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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8623/2023, CM APPL. 32733/2023 & CM APPL. 32734/2023

ALL INDIA ESIC EMPLOYEES FEDERATION..... Petitioner
Through: Mr. Vishnu Shankar Jain, Mr. Mani and Mr. Marbiang Khungwir, Advs.

versus

EMPLOYEES STATE INSURANCE CORPORATION AND ANR. Respondents
Through: Mr. Manish Kumar Saran, Advocate for Respondent (ESIC)

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER (O R A L)

% **28.06.2023**

per C.HARI SHANKAR, J

1. This writ petition under article 226 of the Constitution of India assails the following order dated 2 June 2023 passed by the learned Central Administrative Tribunal (“the learned Tribunal”, hereinafter) in a batch of original applications, including O.A. 529/2023, preferred by the present petitioner. The impugned order reads thus:

“1. Learned counsel for the applicant initially submits that the applicants would not be pressing their prayer seeking quashing of the impugned Transfer Policy. However, they would like to contest some actions of the Chairman of ESIC vide which interstate transfers are either proposed or have been Made.

2. We have to confine ourselves to the prayer made in the OA. In case the applicant has no problem now with the impugned transfer policy, nothing sustains in the OA. However, when this is



pointed out to the learned counsel for the applicant, he reverses his decision and submits that he would argue the OA on its own merit and seeks the relief as prayed for Counter reply is not on record. Let the respondents file reply within four weeks. Rejoinder, if any, may be filed within two weeks thereafter.

3. Learned counsel for the applicants prays for adjudication on the applicants prayer for interim relief, i.e., a stay on the transfer policy. We are not inclined to show any indulgence in the matter. Moreover, he has himself made a statement initially that he would be altering the prayer. Further, putting a restraint on policy is neither advisable and nor a correct course of action. It would be putting shackles on the respondents preventing them from taking routine administrative decisions.

4. Accordingly, the prayer for interim relief stands rejected.

5. List on 21.08.2023.”

2. Mr. Vishnu Shankar Jain, learned Counsel for the petitioner essentially advanced, as the grounds for assailing the impugned order, two contentions.

3. The first contention of Mr. Jain is that, in similar circumstances, with respect to a parallel policy applicable to clinical staff in the ESIC, a coordinate bench of the learned Tribunal had, *vide* order dated 24 May 2023 in OA 1535/2023 (**Dr. Meenu Mittal v. ESIC**), granted a stay of the transfer of the applicant in that case. He has invited our attention to the said decision.

4. Paras 8.8 to 8.10 and 9 of the said decision, excluding the extract from the earlier decision in OA 2512/2022, which stands reproduced in para 8.10, reads thus:

“8.8 As per the impugned order of Transfer Annexure A-2, the Competent Authority on recommendation of Transfer Committee has ordered Annual General Transfers for the Transfer year 2023 with immediate effect. The applicant’s name is at Sl. No.25, who is



transferred from Rohini Dental College to Gulbarga Dental College. The impugned transfer order also highlights Clause 3 which reads as under:

“Due to technical reasons, Minutes of Transfer Committee is not being uploaded in HRMS portal and is made available on ESIC Hqrs” website for information of Officers of aforesaid cadre.”

8.9 No explanation whatsoever is coming forth as despite having a time-line as per Annexure A-II, as already highlighted above, the preparatory work of annual transfer has to commence from 1st December and the Transfer Committee has to recommend till the disposal of online grievances regarding proposed transfer, i.e. on or before 15 March. No plausible reason is coming forth as to why vast transfers have been made de hors the policy as well as time-line itself. It is also noticeable that the Dental College of Gulbarga, Karnataka is just opened six years back. There are only 32 Dental Faculty in Rohini. No plausible reason is coming forth prima facie at this stage why all the remaining 28 faculty members have been transferred to Karnataka and all 9 regular dental faculty at Gulbarga to Delhi. It is also noticeable that since the ESIC Gulbarga Karnataka has opened only 6 years back, why all of a sudden such mass transfers have been made contrary to the time-line and also to the fact that there are limited number of vacancies at Gulbarga.

8.10 In view of the above, the applicant has made a prima facie case, balance of convenience also lies in her favour. The transfers have been effected without affording an opportunity of hearing as well as without following the time-line, that too, without justification. Applicant has made a representation to recall the transfer order, but the same is still pending consideration with the respondents and not taken into account. The respondents ought not to have issued transfer order before deciding the said representation. It is highlighted that as per the criteria as laid down in the transfer policy, the applicant being a single women doctor and single parent is covered at Sl. No.2 & 3 having matrix marks 10 each and she is also covered under Sl. No.5 wherein 20 matrix marks are to be given. Hence, she was entitled to be given 40 weightage matrix marks. Needless to mention that though the policy contemplates priority matrix to consider options submitted for transfer, however, no such options have been called. Without complying with the norms of the policy, prima facie the transfer order appears to be bad in law. This Tribunal in OA No.2512/2022 titled as Jitendra Kumar Meena vs. Ministry of Labour and Employment decided on 25.11.2022 has observed as under:



9. In view of the above, the operation of the transfer order dated 20.05.2023 qua the applicant is directed to be kept in abeyance till further orders. In the meantime, liberty is also granted to the applicant to prefer a representation to the appropriate authority in terms of Transfer Policy within a stipulated time-line. The Competent Authority amongst the respondents shall dispose of the same by passing a reasoned and speaking order, duly taking into consideration the weightage points. Needless to say that while disposing of the representation, the respondents shall adhere to the principles of natural justice. Thereafter, the respondents shall be at liberty to move an appropriate application seeking modification and/or vacation of this interim order.”

5. The second ground of which Mr. Jain assails the impugned order is that the transfer policy dated 20 May 2022, whereunder the members of the petitioner federation were transferred, is in violation of the ESI Act.

6. We have considered the said submissions.

7. The present petition assails the impugned order dated 2 June 2023, passed by the learned Tribunal, only to the extent that it rejects the petitioner’s prayer for stay of transfer. A reading of the impugned order discloses, interestingly, that the petitioner was vacillating the stand that was taken before the learned Tribunal when the matter was argued. Initially, learned Counsel for the petitioner stated that the prayer for quashing of the transfer policy was not being pressed. When the learned Tribunal observed that, in that case, possibly nothing remained in the OA, learned Counsel stated that he desired to assail the policy itself. It was in these circumstances that the learned Tribunal proceeded to express its view that it was not advisable or



desirable to to grant a complete restraint on operation of the transfer policy of the ESI, as it would seriously impact the taking of administrative decisions by the ESI in keeping with the transfer policy.

8. We are unable to find any infirmity in this view. As a matter of principle, ordinarily, transfer policies cannot be stayed wholesale, even if they are challenged. It is well settled that the mere establishment of a *prima facie* case does not entitle an applicant or a petitioner to interlocutory injunctive relief. A stay can be granted only if the *troika* of a *prima facie* case, balance of convenience and irreparable loss is found concomitantly to exist in the matter. The learned Tribunal was, in our view, perfectly justified in observing that it would not be advisable to stay the transfer policy as a whole.

9. The question of whether to grant, or not to grant, interlocutory relief, is a matter of judicial discretion, and does not ordinarily brook interference by certiorari, save and except where the manner of exercise of discretion is manifestly illegal or perverse.

10. In so far as the submission, advanced by Mr. Jain, to the effect that, in the case of similarly situated employees on the clinical site in the ESIC, the Coordinate bench of the learned Tribunal had in fact granted stay, we have perused the decision in ***Dr Meenu Mittal***, and reproduced, hereinabove, the relevant passages therefrom. Mr. Jain has stressed, in this context, the initial observation in para 8.9 of the decision of the learned Tribunal in ***Dr. Meenu Mittal***, which noted that the transfer was not effected in accordance with the timelines



stipulated in the transfer policy. *Mutatis mutandis*, he submits, the same situation obtains here.

11. A reading of the decision in ***Dr. Meenu Mittal*** reveals that the learned Tribunal did not proceed solely on this ground. There were several other circumstances which obtained in the case of ***Dr. Meenu Mittal***, and which are not forthcoming in the present case, which persuaded the learned Tribunal to stay the transfer of Dr. Meenu Mittal in that case.

12. Without commenting on the correctness of the order dated 24 May 2023 passed by the learned Tribunal in the case of ***Dr. Meenu Mittal***, we may only observe that the legal position with regard to granting of interlocutory stay against transfer orders is no longer *res integra*. There is a wide swathe of authorities, starting from ***U.O.I. v. S.L. Abbas***¹, which hold that transfer orders are ordinarily not to be interfered with. In a recent decision passed by a division bench of this Court in ***Alok Kumar Verma v. UOI***², this Court has noted the law that has developed on the point and observed that, as things stand today, the only real ground on which a transfer could be challenged is if it is actuated by *mala fides*. No such allegation, much less material or evidence, is forthcoming in the present case.

13. The impugned order merely rejects the petitioner's request for stay of operation of the transfer policy whereunder the petitioner was transferred. We do not feel that any case for interference with the said

¹ (1993) 4 SCC 357

² 2022 SCC OnLine Del 4061



decision is made out, within the parameters of Article 226 of Constitution of India.

14. The present petition is accordingly dismissed *in limine*.

**C.HARI SHANKAR, J
(VACATION JUDGE)**

**MANOJ JAIN, J
(VACATION JUDGE)**

JUNE 28, 2023
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