

AFR**Neutral Citation No. - 2024:AHC-LKO:30597****RESERVED ON 08-04-2024****DELIVERED ON 19-04-2024****Court No. - 20****Case :-** WRIT - A No. - 2511 of 2024**Petitioner :-** Kavita Giri**Respondent :-** Union Of India Thru. Deptt. Of Financial Services Ministry Of Finance New Delhi And 5 Others**Counsel for Petitioner :-** Asit Srivastava**Counsel for Respondent :-** A.S.G.I.,Anand Kumar Singh,Krishna Lal Yadav,Lalit Shukla**Hon'ble Shree Prakash Singh,J.**

1. Heard Dr. L.P.Mishra, Advocate assisted by Sri Asit Srivastava, learned counsel for the petitioner and Sri Sanjay Bhasin, learned Senior Advocate assisted by Sri Anand Kumar Singh, for the opposite parties no. 2 to 6. No one is present for the Union of India.

2. This matter is being decided finally at admission stage on the consent of counsels for both the parties.

3. Under challenge is the order dated 04-11-2023, passed by the General Manager (HRM), Bank of Baroda i.e. opposite party no. 6 as well as the order dated 09-

06-2023 passed by the Regional Head, Bank of Baroda, which are said to be passed in utter violation of the order dated 13-07-2023, by this court in Special Appeal No. 347 of 2023 and against the transfer policy, particularly, with respect to the lady officers of the respondent Bank.

4. Factual matrix of the case are that the petitioner was initially appointed on 26-11-2008, on the post of Probationary Clerk, in Vijaya Bank, which was subsequently merged into Bank of Baroda and she joined in the office at district-Lucknow. Thereafter, in the year, 2012, she was promoted on the post of Assistant Manager in the office at Gomti Nagar, Lucknow. Later on, the petitioner was transferred on 23-05-2022 to Kanpur Dehat Region from Lucknow office and being far away from her family(parental and matrimonial), there was hardship before the petitioner and therefore, she requested for her transfer in nearby place and considering the request of the petitioner, she was transferred to Kanpur Metro Region Kanpur.

5. The Transfer Policy was framed on 31-03-2019 by the Board of Bank of Baroda under the regulations, published on the official website of the bank on 31-03-2019, wherein Clause 8.9 of the Transfer Policy provides that the lady employees posted upto Scale-III posts, shall be posted as per their request for a stipulated tenure of three years.

6. On 09-06-2023, the petitioner was transferred from Kanpur (U.P.) to Vadodara(Gujarat), on inter-zonal transfer, on the ground of 'longest stay' in one zone. As soon the inter zonal transfer was communicated to the petitioner, she preferred a detailed representation before the respondent-bank, citing therein the hardships of staying thousands of Kilometers away from her family members and her mother and also shown severity of medical condition with respect to her elders. On 16-06-2023, her representation was rejected by the Zonal Office at Lucknow and the same was communicated to the petitioner on 16-06-2023 through e-mail by the opposite party no. 3 and the relieving order was passed on 17-06-2023 from Harjinder Nagar, Kanpur Branch.

7. Being aggrieved with the order dated 17-06-2023, the petitioner approached this court on 19-06-2023 while preferring a writ petition, which was dismissed by the Hon'ble Single Judge on 21-06-2023, whereafter, an Special Appeal bearing No. 347 of 2023 was filed, wherein, on 13-07-2023, while setting aside the Judgment and Order passed by the Hon'ble Single Judge, the petitioner was permitted to make a fresh representation and the opposite parties were directed to decide the same in accordance with law and thereafter, the petitioner joined her duties at Harjinder Nagar Branch at district-Kanpur, but, she was told to join her duties at Sisamau Branch on deputation and the petitioner joined at Sisamau Branch on 21-08-

2023. Thereafter, on 28-07-2023, the petitioner preferred a representation before the General Manager, Bank of Baroda, but, on 08-09-2023, the petitioner was again sent on deputation at Behrana Road Branch and ultimately, the representation of the petitioner is rejected vide order dated 11-09-2023, which was challenged by the petitioner vide Writ A No. 7984 of 2023, wherein an order was passed on 18-10-2023 and the learned Single Judge while disposing of the abovesaid writ petition, left it open to the petitioner to submit a fresh comprehensive representation for redressal of her grievances before the competent authority and the competent authority was directed to decide the same within further period of ten days. In compliance thereof, a representation was preferred by the petitioner and the same was decided vide order dated 04-11-2023, which is under challenge in the present writ petition.

8. Contention of learned counsel for the petitioner is that the impugned order dated 04-11-2023 is passed in absolute defiance of the order passed in Special Appeal No. 347 of 2023 and the order dated 18-10-2023 passed in Writ A No. 7948 of 2023. He added that the orders impugned suffer from non application of mind as the ground of longest stay considered by the opposite parties, is not applicable in the present case as the provisions of Clause 8.9.5 of the Transfer Policy with respect to transfer of the lady officers, is evident that in consideration of any request for transfer of any lady

officer by the bank at anyone instance, shall be for one tenure of posting i.e. 3 years and after completion of one tenure of posting in the requested region, it is open to the bank to transfer such employee from the said region but so far as the present matter is concerned, the locking period of three years, is admittedly not completed.

9. Adding his arguments, he submits that the transfer of the petitioner is with malafide intention and for harassing her and is not in consonance with the Transfer Policy as the opposite parties have acted in a most arbitrary and illegal manner, as the petitioner is not only transferred, but, she has been forced, while seizing her bank accounts and discontinuing her salary, which is her hard earned money.

10. Further contention of learned counsel for the petitioner is that since the Judgment and Order dated 13-07-2023 passed by this court in Special Appeal No. 347 of 2023, is evident that the Hon'ble Division Bench of this court has observed that earlier transfer policy is *pari materia* to the subsequent transfer policy with respect to the transfer of lady officers, however, in the new transfer policy, the request of transfer, appears to be confined to the request of transfer involving change of zone i.e. inter-zonal transfers, whereas, in case of transfer of any lady officer, on her request at anyone instance, her tenure of posting shall be three years, remains the same even in the new transfer policy and

the Division Bench of this court has also taken note of the fact so far as paragraph 8.9.1 of the Transfer Policy is concerned, which stipulates that the '*Bank recognizes the commitment, responsibilities of lady employees towards home, family and office and will remain empathetic on issues regarding their transferability.*'

11. Sheet anchor of the argument of counsel for the petitioner is that the impugned orders passed by the opposite parties are in utter violation of the Transfer Policy of the Bank and it reflects non application of mind by the concerned authorities as the petitioner has been thrown thousands of Kilometers away from her place of posting, coupled with the argument that the transfer order passed is also in violation of the observations made in Special Appeal No. 347 of 2023 as well as the order passed by the Hon'ble Single Judge, subsequently. Therefore, submission is that the orders impugned are wholly without application of mind, unjustified and against the Transfer Policy and at the same time i.e. against the observations of the Hon'ble Division Bench made in Special Appeal No. 347 of 2023. Thus, submission is that the impugned orders may be quashed.

12. On the other hand, learned counsel appearing for the respondent-bank has vehemently opposed the contentions aforesaid and submitted that after the order passed by the Hon'ble Single Judge on 18-10-

2023, in Writ A No. 7948 of 2023, a representation was moved by the petitioner, which has rightly and lawfully been decided by the opposite party no. 6, vide order dated 04-11-2023. While adding his arguments, he straightaway came to the provisions of the Transfer Policy i.e. 8.9 meant for transfer of the Lady Officers and contended that the proviso of 8.9.5 of the Transfer Policy, cannot be read in isolation, as the same starts from the proviso 8.9.1 of the Transfer Policy and if the provision of 8.9.4 of the Transfer Policy is read in toto, that itself is explanatory that the same speaks about the transfer from one zone to another zone.

13. Adding his arguments, he submits that so far as the proviso 8.9.4 of the Transfer Policy is concerned, that speaks that *'such requests may be considered upto Scale III but not more than two occasions in the entire career, as **'Only such requests which involve change of zone shall be reckoned for being counted under this clause.'*** and so far as the present case is concerned, the petitioner is not transferred from one zone to another zone but her transfer was made on her request in Lucknow Zone, i.e. from Kanpur Dehat Region to Kanpur Metro Region. Further for sometimes, looking into the work in different branches, she was sent on deputation on other branch in Kanpur region itself.

14. He next submits that so far as proviso 8.9.2 of the Transfer Policy is concerned, that too, is with respect to

the transfer from one zone to another zone, i.e. known as inter zonal transfer. Thus concluding his arguments, he submits that since the transfer of the petitioner is in consonance with the provisions of the Transfer Policy and therefore, no interference is warranted in the transfer order dated 04-11-2023.

15. Having heard the learned counsels for the parties and after perusal of the material placed on record, two basic legal questions emerge so as to resolve the controversy in question. The first and foremost question is as to whether the transfer of the petitioner is in contravention of the Clause 8.9 (proviso 8.9.1 to proviso 8.9.5) of the Transfer Policy with respect to the transfer of the lady officers? The second question is as to whether the transfer order dated 04-11-2023, is hit by or under the teeth of the Judgment and Order passed in Special Appeal No. 347 of 2023 dated 13-07-2023 as well as order dated 18-10-2023 passed in Writ A No. 7948 of 2023?

16. When this court examines the first question, it is relevant to go through the extract of the Transfer Policy with respect of the lady officers, which is quoted hereinunder :-

"8.9 TRANSFER OF LADY OFFICERS

8.9.1 Bank recognizes the concomitant responsibilities of lady employees towards home, family and office and will remain empathetic on issues regarding their transferability.

8.9.2 At the time of initial placement upon recruitment, Bank shall, as far as possible, place lady officers (married/ unmarried) to the Zone of her choice, on her request or to the nearest zone of her choice subject to availability of vacancies in the said zone. In case of unavailability of vacancies, such female officers can be posted to other Zone as per Bank's requirement.

8.9.3 For lady Officers upto MMG/S-III, Bank shall consider requests for transfer on marriage grounds/on the grounds of joining spouse etc., subject to availability of vacancies at the requested Region.

8.9.4 Such requests may be considered upto Scale III but not more than two occasions in the entire career. Only such requests which involve change of zone shall be reckoned for being counted Under this clause

8.9.5 Consideration of any request for transfer of any lady Officer by the Bank at any one instance, shall be for one tenure of posting (3 years). After completion of one tenure of posting in the requested Region, it shall be open to the Bank to transfer her from the said Region in accordance with the Bank's business requirements, or in furtherance of any other policy/guidelines of the Bank/Govt. like career path policy, job rotation guidelines etc. Thus the female Officers who have been granted any placement in accordance with her request, shall be transferable in line with the general transfer policy provisions of longest stay, career path policy, job rotation policy etc. as may be applicable to her on completion of one stipulated tenure of posting in such place."

17. Perusal of the aforesaid provisions, indicates the enabling provisions regarding the transfer of the lady officers and the instructions, which are to be taken care of. This Transfer Policy is meant looking into the responsibilities of the lady employees towards home, family and office, but, the same cannot be read aloof, as the other provisions are explanatory which says that the request under the provisions of Transfer Policy of the lady officers may be considered not more than two occasions in the entire career and the further provision, which is of much importance, to resolve the controversy is that '*only such requests which involve*

change of zone, shall be reckoned for being counted under this clause'. In the next clause i.e. proviso 8.9.5 of the Transfer Policy, it has also been provided that 'Consideration of any request for transfer of any lady Officer by the Bank at any one instance, shall be for one tenure of posting i.e. for 3 years'.

18. It is obvious from the aforesaid provisions, that the special provision with respect to the transfer of the lady officers, will be considered subject to the request of such lady officer from one zone to another zone and then only the rider of three years, as provided under the proviso 8.9.5 of the Transfer Policy, would attract. Further, clause 8.9.4 readwith Clause 8.9.5 of the Transfer Policy for the lady officers, do not leave any confusion with respect to the benefit of rider of three years subject to condition of the transfer from one zone to another zone.

19. It is not in dispute that the transfer of the petitioner is made within the zone, from one region to another region i.e. in Kanpur Dehat Region to Kanpur Metro Region and that's why, the proviso 8.9.4 readwith proviso 8.9.5 of the Transfer Policy, do not attract in the present matter and therefore, answer accordingly is that the transfer order of the petitioner dated 04-11-2023, is in no way violative of any directions/provisions envisaged under Clause 8.9.1 to 8.9.5 of the Transfer Policy.

20. Now coming to the next legal question as to whether the impugned transfer order is in any way passed in violation of the Judgment and Order dated 13-07-2023, passed in Special Appeal No. 347 of 2023 and the Judgment and Order dated 18-10-2023 passed in Writ A No. 7948 of 2023.

21. Having at a glance, the Judgment and Order dated 13-07-2023, passed in Special Appeal No. 347 of 2023, it transpires that the Special Appeal No. 347 of 2023, was filed by the petitioner assailing the Judgment and Order dated 21-06-2023 passed in Writ A No. 4679 of 2023. The Hon'ble Single Judge did not find any illegality or erroneousousness in the transfer order dated 09-06-2023 challenged earlier and therefore, the writ petition was dismissed, whereafter the Division Bench of this court while dealing with the matter in Special Appeal No. 347 of 2023, set aside the Judgment and Order dated 21-06-2023 and left it open to the petitioner to move a representation and the opposite parties were directed to consider the same, particularly, in the light of the provisions of the 'Transfer Policy Of The Lady Officers' of the respondent bank.

22. Much emphasis is also placed on para nos. 12 & 15 of the Judgment and Order dated 13-07-2023 passed in Special Appeal No. 347 of 2023 and it's tried to substantiate that the Division Bench of this court, has directed the opposite parties to consider the object of having separate and distinct provision for transfer of

the lady officers while passing the fresh orders and the impugned order does not disclose that the same is complied with by the opposite party-bank.

23. In totality, the transfer of the petitioner is governed with an special provision of transfer of the lady officer. The Division Bench of this court in paragraph no. 12 of the Judgment and Order dated 13-07-2023 passed in Special Appeal No. 347 of 2023, has noticed the provisions of the Transfer Policy as '*to be confined to request of transfer involving change of zone i.e. inter-zonal transfers*'. Therefore, the Transfer Policy cannot be read in isolation, particularly, with respect to Clause 8.9.1 of the Transfer Policy, but, it has to be read in toto and qualifying Clause 8.9.4 and Clause 8.9.5 shall also be read alongwith Clause No. 8.9.1. The aforesaid provisions are very clear in it's terms that if a transfer is made on the request of a lady officer, such request is reckoned for being counted in case of change of zone i.e. inter zonal transfer.

24. Undisputedly, the tenure of the posting on request would be for a period of three years, which is a rider provided under Clause 8.9.5 of the Transfer Policy, but, such rider would only be invoked, in the event, when the transfer is made inter zonal and in all over the Judgment and Order of the Division Bench, there is no such direction to ignore the rest of the provisions of the Transfer Policy regarding the lady officers, more so, the provision of inter zonal transfer, is also viewed.

25. Resultantly, the second question is also decided negatively, as the impugned transfer order dated 04-11-2023 is in no way violative of the order or direction issued vide judgment and order dated 13-07-2023 passed in Special Appeal No. 347 of 2023 as well as the Judgment and Order dated 21-06-2023 passed in Writ A No. 4679 of 2023.

26. This court is also not unmindful to the several verdicts of the Hon'ble Apex Court, wherein it is held that the statute or rules made thereunder, should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved.

27. It is settled law, started from the Judgment in the case of Nazir Ahmad Vs. King Emperor, rendered by the Privy Council, reported in 1936 SCC Online PC 41, as well as the consistent view of the Hon'ble Apex Court that where the law prescribes a thing to be done in a particular manner while following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure. Conclusively, it is to be done in a manner prescribed not otherwise.

28. In view of the abovesaid submissions and discussions, the writ petition is devoid of merits, hence, the Writ Petition is **dismissed** accordingly.

29. No order as to costs.

Order Date :- 19-04-2024

AKS