

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.10334 of 2019

ORDER:

This writ petition is filed seeking a Writ of Certiorari to call for the relevant records relating to and connected with Memorandum dated 07.05.2019 of the 3rd respondent and quash or set aside the same holding it as arbitrary, illegal, unjust and violative of Article 14 of the Constitution of India and sought a consequential direction to the respondents to continue the petitioner in Hyderabad region or in the State of Andhra Pradesh.

Heard Sri Goda Siva, learned counsel for the petitioner, and Sri Salloori Ramesh, learned Standing Counsel appearing for the respondents.

It has been contended by the petitioner that she was initially appointed as a Cashier-cum-Clerk with the respondent Bank during September, 1986 and later on promoted as Scale-I Officer, Scale-II Officer and Scale-III Officer. The petitioner further submits that she has been discharging her duties to the best satisfaction of her superiors and every one concerned. The petitioner also submits that she was promoted as Scale-IV Officer on 01.06.2011 and posted to Chennai and, after rendering a considerable length of service in Chennai, she was posted back to Hyderabad on 06.08.2013 and presently she is working as Chief Manager in S.D.Road Branch. The grievance of the petitioner is that though she has not completed six years of service in Hyderabad, she is transferred to Chennai vide impugned orders dated 07.05.2019, therefore, the action of the respondents in transferring her to Chennai by the impugned orders is sought to be declared as arbitrary, illegal and contrary to the transfer

policy. The petitioner is also challenging the said transfer order on the ground that some of the employees of the respondent Bank are retained in their present place of working even after completion of six years of their service. To strength this, she has cited some of the names of such employees who are retained in their respective places, i.e., one Gollahalli Raviraj, Tadala Rajgopal, Juluri Sudhakar and Ameer Babu Sheikh and stated that they were all working in their respective places earlier than the petitioner, but the respondents, instead of transferring them, retained them and selectively picked and chosen the petitioner for transfer from Secunderabad to Chennai. The petitioner has also cited the name of one Veronica Tixiera, who has been working in Mumbai for more than ten years. Therefore, the petitioner contends that picking and choosing her only for transfer is arbitrary action of the respondents.

Another ground raised by the petitioner is that while she was working as Scale-III Officer in Hyderabad, the Deputy General Manager – Sri K. Charmana had harassed her and indulged in a conduct which straight away attracted the offence of sexual harassment at work place. The petitioner submitted that as the said Deputy General Manager was harassing her with vulgar remarks and gestures indicating sexual advances and favours, she gave a complaint against him, but no action was initiated against him as per the law laid down by the Honourable Supreme Court in **Visaka v. State of Rajasthan**¹ and the subsequent guidelines issued by the Government of India. When no action was initiated against the said Deputy General Manager and the petitioner sought information under Right to Information Act, then only the petitioner was communicated the final report, wherein it was stated that the petitioner could not bring home

¹ (1997) 6 SCC 241

the charge against the said Officer. The petitioner further submits that when her case for promotion to the post of Scale-V Officer was not considered, she has filed a writ petition being W.P.No.40079 of 2018 and the same is pending. When the petitioner was pursuing her remedies, the respondents bore grudge against her and, with illegal malice, transferred her contrary to the transfer guidelines and also the Ministry of Finance letter dated 08.08.2014. The petitioner further submits that the Ministry of Finance had issued a letter on 08.08.2014, wherein a policy was made that female employees of Public Sector Banks (PSBs), married or unmarried, should be posted near to their husband or parents as far as possible. The petitioner submits that in pursuance of the said letter of Ministry of Finance, the respondent Bank had evolved a transfer policy vide circular dated 13.01.2017, wherein it makes abundantly clear that the spirit of the policy is that the male/female officers who have reached the age of 54/52 respectively and have already served in the Region continuously for 6 years or more are subject to job rotation within the Region. Therefore, the petitioner states that the impugned transfer order is liable to be set aside declaring it as illegal and arbitrary.

Learned counsel for the petitioner submits that subsequent to issuance of the transfer orders, the petitioner has submitted a representation to the respondents on 10.05.2019 and, during pendency of this writ petition, the respondents have rejected the same vide proceedings dated 17.05.2019. Learned counsel further submits that appropriate orders be passed in the writ petition by setting aside the impugned transfer order dated 07.05.2019 and further direct the respondents to continue and retain the petitioner at the present place of working i.e., at Secunderabad.

Learned Standing Counsel appearing for the respondents had contended that on administrative grounds, the petitioner was transferred from Secunderabad to Chennai and there is no malice, arbitrary action and discrimination against the petitioner. Insofar as the contention of the petitioner that she is transferred only because she has made a complaint against the then Deputy General Manager for sexual harassment, the learned Standing Counsel submitted that the said incident happened in the year 2008-09 and the respondents have enquired into the said matter and passed final orders based upon the complaint and thereafter during the year 2011, the case of the petitioner for promotion to the post of Scale-IV Officer was considered and she was transferred to Chennai and that these grounds were very much available to the petitioner even in the year 2011, but she has not raised any protest or demur while accepting the transfer order issued in 2011.

Learned Standing Counsel appearing for the respondents had further contended that so far as the Service Regulations are concerned, the transfer is an incident of service and transfer policy relied upon by the petitioner is applicable only upto Scale-III Officers, but not to Scale-IV Officers, and the transfer guidelines issued vide staff circular No.6498 dated 15.12.2016 are filed by the respondent Bank at page No.58 of the counter affidavit. Learned Standing Counsel has drawn attention to guideline No.2 of the said transfer guidelines, which deals with eligibility, and it reads thus:

“ELIGIBILITY:

Transfers of all permanent officers from JMGS-I to MMGS-III will be governed by this Policy. Accordingly, “Officer” for the purpose of this shall only mean any officer presently working in JMGS-I to MMGS-III.”

Learned Standing Counsel contends that the transfer policy relied upon by the petitioner is not applicable to Scale-IV Officers. Learned

counsel has further submitted that several officers are transferred to various places and they are made in accordance with exigencies of service and for administrative reasons. Learned Standing Counsel also submits that normally the Courts should not interfere with the transfer orders, but if some malafides are attributed, for the proven malafides only, the Courts can interfere with the transfer orders. To strengthen his case, learned Standing Counsel has relied upon the judgment of the Hon'ble Supreme Court in **Shipping Corporation of India Ltd. v. Machado Brothers**² and **Union of India v. S.L. Abbas**³, wherein the Honourable Supreme Court observed as under:

“Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.”

Learned Standing Counsel appearing for the respondents has further relied upon the judgment rendered by the Honourable Supreme Court in **Shilpi Bose v. State of Bihar**⁴, wherein it was held as under:

“In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to

² (2004) 11 SCC 168

³ (1993) 4 SCC 357

⁴ 1991 Supp (2) SCC 659

be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

Learned Standing counsel further submits that the representation submitted by the petitioner for cancelling the transfer orders was considered by the respondents objectively, but it was rejected vide orders dated 17.05.2019. Learned Standing Counsel also submits that it is not that the petitioner is transferred for the first time, earlier in the year 2011 also, the petitioner was transferred from Hyderabad to Chennai and, at that time, she has not raised any protest or demur and the grounds raised now were very much available to the petitioner even during 2011, but she has accepted the transfer and worked in Chennai for two years and later on, she was transferred to Hyderabad during 2013. In the entire career of the petitioner, the petitioner has worked most of the time in Hyderabad and the respondent Bank has transferred the petitioner on administrative exigencies and this Court should not interfere with the impugned transfer order; there are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions made by learned counsel for both parties, is of the considered view that the transfer is an incident of service and the contention of the petitioner that she is being victimized by transfer just because she has made a complaint against the

then Deputy General Manager in the year 2009 is part-II stretched contention. That incident has happened more than 10 years back and it is not that the petitioner is transferred for the first time since that incident. In the year 2011 also, the petitioner was transferred to Chennai on promotion and she has accepted the said transfer order. The petitioner now cannot turn around and contend that she has been singled out only for the incident which happened about ten years ago. So far as the contention of the petitioner that she has been transferred contrary to the transfer policy and transfer guidelines are concerned, the transfer policy and the transfer guidelines relied upon by the petitioner do not have any application for the Officers who are working in Scale-IV. Admittedly, the petitioner is working in Scale-IV grade and the transfer policy and the transfer guidelines relied upon by the petitioner are not applicable to the petitioner. When the petitioner is working in high position, such as Scale-IV Officer, she cannot have any grievance in respect of transfer. She has to take up the responsibility and discharge her duties.

With regard to the contention of the petitioner that some of the employees are continuing in the same place of work even for ten years, is concerned, it is for the administration to decide who should work where and it is not for the Courts. If that argument is to be accepted, the petitioner also worked in Hyderabad in different Grades for more than 10 years. Therefore, the petitioner cannot compare herself with other employees and contend that she has been singled out and discriminated. Therefore, learned Standing Counsel appearing for the respondents had rightly pointed out that in the above referred judgments of the Supreme Court, it was held that the Courts should not interfere with the transfer orders, as it is for the administration to post any Officer and that the

transfer is an incident of service. Therefore, this Court is not inclined to interfere in the matter.

Accordingly, the writ petition is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

28th June 2019
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