

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8987 OF 2018

Balasaheb Vitthalrao Tidke

Age : 45 years, Occ : Sub Divisional Officer,
Mangaon Sub-Division, Dist. Raigad,
r/at. Sub Divisional Officer Quarter,
Kacheri Road, Mangaon,
District- Raigad

...Petitioner

V/s.

1. The State of Maharashtra,
Through Principal Secretary,
Revenue & Forest Department,
Having office at Mantralaya,
Mumbai-400 032.

2. Prashali Dighavkar,
Aged: Adult, Currently Working as
Sub-Divisional Officer, Mangaon
Taluka : Mangaon, District-Raigad

....Respondents

* * * * *

Mr. R.M. Haridas i/by. Mr. Amol P. Mhatre, the Advocate for
the petitioner.

Mr. A.B. Vagyani, the Government Pleader a/w. Mr. Y.S.
Khochare, AGP for respondent no.1.

Mr. Abhishek P. Deshmukh, Advocate for respondent no.2.

Coram : A.S. Oka, &

Sandeep K. Shinde, JJ.

Wednesday, 12th December, 2018.

ORAL JUDGMENT (PER : A.S. OKA, J)

1. Perused the order dated 2nd November, 2018. Considering the stand taken by the State Government on Affidavit, it is crystal clear that a transfer of Government Servant subject matter of this petition was influenced by recommendations/request made by a Hon'ble Cabinet Minister of the Government of Maharashtra and a Member of Maharashtra Legislative Assembly. Moreover, the State Government has itself taken a stand that only based on the said recommendations, the Hon'ble the Chief Minister modified the proposal submitted by the department for transfers. We may note here that, there are more than one recommendations made by the same Hon'ble Minister. The contention of the petitioner was that the letters of recommendation are not written at his instance. This contention is not strictly relevant as the Affidavit of the State Government itself records that, the transfers were influenced by the recommendations made by the Hon'ble Minister and an elected representatives of people. That is

the reason why under the aforesaid order, this Court observed that, an enquiry is called for in the entire episode and that the Chief Secretary of the State Government will file an Affidavit explaining as to how such recommendations are considered in the matter of transfers especially when now transfers are governed by the Maharashtra Government Service Regulations of transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short “the said Act of 2005”).

2. In the order dated 3rd December, 2018, we have recorded the assurance of the State that it will be ensured that the process of transfers will not be influenced by the recommendations made by elected representatives of people and the Hon’ble Ministers who are not concerned with the process of transfers. In terms of the said statement, Mr. Dinesh Kumar Jain, the Chief Secretary of the Government of Maharashtra has filed an Affidavit. The Affidavit dated 12th December, 2018 is taken on record and marked ‘A’ for identification. Paras-1 and 2 of the said Affidavit reads thus :

"1. I submit that I am filing the present Affidavit for the limited purpose of stating that the process of transfer at the level of the Government will not be influenced by any recommendations made by any political leaders, members of political parties or any Hon'ble Ministers who are not part of the process of transfers.

2. I submit that all authorities who are competent to effect the transfers will be advised to strictly follow the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 while issuing transfer order."

2. We accept the statements made in paragraphs-1 and 2 of the said affidavit quoted above as the Undertakings given on behalf of the State of Maharashtra. Now there is a clear assurance that all transfers will be effected strictly in accordance with the provisions of the said Act of 2005 and none of the transfers will now be influenced by the

recommendations of the political leaders including the Hon'ble Ministers (who are not a part of the process of transfers). We direct that the statements made in para-1 of the said Affidavit are brought to the notice of all the concerned who have to exercise powers of transfer under the said Act of 2015 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants.

3. The learned Counsel appearing for the petitioner had tendered across the bar a letter dated 20th November, 2002 addressed to the Advocate on record for the petitioner which is taken on record in which he has instructed his advocate to withdraw the6+ petition.

4. Hence, we pass the following order :

(i) *The writ petition is disposed of as withdrawn;*

(ii) *The statements made in paras-1 and 2 of Affidavit of Mr. Dinesh Kumar Jain, Chief Secretary of the State*

Government dated 12th December, 2018 are accepted as statements made on behalf of the State Government and the undertakings given by the State Government;

(iii) We hope and trust that the statements made in the Affidavit of Mr. Dinesh Kumar Jain are made known to all concerned authorities exercising powers under the said Act of 2005 to avoid any attempt of political influence in the process of transfer;

(iv) Though the Petition is disposed of, the protection granted to Shri. Shripat Shinde under Clause-11 of the order dated 2nd November, 2018 stands;

(v) There shall be no order as to costs.

(SANDEEP K. SHINDE, J)

(A.S. OKA, J)