

(2012) 01 BOM CK 0097
In the Bombay High Court
Case No : Writ Petition (L) No. 1940 of 2011

S.B. Bhagwat

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 — Section 3, 4, 4(1), 4(5), 6

Citation : (2012) 3 ALLMR 845 : (2012) 3 MhLj 197

Hon'ble Judges : M.S. Sanklecha, J; D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Ashish Kamat with Mr. Abhijeet Shinde, for the Appellant; Madhubala Kajle, AGP for Respondent Nos. 1 and 2, Ms. Hina P. Shah for Respondent No. 3 and Mr. Abhijeet J. Kandarkar, for the Respondent

Judgement

Dr. D.Y. Chandrachud, J.—Rule; with the consent of Counsel for the parties returnable forthwith. With the consent of Counsel and at their request the Petition is taken up for hearing and final disposal.

2. The Petitioner seeks to challenge an order dated 29 August 2011 by which he was transferred from Sangli to Solapur. The Petitioner joined service with the Maharashtra Textile Corporation Ltd. On 2 December 2003, the Petitioner was redeployed with the Maharashtra State Other Backward Classes Finance and Development Corporation Ltd., the Third Respondent. In 2007, the Petitioner was posted as District Manager in Pune District. On 23 November 2007, 15 March 2010 and 13 April 2010, the Petitioner sought his transfer to Kolhapur on grounds of illhealth. On 31 May 2010, the Petitioner was transferred from Pune District to Sangli District upon the completion of a tenure of three years.

3. On 18 May 2011, the Third Respondent sought the approval of the Ministry of Social Justice, Welfare of Nomadic, DeNotified Tribes and Other Backward Classes of the State of Maharashtra (the Second Respondent), under subsection (5) of

Section 4 of the Maharashtra Government Servants' Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, for transferring six employees on administrative grounds though they had not completed the normal tenure of service of three years. The six employees whose transfer was sought, included the Fourth Respondent, but not the Petitioner. The Fourth Respondent was proposed to be transferred from Nashik to Satara. On 27 July 2011, the Second Respondent in response to the request directed that transfers be effected of 14 persons u/s 4(5) as a special case. The name of the Petitioner was not part of the list of the 14 persons. The Chairperson of the Third Respondent thereupon addressed a letter dated 9 August 2011 to the Secretary of the Second Respondent stating that the transfers proposed by the State Government would result in dislocation of administrative work. Eventually, an order has been passed on 29 August 2011, by which the Fourth Respondent has been transferred to Sangli as District Manager, whereas the Petitioner has been transferred from Sangli to Solapur as District Manager.

4. Counsel appearing on behalf of the Petitioner submitted that the transfer of the Petitioner is wholly contrary to the provisions of the Act which are of a mandatory nature and is, therefore, liable to be quashed and set aside. Counsel submitted that u/s 4(1), the normal tenure of a Government servant is three years. Under Subsection (5) of Section 4, an overriding provision is introduced by which the Competent Authority may, in special cases after, recording reasons in writing and with the prior permission of the immediately preceding Competent Transferring Authority, transfer a Government servant before completion of a tenure post. In the present case, no reasons have been recorded. Reliance was placed on the judgments of the Division Benches of this Court in *Shriprakash Maruti Waghmare Vs. The State of Maharashtra, Home Department, The Director General of Police and Shri Navichandra Reddy, Deputy Commissioner, State Intelligence Department, and Pradeepkumar s/o. Kothiram Deshbhratar vs. State of Maharashtra Writ Petition 2665 of 2011* decided on 25 July 2011

5. An affidavit in reply has been filed by the Third Respondent. In the affidavit, it has been stated that the Third Respondent had sought approval for six employees. However, the Second Respondent approved and forwarded a list of fourteen employees for transfer. The Third Respondent, it is stated, had already transferred four employees before the receipt of a letter dated 27 July 2011 of the Second Respondent. Of the remaining ten employees, four employees are stated to have been validly transferred (including the Fourth Respondent) since approval u/s 4(5) was obtained from the Second Respondent. Furthermore, it has been stated that though the Petitioner had not completed three years in the erstwhile post at Sangli District, he was transferred as a special case, in exercise of the wide powers that Respondent No.2 had and accordingly, it has been stated that the Third Respondent has only complied with the directions of the Second Respondent. Though no approval was sought by the Third Respondent in respect of the remaining ten employees, the Second Respondent granted approval allegedly in the interests of the Third Respondent.

6. The Petition initially came up for hearing on 26 September 2011 and thereafter, on 18 October 2011 and 14 November 2011 when liberty was granted to the Petitioner to apply for a fixed date of hearing in the second week of January 2012. No affidavit in reply has been filed either by the State of Maharashtra or by the Fourth Respondent. The Third Respondent Corporation, as noted earlier, has filed a reply.

7. In the State of Maharashtra, transfers of Government servants" in the State Services, including those of All India Service Officers of the Maharashtra Cadre are governed by the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Section 4(1) stipulates that no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3. Section 4(5), confers an overriding power in the following terms:

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

Under Section 6, it has been specified that the Government servants specified in Column (1) of the table may be transferred by the Transferring Authority specified in Column (2). As regards the officers of GroupB, the competent transferring authority is the Minister incharge in consultation with the Secretaries of the concerned Departments.

8. The Petitioner is an employee of the Third Respondent. He had not completed his normal tenure of three years in the place of posting in Sangli District. As a matter of fact, the Third Respondent in a communication addressed on 18 May 2011 had proposed a transfer of six employees, including the Fourth Respondent. No transfer was proposed of the Petitioner. The State Government, as a special case, granted its "approval" for the transfer of fourteen employees, including the Fourth Respondent, who was to be transferred to Satara or Sangli. Though the Chairperson of the Third Respondent addressed a letter on 9 August 2011 to the Secretary in the State Ministry, an order was passed on 29 August 2011 thereafter, by which the Petitioner has been transferred from Sangli to Solapur while the Fourth Respondent has been transferred to Sangli on his request. The manner in which the exercise has been carried out is patently contrary to law and in breach of the mandate of the statute. Ordinarily, a government servant cannot be transferred unless he has completed the tenure of posting. An employee who has not completed his normal tenure of three years may yet be subjected to transfer, as provided in Subsection (5) of Section 4. Subsection (5) of Section 4 begins with an overriding nonobstante provision, but requires that reasons have to be recorded in writing in a special case for transferring an employee even prior to the completion of tenure. Merely calling a case a special case does not constitute a sufficient reason. The rationale why the legislature has

required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers. Indeed, the matter of transfers has been brought within a regulatory framework laid down in the statute enacted by the State legislature. Section 4(5) permits as an exceptional situation, a transfer to be carried out, notwithstanding anything contained in Section 3 or in Section 4. The exceptional power must be exercised strictly in accordance with Subsection (5) of Section 4. It is a settled position in law that when a statutory power is conferred upon an authority to do a particular thing, that exercise has to be carried out in the manner prescribed by the statute.

9. In the present case, the Third Respondent with whom the Petitioner was employed, did not even propose to transfer the Petitioner who had not completed his normal tenure. The State Government was requested to grant its approval for transferring six employees. Inexplicably, the State Government granted its approval for transfer of fourteen employees. The Petitioner does not figure in one of those fourteen. The Fourth Respondent was sought to be transferred from Nashik to Sangli at his request. The Petitioner is sought to be displaced. The manner in which the power has been exercised leaves no manner of doubt that the exercise was carried out not in public interest, but with a view to accommodate the request of the Fourth Respondent. The mandatory statutory provision of recording reasons in writing for justifying recourse to the exceptional power conferred by Subsection (5) of Section 4 has not been fulfilled. The two judgments of the Division Benches in Pradeepkumar and Waghmare's case have elaborated upon the position of law. In Pradeepkumar's case, the Division Bench has held as follows:

Section 4(5) of the 2005 Act contemplates such premature transfers only in exceptional cases. The facts above show that request made by the President of Zilla Parishad and recommendation of Hon'ble Minister has been the only reason for treating the proposal as special case. This is not contemplated by Section 4(5) of 2005 Act and reasons to be recorded for permitting such transfers must be spelt out and must be found to be in the interest of administration.

10. In the present case, it needs to be emphasised that the transfer has not been based on any administrative ground, nor have the mandatory requirements of Section 4(5) been fulfilled. Hence, conscious as we are of the limited parameters for the interference of the Court under Article 226 of Constitution in matters relating to transfers of employees, this Court is constrained to intervene when there is a clear breach of the statutory provisions. During the pendency of this petition, the Petitioner has had to take charge at Solapur. Since we have come to the conclusion that there has been a breach of the provisions of the Act, we allow the Petition by quashing and setting aside the impugned order dated 29 August 2011 (Exh.O to the Petition).

11. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.