

## Writ Appeal No.288 of 2014

6. 30.09.2014  
(CAV Order)

This Writ Appeal has been directed against the judgment dated 26.7.2014 passed by the Hon'ble Single Judge in W.P.(C) No.10216 of 2014. While disposing of the said writ application, the Hon'ble Single Judge directed the appellants to have a re-look at the difficulties of the respondent and modify the order of transfer and consequently, the relieve order thereby allowing the respondent to continue in and around Bhubaneswar or Puri Town till he attains the age of superannuation. Hon'ble Single Judge further directed that the decision should be taken within one month.

**2.** The facts in the present case are as follows;

The respondent was initially appointed as a Clerk-cum-Cashier and was posted at Bhubaneswar Main Branch. Thereafter, he was promoted to the grade of OJM (I) and was posted at Angul Branch under Sambalpur Module. Again, he was promoted to the post of MMGS (II). The respondent was transferred to the Forest Park Branch in May, 2007 and continued thereafter in and around Bhubaneswar in the Branch as well as in administrative offices till 11.8.2013, where after he was transferred to Puri Branch. Thereafter, the respondent was transferred from Puri Branch of Bhubaneswar Zone-II to Berhampur Zone as per the Transfer Policy 2014-15 during April, 2014. Since the respondent is suffering from heart disease and has undergone Angioplasty Surgery, since his son is suffering from mental disease and currently under treatment and further since his daughter is studying B.Tech at Bhubaneswar, the respondent prayed for

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cancellation of transfer order on 2.5.2014 by addressing a representation (Annexure-7 to the writ petition) to the Regional Manager, State Bank of India, Region-II, Zone-II, Bhubaneswar and further prayed that he be posted at Bhubaneswar on compassionate ground. It is undisputed that the respondent is going to retire on 2.6.2016. When nothing was done, the respondent filed W.P.(C) No.10216 of 2014 before this Court praying for setting aside the impugned transfer order and relieve order dated 19.5.2014. On notice, the appellants filed their counter-affidavit and ultimately, W.P.(C) No.10216 of 2014 was disposed of vide judgment dated 26.7.2014 pronounced by the Hon'ble Single Judge. While disposing of the said writ application, the Hon'ble Single Judge as indicated above directed the appellants to have a re-look at the difficulties of the respondent and modify the order of transfer and relieve order thereby allowing the respondent to continue in and around Bhubaneswar or Puri Town till he attains the age of superannuation. Challenging the same, the appellants have filed the present writ appeal.

**3.** Heard Mr. Rajat Kumar Rath, learned Senior Advocate, for the appellants and Mr. Amitav Bagchi, learned counsel for the respondent.

**4.** Mr. Rath, learned Senior Advocate for the appellants submits that though Mr. Bagchi, learned counsel for the respondent fairly admitted before the Hon'ble Single Judge that his client has not challenged the order of transfer on the ground of malafide or violation of any statutory rules as has been noted in Paragraph-11 of the impugned judgment, however, the Hon'ble Single Judge has erroneously directed

the appellants to modify the transfer order and relieve order

as indicated above. According to Mr. Rath, when the respondent had failed to prove any malafide and violation of statutory rules in passing of the order of transfer, the Hon'ble Single Judge ought to have dismissed the writ application filed by the respondent. Further Mr. Rath submitted that since the respondent has been transferred to a Branch inside Berhampur city and since MKCG Medical College and Hospital has got adequate facilities for treating heart disease as well as psychiatric disease, the respondent would have no difficulty in continuing with his treatment and also the treatment of his son at Berhampur. Further Shri Rath submitted that respondent has already completed 6 years of service in Bhubaneswar Zone/ Module and out of 32 years of service career, he has been posted at Bhubaneswar for 23 years. Lastly, Mr. Rath relied on a decision of the Hon'ble Supreme Court in the case of **State of U.P. and others v. Gobardhan Lal** reported in **AIR 2004 Supreme Court 2165** wherein it has been laid down as follows;

“8.It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an

opportunity to the officer or servant concerned to approach their higher authorities for redress but

cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

In such background, Mr. Rath, learned Senior Advocate contended that the Hon’ble Single Judge has gone wrong in issuing a direction to modify the order of transfer and relieve order to enable the respondent to continue in and around Bhubaneswar and Puri Town till he attains the age of superannuation.

**5.** On the contrary, Mr. Bagchi, learned counsel for the respondent defended the impugned judgment passed by the Hon’ble Single Judge and submitted that the same has been passed correctly taking into account the Circle Transfer Policy of the Bank, which itself speaks about minimizing a hardship to an officer in case of transfer. Mr. Bagchi drew our attention to Clause-1.4 of the

Circle Transfer Policy, which was annexed as Annexure-2 to the writ application. The same makes it clear that an officer may be put to hardship consequent on transfer on account of ill health of the officer or a member of his/her family (depending on him/her) requiring special medical facilities. Also he drew our attention to Clause-7.0 of the Circle Transfer Policy which deals with Special Cases for Transfer on Compassionate grounds. He further submitted that the representation dated 2.5.2014 made by the respondent praying for cancellation of transfer under Annexure-7 is still lying undisposed of. In such background, he defended the judgment passed by the Hon'ble Single Judge by which the appellants have been directed to have a re-look at the difficulties of the respondent by modifying the order of transfer so as to allow the respondent to continue in and around Bhubaneswar or Puri Town till he attains the age of superannuation, i.e., on 2.6.2016.

**6.** Perused the records.

**7.** It is settled that the transfer order, which has been made in public interest and for administrative reasons, should not be interfered with unless it has been made in violation of any statutory rule or the same is a product of malafide. At the same time, no one can deny a public servant his right to approach to the competent authority for modification or cancellation of the transfer order. It is true that no Government servant or a public servant once appointed or posted in a particular place or position, should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service. It is also settled that order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights. Thus, the Circle Transfer Policy

containing guidelines does not confer any legally enforceable right.

**8.** For all these reasons, we dispose of this writ appeal by modifying the ordering portion at Paragraph-13 of the impugned judgment by directing that in case the respondent submits a fresh representation before appellant No.2 within one week from today highlighting all his grievances, appellant no.2 should give a re-look at the difficulties of the respondent including the fact that his son is undergoing psychiatric treatment and shall dispose of the representation in a sympathetic manner. Till disposal of such representation, no coercive action shall be taken against the respondent.

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**Pradip Mohanty, J.**

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**Biswajit Mohanty, J.**