

MHIC110001202024



**IN THE INDUSTRIAL COURT, MAHARASHTRA,
AT SATARA.**

[Presided over by Sham V. Suryawanshi, Member, JO Code
No.1732]

COMPLAINT (ULP) NO.50/2024

Ulhas Baliram Kadam. . Complainant.

Versus

General Manager (P. & I.R.),
MSRTC and anr. . Respondents.

Appearances : *Shri. R. P. Jadhav, advocate for the
complainant.*

*Shri. Yogesh Karpe, Advocate for the
Respondents.*

ORDER BELOW EXH.U-2

[Delivered on 27th November, 2024]

1] The Complainant has filed this complaint for unfair labour practice alleged to be committed by the respondent under Item Nos.3, 9 & 10 of Schedule-IV of the MRTU & PULP Act, 1971. Respondent No.1 is the General Manager of

respondent Maharashtra State Road Transport Corporation, whereas respondent No.2 is the Divisional Controller under whose direct control and supervision, the present complainant is working. As per complainant, he was initially appointed as "Assistant Security Inspector" at Nanded. Thereafter he was transferred at Satara in the year 2013. Thereafter he was again transferred at Ratnagiri Division in the year 2018. From 2018 to 2023, complainant has worked at Ratnagiri. Again on 5th May 2023, Complainant is transferred at Satara and since then he is working at Satara as a "Security Inspector". Said post falls under class-III category. Complainant is original resident of village Vaduj, taluka Khatav, Dist. Satara. Complainant is staying with his family at said address. He is having two children, one is studying in 9th standard and other is studying in 6th standard in Potdar International School, Satara. Complainant has recently taken admissions for his two daughters. Parents of the complainant are old.

2. As per circulars and the policy of the respondent corporation minimum three years service tenure for each employee working in class three category is fixed at each station. There are restrictions on mid-term transfer of

employees. Also it is provided that all the transfers are to be effected in the month of March and April. Government has made it mandatory on the respondent corporation to follow transfer policy as fixed by its circular. Despite of this, respondent has issued illegal, unjust and malafide transfer order dated 9th October 2024 and thereby illegally transferred services of the complainant from Satara to Mumbai on so called administrative ground. As per complainant said transfer order issued by respondent is against transfer policy fixed by respondent Corporation. It is further contention of the complainant that the respondents have transferred him on the basis of false and fabricated complaint made by Mr. Shekhar Pharande. Therefore, transfer order amounts to punishment. Before effecting said transfer, Respondents have not followed the process of law. All these acts and omissions on the part of the respondents are amounting to unfair labour practices. Therefore, complainant has filed this complaint. Complainant has also filed application for interim below Exhibit U-2 wherein he has prayed for temporary injunction and stay to execution and implementation of the transfer order dated 9th October 2024.

3. Notice of the present complaint was served upon the respondents. Respondents appeared in the present matter and filed its reply to the interim application below exhibit C-5 wherein respondents have denied all the adverse allegations made by the complainant. As per respondents present complaint is not maintainable since Complainant has not joined at transferred place. Complainant has misinterpreted the circular and trying to make obstacles in the administration of the respondent corporation. Respondent corporation has every right to transfer its employees on administrative ground. Respondents have not committed breach of any rules, regulations and so called policy of the respondent corporation. Transfer of complainant is not made by way of punishment. Complainant is relieved from Satara. Therefore, he should join at the transfer place, then only the complainant has right to file present complaint. With these and other averments, Respondents prayed that application for interim relief filed by the complainant be rejected.

4. Heard learned advocates for both the parties. Perused record and proceeding. On the basis of rival submissions of both the parties, following points arise for my

consideration, to which I record my findings along with reasons thereof as under -

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the complainant has made out strong prima facie case?	Yes.
2) Whether the balance of convenience lies in favour of the complainant ?	Yes.
3) To whom irreparable loss would be caused if interim relief is not granted ?	Complainant.
4) What Order?	As given below.

REASONS

5) **As to Point Nos.1 to 3:** All these points are interlinked and depending upon each other. Hence, I am taking all the points for simultaneous consideration.

6) In the present matter, there are certain undisputed rather indisputable factual aspects. Complainant is an employee of the respondent Corporation. Initially he was appointed as "Assistant Security Inspector" at Nanded in the year 2009. He was made permanent somewhere in the year

2011. Thereafter on the request of the complainant, he was transferred at Satara Division in the year 2013. Thereafter, he was promoted as Security Inspector and transferred to Ratnagiri division on 29th November 2014. However, complainant refused to accept promotion and continued to work at Satara itself. Thereafter, in the year 2018, complainant was transferred from Satara division to Ratnagiri division on administrative ground, where he has worked up to year 2023 and on 3rd May 2023 complainant was again transferred from Ratnagiri to Satara division. Thereafter on the administrative ground, respondents have transferred him from Satara to Mumbai division by transfer order dated 9th October 2024, which is impugned in the present matter. Main ground for challenging transfer order is that said order is against circulars dated 2nd May 2024 and 26th May 2014. Learned advocate for respondent has relied upon circular of Government of Maharashtra, General Administration Department dated 11th February 2015. Same is not applicable to the respondent Corporation. By way of circular dated 2nd May 2014 respondent Corporation has prepared rules in respect of transfer of employees and officers of respondent Corporation

Rule 8-B of said rules is relevant and necessary to be reproduced.

8B) वर्ग ३ — राज्य संवर्गातील कर्मचा—यांकरीता एखादया पदावर असण्याचा सामान्य कालावधी तीन वर्षांचा असेल. त्यानंतर त्याची बदली मार्च/एप्रिल महिन्यात अन्यत्र करण्यात येईल. याकरीता सक्षम प्राधिकारी मार्च / एप्रिल मध्ये बदलीस पात्र होतील. अशा कर्मचा—यांची यादी डिसेंबर महिन्यात तयार करतील. बदली पात्र कर्मचा—यांकडून तीन ठिकाणांसाठी पसंतीक्रम मागविण्यात येईल. बदली करताना प्रशासकीय सोय विचारात घेवुन पसंतीक्रमाचा विचार करण्यात येईल. एखादया ठिकाणाकरीता एकापेक्षा जास्त कर्मचा—यांकडून पसंतीक्रम प्राप्त झाल्यास अशा प्रकरणी काय कार्यवाही करावी याबाबत स्वतंत्र अभ्यास करून निर्णय घेण्यात येईल.

From rule 8-B, it is clear that employees working in class-III will be eligible for transfer only after completing three years tenure on a post. His transfer is to be effected in the month of March or April, for which a list of employees who are due for transfer is to be made in the month of December, and such transfers are to be effected by obtaining 3 preferences from the employees. However there are some exceptions given under rule 8-E which reads as under -

8-E खाली नमुद केलेल्या परिस्थितीत, सर्व अधिकारी व कर्मचारी यांचे बाबतीत, वर्षातील कोणत्याही वेळी —

एक नव्याने निर्माण झालेल्या पदावर किंवा सेवानिवृत्ती, पदोन्नती, राजीनामा, पदावनती, पुनःसीपना यामुळे किंवा बदलीच्या परिणामस्वरूप झालेल्या पदांवर किंवा रजेवरून परत आल्याच्या बाबतीत,

दोन अपवादात्मक परिस्थितीमुळे किंवा विशेष कारणामुळे किंवा तक्रार असल्यास तक्रारीची चौकशी करून बदली करणे आवश्यक आहे अशी सक्षम प्राधिका—याची खात्री पटली असेल अशा बाबतीत, तसे लेखी नमुद केल्यानंतर आणि लगतनंतरच्या वरिष्ठ प्राधिका—यांच्या पूर्व मान्यतेने, अशी बदली करण्यात येईल.

Thus rule 8-B is not absolute. There are certain exceptional circumstances under which respondents have every authority to transfer the employees. Later on respondent Corporation has issued a circular dated 26th May 2014, wherein it is specifically mentioned that Directions issued by circular dated 2nd May 2014 are to be followed strictly. If any irregularities are found, then appropriate action will be taken against competent authority. Thus, the transfer policy fixed by circular dated 2nd May 2014 is strictly and mandatorily binding upon the respondent corporation. In the

present matter, it is admitted that the complainant is transferred recently on 5th May 2023. Still, he has not completed three years on the same post. It also cannot be disputed that impugned order dated 9th October 2014 is a mid-term transfer order. Under such circumstances, only a short question that remains to be decided is whether transfer of the complainant falls under the exception given in rule 8- E of circular dated 2nd May 2014 ?

7) In this background, respondents have heavily relied upon internal correspondence letter issued by Senior Security and Vigilance Officer, Mumbai Division dated 26th September 2014 to the Respondent Corporation which is filed below exhibit C-5/5. By virtue of said letter Senior Security and Vigilance Officer has written to the Corporation that in Mumbai Division, there are several vacant posts, therefore Security Supervisor be appointed at Mumbai Division. On the basis of this letter, learned advocate for respondents tried to submit that the transfer of the Complainant falls under clause 8-E of the circular dated 2nd May 2014. It is to be noted that under said clause mid-term transfer can be made in respect of newly created post or the post which becomes vacant on

account of resignation, promotion, superannuation, demotion, reappointment, or transfer. Said clause is not applicable for the post which are already vacant or which are vacant on account of medical leave of an employee. Lateron respondent has realised that there are certain vacant posts and one of the employees are on leave from 12th January 2024 and one of the employee is likely to go on leave. Respondent Corporation was very well aware about the vacant posts in the month of March and April. Medical Leave of an employee or possibility of employee to go on Medical leave cannot be a ground for effecting mid-term transfer as prescribed under circular of the respondent Corporation dated 2nd May 2014. The transfer of complainant effected by the Corporation is apparently against transfer policy of Corporation fixed by way of its own circular, which was lateron made mandatory by the respondent Corporation itself. Transfer against transfer policy or service conditions certainly amounts to legal victimisation. Such transfer can be said to be a malafide transfer within the ambit of items 3, 9 and 10 of schedule IV of the MRTU & PULP Act. Complainant has filed on record documents relating to admissions of his children to the Potdar International School

for which he has paid huge amount towards fees. Mid-term transfer against policy of the corporation will certainly cause great prejudice to the complainant.

8) In the present matter, learned advocate for respondent filed on record letter of respondent Corporation dated 25th November 2024 mentioning the number of Vacant posts. Corporation is always aware about same while effecting general transfers that is why new posts are not included in the exceptional circumstances as mentioned in the circular.

9) In the present matter, learned Advocate for complainant has relied on following judgments.

1) **Press Trust of India Ltd. Vs. Press Trust of India Employees Union and ors. (Bombay High Court) reported in MANU/MH/0440/2002 and**

2) **Bajaj Auto Limited Vs. Shrikant Vinayak Yogi and ors. Bombay High Court reported in MANU/MH/0146/2006.**

All the aforesaid judgments are applicable to the present case in hand. Complainant's transfer is under the guise of administrative ground, but the same is in violation of service conditions. Thus complainant has made out strong

prima facie case. Balance of convenience also lies in favour of the complainant. Irreparable loss would be caused to the complainant if he is uprooted from Satara in the mid-term that may cause irreparable harm to his family, more particularly education of children. Hence my answer to Point Nos.1 to 3 is in the affirmative and I proceed to pass following order.

ORDER

- 1) Application Exh.U-2 is allowed.
- 2) Respondents are directed to temporarily cease and desist from engaging into the unfair labour practices under items 3, 9 & 10 of Sch.IV of MRTU & PULP Act, 1971.
- 3) Execution and operation of the transfer order dated 09.10.2024 transferring the Complainant from Satara Region to Mumbai Region stands stayed temporarily till decision of main complaint.

Satara.

Date : 27.11.2024.

Argued On: 27.11.2024.
Dictated on:27.11.2024.
Transcribed on : 30.11.2024.
Checked and Signed on: .23.12.2024.

(S. V. Suryawanshi)
Member,
Industrial Court, Satara.