

(2025) 06 BOM CK 0103

In the Bombay High Court

Case No : Writ Petition Nos.7830, 7831 Of 2024

Kiran Ramesh Shinde

APPELLANT

Vs

State Of Maharashtra General Administrative Department
And Ors

RESPONDENT

Date of Decision : 20-06-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 235

Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in
Discharge of Official Duties Act, 2005 — Section 4, 4(1), 4(5), 6

Citation : (2025) 06 BOM CK 0103

Hon'ble Judges : A. S. Gadkari, J;Kamal Khata, J

Bench : Division Bench

Advocate : Aditya S. Raktade, K.S. Thorat, Tanu N. Bhatia, R.S. Datar

Final Decision : Dismissed

Judgement

Kamal Khata, J

WRIT PETITION NO.7830 OF 2024:

1) By this Writ Petition under Article 226 of the Constitution of India, the Petitioner seeks a direction to permit him to continue working in the Labour Court, Kolhapur, and not be transferred to Industrial Court, Sangli as per the Order dated 24th May, 2024.

2) The Petitioner was appointed as a peon in Labour Court, Kolhapur, following a due selection process, as per the Order dated 19th May, 2010 issued by the Incharge Administrative Judge, Labour Court, Kolhapur. His service was regularised by an Order dated 15th September, 2014. He was promoted to the post of Naik (Class IV Post) and further promoted to the post of Bailiff (Class III Post) by an Order dated 17th October, 2023.

3) The Petitioner is aggrieved by his transfer from Labour Court, Kolhapur, to the Industrial Court, Sangli by impugned Order of 24th May, 2024. He contends that,

he was not due for transfer as he has not completed five years of service as a Class III employee. He further asserts the personal grievances of the employees were disregarded during the transfer process, and the Government Resolution ("GR") dated 9th April, 2018, which prescribes Guidelines for Transfer of Employees in various classes, was ignored. On 27th May, 2024, he submitted a representation highlighting that he has served as a Bailiff for only seven months, which is below the mandatory five year period outlined in the GR. Consequently, he asserts that the transfer Order is illegal and should be revoked.

WRIT PETITION NO.7831 OF 2024:

4) By this Writ Petition under Article 226 of the Constitution of India, the Petitioner seeks a direction to permit him to continue working in the Industrial Court, Kolhapur, and not be transferred to Labour Court, Solapur as per the Order dated 24th May, 2024.

5) The Petitioner was appointed as a peon in Labour Court, Kolhapur, following a due selection process, as per the Order dated 19th May, 2010 issued by the Incharge Administrative Judge, Labour Court, Kolhapur. His service was regularised and he was promoted to the post of Daftary (Class IV Post) in the Industrial Court at Kolhapur and further promoted to the post of Bailiff (Class III Post) by an Order dated 17th October, 2023.

6) The Petitioner is aggrieved by his transfer from Industrial Court, Kolhapur, to the Labour Court, Solapur by impugned Order of 24th May, 2024. He contends that, he was not due for transfer as he has not completed five years of service as a Class III employee. He further asserts that the Government Resolution ("GR") dated 9th April, 2018, which prescribes Guidelines for Transfer of Employees in various classes, was ignored. While the employees who have completed more than three to five years on the same post are not transferred, he who was promoted to class III post only 7 months ago i.e. on 17th October 2023 has been transferred. He also asserted that, his family's life will be severely affected on account of the said transfer. Consequently, he asserts that the transfer Order is illegal and should be revoked.

7) Mr. Raktade, learned Advocate representing the Petitioners in both Petitions vehemently argued that, several employees holding Class II and Class III posts, despite completing three to five years in the same position, were not transferred, while the Petitioners were only served seven months as a Bailiff, was transferred without justification. He emphasized that the Petitioners annual performance reports were outstanding and their service record was exemplary. Despite this, the Petitioners were transferred without any prior notice, causing them severe prejudice and inconvenience. He maintains that the Petitioners are entitled to continue their service at Kolhapur for at least five years, in accordance with the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ('Transfer Act'). He accordingly urges for a stay on the implementation of the transfer Order, which has taken

effect on 31st May, 2024. He submitted that, the Petitioners were transferred without prejudice to their rights and outcome of the Petition.

7.1) Mr. Raktade submitted that, the Transfer Act clearly lays down a complete modality for transfer of Government servants. According to him none of the provisions were followed by the Respondents. According to him the Respondents were duty bound to have published the list of employees in the month of January for those who were eligible for transfer in the month of May.

7.2) He submitted that, in the present case the Respondents had issued a circular on 21st March, 2024, calling upon employees from class II and class III who had completed three to five years in the same Zilla and class IV who had completed five years at the same office to submit form A with required details for administrative transfer. According to the Petitioners, they had been posted as a bailiff at the said location for only seven months and, therefore, they did not fall within the scope of this circular, as they were entitled to continue for a minimum tenure of three years in the class III post. Consequently, they were under no obligation to submit the form. In any event, there were several other employees who had completed the mandatory period in the same post who had submitted the required form.

7.3) Learned counsel for Petitioners contended that, there was a breach of Rule No.4 of the Transfer Act, which mandates publication of the list of transferees. However, the Order of transfer was abruptly served upon the Petitioners on 24th May, 2024 without publication of the list. The impugned Order involved transfer of thirteen employees from various districts, directing them to be relieved by 31st May, 2024. According to the learned Counsel, Respondent No. 2 failed to apply his mind and passed an Order that is vague, arbitrary, baseless and devoid of legal justification. It was submitted that, the impugned Order appears to be actuated by personal bias, as there is no material or evidence on record to support the action taken against the Petitioner.

7.4) Mr. Raktade further submitted that, if the Petitioners were transferred on account of the complaint received by Respondents against them, then such transfer Order would be in the nature of punishment, for which they deserved to be heard before such transfers were affected. He relied on Clause 1(C) of the Government Circular dated 27th November, 1997 to submit that, transfer made in exigent circumstances should be to the satisfaction of the Competent Authority and if that is so, the reason for the same should necessarily be stated in the transfer Order which is absent in the present case.

7.5) Mr. Raktade submitted that, in the case of the Petitioners, the Order of transfer was in effect a punitive action, issued without due process and was followed by a discreet inquiry conducted thereafter. Such a sequence of events, where punishment precedes investigation, renders the entire action against the Petitioners illegal and contrary to principles of natural justice.

7.6) He submitted that, Section 4 of the Transfer Act unequivocally provides that

if the employee is transferred in the middle of the administrative year, such transfer must be supported by written reasons and carried out only with the prior approval of the higher Authority. In the present case, the respondents have failed to comply with these mandatory requirements.

7.7) Mr. Raktade submitted that, even the Petitioners representation dated 6th June 2024 was rejected without assigning any reasons and no copy of the rejection order was furnished. Such a denial of procedural fairness renders the entire process illegal, arbitrary, and unsustainable in law. According to him, the impugned Order amounts to nothing but sheer harassment of the Petitioners.

8) Mr. Raktade relied upon the judgements of this Court in the case of Kishor Shridharrao Mhaske vs Maharashtra OBC Finance and Development Corporation and Ors. 2023 (6) Bom. C.R. 391 and Kunal Satish Dinde vs State of Maharashtra and Anr. Writ Petition No.5593 of 2023 dated 19th July, 2023 to contend that the mid – term or pre-mature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. Thus an Order of transfer in breach of statutory obligations suffers from vices and is unsustainable in law.

9) Mr. R.S. Datar, learned Advocate for Respondent Nos.2 and 3, submitted that, the Petitioners have made a false and misleading representation before this Court. He contended that the Petitioners allegation of a sudden midterm transfer is factually incorrect and deliberately misleading. The transfer in question was a part of the routine Annual General Transfer process involving thirteen other employees and was carried out strictly in accordance with the Government Resolution (GR) dated 12th February, 1992.

9.1) He asserted that, the clauses of the Circular are unambiguous. It contemplated transfers of all employees who had completed three to five years in the Zilla, not for any post as alleged. It appears that with a view to avoid transfer the Petitioners failed to submit the requisite form, not because they did not fall in the criteria.

9.2) Mr. Datar, further placed on record that, by its Order dated 30th May, 2024 the Vacation Bench had refused to stay the transfer Order but permitted the Petitioners to submit a supplementary representation to the Respondents with a direction that it be decided within four weeks. It further directed the Petitioners to report to the transfer post immediately, with a caveat that his transfer would be subject to the outcome of the present Petition.

9.3) Mr. Datar submitted that, after the Petitioners joined the transfer post, they filed an additional representation on 6th June, 2024. The President Industrial Court, Maharashtra, Mumbai, being head of the department and disciplinary authority, conducted a discreet enquiry into the complaints against the Petitioners. Based on the findings thereon, an Order dated 4th July, 2024 was passed, rejecting the representation of the Petitioners dated 27th May, 2024 and

6th June, 2024. The Order was communicated to the Petitioners by a covering letter dated 4th July, 2024. The Order recorded a finding that the Petitioners had misbehaved with Advocates and had disregarded the directions from the Judicial Officer, while performing his duties. Therefore, the Respondents had rightly exercised its powers and transferred the Petitioners from office of the Labour Court, Kolhapur to the office of the Industrial Court, Sangli in accordance with the GR dated 27th November, 1997 and 9th April, 2018 as well as the Transfer Act.

9.4) Mr. Datar submitted that, the judgements in the case of Kishor Shridharrao Mhaske vs Maharashtra OBC Finance and Development Corporation and Ors. 2023 (6) Bom. C.R. 391 and Kunal Satish Dinde (supra) were not applicable to the facts of the present case.

9.5) Mr. Datar emphasized that, the transfer Order was legally valid and appropriately executed. He argued that the Petitions lacked merit and thus deserved to be dismissed with costs, in the interest of justice.

10) We have heard both counsel and perused the record and proceedings before us. Having considered the arguments and submissions, we find that the Petitions lacked merit and are liable to be dismissed for the reasons stated hereafter.

11) We are unable to agree with any of the Petitioners contentions. In our view, specious pleas are raised only to avoid the annual general transfer.

12) The transfer order explicitly highlights that, the transfer was an annual transfer. It was not a mid-term transfer as alleged by the Petitioners. In our view, by raising the above contention, the Petitioners attempted to mislead this Court. The GRs' make it abundantly clear that the administration is empowered to transfer employees for its administrative convenience.

13) It is pertinent to note that, though there were complaints against the Petitioners received by the Respondents the transfer was not effected. In fact, the Petitioners were simply transferred in the normal course for administrative convenience and not based on the complaints as such. According to us, the transfer was within the region and therefore the employee cannot allege the said transfer was in guise of a punishment. Furthermore, the impugned transfer is an administrative decision taken in the normal course in consonance with the Circular and the GRs.

14) Petitioners' reliance on the Transfer Act, 2005 is also misplaced. The Act primarily governs the transfer of Government employees, whereas the Petitioners, being a judicial employee, is governed by separate administrative rules.

Section 2 (f) of the Maharashtra Act reads as under:

"2(f) "Government servant" means The provisions of the Transfer Act do not apply mutatis mutandis to the judicial employees. However, even with

respect to Section 4 of the Transfer Act, sub-section 5 permits the transfer of a Government servant before the completion of his prescribed tenure in a given post, provided that reasons are recorded in writing and prior approval of the immediate superior authority is obtained."

15) Thus, the Petitioners contention that, the mandate of Section 4 is violated is based on a misreading of the Section. We are, therefore, unable to accept the argument that a government servant cannot be transferred before completing a tenure of three years in a given post. In our view, such a contention is extreme and untenable. The Sections 4(1) & 4(5) of the Transfer Act are reproduced hereunder:

"4(1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3."

4(5) Notwithstanding anything contained in section 3 of this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of the immediately superior. Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post."

16) The use of the phrase "shall ordinarily" implies that while the norm is prescribed, deviations are permissible in exceptional circumstances, which are expressly contemplated under sub-section 5 .

17) The words "shall ordinarily" have to be construed in a manner to serve as an exception to the Rule and therefore sub-section 5 has provided for such exceptions.

18) The GR dated 12th February, 1992 outlines guidelines for the transfer of Class III employees, specifying regional seniority and transfer protocols. Paragraph 9 of Affidavit of Smt. Usha A. Kulkarni dated 1st August, 2024 clearly states that, a Class III employee of the Pune region, could be transferred to any district such as Pune, Nashik, Solapur, Sangli and Kolhapur, among others being co-regions in the State of Maharashtra as per the direction of Hon'ble High Court. Consequently, in our view, the transfer was in accordance with this regional classification and was within the administrative discretion of the Competent Authority.

19) Moreover, another GR dated 27th November, 1997, provides guidelines regarding annual transfer of employees from one office to another as well as provisions empowering competent authority to transfer government employees even before completing their regular tenure of three years on the same post, only caveat being that reasons must be provided and recorded and furthermore that it's done in exceptional cases.

20) It is apparent that, although the President of the Industrial Court, Maharashtra State, Mumbai, who is the Competent Authority and Disciplinary Authority, had received written complaints from the President of the Labour Law

Practice Association, Kolhapur, and Bar Association of Industrial Labour Court, Kolhapur alleging misconduct by some Class III employees, including the Petitioners, who had remained posted in the same office for eight to eleven years he had not acted thereon and immediately passed any transfer orders of the Petitioners. Therefore, the allegation that the transfer was triggered solely by a complaint dated 18th April, 2024 is wholly misconceived and factually untenable. The Order dated 29th May 2024 was passed by the incharge President of the Industrial Court, Mumbai, Maharashtra in accordance with the GR dated 27th November, 1997 and 12th February, 1992 on the Petitioners representation dated 27th May, 2024 and 6th June, 2024 requesting to retain them in the office and for cancellation of his transfer order.

21) The Judgments in the case of State of Gujarat & Anr V/s. Ramesh Chandra Mashruwala, (1977) 2 SCC 12 Laxmikant Dhal & Ors. V/s. State of Orissa & Ors., (1988) Supp SCC 504 R. M. Gurjar & Anr. V/s. High Court of Gujarat & Ors., (1992) 4 SCC 10 Renu & Ors V/s. District & Sessions Judge, Tis Hazari Court, Delhi & Anr. (2014) 14 SCC 50 relied upon by the Respondent are not relevant for the present case in as much as the Petitioners have not raised any dispute with regard to the the High Court's authority and control of the subordinate court under Article 235 of the Constitution of India.

22) The Judgements relied upon by Mr. Raktade in the case of Kishor Shridharrao Mhaske vs Maharashtra OBC Finance and Development Corporation and Ors. 2023 (6) Bom. C.R. 391 and Kunal Satish Dinde (supra) are applicable only to Government employees and not applicable to judicial employees. In our view it was apparently an attempt to mislead the Court.

23) In our view, if an employee in the judicial service adopts such a pedantic and defiant attitude towards service obligations, then such conduct is unbecoming of a judicial employee. Persons like the Petitioners do not deserve to remain in the service in any judicial institution and appropriate action for their removal ought to be considered. The complaints made by the Bar Association cannot be brushed aside or diluted. We consider it necessary to carry such complaints to their logical conclusion. It is not the case that Bar Associations are routinely filing frivolous complaints. On the contrary, the nature of the complaints in the present case is grave. Allegations of misbehavior with Advocates and accepting favours are matters that strike at the very root of integrity and cannot be tolerated.

24) It must be reiterated that service of an employee in judiciary stands on a higher pedestal than ordinary government service. It demands the high standards of integrity, humility, and service to the public. They are to serve the system akin to how nurses serve patients—with patience, dignity, and compassion. The Administration, in our view, had taken a reasonable and appropriate decision to transfer the Petitioners in administrative interest. This transfer was in fact beneficial to the Petitioners, preventing a harsher course of action. Despite the permissibility of such transfers under the Rules, the Petitioners chose to challenge the same, solely on the ground that they had been

posted as a Bailiff for only seven months. There exists no rule that entitles him to continue in a specific post on that basis. More importantly, they had been posted in the Labour Court—albeit in different capacities—for over ten years, a fact that cannot be overlooked, especially in light of the written complaints against them.

26) Upon perusal of the Petitioners rejoinder affidavit, we find that the tone and tenor of the averments are inappropriate and derogatory. The language used reflects an unwarranted arrogance and an inflated sense of superiority over the Administration. We express our strong disapproval of the manner in which the Petition is drafted.

28) In our considered view, the Petitioners conduct, and the serious nature of complaints warrant administrative action against them. The transfer is a consequence of service and was a reasonable measure to maintain discipline within the judicial establishment, without resorting to immediate disciplinary proceedings.

29) Accordingly, we see no reason to interfere with the impugned Order of transfer.

30) The Petitions are devoid of merits and are accordingly dismissed.