

Group of Hospitals (hereafter “the GGMC”, for short) have invoked the writ jurisdiction of this Court by presenting this application under Article 226 of the Constitution of India (hereafter “the writ petition”, for short) in their attempt to have a judgment and order dated January 9, 2021 passed by the Maharashtra Administrative Tribunal, Mumbai (hereafter “the Tribunal”, for short) set aside. By the said judgment and order, the Tribunal allowed Original Application No.507 of 2020 presented before it by the sole respondent in this writ petition (hereafter “Dr. Anand”, for short). An order dated August 5, 2020 bearing no.DMER/Covid-19/Deputation/558/2020 passed by the Director, invoking the Epidemic Disease Act, 1897 (hereafter “the ED Act”, for short) read with the Maharashtra COVID-19 Regulations, 2020 (hereafter “the Regulations”, for short) and assigning Dr. Anand on deputation at Swami Ramanand Teerth Rural Government Medical College, Ambejogai (hereafter “SRTR Medical College”, for short) was the order under challenge before the Tribunal. At the time of issuance of such order, Dr. Anand was discharging duties as Professor and Head of the Department of Gynaecology and Obstetrics of GGMC.

2. The grounds on which Dr. Anand challenged the order dated August 5, 2020 were: (i) the Director, in his capacity as

a Nodal Officer and Empowered Officer under the ED Act, transgressed his jurisdiction inasmuch as the ED Act does not confer any power on him to pass an order for assignment on deputation; (ii) although the order dated August 5, 2020 was framed in a manner as if it assigned Dr. Anand to SRTR Medical College on deputation, for all intents and purposes, the same was an order of transfer and such order of transfer was passed in clear breach of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereafter “the Transfer Act”, for short); (iii) Dr. Anand being an officer of the State services in Group ‘A’, his transfer could not have been directed by anyone else other than the Chief Minister; and (iv) the order of deputation/transfer is punitive in the sense that an Inquiry Committee had been constituted to look into certain complaints against Dr. Anand while he was on duty at GGMC and the findings of the Inquiry Committee formed the foundation for the impugned order without Dr. Anand being offered an opportunity to place his version against the allegations before the Inquiry Committee in compliance with principles of natural justice.

3. The Tribunal accepted the contentions advanced on behalf of Dr. Anand by Ms. Sonal, learned advocate and

overruled the opposition raised by the respondents in the original application by their Presenting Officer and consequently, while allowing the original application quashed the order dated August 5, 2020 and directed the respondents to “*repost Dr. Anand within a week*”.

4. Appearing in support of the writ petition, Mr. Kumbhakoni, learned Advocate General, contended that the judgment and order of the Tribunal is indefensible. According to him, power was exercised by the Director in strict adherence to the ED Act and the Regulations and having regard to the emergent need of preventing outbreak of COVID-19. He endeavoured to highlight before us that Dr. Anand was not keeping well and because of ill-health, he was not in a position to attend to the patients at the GGMC. Complaints having been received, an Inquiry Committee was constituted to ascertain the veracity of the allegations leveled therein. A questionnaire was forwarded to Dr. Anand by the Inquiry Committee to ascertain his views. Considering the comments of Dr. Anand as well as upon a detailed exercise undertaken by it, the Inquiry Committee arrived at findings that there was a lack of coordination between Dr. Anand and other members of the staff at GGMC which, in turn, affected the hospital administration and management of patient care

during the pandemic, and his guidance and assistance not being available to his subordinates, residents and patients, the image of the GGMC was tarnished. The Director being the Empowered Officer was well within his jurisdiction to take measures in preventing outbreak of the pandemic and the decision to assign Dr. Anand on deputation to SRTR Medical College was taken in public interest and for administrative exigency.

5. Mr. Kumbhakoni further contended that having regard to the grim situation in Mumbai after the lockdown was announced, it was an absolute necessity to have an officer to head the department of Gynaecology and Obstetrics who could maintain good coordination between himself and the staff/residents/patients and, therefore, without curtailing any of the entitlements of Dr. Anand, the impugned order was issued by the Director which can, by no stretch of imagination, be branded as illegal and arbitrary and therefore, it did not deserve to be quashed by the Tribunal. Further, Mr. Kumbhakoni submitted that Dr. Anand was assigned on deputation to SRTR Medical College for a temporary period, an aspect which the Tribunal failed to notice and, thus, erred in the exercise of its jurisdiction. It was also contended by Mr. Kumbhakoni that for the

machinery of the Government to work, some free-play in its joints has to be conceded to the administrative body and that interference by the Tribunal in the present case is an unnecessary interference with the decision taken by the State in the administrative sphere. He, accordingly, prayed for stay of operation of the judgment and order under challenge.

6. *Per contra*, Ms. Sonal has argued that having regard to the facts and circumstances, the materials on record vis-a-vis the law applicable thereto, the impugned judgment and order of the Tribunal is unexceptionable; hence, the writ petition does not deserve to be entertained.

7. It is the specific contention of Ms. Sonal that the power under the ED Act to take measures for preventing the spread of the pandemic cannot be exercised in a manner so as to breach the provisions of the Transfer Act and thereby take away the rights that are guaranteed to officers like Dr, Anand. If indeed, such power is conceded, valuable rights of officers of the State services would be impaired and such is not the intent and purpose of the ED Act. The ED Act cannot be read, understood and interpreted in a manner divorced from the statutory provisions, which govern the terms and conditions of service of Dr. Anand as well as the protection guaranteed by Articles 14, 16, 21 and 311 of the Constitution

of India. If Dr. Anand was remiss and negligent in discharge of his duties, nothing prevented the disciplinary authority to initiate departmental proceedings in accordance with the Rules framed under Article 309 of the Constitution of India; however, no such proceedings were drawn up and instead, Dr. Anand was made to answer certain queries in the form of a questionnaire and based on the findings arrived at by the Inquiry Committee behind Dr. Anand's back, the report of such Committee was made the foundation for issuance of a stigmatic order of transfer, finely disguised as an order of deputation. There being no valid exercise of power by the Director, the Tribunal's interference with the impugned order was perfectly justified on facts and in the circumstances. It has also been contended by Ms. Sonal that if indeed prevention of outbreak of pandemic in GGMC was the paramount consideration to shift Dr. Anand out, it defies logic as to why it took almost 3 (three) months to issue the impugned order dated August 5, 2020 from the date the Inquiry Committee submitted its report and thereafter, nearly 2(two) months to find out a replacement for Dr. Anand. The time taken for completing the inquiry and finding out a replacement for Dr. Anand over several months does not suggest that the Director or, for that matter, the State was acting in an emergency like situation; instead it is clear that

the Director took his own time in the matter which disproves the contention on behalf of the State that Dr. Anand was assigned on deputation at SRTR Medical College in view of the scary situation brought about by the pandemic. She has, thus, prayed for dismissal of the writ petition at the admission stage.

8. We have heard Mr. Kumbhakoni and Ms. Sonal at length and have perused the materials on record. Since the Tribunal has found fault with the Director's invocation of power under the ED Act as well as Regulations assigning Dr. Anand on deputation at SRTR Medical College, it would be profitable to read section 2 thereof together with the relevant provisions of the Regulations.

9. Section 2 of the ED Act reads as follows:

2. Power to take special measures and prescribe regulations as to dangerous epidemic disease.—

(1) When at any time the State Government is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the State Government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary

regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.

(2) In particular and without prejudice to the generality of the foregoing provisions, the State Government may take measures and prescribe regulations for—

(a)*** (omitted)

(b) the inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

Regulations 3 and 10 of the Regulations may have some bearing on the subject matter and therefore, are quoted below:

“3. ‘Empowered Officer’ under Section 2(1) of the Act shall be Commissioner, Health Services, Director of Health Services (DHS-I & II), Director, Medical Education & Research (DMER), all Divisional Commissioners of Revenue Divisions & all Collectors and Municipal Commissioners & they are empowered to take such measures as are necessary to prevent the outbreak of COVID-19 or

the spread thereof within their respective jurisdictions.

10. In the event of COVID-19 being reported from a defined geographic area such as village, town, ward, colony, settlement, the Collector of the concerned District /Municipal Commissioner of the concerned Municipal Corporation shall be competent to implement following containment measures, but not limited to these, in order to prevent spread of the disease.

- i. Sealing of the geographical area.
- ii. Barring entry and exit of population from the containment area.
- iii. Restricting Vehicular Movement in the area.
- iv. Closure of schools, offices, cinema halls, swimming pools, gyms, etc. and banning mass congregations, functions as may be deemed necessary.
- v. Initiating active and passive surveillance of COVID-19 cases.
- vi. Hospital isolation of all suspected cases and their contacts.
- vii. Designating any Government or Private Building as a quarantine facility.
- viii. Any other measure as directed by Public Health Department of Government of Maharashtra.

Staff of all Government Departments and Organisations of the concerned area will be at the disposal of Collector/ Municipal Commissioner for discharging the duty of containment measures. If

required, Collector / Municipal Commissioner may requisition the services of any other person also.”

10. Having regard to the scheme of the ED Act and the Regulations, it is difficult to trace a power to transfer an officer or to assign an officer on deputation in breach of the other statutory provisions governing the terms and conditions of such officer. The Regulations obviously cannot override the Transfer Act and, therefore, has to yield to the latter. The ED Act being a Central Act [referable to Entry 29 of List-III of the Constitution of India], and the Transfer Act a State Act [which has Article 309 as its source], what calls for examination next is, whether any inconsistency exists between the two enactments. Having read the extant laws, we also do not see any inconsistency between the ED Act and the Transfer Act. The said statutory provisions operate in completely separate fields. The primary object of the ED Act is to prevent spread of an epidemic and authorizes measures to be taken such as those extracted supra and also other measures not clearly specified for prevention of spread. The specific measures which could be taken do not include any step of the nature with which we are concerned. Shifting an officer out from a post held by him except in accordance with the provisions governing his employment, we are persuaded to hold, is not even an implied power that the Director possesses in terms of

the ED Act. In order that exercise of power under a general law does not conflict with a special law in a case of the present nature, in our considered view, the power of the Director, if any, as the Empowered Officer under the ED Act could not have been exercised in complete disregard/derogation of the Transfer Act. Having regard to the office Dr. Anand was holding on August 5, 2020, it is none other than the Chief Minister who would be the Competent Authority under the Transfer Act to direct his transfer. If indeed it is conceded that the Director, being the Empowered Officer, has power so wide as to transfer any officer/government servant notwithstanding the safeguards provided in the statutory provisions, such power would be susceptible to a charge of being arbitrary and offending Article 14 of the Constitution of India. Regard being had to the facts of the instant case where the Inquiry Committee was constituted on May 13, 2020 and submitted its report on the following day and it took the Director time till August 5, 2020 to exercise power under the ED Act, as contended, it defies logic as to why the Chief Minister was not consulted prior to directing Dr. Anand to report at SRTR Medical Hospital in pursuance of the impugned order dated August 5, 2020. We are inclined to the view that there was no such grave emergency which could brook no delay and thereby the

opinion of the Chief Minister could have been forsaken. We, therefore, concur with the Tribunal that the Director erred in assuming unto himself the power to shift Dr. Anand out from GGMC to SRTR Medical Hospital as if he was empowered to do so under the provisions of the ED Act and the Regulations.

11. Assuming arguendo that the Director did have power under the ED Act read with the Regulations to issue the order dated August 5, 2020, we have no doubt in our mind that exercise of power in this behalf stood vitiated by malice in law. Although Ms. Sonal has tried to impress upon us that exercise of such power by the Director is also vitiated by malice in fact and that the Director was successful in replacing Dr. Anand by appointing an officer of his own choice, we need not deal with the same since such a point has been raised only in course of arguments before us. However, closer examination of the impugned order dated August 5, 2020 does suggest that it is a clear-cut case of legal malice. The Director disguised a pure and simple transfer order and cloaked it by referring it to be an order of deputation. **State of Punjab and Others vs. Inder Singh and Others**, reported in (1997) 8 SCC 372, is a decision by the Supreme Court explaining the concept of deputation upon consideration of various authorities. We consider it

profitable to reproduce paragraph 18 thereof hereinbelow for facility of guidance:

“18. The concept of ‘deputation’ is well understood in service law and has a recognised meaning. ‘Deputation’ has a different connotation in service law and the dictionary meaning of the word ‘deputation’ is of no help. In simple ‘deputation’ means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. ***”

(Emphasis Supplied)

12. We inquired of Mr. Kumbhakoni as to whether the word “deputation” has been defined either in the Transfer Act or the Maharashtra Services (General Conditions of Service) Rules, 1981 or in any other Rule framed under Article 309 of

the Constitution. He answered in the negative. Drawing guidance from the decision in **Inder Singh** (supra), deputation of an employee is service on a post which is outside his cadre or outside his parent department, and that too with his consent. In the present case, neither has Dr. Anand been posted outside his cadre nor outside his department. Consent of Dr. Anand was also not taken. The order dated August 5, 2020, although is camouflaged as an order of deputation, is on the face of it an order of transfer. An order of transfer could have been passed only in accordance with the terms of the Transfer Act and not otherwise. By describing the order dated August 5, 2020 as an order of deputation and not transfer, the Director took recourse to an action which the law abhors and such action appears to us to be plainly indefensible.

13. Finally, we record our agreement with the contention of Ms. Sonal that the inquiry report dated May 14, 2020 formed the foundation for Dr. Anand's transfer to SRTR Medical Hospital and has civil consequences. The transfer was directed not purely in public interest or administrative exigency, but treating the Inquiry Committee's report as sacrosanct without Dr. Anand being given an opportunity of defending the allegations levelled against him and without

giving him the chance to respond to such report. Mere handing over of a questionnaire for eliciting views on certain queries is no part of due process of law. It has transpired from the materials on record that Dr. Anand had been quarantined for quite some time and as a result thereof he was not regularly available for discharge of his duties at GGMC. If indeed such absence affected the hospital administration as well as there was lack of proper health care facilities for patients, nothing prevented a simplicitor transfer order posting Dr. Anand to SRTR Medical Hospital being issued without casting any stigma on his reputation or performance of duties. The impugned order dated August 5, 2020 waxes eloquent on how Dr. Anand was found to be remiss in discharging duties, triggering the transfer. A Government servant, holding a transferable service, can be transferred from one post to another having regard to administrative policy or practice or because of administrative reasons is beyond any shadow of doubt. When reasons for transfer are administrative in nature and the appropriate authority acts *bona fide*, the Court has to stay at a distance and not interfere with such administrative order of transfer. However, an order of transfer could be labelled as *mala fide* if it is used as a cloak for punishment. Unless a case of *mala fide* is pleaded and proved, it may not be appropriate for the

Court to review the expediency and propriety of an administrative order to transfer a Government servant from one post to the other. Whenever a transfer order is proved to have been issued *mala fide* or when such an order has penal consequences, the Court ought not hesitate to strike down the transfer order.

14. Having regard to the aforesaid guiding principles and bearing the facts and circumstances of this case vis-à-vis the extant statutory provisions in mind, we are constrained to hold that the impugned order dated August 5, 2020 was rightly interdicted and have no doubt in our mind that the impugned judgment and order dated January 9, 2021 is unexceptionable; thus, this writ petition deserves summary dismissal. It is ordered accordingly.

15. There shall be no order as to costs.

16. The direction of the Tribunal for re-posting Dr. Anand may be implemented by the petitioners within two weeks from date.

G. S. KULKARNI, J.

CHIEF JUSTICE