

**BEFORE THE INDUSTRIAL COURT, MAHARASHTRA,
(AMRAVATI BENCH), A M R A V A T I.**

Comp. (ULP) No.85/2023.
CNR No.MHIC27000126-2023.

Vijay S/o Pundlikrao Kavitkar

----- Versus -----

Chief Executive Officer, Zilla Parishad, Amravati.

ORDER BELOW EXH.U-2
(Passed On 12.08.2025)

01] Applicant/complainant has filed complaint u/s 28 R/w Item 3, 5 & 9 of Schedule IV of MRTU & PULP Act to declare that the respondent has engaged in unfair labour practice and to quash and set-aside transfer order dated 19.07.2023 etc. Applicant has also filed present application u/s 30(2) of the Act to stay the effect and operation of the transfer order dated 19.07.2023 during pendency of main complaint.

02] Respondent/non-applicant has filed written statement cum reply (Exh.C-9(A)) and denied material averments adverse to it. I have heard both the sides. Following points arises for my determination and I record my findings with reasons thereon as under.

	<u>POINTS</u>	<u>FINDINGS</u>
1]	Whether the applicant has made out prima facie case ?No.
2]	Whether balance of convenience lies	

- in favour of the applicant ?No.
- 3] Whether applicant would suffer irreparable loss if interim relief as prayed for is not granted ?No.
- 4] What Order ? As per final order.

REASONS

03] **As to point No.1 to 3** :- As all the points are inter connected, they are discussed together. Ld. Advocate for the applicant has argued that the applicant is posted as Junior Administrative Officer in Zilla Parishad, Amravati. Applicant has not completed 10 years of service at present station. There is no administrative exigency to transfer the applicant. Transfer of the applicant is in middle of the academic session which is not permissible. He submits that complainant is awarded with punishment of barring one increment without any reason. Punishment of transfer is not prescribed in D & A Procedure and, therefore, action on the part of respondent is arbitrary and illegal.

04] He argued that respondent is required to effect the transfer as per the final seniority list prepared for concerned year. However, respondent has not published final seniority list before effecting transfer. Non-applicant has not transferred many other employees who are over due for transfer. This fact shows favouratism to one set of workers regardless of merit and, therefore, transfer of the applicant is

illegal.

05] Ld. Advocate for the applicant further laid emphasis that the respondent had issued charge-sheet to one Smt. Yamuna Bagade in respect of misconduct in which applicant was presenting officer. In that enquiry, Smt Bagade was punished and, therefore, Smt. Bagade is having grudge against the applicant. He submits that on 03.05.2023 Smt. Bagade went to the house of the applicant and abused him in filthy language. The applicant had informed the said fact to his higher authority and lodged report with the Frezarpura Police Station. He submits that Smt. Yamuna Bagade has made false complaint against the applicant. The non-applicant took action on the basis of complaint of Smt. Bagade which is amounting to discrimination.

06] Ld. Advocate for the applicant further submits that the respondent has forwarded the matter to the Grievance Committee in respect of harassment to women servant at working place. The report of said Grievance Committee is not reliable. Grievance Committee has not given an opportunity to cross-examine the employees whose statement were relied upon by it. Respondent has not given opportunity before passing impugned order. Non-applicant cannot effect transfer of employee by way of punishment. Moreover, respondent cannot award punishment

twice in respect of same bunch of facts. He submits that the applicant has made out prima facie case and balance of convenience lies in his favour. Upon these contentions, Ld. Advocate for the applicant prayed to allow the application. Ld. Advocate for the applicant has also filed written notes of argument.

07] Ld. Advocate for the applicant in support of his case relied upon the case of **Somesh Tiwari Vs. Union of India and others (2009 1 SCC. (L & S) 411)** wherein Para No.16 Hon'ble Supreme Court observed that "Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds-one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment,

the same is liable to be set aside being wholly illegal”.

08] In the case of **Laxman B. Panmand Vs. Nuclear Power Corporation of India Limited (2022 DGLS (Bom.) 2476)**, Hon’ble Bombay High Court observed in para No.34 that “It was open to the disciplinary authority to down-grade the petitioner’s pay but there being no provision in the D & A Rules of 1996 authorizing the disciplinary authority to revert the petitioner from the post of Senior Manager (HR) to that of Deputy Manager (HR), to such extent too, the order of the disciplinary authority is illegal which the Board of Directors, while hearing the appeal as well as the review, failed to take note of. Consequently, even if the petitioner’s (mis) conduct called for any penalty, the disciplinary authority ought to have imposed penalty within the contours of the D & A Rules of 1996 and not beyond it”.

09] In the case of **Ku. Mamta D/o Vithalrao Gavhane Vs. M.S.R.T.C. Amravati and other (W.P. No.6465 of 2018 decided on 3.10.2018)**. Hon’ble Bombay High Court observed in Para No.6 that “In the present case, there is a clear breach of these instructions given in this Circular as the part of the respondent no.1. The respondent no.1, on the pretext of giving effect to the instructions contained in the Circular, has passed a transfer order exceeding his jurisdiction. He has transferred the

petitioner working in Amravati Division to Yavatmal Division which is under the supervision and control of some different Divisional Controller and certainly not the respondent no.1. In such a case, it was required of respondent no.1 to have made appropriate recommendation to the superior officer as per the Circular dated 22.02.2018. On this additional count, the action of respondent no.1 is found to be patently illegal smacking of malice on his part. The malice entertained by the respondent no.1 against the petitioner is obvious as respondent no.1 is prepared even to transgress the limits of his powers in his desire to teach a lesson to the petitioner. I think this would be a fit case for the Vice-Chairman-cum-Managing Director of the Corporation to take appropriate action against the respondent no.1 in the present case”.

10] It appears that Maharashtra State Road Transport Corporation and another has challenged the Judgment and order passed in the case of Ku. Mamta Vs. M.S.R.T.C. (Supra) before the Hon'ble Supreme Court **in Special Leave Petition [(Civil) Diary No(s).1967/2019 decided on 18.02.2019]**. The Hon'ble Supreme Court observed that “We are not inclined to interfere with the impugned order except to the extent of the observation made by the High Court in last three lines of para 6 by which the High Court directed to take appropriate action against

respondent no.1 of the writ petitioners”. Ld. Advocate for the applicant further relied upon the case of **Sunita Jasmine Pauldas Gladston Somervel Vs. State of Maharashtra and others (2021 DGLS (Bom.) 2958**”.

11] Ld. Advocate for the non-applicant has argued that Smt. Yamuna Bagde and other six women employees had lodged complaint against the applicant. The grievance redressal committee had enquired into the matter and it found that the applicant is guilty of misconduct with women employees and submitted report. He submits that disciplinary authority has awarded punishment of barring one increment by an order dated 15.06.2023.

12] Ld. Advocate for the non-applicant has argued that the non-applicant has transferred the applicant by an order dated 19.07.2023. The said transfer is not routine transfer but a special transfer. The motive of non-applicant to transfer the applicant is to maintain healthy atmosphere in the office by which the women employee in the office can work fearlessly. He further submits that applicant has neither prima facie case nor balance of convenience lies in its favour. Upon these contentions, Ld. Advocate for the non-applicant has submitted that application is liable to be rejected. Ld. Advocate for the non-applicant has also filed written notes

of argument (Exh.C-18).

13] I have considered the submissions of both the sides and written notes of argument. I have also perused the above decisions and documents produced on the record. Applicant has produced order dated 15.06.2023 and transfer order dated 19.07.2023. It appears that by the order dated 15.06.2023, misconduct of the applicant was taken as proved and his one increment is barred. In the present case, applicant is not seeking any relief against the order dated 15.06.2023 by which punishment of barring one increment is imposed. Thus, there is no need to go into the question of validity of the order dated 15.06.2023.

14] From the submissions of both the sides, it appears that the applicant is not due for transfer. Applicant has challenged transfer order dated 19.07.2023. It is well settled that it is entirely for the employer to decide when, where and at what point of time public servant is to be transferred. Ld. Advocate for the applicant has argued that non-applicant has not published seniority list of the employees and it has not followed the Government Resolution properly. Applicant has filed G.R. dated 15.05.2014. The said Government Resolution is in respect of administrative guidelines for effecting transfer and cannot create any statutory right in favour of the applicant.

15] In the transfer order dated 19.07.2023, the reason for transfer is shown as “तकरीचे कारणास्तव बदली”. Non-applicant has produced photo copy of FIR which shows that one Yamuna Bagde lodged the same alleging that “आमचे ऑफीसमध्ये काम करणारे ‘वरिष्ठ अधीक्षक’ या पदावर काम करणारे अधिकारी विजय पुंडलीकराव कवितकर अंदाजे वय-45 वर्षे जात माळी रा. चैतन्य कॉलनी अमरावती हे नेहमी मला अंगाला स्पर्श करतात, तसेच येता जाता धक्का देतात- तसेच अशिल्ल भाषेत बोलुन तसेच टॉनटिंग करतात तसेच एकदा त्यांनी माझी ओढणी सुध्दा ओढली होती- यावर मी त्यांना कोणत्याही प्रकारे प्रतिसाद दिला नाही मला श्री विजय पुंडलीकराव कवितकर हे मला म्हणतात की - तुम्ही कुठे राहतात तुचे घरी कोणी राहते की नाही नाही राहत तुम्ही एकटया राहतात का असे प्रश्न करतात व म्हणतात की- माझी बायकोची तब्येत बरोबर नसते तु माझया घरी ये असे म्हणून नेहमी माझया अंगाचे विविध भागाला पुष्टभागचे भागाला हात लावुन त्रास देत होते सदर प्रकार हा मागील तीन ते चार महिन्यापासुन सुरु आहे.....”. FIR shows that PS Gadgenagar registered crime bearing no.757/2023 against the applicant for the offence punishable u/s 354, 354 A, 506 I.P.C. and Section 3(1)(2) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities Act) 1989.

16] Non-applicant has also produced Mahila Takrar Nivaran Samittee Choukashi Ahwal which shows that Yamuna Bagde and other 6 women employees have made complaint to the CEO of Zilla Parishad in respect of misbehavior of the applicant. It appears that on the basis of report of Committee, respondent has passed an order dated 15.06.2023

by which punishment of barring one increment of the applicant is imposed. Transfer order produced by the applicant shows that Yamuna Bagde, Rekha Jadhav and Shilpa Thakare are still working in the office of Zilla Parishad, Amravati. Complaint dated 22.06.2023 shows that Yamuna Bagde and other 5 women employees have also lodged the same with the police that the applicant is threatening them as “ज्या कर्मचा-यांनी माझी तक्रार केली त्यांना मी बघुन घेतो, त्यांचे मी काय करतो ते बघा.”

17] Ld. Advocate for the applicant has submitted that non-applicant has issued charge-sheet to Yamuna Bagde in respect of misbehavior in which applicant was presenting officer and in that enquiry Smt. Bagde was punished and, thus, she has made false allegation against him. However, case papers shows that not only Smt. Yamuna Bagde but other 6 women employees also lodged complaint against the applicant with the respondent. There is absolutely no reasonable explanation on behalf of the applicant regarding the allegation made by those 6 women employees. Therefore, I do not found substance in the submission of contention of Ld. Advocate for the applicant.

18] Applicant is working as Junior administrative officer in Zilla Parishad, Amravati where number of women employees are working. Applicant is transferred from Amravati to Nandgaon Khandeshwar. Case

papers shows that respondent has imposed minor punishment of barring one increment by an order dated 15.06.2023 and after some days applicant was transferred by an order dated 19.07.2023. Perhaps that can be administrative decision taken by the respondent keeping in mind the misconduct of the applicant. It appears that the applicant's transfer in fact and circumstances of the case is bonafide exercise of power so as to run the administration smoothly. There is no prima facie material on record to show that there was personal bias or oblique motive of the non-applicant in transferring the applicant. Considering all these factors, I am of the view that neither the prima facie case is made out nor balance of convenience lies in favour of the applicant. In the result, there is no question of irreparable loss to the applicant if the interim relief is not granted. The authorities cited above is not applicable to the case in hand on account of different facts and circumstances. For these reasons, I answered point no.1 to 3 in the negative and pass following order.

ORDER

- 1] Application Exh.U-2 is rejected.
- 2] No order as to costs.

Date : 12.08.2025.
Amravati.

(H.A. Ali)
Member,
Industrial Court, Amravati.