
(2017) 02 BOM CK 0181
In the Bombay High Court
Case No : 13754 of 2016

Pandurang Babu Patil

APPELLANT

Vs

Chief Administrative Officer, Maharashtra Jivan Pradhikaran
and Others

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Constitution of India, Article 14 -
Appointment of Commission to inquire into and report on the administration of
autonomous districts and autonomous regions

Citation : (2017) 02 BOM CK 0181

Hon'ble Judges : S. C. Dharmadhikari, B. P. Colabawalla

Bench : DIVISION BENCH

Advocate : Umesh Mankapure, Vinod Sangvikar, A.D. Vhatkar, Ajit Pitale

Final Decision : Disposed off

Judgement

1. Rule.

2. The Respondents waives service. The Respondent No. 5, though duly served is absent.

3. The Petitioner challenged the order passed on 29th October, 2016 (Exhibit C) to the Writ Petition transferring him from the establishment of Respondent No. 1 at Tasgaon to Deogad. The order of transfer issued by Respondent No. 1, 3 and 4 purporting to transfer the Petitioner from Tasgaon to Deogad and bringing Respondent No. 5 in his place is because there is a request made from the Petitioner.

4. The Petitioner categorically states that there was no such request made by him. Even in the order of transfer, there is nothing like a request, but what is referred to is some sort of approach which was made by the Petitioner not to this independent statutory entity, but somebody else in the Government and to pass a transfer order.

5. In the Writ Petition the Petitioner states that he was appointed as "Assistant Engineer" Class II in the establishment of first Respondent on 1st July, 1987. He joined the post at Dahanu in Thane District.

6. Considering his dedication and hardship, he was promoted as "Deputy Engineer" by order dated 15th July, 2004 and he joined promotional post on 19th July, 2004 at Vita, District Sangli. His services were made over on deputation to the Zilla Parishad, Sangli where he worked till 31st June, 2015. From 1st July, 2015 he was brought and posted at Tasgaon as "Deputy Engineer". He has not completed 3 years at Tasgaon. Rather, he has highlighted his difficulties, as his father is 93 years of age suffering from paralysis. His parents reside at Budhgaon in Sangli District. He originally belongs to Sangli and his daughter is undergoing education at Budhgaon. He never requested, therefore, for any transfer from Tasgaon to Deogad which is nearly 200 k.m. away from his posting.

7. He relies upon the regulations of Respondent No.1 on transfer and the Government policy which indicates that ordinarily a person like the Petitioner posted at one place should not be transferred for a period of 3 years, save and except for administrative exigencies and in public interest, which can be an exceptional factor. However, the request to transfer is not such an exception. Moreover, the Petitioner did not make any such request and yet he was transferred so as to accommodate Respondent No. 5.

8. On such Writ Petition, we had called for an affidavit in reply and which is now filed by first Respondent. That makes an interesting reading. It says that everything that the Petitioner has stated in the Petition is true and correct. There is a policy as also a Regulation of the first Respondent styled as "Maharashtra Jivan Pradhikaran Employees Transfer Regulation, 2013". The Regulation No. 3(1) provides that the minimum tenure on the post shall be normally for 3 years and Regulation No. 4(1) makes it clear that no employee of Maharashtra Jeevan Pradhikaran shall be transferred unless he has completed the normal tenure of 3 years on his post. The Petitioner admittedly has not completed his 3 years, but there was a Government letter dated 25th October, 2016 addressed to Member Secretary, Maharashtra Jeevan Pradhikaran. Thus, there was no proposal of transfer of the Petitioner submitted to the competent authority by the Respondent No. 1. They had no complaint about his posting nor his work. Yet, the Government letter is issued by the Deputy Secretary of the Maharashtra State Water Supply and Sanitary Department (in short "W.S.D.D.") addressed to the Member Secretary of Respondent No. 1 about the transfer of the Petitioner. A copy of this letter is annexed and marked as Exhibit R2 to the affidavit of the Respondent No.1. Interestingly, this letter refers to prior two letters dated 31st May, 2016 and 20th June, 2016 from the Member Secretary, Maharashtra Jivan Pradhikaran. The Government order in which there is reference to the recommendation by the Minister, Incharge of the Department which recommendation of the Minister was placed before the Chief Minister who also endorsed his opinion and recommends that fifth Respondent be brought at

Tasgaon in place of the Petitioner and the Petitioner be posted at Deogad, District Sindhudurg. After relying on the recommendation the Petitioner is transferred and hence this communication is styled as Government order.

9. In para 8 of the affidavit in reply the Pradhikaran/ Corporation states that the Petitioner had not submitted any request in writing for transfer at SubDivision Deogad. However, in order to comply the direction of the Minister, W.S.S.D. Government of Maharashtra the first Respondent issued the transfer order. The Petitioner protested about his transfer by letter dated 3rd November, 2016. Then the Respondent No. 1 by its letter dated 29th November, 2016 addressed to Deputy Secretary, W.S.S.D., Government of Maharashtra it requested him to inform Respondent No. 1 as to whether the transfer of Petitioner has been made as per his request or otherwise. In response to that letter on 26th December, 2016 the W.S.S.D, Government of Maharashtra has clarified that there is no request in writing made by the Petitioner and available in the files of the department.

10. In para 12 of this affidavit in reply, thereafter the helpless Corporation says that though there was no request, there was no policy, there was no complaint, nor were there any administrative exigencies or larger public interest, still they transferred the Petitioner in order to comply with the direction of the State Government.

11. We have noted that this Deputy Secretary and the State being a party Respondent and duly served has not filed any affidavit and controverted this factual position. That means the State has not been able to place on record any written letter addressed by the Petitioner requesting his transfer. There is also no request made for transfer otherwise recorded in any communication of the 1st Respondent. Yet, the order of transfer recites that the Petitioner has been transferred at his request. This is a clear case of exercise of powers by a public functionary in contravention of the mandate of Article 14 of the Constitution of India. Though the employee cannot complain about a transfer and it is a prerogative of the Corporation like the first Respondent, which is a statutory body to take such decisions yet no one including the Minister Incharge of the department can interfere with its day to day functioning and administration or management and arrangement of its staff and their affairs. There is, therefore, no reason for the Minister to send out any command to such statutory Corporations. Such direction and day to day interference would hamper the smooth functioning of the administration. We hope and trust that hereafter the Minister does not issue such commands and the State also does not direct the authorities like first Respondent to abide by the order of the Minister. We are happy to note that first Respondent Corporation has boldly stated the above in its affidavit and placed the true state of affairs. Ordinarily, transfer is an incidence of service and the power to appoint would include such power, yet that has to be exercised fairly and reasonably. The power should be exercised bearing in mind the administrative exigencies and larger public interest. It should not be

exercised arbitrarily and in a discriminatory manner. The responsibility of the Ministers in the Government and that of the Executive is too well settled. In the scheme of the written Constitution there is no place for interference in the autonomy and independence of another organ of the State. The doctrine of separation of powers enshrined therein (see Article 50) would denote that the Independent Judiciary can in exercise of its power of judicial review take cognizance of the grievances and complaints of the public and redress them, direct corrective course and remove injustice. The Hon''ble Supreme Court has on several occasions held that the political masters should not exercise the powers vested in them for the purpose alien to the vesting of the same. In the two judgments authored by His Lordship the Hon''ble Mr. Justice V. R. Krishna Iyer, speaking for the Hon''ble Supreme Court in A.I.R. 1980 S.C. 319 (The State of Punjab and another vs. Curdial Singh and others) observed and held as under:

9. The question then, is what is malafides in the jurisprudence of power ? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of powersometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated : "I repeat ...that all power is a trust that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be maliceladen or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud or power vitiates the acquisition or other official act.

In an earlier verdict reported in A.I.R. 1977 SC 2171 (Attukkaran v. State of Tamil Nadu) Hon''ble Supreme Court held as under :

4. Caesar''s wife must be above suspicion and wielders of public power must fill this bill. A moral matrix and administrative culture must nurture the power process if democracy is not to commit suicide.

11. However, the performance of the political government and the pressurization implicit in the hectic activities we have adverted to, read in the light of the likely

political gains accruing to the party in power, generate apprehensions in our minds about the peril to the electoral process if political bosses in office rubberise the public services to carry out behests which are contrary to the law but noncompliance with which might be visited with cryptopunitive consequences.

13. The faith of the people in the good faith of government is basic to a republic. The administrative syndrome that harms the citizens" hopes in the State often manifests itself in callously slow action or gravely suspicious instant action and the features of this case demonstrate both.

29. We have vacated the finding but must warn that the civil services have a high commitment to the rule of law, regardless of covert commands and indirect importunities of bosses inside and outside government. Lord Chesham said in the House of Lords in 1958: "He is answerable to law alone and not to any public authority." A suppliant, obsequious, satellite public service - or one that responds to allurements, promotional or pecuniary - is a danger to a democratic polity and to the supremacy of the rule of law.

The factual matters from the record would enable us to hold that it is wholly because of undue and uncalled for interference of the State in the affairs of the Corporation that the Petitioner has been transferred. Such order of transfer, therefore, can safely be interfered with.

12. As a result of the above discussion, we proceed to quash and set aside the same. We note that the transfer of the Petitioner is wholly illegal, unreasonable & unfair so also unjust. The Petition, therefore, succeeds.

13. Needless to clarify that all consequential steps in pursuance to the order shall follow and the Petitioner be relieved from Deogad and brought to Tasgaon, District Sangli within a period from 10 days from today.

14. The Writ Petition stands disposed of as such. No order as to costs.