

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 8771 OF 2019**

ARVIND ARJUN CHAUDHARI  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

...  
Advocate for Petitioner : Ms. P. S. Talekar h/f.  
M/s. Talekar and Associates  
AGP for Respondent No. 1 : Mr. A. R. Kale  
Advocate for Respondents No. 2 to 5 :  
Mrs. M. S. Mhase-Thube h/f. Jay and Co.  
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**CORAM: S. V. GANGAPURWALA &  
SHRIKANT D. KULKARNI, JJ.**

Reserved for orders on:	13.02.2020
Order Pronounced on:	30.04.2020

**ORDER (Per S. V. Gangapurwala, J.):**

1. The petitioner assails the order transferring the petitioner from Waluj to Sangli under transfer order dated 31.05.2018, so also, the communication dated 06.06.2019 rejecting the petitioner's request for re-transfer at it's original place viz. Waluj.

2. The petitioner had initially challenged the transfer order dated 31.05.2018 by filing Writ Petition No. 5329 of 2018. This Court disposed of the writ petition under order dated 26.04.2019 observing that the petitioner has joined at the transferred place and subsequently request application is made for his transfer at some nearby place. We had directed the respondents to take decision upon the request application of the petitioner on its own merits. The said request application is rejected on 06.06.2019.

3. Miss Talekar, learned counsel for the petitioner submits that in a span of eight years the petitioner is transferred seven times. The petitioner was promoted from the post of Fireman (Class - III) vide promotion order dated 16.10.2015 and was posted at Fire Station, Waluj under order dated 06.11.2015. On 31.05.2018 the petitioner is issued with the transfer order, thereby transferring the petitioner to Sangli. The learned counsel submits that the order of transfer is against the provisions of Section 3(1) of the

Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (*Act-2005*). It is also violative of Section 4(4) and 4(5) of the said Act. According to the learned counsel, the order of transfer and rejecting the request application to re-transfer is malafide. The petitioner is President of the Union and because of the same the petitioner is transferred. The respondents have falsely stated that no transfers are made owing to insufficiency of manpower in Class - III employees. The information received under Right to Information Act, 2005 discloses the transfer order of Class - III employees made on 10.06.2019.

The learned counsel further submits that the normal tenure provided for Group 'C' (Class III) employees is five years, after which transfers are prescribed to be effected as provided under Clause 6 of the Circular dated 27.11.1997. The learned counsel submits that for a minimum period of five years the petitioner cannot

be transferred being a Class - III employee as per the Circular dated 27.11.1997. An employee can be transferred after the tenure, only after calling for three preferred places of posting where he / she shall be posted. No such preference was called from the petitioner. The entire procedure was given go bye. It is only with a view to harass and victimise the petitioner the transfer orders are issued. The petitioner is Unit President of the Rayatraj Kamgar Union and is vocalizing his complaints against corruption with Maharashtra Industrial Development Corporation (*MIDC*). The petitioner also is always agitating house rent allowance facilities of employees, so also illegal transfers. The transfer order is vindictive and intended to thwart the activities of the Union gaining ground withing the MIDC exposing its corruption, mis-management and other illegalities. The order of transfer being illegal deserves to be set aside. The order rejecting the request application is also without application of mind. The Court directed to consider the application for

request on its own merits. Under the communication, rejecting the request application for re-transfer, the authority has opined that the Court has not directed to cancel the transfer order and that there is no need for transfer. All the aspects have not been considered.

4. Mrs. Mhase-Thube, learned counsel for the respondents submits that the appointment order of the petitioner carries a specific condition that the petitioner will be transferred, deputed at any place in the fire station of the Corporation as per the exigency and administrative necessity. The petitioner has accepted the said condition, now cannot make a grievance.

The learned counsel further submits that the department is short of staff and has to function with deficit number of employees. Though, the department has sanctioned posts of 771 out of the same 331 posts are vacant. The fire services of MIDC are categorised as emergency services by the State of Maharashtra. As per Rule 17 of the Maharashtra Industrial Development Corporation

Service Regulations, 1970 there is a provision enabling the Corporation to transfer the services of the employees anywhere and any time as per necessity. The provisions of Act-2005 are not applicable and are not adopted by the Corporation. The transfer order dated 10.06.2019 of some persons relied by the petitioner is not a transfer under the general transfers but is one made under administrative necessity. The three officials, named therein have been transferred for supervising the setup of a new fire station at Ambad. The employees in the new station have been taken on contract basis, though they are trained employees they are fresh recruits without experience of live firegrounds. To have an experienced staff to supervise them those three persons were transferred. There have been no other transfer orders, except the one relied by the petitioner. The learned counsel further submits that the petitioner is habitual litigant. He has filed numerous false and vexatious petitions time and again. False cases are filed by him only to

harass the superior officers. The petitioner is transferred on administrative grounds. There are no malafides on the part of the respondents nor the petitioner is victimised.

5. We have considered the submissions canvassed by the learned counsel for the parties.

6. It appears that the petitioner is a Group 'C' employee and the normal tenure is five years. The petitioner was promoted and posted as a Driver Operator to Fire Station, Waluj on 06.11.2015. Under transfer order dated 31.05.2018, the petitioner is transferred to Fire Station-Kupwad, Sangli on administrative grounds. The transfer order also suggest the same. Under the transfer order as many as eleven persons are transferred. The petitioner is one of them. It is not an isolated case of the transfer of the petitioner. It appears that as per Circular of the year 1997, normal tenure of Group 'C' employee is five years.

7. It cannot be a matter of debate that the fire department is an essential and emergency service.

It also appears, as per the affidavit filed, that the respondent is working with a deficit staff. It has to manage the staff with available workforce and that is why the petitioner was required to be transferred. It cannot be said that there are malafides.

8. Transfer is an incidence of service. As per the administrative exigency a person can be transferred. The petitioner herein is transferred under order dated 31.05.2018, more than 1½ year has lapsed. The petitioner has also joined at the transferred place. Today, five years would be nearing completion. In light of that, we would not like to interfere at this stage and unsettle the position.

9. It has been contended by the respondents that the general transfers are not effectuated and the transfer of three employees under order dated 10.06.2019 is on the ground that the station at Ambad was newly commenced and it was necessary to place experienced staff and none of the said



persons who were posted under the said order was Driver Operator. It cannot be said that the action of the respondents transferring the petitioner is malafide.

10. In the communication rejecting the application of the petitioner for re-transfer reasons are not properly given. The same would not affect the merits of the matter. The authority ought to have given some reasons while rejecting the application of the petitioner.

11. Considering the fact that the transfer order is effectuated on 31.05.2018 about 1½ year back, the petitioner has joined at the transferred place and that no general transfers were effectuated in the year 2019, we are not inclined to interfere in the order of transfer.

12. In light of the above, writ petition is disposed of. No costs.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

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