

(2025) 02 BOM CK 0719

In the Bombay High Court

Case No : Writ Petition Nos. 17628, 17629, 17630, 11740, 18051 Of 2024 With
Interim Application No.15200 Of 2024

State Of Maharashtra Through Its Additional Chief Secretary
Home Department

APPELLANT

Vs

Sonyabapu Bansi Deshmukh And Ors

RESPONDENT

Date of Decision : 07-02-2025

Acts Referred:

Constitution of India, 1950 — Article 324, 328
Maharashtra Police Act, 1951 — Section 22N, 22N(2)
Representation of the People Act, 1951 — Section 28A
Maharashtra Government Servants Regulations of Transfers and Prevention of Delay in
Discharge of Official Duties Act, 2005 — Section 4(4), 4(5)

Citation : (2025) 02 BOM CK 0719

Hon'ble Judges : A. S. Chandurkar, J;Rajesh S. Patil, J

Bench : Division Bench

Advocate : Dr. Birendra B. Saraf, Neha S Bhide, Reena A. Salunkhe, Prashant
Katneshwarkar, Prashant M.Nagargoje, Mihir Desai, Prashant M. Nagargoje,
V.B.Narke, Sanskriti Yagnik, Prashant M. Nagargoje, V. B. Narke, Prashant M.
Nagargoje, V.B.Narke, Bhupesh G.Singh, Sidharth Kamble

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J

1] This batch of writ petitions raises challenge to the common judgment of the Maharashtra Administrative Tribunal (Tribunal, for short) dated 19/07/2024 whereby the learned Member of the Tribunal decided various Original Applications that had been preferred by police personnel in the rank of Police Inspector, Assistant Police Inspector and Police Sub-Inspector who had been transferred by the order dated 26/02/2024 in view of the directives issued by the Election Commission of India (ECI, for short). The learned Member of the Tribunal was of the view that the transfer orders that had been issued in view of directives of the ECI would lose their efficacy at the conclusion of the general elections and hence

the transfers effected on that basis were in the nature of deemed deputation of the concerned police personnel during that period.

2] On 21/12/2023, the ECI issued communication to the Chief Secretary of all States and Union Territories as well as respective Chief Electoral Officers stating therein that no officer connected directly with elections should be permitted to continue in the current revenue district of posting if he/she was posted in her/her home district and if he/she had completed three years in that district during the last four years or would be completing three years on/or before 30/06/2024. The Additional Director General of Police, Maharashtra State in the light of aforesaid communication dated 21/1/2023 issued by the ECI and communication dated 22/02/2024 issued by the Chief Election Officer, Maharashtra State, issued transfer orders to about 73 police personnel in exercise of powers conferred under Section 22-N(2) of the Maharashtra Police Act, 1951 (for short, Act of 1951). It was stated that these transfers were effected in public interest as well as on account of administrative exigencies. Some of the transferees being aggrieved by the order of transfer approached the Tribunal and filed separate Original Applications. The learned Member of the Tribunal after hearing the concerned parties held that the transfer orders were perishable in nature and that they did not have lasting effect at the conclusion of the elections by the ECI or the State Election Commission. The State of Maharashtra through its Home Department being aggrieved by the said common judgment has preferred these writ petitions.

3] Dr. Birendra Saraf, learned Advocate General in support of the challenge as raised to the impugned judgment submitted that the learned Member of the Tribunal committed an error in holding that the orders of transfer issued pursuant to the directives issued by the State Election Commission on 21/12/2023 were perishable in nature and that they were effective only till the time election process was ongoing. The orders of transfer having been issued in exercise of the powers conferred by Section 22-N of the Act of 1951 did not result in any deemed deputation of the transferees as held by the learned Member. He referred to the directives issued by ECI dated 21/12/2023 and submitted that in accordance therewith and with a view to comply with such directives issued by the ECI in exercise of the authority conferred by Article 324 of the Constitution of India, the transfer orders had been effected. The issues and grounds of challenge raised by the transferees had been considered in detail by the Division Bench in Mahendra Eknath Mali vs. State of Maharashtra, 2018 (5) Mh.L.J. 307. It had been held in clear terms that there was no question of any deputation in view of such transfer during the period when the election process was ongoing. The Division Bench had considered the judgment of the Karnataka High Court in Election Commission of India and Others vs. State of Karnataka and Others, 2013 CJ (Kar) 595 and had distinguished this aspect. Despite aforesaid, the learned Member of the Tribunal did not follow the ratio of the said judgment in Mahendra Eknath Mali (supra) and instead sought to rely upon the judgment of the Karnataka High Court referred to above. There was no question of

applicability of Section 28A of the Representation of the People Act, 1951 and the orders of transfer could not have been interfered with on that count. The Home Department was within its jurisdiction in effecting transfers and it was not stated therein that transfers were to remain effective only during the period when the election process was ongoing. The power conferred by Section 22-N of the Act of 1951 had been exercised in public interest and good faith pursuant to the directives issued by the ECI. As a result of the impugned judgment the entire exercise undertaken by the Home Department was set aside for reasons that were not sustainable in law. To substantiate his submissions the learned Advocate General also placed reliance upon the decisions in Babu Barkya Thakur vs. State of Bombay and Others, AIR 1960 SC 1203, Regina vs. Kelly (Edward) [1999] 2 WLR 1100, Ranji Kumar vs. Suresh Kumar Malhotra and Another, (2003) 5 SCC 315 and State of Maharashtra and Another vs. Anuradha Subhash Dhumal, 2022 (2) Mah LJ 669. It was thus submitted that the common judgment deciding various Original Applications was liable to be set aside and the transfer orders dated 26/02/2024 ought to be implemented in its true letter and spirit.

4] Mr. Prashant Katneshwarkar, learned Senior Advocate appearing for respondent no.1 in Writ Petition No.11740 of 2024 opposed the said submissions. Supporting the impugned judgment of the Tribunal, it was submitted that Article 324 of the Constitution of India conferred power of superintendence, directions and control of the election process upon the ECI. There was no power conferred on the State Government to effect transfers on the ground that the general elections were to be conducted. Referring to the provisions of Article 328 of the Constitution of India, it was submitted that the impugned transfer orders had been effected in exercise of power conferred by Section 22-N of the Act of 1951. Inviting attention to the order passed by the Co-ordinate Bench in Writ Petition No.9499 of 2016 (Smt. Jyoti Hanuman Patil vs. The Principal Secretary (Revenue) and Others) with connected writ petitions dated 07/10/2016, it was submitted that though the State Government had been directed to frame a policy in the matter of transfer in such situations, no such policy had been framed till date. Section 22-N of the Act of 1951 prescribes duration of the normal tenure of posting of police personnel. Though it was permissible to effect a transfer in an exceptional case in public interest as well as on account of administrative exigencies, the common transfer order dated 26/02/2024 did not indicate existence of any exceptional case so as to curtail the normal tenure of posting. Except for stating that transfers were being effected in view of the directives issued by the ECI on 21/12/2023, the Police Establishment Board (PEB, for short) merely referred to the aforesaid directives and recommended the said transfers. The learned Member of the Tribunal rightly placed reliance upon the judgment of the Karnataka High Court in Election Commission of India and Others (supra). The ratio of the decision in Mahendra Eknath Mali (supra) was not applicable to the case in hand. Reference was made to the provisions of Section 28-A of the Representation of People Act, 1951 and it was submitted that the transfer as effected could operate only during the period when the of

elections were in progress. At the conclusion of such elections, the police personnel were entitled to be brought back to their original place of posting. The concept of deemed deputation was rightly applied by the learned Member of the Tribunal. To substantiate his contentions, the learned Senior Advocate placed reliance on the decisions in *Dattatraya R. Karale vs. Shekhar Balasaheb Genbhau and Others*, 2024 SCC OnLine Bom 868, *Ankur Prabhakar Patil vs. State of Maharashtra and Others*, 2024 SCC OnLine Bom 2890, *Sachin Ashok Patil vs. State of Maharashtra and Others*, AIR Online 2021 Bom 3565, *Santosh Machhindra Thite vs. State of Maharashtra and others*, 2019 (4) Mh.L.J. 547, the decision in *D.G.P. Maharashtra and others vs. Dr. Nitin s/o Bhaskarao Kashikar and others* decided at the Aurangabad Bench in Writ Petition no.11574 of 2024 on 25/10/2024, *The State of Maharashtra through its Secretary and Another vs. Hareshwar Raghunath Ghuge and others* delivered at the Aurangabad Bench in Writ Petition No.8316 of 2024 on 07/08/2024, *Smt. Jyoti Hanuman Patil vs. The Principal Secretary (Revenue) and others* delivered at the Principal Seat in Writ Petition No.9499 of 2016 with connected writ petitions on 07/12/2016, *T.S.R. Subramanian and others v. Union of India and others*, (2013) 15 SCC 732, *Ramadhar Pandey vs. State of U.P. and others*, 1993 AIR SCW 2581, *Election Commission of India vs. State Bank of India Staff Association Local Head Office Unit, Patna and others*, 1995 Supp (2) SCC 13, *A.C. Jose vs. Sivan Pillai and Others*, (1984) 2 SCC 656, judgment in *Anurag Gupta vs. The Election Commission of India and others* delivered by the High Court of Jharkhand at Ranchi in W.P.(S) No.1714 of 2019 on 03/05/2019, *Election Commission of India and Another vs. The State of Karnataka and Others* delivered by the High Court of Karnataka at Bangalore in W.P. Nos. 17123-124 of 2013, 17295-297 of 2013 & 17298-299 of 2013 (S-CAT) It was thus submitted that the impugned orders of transfer were rightly interfered with by the Tribunal and hence there was no merit in the challenge raised to the common judgment.

5] Mr. Mihir Desai, the learned Senior Advocate appearing for the respondents in Writ Petition No.18051 of 2024 also opposed the submissions of the learned Advocate General. He submitted that in terms of the Circular dated 21/12/2023 it was only if a public servant was directly connected with the conduct of elections that he was liable to be shifted from the earlier place. Since the conduct of elections was notwithstanding the nature of such transfers, it was rightly held that same were effective till the time election process was ongoing. While the period during which the election process was ongoing, the same could be treated to be in public interest. However, on completion of the elections, the public interest of keeping the police personnel away from their place of posting would not arise. It was then submitted that since the various vacant posts were now available where the respondents could be accommodated, that exercise could be directed to be undertaken. As a common transfer order had been issued only in view of the directives issued by the ECI and with the completion of the election process, the purpose behind such transfer had been served. There was no impediment in sending back the respondents at the respective places of their

initial posting. The concept of deemed deputation during the period when the election process was in operation being reasonable ought to be upheld. He therefore submitted that there was no case made out to interfere in exercise of writ jurisdiction. The writ petitions were therefore liable to be dismissed.

6] We have heard the learned counsel for the parties at length and with their assistance we have perused the documents on record. We have thereafter given due consideration to the respective contentions. In the Original Applications preferred by the various police personnel, mid-term transfer orders issued by the Home Department in view of the directives issued by the ECI were under challenge. The Home Department has sought to justify these mid-term transfers by relying upon the provisions of Section 22-N(2) of the Act of 1951 to urge that they had been effected in public interest as well as in view of administrative exigencies. On the other hand, the police personnel challenging the orders of transfer contend that there was no public interest involved for curtailing the normal tenure of posting assured by Section 22-N(2) and assuming that the orders of transfer were issued pursuant to the directives of the ECI, the public interest came to an end at the conclusion of the elections. Hence the purpose of the transfer orders had been served. The learned Member of the Tribunal has accepted the contention raised by the police personnel that the mid-term transfer orders did not have lasting effect and that the same should be treated as worked out at the conclusion of the elections. He further held that at the conclusion of the elections, the "deemed deputation" with the ECI would also come to an end and that the transferred police personnel were entitled to be reverted back to their respective establishments. To arrive at this conclusion, the learned Member placed heavy reliance on the judgment of the Karnataka High Court in Election Commission of India and Others (supra).

7] It was urged by the learned Advocate General that a Co-ordinate Bench of this Court in Mahendra Eknath Mali (supra) had considered a somewhat similar challenge to a transfer order issued in view of the directives of the State Election Commission. After distinguishing the judgment of the Karnataka High Court referred to above, this Court had negatived the contention that at the conclusion of the general elections, the deputation with the ECI would come to an end thus giving a right to the police personnel to be reverted back to their respective establishments. It would therefore be necessary to consider the judgment in Mahendra Eknath Mali (supra). The petitioner therein was serving on the post of Tahasildar at the relevant time when the State Election Commission issued directions on 19/01/2016 to the State Government in the matter of conduct of free and fair elections. The said elections were to be held during the period from November, 2016 till February, 2017. On the basis of the aforesaid directives, the said petitioner came to be transferred. In proceedings filed for challenging the order of transfer, the Tribunal was of the view that in effect, the orders of transfer had been issued in view of ensuing elections and that at the end of such elections the concerned officers were required to be brought back to their original position. In a challenge raised to the order passed by the Tribunal, the

State Government sought to justify its action by relying upon the provisions of Section 4(4) and 4(5) of the Maharashtra Government Servants Regulations of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. It was held that a transfer order issued under the instructions of the ECI could be categorised as a mid-transfer for a special reason within the permissible parameters under Section 4(4) and 4(5) of the Act of 2005. The Court was satisfied that the order of transfer had been issued as a result of administrative exigencies and on account of special circumstances, namely the directives issued by the ECI. It found that the procedure prescribed under the Act of 2005 had been duly followed.

A contention was raised on behalf of the employee that as the order of transfer was issued pursuant to the directions of the State Election Commission, it ought to be construed as an order on deputation. In that regard, reliance was placed on the decision in Election Commission of India and Others (supra) of the Karnataka High Court. The Division Bench held that the order of transfer did not indicate that it was to remain in operation only till the completion of the election process. The proposal for transfer had been scrutinized by the Civil Services Board before making such recommendation for transfer and that the procedure prescribed under the Act of 2005 had been followed. It was therefore held that such an order of transfer could not be treated as amounting to placing the employee on deputation that was to operate only till the conclusion of the elections. On these counts, the order passed by the Tribunal was set aside and the transfer order was upheld. The judgment of the Karnataka High Court was distinguished by the Division Bench.

8] In our view, the contention raised by the police personnel in the present proceedings that the orders of transfer having been issued in view of the directives of the ECI on account of general elections and at the conclusion of such elections the deemed deputation of such police personnel ought to come to an end cannot be accepted. A similar contention raised by relying upon the decision of the Karnataka High Court in Election Commission of India and Others (supra) has been repelled in Mahendra Eknath Mali (supra). We are in agreement with the view taken by the Co-ordinate Bench in Mahendra Eknath Mali (supra) and are thus inclined to follow the same. The decision in Mahendra Eknath Mali (supra) was brought to the notice of the learned Member which finds reference in para 17 of the impugned order. However, without considering the ratio of the said decision, the learned Member sought to follow the ratio of the judgment of the Karnataka High Court in Election Commission of India and Others (supra). Since the judgment of the Karnataka High Court was considered by the Division Bench in Mahendra Eknath Mali (supra) and was distinguished, the decision in Mahendra Eknathi Mali (supra) was binding on the learned Member of the Tribunal. The learned Member therefore ought to have applied the ratio of the said decision to the facts of the present case. Having failed to do so, the learned Member has taken a view which is contrary to the ratio of the decision of this Court in Mahendra Eknath Mali (supra). It is true that the provisions of Section 4(4) and

4(5) of the Act of 2005 were under consideration in the said decision. In our view, the same would not make much difference as the said provisions provide an exception to the normal tenure of a government servant and permit a mid-term transfer being effected in exceptional circumstances and for administrative exigencies. A similar power has been conferred by Section 22-N(2) of the Act of 1951 which came to be exercised by the Home Department. Moreover, as required under the Act of 2005 the matter in the present case was referred to the PEB. We are therefore of the considered opinion that the learned Member of the Tribunal having failed to apply the ratio of the decision in Mahendra Eknath Mali (supra) to the facts of the present proceedings has proceeded to incorrectly hold that the orders of transfer were in the nature of "deemed deputation" and that at the end of the elections, the transferred police personnel were entitled to be reverted to their initial place of posting. For this reason, a case for interference in exercise of extraordinary jurisdiction has been made out.

9] Mr. Prashant Katneshwarkar, learned Senior Advocate appearing for the respondent no.1 in Writ Petition No. 11740 of 2024 relied upon the decision in Dattatraya R. Karale (supra) to urge that the impugned order did not satisfy the requirement of Section 22-N(2) of the Act of 1951. Referring to the minutes of the meeting of the PEB dated 22/02/2024, he submitted that except by referring to the Circulars dated 21/12/2023 issued by the ECI and 22/04/2024 issued by the State Election Commission, the orders of transfer were recommended. It was urged that the said minutes of the PEB did not reflect due consideration of relevant aspects while issuing the orders of transfer. In Dattatraya R. Karale (supra), the Division Bench has held that while subjecting an officer to mid-term transfer in exercise of power conferred by Section 22-N(2) of the Act of 1951 there ought to be atleast one reason of the nature referred to in the proviso to sub-section (1) or sub-section (2) of Section 22-N of the Act of 1951. It was further held that in view of Article 324 of the Constitution of India, the ECI had been vested with plenary powers of superintendence, direction and control of elections. The Circular dated 21/12/2023 was required to be seen in this perspective and directives issued by the ECI were required to be mandatorily followed by the State Government. In the said case, it was found that the requirements contained in clause 6(vi) of the Circular dated 21/12/2023 issued by ECI had not been satisfied and hence it was held that the transfer of respondent no.1 therein was not in accordance with the provisions of Section 22-N(2) of the Act of 1951.

10] Perusal of the minutes of the PEB dated 25/02/2024 indicates that reference has been made to the Circular dated 21/12/2023 issued by the ECI as well as the communication dated 22/02/2024 issued by the State Election Commission. On that basis requisite information from the concerned superior police authorities was called. After considering the Circular dated 21/12/2023 and communication dated 22/02/2024 referred to above, the power conferred by Section 22-N(2) of the Act of 1951 was invoked and seventy three officers came to be transferred. Since the transfers in question have been effected only in view of the directives

of the ECI, it cannot be said that there is absence of any public interest or absence of any exceptional case in transferring the concerned officers. The Circular dated 21/12/2023 issued by the ECI being binding on the State Government, it cannot be said that the PEB by transferring the concerned officers after taking recourse to the said Circular was not entitled to do so. Once it is found that the directives of the ECI were binding on the State Government, steps taken to comply with the same in public interest would be sufficient to invoke the power conferred by Section 22-N(2) of the Act of 1951 and effect transfers accordingly. On that count we do not find that any fault can be found with the orders of transfer.

11] Reference was made to the various decisions of this Court to urge that the impugned orders of transfer did not satisfy requirements of Section 22-N(2) of the Act of 1951. We however are satisfied from the material on record that the PEB has acted in accordance with the Circular dated 21/12/2023 issued by the ECI and consequential communication. The Circular dated 21/12/2023 issued by the ECI being binding on the State Government, it would be an exceptional circumstance to invoke the power conferred by Section 22-N(2) of the Act of 1951 for effecting a mid-term transfer.

12] We thus find that the learned Member of the Tribunal was not justified in holding that the transfer orders issued to the concerned police personnel were to remain effective only till the time the elections were held. The orders of transfer do not indicate that they were to remain in effect only till such time the elections were to conclude. Hence the orders of transfer have to be treated as orders of mid-term transfer not limited for any particular period.

13] We are however mindful of the contention that presently there are some vacancies available at certain Stations on which the respondents seek placement. It would be open for the Home Department to fill-in such vacancies by following the prescribed procedure. While doing so it would also be open for the Home Department to take into consideration any request made by the concerned police officers to be considered for being posted at such vacant post.

14] Accordingly, for the aforesaid reasons, the following order is passed:-

(i) The order dated 19/07/2024 passed by the learned Member of the Maharashtra Administrative Tribunal is quashed and set aside. The Original Applications raising challenge to the transfer orders stand dismissed.

(ii) It would however be open for the Home Department to fill-in any existing vacancies in accordance with law after considering any request/representation made in that regard.

(iii) Rule in all the above writ petitions is made absolute. Parties to bear their own costs. The Interim Applications also stand disposed of.