

ORIGINAL APPLICATION ST. NO. 508/2020
(Sudarshan S. Pagar Vs. State of Maharashtra & Ors.)

CORAM : B.P. PATIL, VICE CHAIRMAN

DATE : 27.05.2020

ORAL ORDER :

Heard Shri Avinash S. Deshmukh, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. Learned Advocate for the applicant has submitted that the applicant could not swear the verification as boundaries of Aurangabad and Osmanabad Districts are sealed. Therefore he seeks permission to swear the verification in due course. In view of sealing of boundaries of Aurangabad and Osmanabad Districts permission is granted to the applicant to swear the verification in due course.

3. On perusal of record, prima-facie, it reveals that the respondent no. 3 Shri Manoj R. Awalgaonkar has been promoted and posted as a Superintending Engineer, Aurangabad Irrigation Circle, Aurangabad by the order dtd. 1.2.2020. The respondent no. 3 has not yet joined the said post and as per the contention of the applicant the respondent no. 3 is still serving on the post of Executive Engineer, P.W.D. at Pune. The applicant is serving as a Superintending Engineer,

Osmanabad Irrigation Circle, Osmanabad. Previously he was transferred from the post of Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai by the order dtd. 13.2.2019. The applicant had challenged the said order before this Tribunal by filing O.A. no. 136/2019. This Tribunal quashed the said order of transfer of the applicant by the judgment and order dtd. 6.5.2019 and directed the respondents to repost the applicant on the post of Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad. The said order was challenged by the Respondent State before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing Writ Petition No. 12758/2019. The said writ petition is still pending and the Hon'ble High Court has not granted any stay therein.

4. The record shows that the applicant is due for transfer as he has completed his normal tenure of posting at Osmanabad.

5. The Government has decided not to effect transfers of the Government servants during the

financial year 2020-21 because of spread of COVID-19 and accordingly issued G.R. dtd. 4.5.2020. In spite of that the respondents issued the impugned order dtd. 26.5.2020 thereby transferring the applicant from the post of Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai.

6. Prima-facie, it reveals that the impugned order has been issued in violation of the G.R. dtd. 4.5.2020 as well as the provisions of section 4(4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005). Prima-facie, it reveals that the proposal regarding transfer of the applicant and the respondent no. 3 has not been placed before the Civil Services Board. Prima-facie, the impugned order has been issued illegally with malice and vindictively and therefore it requires to be stayed till filing of affidavit in reply by the respondents.

7. In view of this the operation and execution of the impugned order dtd. 26.5.2020 is stayed till filing of affidavit in reply by the respondents.

8. Issue notices to the respondents, returnable on 24.6.2020.

9. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.

10. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

11. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

12. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in

the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

13. If notice is not collected within 7 days or proof of service is not produced before 3 days of the next date, case shall automatically stand dismissed without further reference to the Tribunal.

14. S.O. to 24.6.2020.

15. Steno copy and Hamdast is allowed to both parties.

VICE CHAIRMAN