
(2016) 05 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 1277 of 2016

Sanjay Gulabrao Deshmukh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Maharashtra Police (Amendment and Continuance) Act, 2014 — Section 22N(1)

Citation : (2016) 4 BCR 284 : (2016) 5 SLR 789

Hon'ble Judges : S.S. Shinde and V.K. Jadhav, JJ.

Bench : Division Bench

Advocate : Mr. V.D. Sapkal, Advocate, for the Appellant; Mr. S.B. Yawalkar, AGP, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Heard the learned counsel appearing for the petitioner and the learned AGP appearing for the respondent ? State.

2. This Petition is filed being aggrieved by the order dated 16.12.2015 passed by the Member, Maharashtra Administrative Tribunal, Aurangabad [for short ?MAT?] in Original Application No.323 of 2015, and also the order dated 30th May, 2015 passed by respondent no.2 [Exhibit-A].

3. The learned counsel appearing for the petitioner submits that the order passed by respondent no. 2 to effect the petitioner's midtenure transfer from Jalgaon District and / or the Nashik Range is totally in violation and disregard of the provisions contained in the proviso to Section 22N (1) of the Maharashtra Police [Amendment and Continuance] Act, 2014. It is submitted that the transfer of the petitioner is before completion of normal tenure in the Nashik Range and the said transfer is contrary to the policy of the State Government reflected in the Circular dated 18th March, 2015. It is submitted that the petitioner has hardly completed the tenure of three years in the Jalgaon District and/or in the Nashik Range that in view of the provisions contained in the Maharashtra Ordinance No. II of 2015

published on 16th February, 2015, read with the provisions in the Maharashtra Police [Amendment and Continuance] Act, 2014, the petitioner was not due for transfer out of the Jalgaon District and / or of the Nashik Range. Bare reading of the said Ordinance along with the provisions of Section 22N (1) of the said Act shows and establishes that while normal tenure of a Police Officer like the petitioner in one post or office is of two years, the same is of four years and eight years respectively in the District and in the Range. Therefore, though the petitioner is liable to be transferred upon completion of the tenure of two years in one post or office, however, he is not liable to be transferred out of a District and a Range unless and until he completes the tenure of four years and eight years therein respectively. However, the petitioner is transferred though he has not completed tenure of 3 years in the Jalgaon District and / or in the Nashik Range.

4. It is submitted that the provisions of Section 22N of the said Act along with the Ordinance dated 16th February, 2015, if read conjointly, those not only speaks about normal tenure of the Police Officer in a post, District and Range, but those also admittedly speak of certain contingencies upon existence of which only a mid tenure and / or a midterm transfer of a Police Officer can be effected. For effecting a midtenure transfer of a Police Officer like the present petitioner existence of the contingencies mentioned in the proviso of Section 22N is mandatorily required and further even as far as a midterm transfer is concerned, for effecting it the contingencies i.e. exceptional case, public interest and administrative exigency must necessarily exist. In the absence of any of the contingencies mentioned in the proviso to Section 22N of the said Act, no midtenure transfer of a Police Officer can be effected and likewise in the absence of exceptional case, public interest and administrative exigency, no midterm transfer of a Police Officer can be effected even in the light of the provisions of the said Act. It is submitted that the petitioner is not only transferred from Chalisgaon Police Station but even out of the Jalgaon District and the Nashik Range. It is submitted that, unscrupulous elements were instrumental in bringing extra departmental pressure on respondent no.2 for effecting petitioner's transfer not only out of Chalisgaon but out of the Jalgaon District and the Nashik Range. As per the information of the petitioner, there was no report made either by respondent no. 3 or by the Special IGP Nashik Range, Nashik to respondent no.2 and / or to respondent no.1 for shunting the petitioner not only out of his post at Chalisgaon but even out of Jalgaon District and Nashik Range. Therefore, on the said backdrop, when there was no report submitted by the Competent Authority recommending petitioner's midtenure transfer out of Jalgaon District and Nashik Range and further when none of the contingencies quoted in clauses (a) and (e) of subsection (1) of Section 22N of the said Act was in existence and in case of the petitioner that it was simply impermissible nay illegal for respondent no. 2 to effect the petitioner's midtenure transfer by including his name in the order dated 30.05.2015.

5. It is submitted that the MAT, in similar set of facts, decided Original

Application on 3rd August, 2015. In the said order, it is observed that, the Police Inspector rank can be transferred by Police Establishment Board, on completion of normal two years period. In case non-completion of normal tenure, the State Government has authority to transfer Police Inspector in case of exigencies as mentioned in the clause (a) and (c) in Section 22N (1) of the said Act. In such matter, only the Government is Competent Authority. Therefore, the learned counsel appearing for the petitioner relying upon the pleadings in the Petition, annexures thereto and other documents placed on record submits that, the Petition deserves to be allowed.

6. In pursuance of the notices issued to the respondents, respondent no.2 has filed affidavit-in-reply. The learned AGP appearing for the respondent ? State submits that, the MAT did not accept the averments raised by the petitioner such as, that the Police Personnel cannot be transferred unless, he / she completes normal tenure, as it cannot be the intention of Legislation and the vague allegations made by the petitioner that he was transferred as he had filed one complaint to the Superintendent of Police against MLAs Smt. Pankaja Munde and Shri Vinod Tavade, the then leaders of opposition in Legislative Council, there is nothing on record to show that any of the Officers of the respondents or Smt. Pankaja Munde or Shri Vinod Tavade was having personal grudge against the petitioner. No specific allegations of malice have been levelled against the respondents. It is submitted that the transfer order of the petitioner is justified, although made at the time of General Transfer, 2015, it is made on the basis of the powers conferred upon the P.E.B. No.2, in terms of Section 22N (2) i.e. in exceptional cases, in public interest and on account of administrative exigencies, on the undisputed position that the petitioner has never worked at Nagpur and there were vacancies available in Nagpur City and that were required to be filled in the public interest and because of the administrative exigencies. It is submitted that once the provisions of Section 22N (2) of the M.P. Act, 1951, have been invoked, on the basis of the undisputed position in the case of the petitioner such as, that there were number of vacancies in the Nagpur City and the fact that the petitioner had never worked in Nagpur. The transfer of the petitioner is issued purely on administrative grounds in public interest. The post on which the petitioner is working, is a transferable post within the State of Maharashtra. It is submitted that the petitioner is relying upon the ordinance dated 16th February, 2015, but as a matter of fact the Ordinance dated 16th February, 2015 has become part of the Maharashtra Police Act, 1951, because of issuance of Maharashtra Act No.XI of 2015 on 06.04.2015. Secondly, the petitioner is not taking into consideration the administrative exigencies were existed at the relevant time, as there were number of vacancies to be filled in Nagpur City and also the fact that the petitioner had never worked in Nagpur and hence the transfer of the petitioner made by the P.E.B. No.2 by invoking Section 22 N(2) of the Maharashtra Police Act, 1951 is legally sustainable. The P.E.B.No.2 has been very specifically conferred with right of transferring the Police Personnel up to the rank of P.I. by way of explanation given below the Maharashtra Act

No.XI of 2015 dated 06.04.2015, by invoking the provisions of Section 22N (1) (2) of the Maharashtra Police Act, 1951. Therefore, the learned AGP appearing for the Respondent ? State submits that, the Petition may be rejected.

7. We have given careful consideration to the rival submissions of the learned counsel appearing for the petitioner and the learned AGP appearing for the respondent ? State. With their able assistance, perused the pleadings and the grounds taken in the Petition, annexures thereto, the provisions of the said Act, 1951 and the impugned judgment and order passed by the MAT. Though the petitioner has tried to suggest that his transfer is due to the extra departmental interference and / or pressure, however, there are no specific allegations against any particular individual. Though the petitioner made feeble attempt before the MAT to contend that the petitioner was transferred from Chalisgaon as he had filed one complaint to the Superintendent of Police against Smt. Pankaja Munde and Shri Vinod Tavade, the then leaders of Opposition in Legislative Council, there is nothing on record to show that any of the Officers of the respondents or Smt. Pankaja Munde or Shri Vinod Tavade was having personal grudge against the petitioner, and therefore, the MAT in para 24 of the impugned judgment observed that mere vague allegations in the Original Application that the applicant has taken stern action against some persons and those persons wanted the petitioner to be out of District is not sufficient to prove malice. Though it is argued by the learned counsel appearing for the petitioner that in similar set of facts the MAT has allowed the Original Application No.177/2015. Upon careful perusal of the Judgment in the Original Application No.177/2015 [Rameshwar s/o. Mohanrao Gade v. The State of Maharashtra and others], it is abundantly clear that the transfer of the applicant therein was the outcome of the political interference by the local MLA. The MAT has discussed in detailed about the said aspect in the said Judgment. However, in the present case, the petitioner could not establish malice as alleged by him against two political leaders.

8. We have carefully perused of the provisions of Section 22N (1) and (2) of the Maharashtra Police Act. The relevant provisions of Section 22N (1) (c) reads thus: (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 It is true that, upon perusal of the aforementioned provision, normal tenure of the Officer of the rank of the petitioner shall be of two years at a Police Station or Branch, four years in a District and eight years in a Range. The provisions of Section 22N (e) (c) provides that the Officers up to the rank of Police Inspector can be transferred by the Police Establishment Board No.2, Police Establishment Board at Range level, Police Establishment Board at Commissionerate Level, Police Establishment Board at District Level and Police Establishment Board at the level of Specialised Agency. There is proviso which states that the State Government may transfer any Police Personnel prior to the

completion of his normal tenure on the grounds given under the said proviso. Sub section (2) of Section 22N, reads thus: (2) In addition to the grounds mentioned in subsection (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make midterm transfer of any Police Personnel of the Police Force. Therefore, upon reading subsection (2) of Section 22N of the said Act, it is abundantly clear that in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make midterm transfer of any Police Personnel of the Police Force.

9. By way of amendment, Section 22N (1) was inserted by Maharashtra 11 of 2015, with effect from 16.02.2015. The said provision starts from non obstante clause and provided to ensure that the Government work is not adversely affected on account of large scale transfers of Police Personnel from one single Department or office, not more than one third of the Police Personnel shall be transferred from any office or Department at a time, in a year.

10. If the facts of the case of the petitioner are considered in the light of the aforementioned provisions and read conjointly with the reasons assigned in the order dated 30th May, 2015 passed by respondent no.2, it is abundantly clear that the transfer of the petitioner along with other 330 Police Inspectors on the administrative grounds cannot be construed, contrary to the provisions of Section 22N (1) (c) or proviso thereof or the said transfer is out of mala fide exercise of powers by the respondents. The MAT has in detail dealt with the contentions raised by the petitioner in para 18 of the impugned Judgment, adverted to the order dated 30th May, 2015 and after considering all aspects of the matter, the MAT reached to the conclusion to reject the original Application filed by the petitioner.

11. The reasons / findings recorded by the MAT are in consonance with the material placed on record and the relevant provisions. The view taken by the MAT needs no interference, hence, the Writ Petition stands rejected.