completed more than 2 years of his tenure at Nashik, firstly as Deputy Inspector General of Police and thereafter, as Special Inspector General of Police.

8. The submission of the learned counsel representing the cause of the competing parties in this case revolves around section 22N of the Maharashtra Police Act, 1951 (hereafter referred to as "the Police Act") and a Circular issued by the Election Commission of India (hereafter referred to as "ECI") dated 21st December 2023. Section 22N, which is in respect of normal tenure of posting of a police personnel, is extracted hereinbelow: -

"22N. Normal tenure of Police Personnel, and Competent Authority

(1) Police Officers in the police force shall have a normal tenure as mentioned

below, subject to the promotion or superannuation: -

(a) For Police Personnel of and above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police a normal tenure shall be of two years at one place of posting;

(b) For Police Constabulary a normal tenure shall be of five years at one place of posting;

(c) For Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of two years at a Police Station or Branch, four years in a District and eight years in a Range, however, for the Local Crime Branch and Special branch in a District and the Crime Branch and Special Branch in a Commissionerate, a normal tenure shall be of three years;

(d) For Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector a normal tenure shall be of six years at Commissionerates other than Mumbai, and eight years at Mumbai Commissionerate;

(e) For Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and Police Inspector in Specialized Agencies a normal tenure shall be of three years.

The Competent Authority for the general transfer shall be as follows, namely: -

Police Personnel

Competent Authority

(a) Officers of the Indian Police Service

Chief Minister;

(b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police

Home Minister;

(c) Officers up to Police Inspector

(a) Police Establishment Board No. 2

(b) Police Establishment Board at Range Level

(c) Police Establishment Board at Commissionerate Level

(d) Police Establishment Board at District Level

(e) Police Establishment Board at the Level of Specialized Agency

Provided that, the State Government may transfer any Police Personnel prior to the completion of his normal tenure, if, -

- (a) Disciplinary proceedings are instituted or contemplated against the Police Personnel; or
- (b) The Police Personnel is convicted by a court of law; or
- (c) There are allegations of corruption against the Police Personnel; or
- (d) The Police Personnel is otherwise incapacitated from discharging his responsibility; or
- (e) The Police Personnel is guilty of dereliction of duty.

(2) In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent authority shall make mid-term transfer of any Police Personnel of the Police Force:

Explanation. – For the purposes of this sub-section, the expression “Competent Authority” shall mean: -

Police Personnel

Competent Authority

- (a) Officers of the Indian Police Service

Chief Minister;

- (b) Maharashtra Police Service Officers of and above the rank of Deputy Superintendent of Police

Home Minister;

- (c) Police Personnel up to the rank of Police Inspector for transfer out of the respective Range or Commissionerate or Specialized Agency

Police Establishment Board No. 2

- (d) Police Personnel up to the rank of Police Inspector for transfer within the respective Range, Commissionerate or Specialized Agency

Police Establishment Boards at the Level of Range, Commissionerate or Specialized Agency, as the case may be;

- (e) Police Personnel up to the rank of Police Inspector for transfer within the District

Police Establishment Board at District Level

Provided that, in case of any serious complaint, irregularity, law and order problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board.”

9. The Circular dated 21st December 2023 addressed to all the Chief Secretaries

of the States and Union Territories and Chief Electoral Officers in the States and Union Territories is extracted hereinbelow: -

" ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELI-110001

No.437/6/1/INST/ECI/FUNCT/MCC/2023

Dated:
December, 2023

21st

To

1. The Chief Secretaries to
All the States and Union Territories.

2. The Chief Electoral Officers of
All the States and Union Territories.

Subject: General Elections to House of the People (Lok Sabha), 2024 and State Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Odisha and Sikkim – Transfer/ Posting of officers – regarding.

Madam/Sir,

I am directed to state that the term of existing House of the people (Lok Sabha) and State Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Odisha and Sikkim are upto 16th June, 2024, 11th June, 2024, 2nd June, 2024, 24th June, 2024 and 2nd June, 2024 respectively.

2. The Commission has been following a consistent policy that officers directly connected with conduct of elections in an election going State/UT are not posted in their home districts or places where they have served for considerably long period.

3. Hence, the Commission has decided that no officer connected directly with elections shall be allowed to continue in the present district (revenue district) of posting:-

(i) if she/he is posted in her/his home district.

(ii) if she/he has completed three years in that district during last four (4) years or would be completing 3 years on or before 30th June, 2024.

While calculating the period of three years, promotion to a posit within the district is to be counted.

4. If any small state/UT with a few numbers of districts, face any difficulty in

compliance of the above instruction, then it may refer the specific case with reasons to the Commission through CEO for exemption and the Commission would issue directions, if considered necessary.

5. Applicability

5.1 District Officers: - These instructions shall cover not only officers appointed for specific election duties like DEOs, Dy. DEOs, RO/AROs, EROs/AEROs, officers appointed as nodal officers of any specific election works but also district officers like ADMs, SDMs, Dy. Collector/ Joint Collector, Tehsildar, Block Development Officers or any other officer of equal rank directly deployed for election works.

5.2 Officers other than District Officers: - These instructions shall also cover the officers deputed in Municipal Corporations and Development Authorities, etc.

5.3 Police Officers: - These instructions shall be applicable to the police department officers such as Range ADGs/IGs, DIGs, Commandants of State Armed Police, SSPs, SPs, Addl. SPs, Sub-Divisional Head of Police, SHOs, Inspectors, Sub-Inspector, RIs/Sergeant Majors or equivalent ranks, who are responsible for security arrangement or deployment of police forces in the district at election time. The police officials who are posted in functional departments like computerization, special branch, training etc. are not covered under these instructions. Following shall be followed:

(i) The Police Sub-Inspectors and above should not be posted in their home district.

(ii) If a Police Sub-Inspector has completed or would be completing a tenure of 3 years out of four years on or before the cutoff date in a police sub-division, then he should be transferred out to a police sub-division which does not fall in the same AC. If that is not possible due to small size of district, then he/she should be transferred out of the district.

5.4 Prohibition and Excise Officers: - Further, these instructions shall also be applicable to the officers of the Prohibition and Excise Department of the State of the rank of Sub-Inspector and above.

6. Categories of Officers not covered under transfer policy

During an election, a large number of employees are drafted for different types of election duty and the Commission has no intention of massive dislocation of state machinery by large scale transfers. Hence, the aforesaid transfer policy is normally not applicable to the categories of officers mentioned below:

(i) Officers posted in the State headquarters of the department concerned.

(ii) Officers/Officials who are not directly connected with elections like doctors, engineers, teachers/principals etc. However, if there are specific complaints of political bias or prejudice against any such govt. officer, which on enquiry, are found to be substantiated, then CEO/ECI may order not only the transfer of such

official but also appropriate departmental action against the said officer.

(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.

(iv) It is further directed that the officers/officials against whom the Commission had recommended disciplinary action in past and which is pending or which has resulted in a penalty or the officers who have been charged for any lapse in any election or election related work in the past, shall not be assigned any election related duty. However, an officer who was transferred during any past election under the Commission's order without any recommendation of disciplinary actions will not be, just on this ground, considered for transfer, unless specifically so directed by the Commission. A copy of the Commission's instruction number 464/INST/2008-EPS dated 23rd December 2008 regarding tracking of names of tainted officers is enclosed. CEOs must ensure its compliance.

(v) The Commission further desires that no officer/official, against whom a criminal case related to official functioning is pending in any court of law, be associated with/deployed on election related duty.

(vi) Any officer, who is due to retire within the coming six months will be exempted from the purview of the Commission's directions mentioned in para-3. The six months period shall be reckoned backwards from 30th June, 2023. Further, officer falling in the category (home district/3 years + criteria and due to retire within 6 months) if holding an election related post mentioned in para 5, shall be relieved of that charge and not be associated with any election related duty. It is however, reiterated that such retiring officer need not be transferred out of the district.

(vii) All the officials of the State (except those posted in the office of the Chief Electoral Officer), who are on extension of service or re-employed in different capacities, will not be associated with any election related work.

7. The transfer orders in respect of officers/officials, who are engaged in the electoral rolls revision work, if any during an election year shall be implemented only after final publication of the electoral rolls, in consultation with the Chief Electoral Officer concerned. In case of any need for transfer due to any extraordinary reasons, prior approval of the Commission shall be taken.

8. The Chief Electoral Officer of the State/UT invariably be consulted while posting the persons in place of present incumbents who stand transferred as per the above policy of the Commission. A copy of each of the transfer orders issued under these directions shall be given to the Chief Electoral Officer without fail.

9. All election related Officers will be required to give a declaration in the format given below to the DEO concerned, who shall inform to CEO accordingly.

DECLARATION

(To be submitted within 2 days after the last dated of nomination papers)

I (Name) Presently posted from

I (Name) Presently posted from

(Date) Do hereby make a solemn declaration, in connection with the current General/Bye election to Lok Sabha/ (Legislative Assembly that

(a) I am not a close relative of any of the contesting candidates in the current election/leading political functionary of the state/district at the aforesaid election.

(b) No criminal case is pending against me in any court of law.

None-If answer (a) or (b) above is "YES", then give full details in a separate sheet.

Dated (Name)

Designation

NOTE- Any false declaration made by any officer shall invite appropriate disciplinary actions.

10. The Commission's aforesaid instructions shall be brought to the notice of the concerned departments/ offices or State Govt. for their strict compliance. The DEO or concerned district officers shall ensure that officers/officials who are transferred should immediately handover their charge without waiting for their substitute.

11. The Commission has further directed that transfer/ posting of all officers covered under the above instructions shall be done and compliance reports by Chief Secretary and DGP with details of action obtained from the concerned departments/offices of State Government shall be furnished to the Commission by 31st January, 2024.

12. Kindly acknowledge receipt of this letter.

Yours faithfully,

Sd/-

(NARENDRA N. BUTOLIA)

SENIOR PRINCIPAL SECRETARY"

10. Apart from section 22N of the Police Act, the definition of the phrases "General Transfer" and "Mid-term Transfer" occurring in sections 2(6A) and 2(6B) of the said Act are also noticed, which are extracted as under: -

"2(6A) "General Transfer" means posting of a Police Personnel in the Police Force from one post, office or Department to another post, office or Department in the

month of April and May of every year, after completion of normal tenure as mentioned in sub-section (1) of section 22N;

2(6B) "Mid-term Transfer" means transfer of a Police

Personnel in the Police Force other than the General Transfer."

11. When we peruse section 22N of the Police Act, what we find is that for a police officer above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police, a normal tenure shall be of two years at one place of posting. Section 22N (1)(a) of the Police Act provides for the same. Sub-section (2) of section 22N also permits, in exceptional cases, transfer of police officers on the ground of public interest and on account of administrative exigencies, in addition to the grounds mentioned in sub-section (1) of section 22N. Thus, a perusal of sub-sections (1) and (2) of section 22N reveals that police officer above the rank of Deputy Superintendent of Police/Assistant Commissioner of Police is to be transferred normally only after completion of a term of two years at one place of posting, however, such an officer can be subjected to mid-term transfer as well by the competent authority in public interest and on account of administrative exigencies. Thus, the transfer before completion of the tenure of two years at one place of posting is permissible, however, such a power can be exercised by the competent authority in two situations, namely, (i) if an officer is to be transferred in public interest or (ii) on account of administrative exigencies.

12. As far as the Circular dated 21st December 2023 of the ECI is concerned, it is to be noticed that the same has been issued in view of the impending elections for Lok Sabha. The consistent policy of the ECI has been that the officers directly connected to the conduct of the elections are not to be posted in their home districts or places where they have served for considerably long period and accordingly, the Circular, inter alia, states that an officer connected directly with the elections shall not be allowed to continue in the present place of posting if she/he is posted in her/his home district or if the officer has completed three years in the district during last four years or would be completing three years on or before 30th June 2024. It further prescribes that while calculating the period of three years, promotion to a post within the district is to be counted.

13. In respect of the police officers, clause 5.3 of the Circular dated 21st December 2023 provides that the Circular is applicable to various level police officers who are responsible for security arrangement or deployment of police forces in the districts in the election times. It further provides that the police officers who are posted in functional departments like computerization, special branch, training etc. are not covered under this Circular. The Circular clearly mandates that the police officers of the rank of Sub-Inspectors and above should not be posted at their home district. Clause 6(vi) of the Circular also provides that any officer, who is due to retire within the coming six months, will be exempted from the purview of the ECI's directions. The six months' period shall be reckoned backwards from 30th June 2023. It also provides that an officer if

posted in home district or is due to retire within six months and is holding any election related post, then, in that eventuality, he shall be released of that charge and will not be associated with any election related duty.

14. It is in the light of the provisions of section 22N of the Police Act and the Circular issued by the ECI on 21st December 2023 that the Court needs to examine as to whether in the instant case the action on the part of the respondents in transferring the respondent no. 1 from Nashik and posting him to Pune can be said to be in conformity with section 22N of the Police Act and/or with the provisions contained in the Circular issued by the ECI, dated 21st December 2023.

15. Mr. Tulzapurkar, learned senior counsel representing the petitioner has vehemently argued that the impugned order of transfer dated 31st January 2024, whereby the petitioner was transferred to Nashik in place of respondent no. 1 is a composite order, in the sense that the said order is referable to section 22N of the Police Act as also to the Circular of the ECI issued on 21st December 2023. He has further argued that the respondent no.1 was transferred on account of completion of the term of two years at Nashik and the petitioner was transferred from Thane to Nashik on account of the impending Lok Sabha elections. Submission is that the respondent no. 1 was posted on 23rd August 2021 on the post of Deputy Inspector General of Police at Nashik and thereafter even on his promotion to the post of Special Inspector General of Police on 20th April 2022, his place of posting was not changed and he remained posted at Nashik and thus, he completed his term of two years at Nashik and hence, in view of section 22N of the Police Act, since he had completed the term of two years at one place of posting, i.e., Nashik, he was liable to be transferred and accordingly, there is no illegality in the transfer of respondent no. 1 and his posting at Pune by means of the order dated 2nd February 2024.

16. In view of the aforesaid submissions, Mr. Tulzapurkar has argued that the impugned judgment and order passed by the Tribunal is not sustainable and further that the reasoning given by the Tribunal while setting aside the transfer order of the petitioner and directing posting of respondent no. 1 in his place at Nashik is also not tenable.

17. Per contra, Mr. Kumbhakoni, learned senior counsel representing the respondent no. 1, opposing the writ petition has argued that the impugned judgment and order passed by the Tribunal is well considered and reasoned order and as a matter of fact, the transfer of the respondent no. 1 from Nashik to Pune is clearly hit by the provisions contained in clause 6(vi) of the Circular dated 21st December 2023 issued by the ECI which clearly provides that any officer who is due to retire within coming six months will be exempted from the purview of the directives of the ECI. He has stated that since the respondent no. 1 is to retire on his attaining the age of superannuation on 31 st May 2024, as such, he is clearly covered by the provisions contained in clause 6(vi) of the Circular dated 21st December 2023. He has further argued that jurisdiction of this Court under

Article 226 of the Constitution of India is discretionary and since the impugned judgment and order passed by the Tribunal does not suffer from any perversity, hence, no interference in the judgment of the Tribunal, in the facts of the case, is warranted. It is his further submission that the stability of tenure by way of minimum assured service tenure is to be provided to police officers as laid down by Hon'ble Supreme Court in the case of T. S. R. Subramanian and Ors. vs. Union of India & Ors. (2013) 15 SCC 732 . He has also relied upon the judgment of Hon'ble Supreme Court in the case of Prakash Singh & Ors. vs. Union of India (2006) 8 SCC 1 in this regard. It is his submission that since the respondent no. 1 was promoted as a Special Inspector General of Police at Nashik on 20th April 2022, as such, two years' term on this post is up to 19th April 2024 and hence, section 22N in this case is not attracted.

18. Mr. Kumbhakoni has also stated that for attracting sub-section (2) of section 22N of the Police Act, either of the two exigencies should exist for effecting transfer of a police officer, that is to say a police officer can be subjected to mid-term transfer either in public interest or on account of administrative exigencies and such reason should be spelt out in the order of transfer. It is, thus, his submission that since the respondent no.1 has not completed two years' tenure as Special Inspector General of police at Nashik and further that since the grounds of transfer mentioned in sub-section (2) of section 22N of the Police Act for transferring the respondent no. 1 are not born out from the record, hence, his transfer was completely illegal on both the counts.

19. Dr. Birendra Saraf, learned Advocate General has supported the case of the petitioner and defended the order of transfer, which has been quashed by the Tribunal by means of the impugned judgement and order. He has argued that the finding of the Tribunal that the transfer order is in violation of the Circular of the ECI is not tenable. It is his further submission that the Tribunal has erred in law in recording a finding that the transfer of respondent no. 1, having not been made in the months of April/May, was a mid-term transfer and therefore, in view of the judgement of this Court in the case of Sachin Ashok Patil vs. State of Maharashtra & Ors. 2021 SCC OnLine Bom 8032 the reasons were needed to be assigned for such transfer, which are absent. Such a finding, according to learned Advocate General, is erroneous.

20. Therefore, Dr. Saraf has argued that in fact the transfer of the petitioner was a composite transfer along with transfer of number of other officers for various reasons, including the reasons as available in the Circular issued by the ECI. According to Dr. Saraf, the petitioner was required to be transferred as a result of the Circular issued by the ECI and in order to accommodate such officers transferred on account of the Circular issued by the ECI, some other officers had to be necessarily transferred and accordingly, the impugned exercise of transferring the petitioner and respondent no. 1 was a result of consideration of transfers in the light of the mandate of the Circular of the ECI, hence, no fault can be found in the same. Dr. Saraf has also stated that even if Pune is the home

town of respondent no. 1, since the post of Special Inspector General of Police, Motor Transport does not involve any election duty, such a transfer at home town is permissible. He has also stated that so far as the alleged violation of clause 6(vi) of the Circular issued by the ECI is concerned, the said clause only provides that certain category of persons need not be transferred, which would mean that though the Circular mandates transfer in certain circumstances and further provides that certain category of persons "need not be transferred", but this clause does not contain any prohibition on transferring such category of persons. He has also drawn our attention to the finding recorded by the Tribunal in the impugned judgement and order that the respondent no. 1 is out of the purview of clause 6(vi) of the Circular issued by the ECI. On these counts, he has impeached the impugned judgement and order passed by the Tribunal.

21. We have given our anxious consideration to the rival contentions made by the learned counsel for the respective parties.

22. Under Article 324 of the Constitution of India, the ECI has been vested with plenary powers of superintendence, direction and control of elections and in order to discharge constitutional obligations and duties, the ECI issues various directives, including the directives in relation to transfer and posting of officers in a State where elections are due. The Circular issued by the ECI, dated 21st December 2023, thus, has to be seen in this perspective and in a sense that the directives issued by the ECI are mandatorily to be followed by the respective Governments.

23. We will first examine the transfer of respondent no. 1 from Nashik to Pune in the light of the said Circular. The Circular, in our considered opinion, primarily concerns itself with the transfer and posting of officers, including police officers who are entrusted with the duties in relation to conduct of the elections. As per clause (3) of the said Circular, an officer who has completed three years in a particular district during last four years or would be completing three years on or before 30th June 2024 has to be transferred. However, the said provision has an exception, which is available in clause 6(vi) of the Circular. Clause 6(vi) provides that an officer, who is due to retire within the coming six months, will be exempted from the purview of the ECI's directions mentioned in clause (3). It also provides that six months' period shall be reckoned backwards from 30th June 2024. Accordingly, if an officer is due to retire between 1st January 2024 and 30th June 2024, she/he is exempted from the purview of clause (3) of the said Circular. It is also to be noticed that clause 6(vi) clearly provides that if such an officer, who is exempted from operation of clause (3) on account of the fact that he is retiring between 1st January 2024 and 30th June 2024, he shall be relieved of the charge if he is holding an election related post.

24. Indisputably, the respondent no. 1 is to retire on 31st May 2024 on his completing the age of superannuation. Therefore, he falls within the time period provided in clause 6(vi) and hence, has to be exempted from operation of clause (3) with the condition that in case he is to be retained at his place of posting,

i.e., Nashik and if the post of Special Inspector General of Police, Nashik Range, Nashik is related to any election related duties, he will have to be relieved of the charge of such a post. It is also to be noticed that clause (3)(ii) of the Circular provides that the officer connected with the elections shall not be allowed to continue in the present district if she/he has completed three years in that district during last four years or would be completing three years on or before 30th June 2024. So far as respondent no. 1 is concerned, he was posted on the post of Deputy Inspector General of Police at Nashik on 23rd August 2021 and thus, would be completing the term of three years at Nashik only on 22nd August 2024, however, before the said date, he shall be retiring on 31st May 2024 itself.

25. Thus, if the facts of the present case, in relation to respondent no. 1 are analyzed, what we find is (i) that he has not completed three years' term in district Nashik, neither will he be completing three years' term at Nashik before 30th June 2024 and (ii) that he is retiring on 31st May 2024, i.e., between 1st January 2024 and 30th June 2024, which means that he will be exempted from operation of clause (3) as per the provisions contained in clause 6(vi) of the Circular dated 21st December 2023 issued by the ECI.

26. For the aforesaid reasons, in our opinion, the transfer of respondent no. 1 from Nashik and his posting to Pune explicitly runs contrary to clause (3) as also clause 6(vi) of the Circular issued by the ECI on 21st December 2023. Thus, we conclude that if the transfer of respondent no. 1 is tested on the provisions of the Circular issued by the ECI on 21st December 2023, it is found to be contrary to the same and hence, on this count, his transfer from Nashik to Pune is not sustainable.

27. The learned Tribunal, however, has wrongly given a finding that the respondent no. 1 will not be covered by clause 6(vi) of the Circular dated 21st December 2023. The Tribunal has given such finding giving the reason that since respondent no. 1 is not retiring on 30th June 2024, therefore, he gets excluded from the purview of clause 6(vi) of the Circular of the ECI. This finding is absolutely perverse and is clearly based on absolute misreading of clause 6(vi) of the Circular of the ECI for the reason that for being covered within the purview of clause 6(vi) of the Circular of the ECI, an officer has to retire between 1st January 2024 and 30th June 2024 and the respondent no. 1 admittedly is due to retire on 31st May 2024. Thus, such a finding recorded by the Tribunal is completely erroneous being based on misreading of clause 6(vi) of the Circular dated 21st December 2023.

28. As far as the arguments made by learned counsel for the parties based on the provisions of section 22N of the Police Act is concerned, though normal tenure of posting of a police officer at a particular place of posting is two years and thereafter he can be transferred, however, as per section 2(6B), every transfer, other than the general transfer, is a mid-term transfer and for a mid-term transfer sub-section (2) of section 22N is to be observed. It is not a general

transfer for the reason that the phrase "General Transfer" has defined in section 2(6A) to mean posting of police personnel in the police force from one post, office or department to another post, office or department in the month of April and May of every year after completion of normal tenure as mentioned in sub-section (1) of section 22N.

According to section 2(6B), "Mid-term Transfer" means transfer of a police personnel in the police force other than the general transfer. Thus, even if respondent no. 1 has completed two years' tenure of posting at Nashik, his transfer cannot be termed to be general transfer, rather as per the definition clauses 2(6A) and 2(6B), it has to be treated as mid-term transfer and for resorting to mid-term transfer, requirement of sub-section (2) of section 22N is to be fulfilled. According to sub-section (2) of section 22N, mid-term transfer can be resorted to in exceptional cases in public interest and/or on account of administrative exigencies. As per the judgment of a coordinate Bench of this Court in the case of Sachin Ashok Patil (supra), once an officer is being subjected to mid-term transfer, there ought to be at least one reason of the nature referred to in the proviso to sub-section (1) or any of those in sub-section (2) of section 22N of the Police Act. Sachin Ashok Patil (supra) clearly holds that in case of absence of the conditions as given in the proviso appended to sub-section (1) of section 22N or any of those in sub-section (2) thereof, if transfer of a police officer is recommended then the purpose of the statute providing a normal tenure would be defeated merely on the ipse dixit of the Board (Police Establishment Board). Para 10 of the said judgement is extracted hereinbelow: -

"10. As has been observed by us above, perusal of the relevant file does not establish that the Police Establishment Board did at all peruse any of the complaints leading to formation of a subjective satisfaction that the mid-term transfer of the petitioner on the ground that there are allegations of corruption against him is warranted. On the contrary, what we find is that several police officers were considered for transfer and the Police Establishment Board had recorded "administrative reasons" as the cause for such transfers. Indeed, if a police officer is subjected to a 'General Transfer', assigning "administrative reasons" as the cause for such transfer would suffice. However, once an officer is being subjected to a 'Mid-term Transfer", there ought to be at least one reason of the nature referred to in the proviso to subsection (1) of Section 22N or any of those in sub-section (2) thereof, other than "administrative reasons", for recommending his transfer; or else, the purpose of the statute providing a normal tenure would be defeated merely on the ipse dixit of the Board that an officer should be transferred 'mid-term'."

29. We may also refer to the stand taken by the State while opposing the original application filed before the Tribunal, wherein it has been stated that certain instructions were issued by ECI vide Circular dated 21st December 2023 and it is pursuant thereto that the State Government in the Home Department issued the transfer order dated 31st January 2024. Paragraphs 7, 8 and 9 of the affidavit in

reply filed by the State to the original application before the Tribunal are extracted hereinbelow: -

"7. The brief facts of the case are as under:

8. Vide Circular dated 21.12.2023 of the Election Commission of India, certain instructions have been given as regards transfer/posting of Government officers directly connected with the conduct of General Election of Lok Sabha, 2024.

9. Pursuant thereto, the Government in the Home Department issued, inter alia, Home Department, Government Order, No. IPS-2024/C.R.19/1/Pol-1, dated 31.01.2024: -

(a) Vide said Government Order, Respondent No. 4 Sh. Dattatraya Karale, I.P.S., came to be transferred from the post of "Joint Commissioner of Police, Thane City" to the post of "Special Inspector General of Police, Nashik Range".

(b) So also, vide said Government Order, the Applicant came to be transferred from the post of "Special Inspector General of Police, Nashik Range". It is stated in the said Government Order that the orders for posting of the Applicant would be issued separately. Latest position is already explained in para 4 and 5 above.

(c) The said Government Order was issued after giving due weightage to the recommendation of Police Establishment Board No. 1 and with the approval of the competent authority specified in section 22N of the Maharashtra Police Act (Bom.: XXII of 1951).

(d) Insofar as inter alia Respondent No. 4 is concerned, his transfer was effected as per the proviso to section 22N(2) of the said Act, as per the orders of the highest competent authority specified in section 22N of the said Act.

(e) Furthermore, the said Government Order issued with the concurrence of the Chief Electoral Officer, Maharashtra State, Mumbai, in pursuance of the instructions in paragraph 8 of the Circular dated 21.12.2023 of the Election Commission of India.

(f) Vide order dated 31.01.2024 of the office of the Director General of Police, Maharashtra State, the Police Officers, including the Applicant, transferred/posted-on-promotion vide said Government Order were relieved. The said order was consisted of 44 officers and not an individual order of the applicant.

(g) Vide letter dated 04.02.2024 of the office of the Director General of Police, Maharashtra State, it has been informed that, Respondent No. 4 assumed charge of the post of "Special Inspector General of Police, Nashik Range" on 02.02.2024 as already stated in para 6 above.

(h) Vide Government Order, Home Department, No. IPS-2024/C.R.20/Pol-1, dated 02.02.2024, the Applicant came to be posted as "Special Inspector General of Police, Motor Transport, Maharashtra State, Pune". The Applicant is due to retire from Government service on superannuation on 31.05.2024 (A.N.).

(i) The relevant legal provisions are as follows-

Section 22N(1)(a) of the Maharashtra Police Act (XXII of 1951) reads as follows-

(1) "Police Officers in the police force shall have a normal tenure as mentioned below, subject to the promotion or superannuation: -

(a) "for Police Personnel of and above the rank of Deputy Superintendent of Police or Assistant Commissioner of Police a normal tenure shall be of two years at one place of posting". [emphasis supplied]

(j) The Applicant was posted as, -

-Deputy Inspector General of Police, Nashik Range, from 24.08.2021 to 21.04.2022 (07 months, 29 days);

-Special Inspector General of Police, Nashik Range, from 21.04.2022 to 31.01.2024 (01 year, 09 months).

(k) The Applicant has, thus, completed 2 years and 4 months at one place of posting, i.e. Nashik as already stated in para 5 and 6 above."

30. Thus, the impugned transfer orders, both in the case of the petitioner as also in the case of the respondent no. 1 have been passed purportedly under section 22N of the Police Act as also under the Circular of the ECI issued on 21st December 2023. We have already held that the transfer of respondent no.1 was in contravention of the provisions of clause (3) read with clause 6(vi) of the Circular issued by the ECI on 21st December 2023. We also hold that the transfer of respondent no. 1 is also not in terms of the provisions contained in sub-section (2) of section 22N of the Police Act for the reason that the record does not spell out, neither does it contain the reason that it has been made either in public interest or on account of any administrative exigency though, undoubtedly, it is a mid-term transfer.

31. For the reasons given and discussions made above, we are unable to persuade ourselves to agree with the submissions made by learned counsel for the petitioner as also by the learned Advocate General.

32. The writ petition, in our opinion, is, thus, devoid of merit, which is, hereby, dismissed.

33. However, we may observe that since the respondent no. 1 is entitled to be retained at Nashik in terms of the provisions contained in clause 6(vi) of the Circular dated 21st December 2023 issued by the ECI and he is retiring on 31st May 2024, i.e., during the midst of elections, hence, if the post of Special Inspector General of Police, Nashik carries any election related duties, he may not be associated with any such charge. The State Government will also pass appropriate orders for transfer/posting of the petitioner as well.

34. Rule is discharged.

35. Costs made easy.