

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C.) No. 7369/2009**
Judgment Reserved on: 03.02.2010
% **Judgment Delivered on: 11.02.2010**
Dr. (Mrs.) Mercy Helen Petitioner
! Through: Mr. M.C. Dhingra, Advocate.
Versus
\$ Indian Council of Philosophical Research and Others
.....Respondents
^ Through: Mr. K.C. Mittal, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J

Aggrieved by her transfer from Delhi to Lucknow, the petitioner has filed this writ petition seeking quashing of her transfer order dated 01.12.2008. The operation of the impugned transfer order was stayed by this Court vide interim order dated 06.03.2009 and the said interim order is continuing till date.

2. The petitioner was appointed as Director (Planning & Research) with Indian Council of Philosophical Research (in short 'the Council') vide appointment letter dated 13.05.2003 with a stipulation that she may be required to serve in any office of the Council anywhere in the country.

Her initial posting, however, was at New Delhi. In December 2004, she was given the additional charge of the post of Director (Administration & Finance) and was later on given further additional charge of Member-Secretary also. The additional charge of Member-Secretary remained with her till 13.10.2007 when Member-Secretary of respondent No. 1 Council was appointed. She was relieved of the additional charge of Director (Administration & Finance) w.e.f. 23.01.2008 upon appointment of Dr. Surendra Kumar as Director (Administration & Finance). Now, vide impugned transfer order dated 01.12.2008, she has been transferred as Director, Academic Centre of respondent No. 1 Council at Lucknow. She, aggrieved by her said transfer, has challenged the impugned transfer order inter alia on the following grounds:

- (i) She has been transferred to a non-existent post because there is no post of 'Director, Academic Centre' in the respondent No. 1 Council;
- (ii) She having been recruited for and appointed to the post of 'Director (Planning & Research)' could not have been moved to some other post, i.e., 'Director, Academic Centre';
- (iii) There are no rules, regulations or policy of transfer in the respondent No. 1 Council;
- (iv) The Chairman and Member-Secretary of the Council have personal vendetta and a prejudice against her and want her out of their way so that they could promote Shri Vimal Kumar Jaggi as Private Secretary; and
- (v) There was no compelling reason for posting the only female Director rank officer to Lucknow, more so, when male officers were also available and it was known to the respondents that the petitioner is herself ailing, she has a school going daughter and an

ailing husband.

3. In response to this writ petition, Mr. Godabarisha Mishra, Member-Secretary, Indian Council of Philosophical Research at New Delhi has filed counter affidavit on behalf of the respondents. It is stated that the petitioner has not approached the Court with clean hands and has wilfully and knowingly distorted and misrepresented the facts. The respondents have stated in their counter affidavit that the petitioner under the rules & regulations of the Indian Council of Philosophical Research (ICPR) is liable to be transferred anywhere in the country and is liable and obliged to serve the respondents in any of the offices whether Lucknow or any other part of the country. The transfer of the petitioner is stated to have been effected in the administrative exigencies as the Academic Centre at Lucknow is meant to undertake multifarious activities and provides a high level academic atmosphere. It is denied that the petitioner has been transferred to a non-existing post, as alleged in the writ petition. It is stated that a Director looked after the affairs of the Centre at Lucknow until 2005 when he was transferred to New Delhi office. The Indian Council of Philosophical Research (ICPR) is stated to be one organisation and the Academic Centre situated at Lucknow is stated to be its integral part. The ICPR currently had three Directors in the same scale of pay and privileges and they are designated as Director (Administration & Finance), Director (Planning & Research) and Director (Academic). These Directors have been assigned different responsibilities for administrative reasons and convenience. Any of the Directors could be asked to function from the Academic Centre in Lucknow, if the exigency of service and public interest so warrants. The respondents have stated that Dr.Arun Mishra, Director (Academic) was functioning from the Academic

Centre in Lucknow. The Director posted at Lucknow, in addition to his/her assigned responsibilities, also acts as the Administrative Head of the Academic Centre by virtue of seniority and is, therefore, appended the designation of the Director of the Academic Centre. The respondents have explained the reasons in their counter affidavit that compelled them to transfer the petitioner from Delhi to its Academic Centre at Lucknow. The reasons that weighed with the respondents to transfer the petitioner at its Academic Centre at Lucknow were that she is the senior most among the three Directors and that she had acted earlier as Director (Administration & Finance) and also looked after the work of the Member-Secretary, when that post was vacant. The other reason for transfer of the petitioner to Lucknow was that she had earlier served at Lucknow as Programme Officer of the ICPR at its Academic Centre. For all these reasons, the respondents felt that the petitioner would be more suitable and would be able to re-locate the Academic Centre in the newly acquired building and would help to plan and build a new campus than the other Directors. The respondents have denied that the impugned transfer is on account of any malafide much less as alleged by the petitioner in her petition. They have also disputed the personal medical grounds set up by the petitioner to stall her impugned transfer. The respondents have submitted that the impugned transfer of the petitioner is in the administrative exigencies and in the best interest of the ICPR and they have, therefore, prayed for the dismissal of the present writ petition.

4. The petitioner has filed her rejoinder to the counter affidavit of the respondents and in her rejoinder, she has denied the averments made by the respondents in their counter affidavit and in reply thereto, she has

reiterated and reasserted her pleadings contained in her petition as correct. She has reasserted her prayer for quashing of the impugned transfer order.

5. I have heard Mr. M.C. Dhingra, learned counsel who appeared on behalf of the petitioner and also Mr. K.C. Mittal, who appeared on behalf of the respondents. I have also perused their written arguments and also the entire material available on record.

6. The main plank of arguments of Mr. Dhingra, who appeared on behalf of the petitioner, was that the post of Director (Planning & Research), to which the petitioner was appointed, is not interchangeable with the post of Director (Academic) and, therefore, according to him, the transfer of the petitioner as Director, Academic Centre at Lucknow, is against a non-existent post. This argument was countered by Mr. Mittal, appearing on behalf of the respondents, stating that there are three posts of Director in the Council and they are described as Director (Planning & Research), Director (Academic) and Director (Administration & Finance) only for the sake of administrative convenience. According to Mr. Mittal, there are two substantive posts of Director and one post of Director (Administration & Finance) under the recruitment rules of the Council. He contended that in the face of the recruitment rules, the petitioner should not be allowed to take any advantage on account of any confusion created by her because of the nomenclature namely Director (Planning & Research) and Director (Academic).

7. In view of the above rival submissions made by the counsel for the parties on the point of nomenclature of the three posts of Directors in ICPR (respondent No. 1 herein), the first and the foremost question that arises for consideration is whether the three posts of Directors, described

as Director (Planning & Research), Director (Academic) and Director (Administration & Finance), are independent to each other and if so, whether an incumbent manning any of these three posts can be assigned the additional responsibilities of the other two posts.

8. The Respondent No. 1 Council is a Government society registered under the Societies Registration Act, 1860. The said Council has laid down service regulations known as ICPR Service Regulations, 1991. The schedule appended to these regulations specifies the posts which existed in the Council. The said schedule mentions three Director level posts, namely (i) Director (Administration & Finance), (ii) Director (Planning & Research) and (iii) Director (Academic). On account of the said nomenclature given to these three Director level posts in the Schedule, the petitioner has tried to create a confusion that these three posts are independent of each other and a person appointed against any one of these three posts cannot be transferred to either of the other two posts. In order to appreciate the rival contentions of the counsel for the parties and also to ascertain the factual position, this Court vide its order dated 01.02.2010 directed the respondents to state on affidavit the details of all the incumbents selected by them to the three posts of Directors with particulars of their posting from time to time after joining of service. They were also directed to produce the original record before the Court for its perusal on the next date. Pursuant thereto, the Member-Secretary of the respondent No. 1 Council has filed his affidavit on 02.02.2010 in which he has given the details of the persons appointed to the three posts of Directors in the Council from time to time. The original record was also produced before the Court and was perused by me.

9. As per affidavit filed by the Member-Secretary pursuant to Court

order dated 01.02.2010, there is an Academic Centre of the Council at Lucknow, which is to be headed by a Director and not by a Director (Academic). There is no post of Director (Academic) under the recruitment rules, which is clear from the Annual Reports of the Council from 1984-85 to 1988-89 annexed with the said affidavit. There is no post of Director (Planning & Research) and Director (Academic) under the recruitment rules but they are being so described only because of administrative convenience. The Selection Committee for the post of Director (Academic), Director (Planning & Research) and Director (Administration & Finance) held interviews on July 5-7, 2002 and recommended appointment of the following:

- (i) Dr. V. Raman for the post of Director (Academic);
- (ii) Dr. Mercy Helen for the post of Director (P&R); and
- (iii) Shri M.P. Gupta for the post of Director (A&F).

Since the above posts remained vacant from the year 1999, the Ministry of Human Resource Development was approached by the Council for revival of these posts, for which approval was given vide Ministry's letter No.F.4-17/2002-U.3 dated 06.05.2003, contents of which are extracted below:

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No.F4-17/2002-U.3
Government of India
Ministry of Human Resource Development
Department of Secondary & Higher Educational

Shastri Bhawan, New Delhi.
6th May 2003

To
Prof. R C Pradhan,
Member Secretary,
Indian Council of Philosophical Research,
36, Tughlakabad Institutional Area,
M.B. Road, Near Batra Hospital,
New Delhi – 110 062.

Subject:- ICPR, New Delhi - Proposal for revival of three posts of Director.

Sir,

I am directed to refer to your letter No.8-5/2002-02/(A&F)ICPR dated 6th August

2002 on the above subject and to say that the proposal for revival of three posts of Director in ICPR has been considered in consultation with Ministry of Finance. The proposal has been agreed to subject to fulfillment of following conditions by ICPR:-

- (i) Surrender of five existing posts {Programme Officer (1), Assistant (1), UDC (1) and Junior Stenographer (2)} with immediate effect and surrender of three more posts by 2006 as and when three incumbents of non academic posts vacate their posts due to retirement/resignation.
- (ii) To achieve the desired ratio between academic and non-academic staff in phased manner by abolishing 75% of non-academic posts falling vacant in a year till the desired ratio is achieved as recommended by ERC.

2. ICPR is requested to furnish an action taken report in this regard to this Ministry.

Yours faithfully,
Sd/-
(S N Burman)
Director
Tel.23070837"

10. After the revival of the above three posts of Director in the Council, the petitioner Dr. Mercy Helen had joined as Director (Planning & Research) on 13.05.2003.

11. The vacant posts of Director were again advertised in 2003 and the Selection Committee which met during March 23-25, 2004 selected the following two persons:

- (i) Dr. Arun Mishra, Director (Academic);
- (ii) Sh. P.S. Patil, Director (A&F) on deputation.

12. On the basis of the decision of the Selection Committee, the letter of appointment was issued to Dr. Arun Mishra and Shri P.S. Patil for the appointment of Director (Academic) and Director (A&F) respectively on March 29, 2004. As per the appointment letter, both of them were posted at Delhi only. Shri P.S. Patil, who joined as Director (A&F) on 30.04.2004, left the Council on 27.12.2004 to join his parent organisation on repatriation in public interest. Dr. Arun Mishra joined the Council on 02.04.2004 and is still continuing in the same position. Dr. A.K. Mukhopadhyaya, Programme Officer, was in-charge of the Academic Centre at Lucknow during the period from 1990 till his death, i.e., 29.11.2005 except from 18.09.1998 to 07.07.1999 when Dr. Kanchan

Saxena working in the post of Director, Academic Centre was holding the post of Director (Academic) on deputation and she repatriated to her parent department on 07.07.1989. Dr. Arun Mishra, Director (Academic) was temporarily transferred to Lucknow during 14.02.2006 to 12.05.2006 to take up the responsibility of shifting the Academic Centre office and library in the newly rented building in PCF Building at Lucknow as the Butler Palace was vacated. He was called back vide office order dated 12.05.2006 to ICPR Office, New Delhi.

13. Dr. Mercy Helen, Director (Planning & Research) was given additional responsibility of Director (Administration & Finance) w.e.f. December 2004 after the repatriation of Shri P.S. Patil, Director (Administration & Finance) and this additional charge remained with her up to January 2008 when Dr. Surinder Kumar joined as Director (Administration & Finance) on permanent basis. Dr. Surinder Kumar resigned from the Council and was relieved of his duties w.e.f. 01.06.2009. Dr. Arun Mishra, Director (Academic) is holding additional charge of Director (Administration & Finance) from 01.06.2009 till date.

14 From the above, it is clear that the petitioner who was appointed as Director (Planning & Research) also held the additional charge of the post of Director (Administration & Finance) for a considerable time from December 2004 till January 2008. Even Dr. Arun Mishra who was appointed as Director (Academic) has been given additional charge of Director (Administration & Finance) from 01.06.2009 till date. All this goes to show that there was no embargo on an incumbent appointed with a particular designation either as Director (Planning & Research) or Director (Administration & Finance) or Director (Academic) to hold the charge of the post of other two Directors mentioned above. In fact, a

perusal of the approval letter of the Ministry dated 06.05.2003, by which three posts of Director in the Council were revived (extracted above), shows that in fact, there are three posts of Director in the respondent No. 1 Council and the nomenclature given to them as Director (Planning & Research), Director (Academic) or Director (Administration & Finance) is only for administrative and official convenience. This conclusion is also strengthened from the contents under the heading 'Organisational Set-up' given in the Annual Reports of respondent No. 1 Council for the years 1984-85 to 2007-08 on record. It shall further be significant to mention that the Government got a work measurement study of respondent No. 1 Council conducted by Staff Inspection Unit on or around 2003-04 and the copy of the report of the Staff Inspection Unit dated 12.10.2004 is at page 171 of the paper book. The consolidated statement of existing functional and assessed strength of respondent No. 1 Council is annexed with the said report of Staff Inspection Unit as Annexure IV at page 186 and a perusal of the same shows only the posts of Director without any classification of them either as Director (Planning & Research) or Director (Academic). The petitioner herself has annexed the recruitment rules applicable to these three Director level posts which are at pages 50-51 of the paper book and a perusal of the same shows that recruitment rules are made by the Council only for recruitment to the post of Director and not for Director (Planning & Research) or Director (Academic). Under the circumstances, it cannot be said that the post of Director (Planning & Research) and that of Director (Academic) are independent and substantive posts or that incumbent appointed to any one of these two posts cannot be assigned the responsibilities of the other post. Hence, I do not find any merit in the argument of Mr.Dhingra, who appeared on

behalf of the petitioner, that the transfer of the petitioner from Delhi to Lucknow is against a non-existent post. In fact, the petitioner holding the post of Director (Planning & Research) vide impugned transfer order has been entrusted with the responsibility of restructuring, planning & developing the Academic Centre of the Council at Lucknow and to head the said Centre.

15. I also do not find any merit in the argument of counsel who appeared on behalf of the petitioner that the impugned transfer of the petitioner is arbitrary and illegal as there are no rules, regulations or policy on transfer. The appointment of the petitioner as Director (Planning & Research) vide appointment letter dated 13.05.2003 stipulates that she may be required to work in the office of the Council anywhere in the country. The respondents were well within their right to transfer the petitioner as per terms & conditions contained in her appointment letter. The law is well-settled that the transfer of a public servant from one place to another is made in the exigency of service and should not be interfered with by the Courts unless they are shown to be incompetent in the sense that the authority issuing the order has no jurisdiction to do so or found to be vitiated by malafides or extraneous considerations.

16. In **State of U.P. & Others Vs. Gobardhan Lal, (2004) 11 SCC 402**, it was held by the Hon'ble Supreme Court that transfer is the prerogative of the authorities concerned and Court should not normally interfere in such transfers. It was further held in the said case that the allegations of malafides must be based on concrete material and must inspire the confidence of the Court. The same view was taken by the Hon'ble Supreme Court in **Kendriya Vidyalaya Sangathan Vs. Damodar Prasad**

Pandey & Others, (2004) 12 SCC 299, wherein it was held that transfer is an incidence of service, who should be transferred and where is a matter for the authority to decide.

17. In the present case, the petitioner has alleged malafides against the Chairman and Member-Secretary of respondent No. 1 Council in transferring her from Delhi to Lucknow vide impugned transfer order. Mr.Dhingra, learned counsel who appeared on behalf of the petitioner, had argued that the petitioner has been transferred from Delhi to Lucknow because she had refused to oblige the Chairman of the Council to select and appoint Shri Vimal Kumar Jaggi as his Private Secretary ignoring the recruitment rules meant for the said post. The learned counsel had pointed out that since the petitioner did not want to succumb to the pressure of the Chairman, she had recused herself from the Screening Committee on personal grounds as per note dated 27.08.2008 and this, according to him, prompted the respondents to transfer her out of Delhi as a personal vendetta. This argument is countered by Mr.Mittal, counsel on behalf of the respondents, who submitted that there was absolutely no pressure from the respondents on the petitioner and, according to him, the allegations of malafide made by her are totally afterthought and false. He pointed out that in terms of ICPR Recruitment Rules, 1991, there is no provision for Screening Committee for the post of Private Secretary but in order to scrutinise the applications and to shortlist the candidates, it was a usual practice to appoint a Screening Committee which consist of officers from the Ministry, ICPR or even outside. Dr. Surinder Kumar in his note dated 19.08.2008 proposed the name of Shri Devender Kumar, Under Secretary, Ministry of HRD and Shri Desh Raj, Under Secretary, Ministry of

HRD as members of the Screening Committee. However, Mr. Godabarisha Mishra constituted the Screening Committee comprising of Dr. Surinder Kumar, Director (Administration & Finance) and the petitioner Dr. Mercy Helen, Director (Planning & Research) for scrutinizing the applications for the post of Private Secretary vide note dated 19.08.2008. At that time, the petitioner was not working as Director (Administration & Finance). It was submitted that since there was dispute regarding eligibility of Shri Vimal Kumar Jaggi for his appointment as Private Secretary, legal opinion was sought by the Department from Shri Rajiv Sharma, Advocate, who vide his letter dated 12.08.2008 gave opinion that the query regarding qualification and eligibility of Shri Vimal Kumar Jaggi may be addressed to the UGC and consequently the Member-Secretary put a note dated 24.08.2008 (at page 313 of the paper book) which reads as under:

“Pending the reply from the Ministry and UGC, Shri Jaggi may be short listed for the interview.”

The allegation of malafide made by the petitioner against the Chairman does not appear to be convincing and appears to be imaginary and an afterthought and seems to have been made by her to stall the impugned transfer order. The petitioner is a highly placed officer working in respondent No. 1 Council. She, as per her own, had recused from the Screening Committee on her personal grounds on 27.08.2008. The impugned transfer order was passed by the respondents after about four months thereafter. In case, there was any truth in the assertion of the petitioner that she was pressurized by the Chairman to appoint Shri Jaggi as Private Secretary, then she must have raised a protest in black & white during the time that elapsed between the date of her recusing, i.e., 27.08.2008 and the date of her transfer, i.e., 01.12.2008. Till she was transferred vide impugned transfer order, she had no complaint of any

kind either against the Chairman or the Member-Secretary. In fact, prior to her impugned transfer, she was given additional responsibilities not only of the post of Director (Administration & Finance) but also of the Member-Secretary of the Council and was declared Head of the Office also. This shows that the respondents have been acknowledging and appreciating the good work of the petitioner from time to time and have transferred her to Lucknow in extreme administrative exigencies and in the interest of respondent No. 1 Council as it wanted to reconstruct, plan and develop its Academic Centre at Lucknow which was virtually lying closed since 2005. On the basis of material that has been placed on record, it cannot be said that the transfer of the petitioner was on account of any malafide or extraneous consideration.

18. There is also no merit in the case of the petitioner that she should not have been transferred to Lucknow as she and her husband are ailing and that her daughter is a school going child and had to appear for Board examination. It is a matter of record that immediately on receiving the impugned transfer order, the petitioner went on medical leave for 74 days and when she was declared medically fit, she applied for Earned Leave on medical grounds. However, immediately on getting stay of impugned transfer from this Court, she re-joined her duties with the respondent No. 1 and is stated to be attending the office regularly. This shows that she had applied for Earned Leave on medical grounds only to avoid her impugned transfer. The ground cited by her in her Earned Leave application disappeared as she re-joined the duties as soon as the stay order against impugned transfer was given by this Court. If the petitioner is healthy to attend duty in the New Delhi office of the ICPR, the respondents have every reason to believe and presume that her

health condition is not a valid reason for her not joining as Director at Lucknow. The real reason appears to be that she does not want to move to Lucknow. The other reason given by the petitioner against the impugned transfer is that her daughter is in school and her husband is chronically ill, is also not a good reason for interfering with the impugned transfer order. Lucknow, where she has been transferred, has excellent schools and other facilities she need to pursue her studies. The condition of the husband of the petitioner is unlikely to change whether he is in Delhi or Lucknow. The petitioner had joined the service with respondent No. 1 Council with eyes wide open that her service was transferable anywhere in the country and now when she has been transferred, she cannot be allowed to stall the said transfer on the ground of her personal convenience. Her transfer from Delhi to Lucknow appears to be in the interest of the institution and, therefore, cannot be interfered with by the Court in the present proceedings.

19. In view of the foregoing and having regard to the facts and circumstances of the present case, I do not find any merit in the challenge to the impugned transfer order made by the petitioner in the present writ petition. This writ petition, therefore, fails and is hereby dismissed but with no order as to costs. The interim order granted by this Court on 06.03.2009 is vacated.

FEBRUARY 11, 2010
'BSR'

S.N.AGGARWAL
[JUDGE]