

(2003) 07 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 3238 of 20003 with Civil Application No. 1025 of 2003 in Writ Petition No. 3238 of 2003

Suresh S. Bhamre, Police Inspector

APPELLANT

Vs

Devendra Purushottam Shinde, Police Inspector, State of Maharashtra and Shri R.K. Deshmukh, Police Inspector

 Devendra Purushottam Shinde, Police Inspector Vs
Suresh S. Bhambre, Police Inspector, Police Welfare Department, State of Maharashtra and Shri R.K. Deshmukh, Police Inspector

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Citation : (2003) 4 ALLMR 540 : (2003) 6 BomCR 611 : (2003) 4 MhLj 857 : (2003) 4 MhLj 856

Hon'ble Judges : C.K. Thakker, C.J.;V.K. Tahirramani, J

Bench : Division Bench

Advocate : A.A. Kumbhakoni and L.M. Acharya, in Writ Petition No. 3238 of 2003 and P.M. Pradhan and A.R. Pitale, Civil application No. 1025 of 2003 in Writ Petition No. 3238 of 2003, for the Appellant; P.M. Pradhan and C.R. Sonawane, Assistant Government Pleader for respondent Nos. 2 to 4 in Writ Petition No. 3238 of 2003 and A.A. Kumbhakoni and L.M. Acharya for respondent No. 1 and C.R. Sonawane, Assistant Government Pleader for Respondent Nos. 2 to 5 in Civil Application No. 1025 of 2003 in Writ Petition No. 3238 of 2003, for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—Rule. Mr. P.M. Pradhan, learned counsel, appears and waives service of notice of rule on behalf of respondent No. 1 in writ petition. Mr. C.R. Sonawane, Assistant Government Pleader, appears and waives service of notice on behalf of respondent Nos. 2 to 4 in writ petition. In the facts and circumstances, the writ petition is taken up for final hearing forthwith.

2. This petition is filed by the petitioner against an order passed by the Maharashtra Administrative Tribunal, Mumbai Bench, on 21st April, 2003 in

Original Application No. 17 of 2003.

3. The said application was filed by respondent No. 1 herein. The action impugned in that petition was an order of transfer passed against him.

4. Along with Original Application No. 17 of 2003, there was another Original Application No. 7 of 2003 filed by another petition. In the said application also, an order of transfer was challenged.

5. The Tribunal, after considering the contentions of the parties, dismissed Original Application No. 7 of 2003 but allowed the application filed by the respondent No. 1 (Original Application No. 17 of 2003). The said order is challenged in the present petition by original respondent No. 4-petitioner herein.

6. The learned counsel for petitioner raised several contentions. It was submitted that in O.A. 7 of 2003, the Tribunal held that transfer is an incident of service. If the post is transferable, it is in the discretion of the authority to pass an order of transfer on administrative grounds. Such order cannot be interfered with in exercise of power by the Tribunal. It was also observed that if the order is not otherwise mala fide or contrary to statutory provisions, on the basis of guidelines issued by the Government, order of transfer cannot be set aside. It was submitted that all those grounds would equally apply to the case of the first respondent herein. By interfering with the order passed by the authorities, an error of law as well as of jurisdiction was committed by the Tribunal, which deserves to be quashed and set aside.

7. The learned counsel for the first respondent, on the other hand, supported the order passed by the Tribunal. It was submitted that on the grounds mentioned and reasons recorded in the order passed by the Tribunal, no interference is called for.

8. Having considered the rival contentions of the parties, in our opinion, the petition deserves to be allowed and the order passed by the Maharashtra Administrative Tribunal deserves to be quashed and set aside.

9. So far as the grounds recorded by the Tribunal in O.A. 07 of 2003 are concerned, it was specifically observed by the Tribunal that transfer is an incident of service, and such action can be taken by the employer. Unless there is violation of statutory provision or the order is mala fide, the Tribunal cannot interfere with an order of transfer. It is, no doubt, true that so far as the present case is concerned, in paragraph 23, the Tribunal has recorded reasons. The said paragraph reads as under:

"The records show that there are various communications received from the office of Hon. Dy. C.M. to D.G.P. regarding posting of respondent No. 4 to Manmad. Hon. Dy. M.C. being in charge of the Home Department, he is directly concerned with the Police Administration and it is within his jurisdiction to issue such direction. It is the job of the Head of the Department like D.g.P. and the transferring authority like District Superintendent of Police to carry out such

directions at the appropriate time and within the principles of administrative norms. The applicant was posted at Manmad only in May, 2002 and had not completed at least one year. There was nothing against his performance. These facts could have been brought to the notice of Hon. Dy. C.M. for reconsideration. However, it is seen, although the District Superintendent of Police thought it appropriate to bring to the notice of the D.G.P. regarding the implications of this untimely transfer, the office of the D.G.P. simply worked as at Post Office and did not convey to Hon.Dy.C.M. the correct position. Had the position been conveyed and implications correctly stressed, the Hon. Dy. C.M. might have reconsidered his decision or would have waited for some time more to effect the change at Manmad. Since no such action was taken by D.G.p. the District Superintendent of Police was left alone to somehow comply with the direction and also keep his order within the guidelines issued under G.R. dated 15.6.2002. Hence, the innovative phraseology of "temporary attachment".

10. From the above paragraph, it is clear that what weighed with the Tribunal was that (i) the applicant (respondent No. 1 herein) was posted at Manmad only in May, 2002 and had not completed even one year; (ii) there was nothing against his performance; and (iii) those facts were not brought to the notice of Hon"ble Dy. Chief Minister. had those facts been brought to the consideration of Dy. Chief Minister, in all probability, he would have reconsidered the matter and would not have made an order of transfer.

11. With respect, in our opinion, none of the grounds can be said to be germane, relevant or material so far as an action of transfer is concerned. Once it has been held that transfer is an incident of service, such action can be taken. It is immaterial whether an employee has or has not completed one year. Similarly, it is not necessary that such action can be taken only if there is something "against" his performance. Finally, the fact whether those aspects were or were not brought to the notice of the Deputy Chief Minister is altogether irrelevant and extraneous. A person might be performing his duties to the satisfaction of the authorities, yet he can be transferred if the post held by him is transferable.

12. In our opinion, therefore, what had been observed by the Tribunal in the previous paragraphs while dealing with Original Application No. 7 of 2003 were applicable with equal force to the present case also.

13. Since neither there is breach of statutory provisions nor the order can be said to be mala fide, the order of transfer of the first respondent-applicant of O.A. 17 of 2003 must be held to be legal and valid. As there was no illegality in passing the order nor the order could be said mala fide or malicious, the tribunal has committed an error of law as well as of jurisdiction in interfering with the said order.

14. The petition, therefore, deserves to be allowed and is accordingly allowed. The order passed by the Tribunal on 21st April, 2003 in Original Application No. 17 of 2003 is hereby quashed and set aside. Rule is made absolute. In the facts

and circumstances, there shall, however, be no order as to costs.

15. No order on Civil Application No. 1025 of 2003 in view of order passed in writ petition.

Parties be given copies of this order duly authenticated by the Sheristedar/
Private Secretary.