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

+ W.P.(C) No. 3873/2014 & CM Nos. 7815/2014, 8721/2014,
13936/2014, 110/2015

% **14th January, 2015**

PRAVEEN KUMARPetitioner

Through: Petitioner in person.

VERSUS

UNION OF INDIA & ORS. Respondents

Through: Mr. Manish Kumar Singh, Advocate
for Ms. Abha Malhotra, Advocate for
respondent no.1/UOI.

Mr. L.R. Khatana, Advocate for
respondent nos. 2 to 5.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India the petitioner, who is an employee of the respondent no. 2/ Export Inspection Council of India, impugns the order dated 11.4.2014 by which the petitioner has been posted on a temporary basis in to the Export Inspection

Agency, Chennai with its sub-office at Tuticorin due to administrative exigencies in public interest.

2. The petitioner who appears in person challenges the impugned order by urging the following grounds before this court:

(i) Respondent no. 2/employer itself is creating confusion by sometimes calling the order a temporary posting and sometimes a transfer order, and therefore, in view of this confusion, the impugned order is liable to be set aside.

(ii) Respondent no. 2/employer is guilty of violating the transfer policy given in para 2.6 of the Guidelines for transfer/placement of personnel in EIC/EIAS, and as per which para 2.6 of the transfer policy persons other than the petitioner who had a longer tenure at Delhi should be given posting outside Delhi and not the petitioner.

(iii) There are as many as 27 sanctioned posts of Technical Officers in respondent no. 2 at Delhi but there are only two persons who are posted at Delhi, and therefore, since there is considerable work at Delhi, petitioner has been *malafidely* posted at Tuticorin pursuant to the impugned order dated 11.4.2014.

(iv) The impugned temporary posting order is *mala fide* because the Director of the employer/respondent no.3 has grievances against the petitioner because the petitioner has questioned his appointment on account of the said Director not being qualified for the post and the petitioner in fact has filed a criminal case against the Director on the ground that the Director of the employer took employment by giving forged certificates.

(v) Respondent no. 2/employer is guilty of violating Supplementary Rule(SR) 114 of the Fundamental Rules and Supplementary Rules (FRSR) which requires that a transfer order, if it is for a temporary transfer, should not exceed for a period of 180 days and this period of 180 days is not mentioned in the impugned order dated 11.4.2014, and which order is therefore liable to be set aside especially because if temporary transfer is upto 180 days, petitioner will be entitled to various allowances and which cannot be in case the temporary posting order will exceed a period of 180 days.

(vi) Petitioner is in fact studying in an LL.B. course pursuant to permission granted by a Division Bench of this Court in L.P.A. no. 620/2012 titled as *Chairman Export Inspection Council of India & Ors. Vs. Parveen*

Kumar & Anr. passed on 7.9.2012 and thus he cannot be posted outside Delhi even for a short period arising due to administrative exigencies.

3. The arguments urged on behalf of the petitioner are vehemently contested on behalf of respondent no. 2/employer and I will discuss the same while taking up each of the argument urged on behalf of the petitioner.

4. The first argument urged on behalf of the petitioner is that the employer has called its action as a posting on a temporary basis vide the impugned order but subsequently in other communications and documents of the employer, this action is called as a temporary transfer and thus the impugned order is illegal. This argument is in my opinion only of form and not of substance because what will prevail is the language of the impugned order dated 11.4.2014 by which the petitioner is posted on a temporary basis to the sub-office at Tuticorin of Export Inspection Agency, Chennai and language used in the subsequent communications or documents, will only be a case of wrong language being used and that will not change the finality of the language of the impugned order dated 11.4.2014. What has to be seen is the substance and not subsequent errors of language, because, it is the language in the impugned order dated 11.4.2014 of the petitioner being posted on temporary basis which will prevail and not language used by

certain offices of the employer by making mistakes in subsequent documents of calling the action against the petitioner as a transfer order. The first argument urged on behalf of the petitioner is, therefore, rejected.

5. The second argument which is urged is by placing reliance on para 2.6 of the transfer policy and this argument is misconceived for various reasons. Firstly, if the petitioner contends that he has been working at the Delhi office not for a longer period than the other employee in the similar post at Delhi, it was necessary for the petitioner to state in the writ petition as to the period of the posting of the other employee Mr. V.K. Bhatia in the Export Inspection Council of India in Delhi and only if that was done, then the period of Mr. Bhatia could have been compared with the period of the petitioner for the alleged benefit of para 2.6 of the transfer policy of the employer. Petitioner has however not stated the periods of respective postings for being compared for the purposes of para 2.6 of the transfer policy.

The second reason for rejecting the argument is that the transfer policy is with respect to regular transfers and not a temporary posting outside in order to meet the administrative exigencies. The case of the employer is that the employer is grossly under-staffed, and therefore, as fire

fighting measures and on account of local needs, there arises a need to transfer officers for small periods and which is permissible by virtue of para 4.4 of the selfsame transfer policy which states that for exigency of work and administrative reasons, notwithstanding anything contained otherwise in the transfer policy, there may be transfers and posting otherwise than in accordance with the normal provisions of the regular transfer policy. I agree with the contention urged on behalf of the employer inasmuch as para 4.4 of the transfer policy is very clear that for exigency of work and for administrative reasons the normal provisions of the transfer policy will not come into play. There is nothing illegal or arbitrary about this condition contained in para 4.4 of the transfer policy because an employer has to run its organization and once there is exigency of work on account of short staffing of the respondent no. 2/employer, petitioner cannot contend that he should not be sent on temporary posting to the sub-office at Tuticorin of Export Inspection Agency, Chennai.

The second argument urged on behalf of the petitioner is also therefore rejected.

6. The third argument urged on behalf of the petitioner is that there are as many as 27 sanctioned posts at EIA Delhi but only two officers are

employed, and therefore, there is no basis for the petitioner to be posted outside Delhi which has a lot of work. Once again, this argument is destructive of the issue raised therein inasmuch as the admitted position is that the employer is short-staffed and as fire fighting measures for exigency of work and administrative reasons officers have to be posted for short period at offices where there is considerable work load and which is the position in this case. Also in my opinion existence of sanctioned strength cannot be a reason for the petitioner to contend that he will not comply with the temporary order of posting which is issued on account of administrative exigencies as provided under para 4.4 of the transfer policy as already stated above. The third argument is also rejected.

7. The fourth argument urged on behalf of the petitioner is of *mala fides* in issuing of the impugned order of temporary posting dated 11.4.2014 because the Director of the employer/respondent no.3 has malice against the petitioner inasmuch as the petitioner has questioned the qualifications of the Director of the employer for being appointed as a Director and accordingly the petitioner has filed a criminal complaint against the Director on the ground that the Director had given forged certificates for seeking employment.

Once again this argument urged on behalf of the petitioner has no legs to stand upon because the averments made by the petitioner are only self serving averments and there is no judgment of any court that the Director of the employer/respondent no.3 is wrongly appointed. In fact, it may be stated that the malice was urged against the Director on the ground that the impugned order dated 11.4.2014 was issued on the same date on which the Director was served of the notice of the criminal complaint, but as the counsel for the employer rightly points out that this argument is totally misconceived because notice under Section 91 of the Code of Criminal Procedure (Cr.P.C.) issued by the Police Station at Tughlak Road, New Delhi is not against the Director of the employer but against the Director, Finance Ministry of Commerce and Industry. Therefore, the whole factual basis laid on behalf of the petitioner that the impugned order dated 11.4.2014 was issued on the same date on which the notice under Section 91 Cr.P.C. was served on the Director of the employer is flawed and is without any factual basis. The fourth argument urged on behalf of the petitioner is also therefore rejected.

8. The fifth argument urged on behalf of the petitioner was that there is violation of SR 114 of the FRSR because the impugned order does not

mention that the same is for 180 days. Once again, this argument if seen in context will be seen to have no valid basis because even assuming the temporary posting order does not mention the period of less than 180 days, this period of less than 180 days will be presumed in the impugned order dated 11.4.2014 whereby the temporary posting would be less than 180 days. It was only if the order had written that the temporary posting was for the period of more than 180 days then the petitioner could have had a grievance but the petitioner cannot have grievance if the order is silent with respect to the number of posting days and in view of SR 114 of the FRSR the period of posting will have to be taken as less than 180 days. This argument urged on behalf of the petitioner is also therefore rejected.

9. The last argument urged on behalf of the petitioner is that the petitioner should not be posted outside Delhi because he is doing an LL.B. course pursuant to an order passed by a Division Bench of this Court in L.P.A. no. 620/2012 and which was an argument which I was inclined to consider favourably in favour of the petitioner but in view of the arguments urged on behalf of the employer I refuse to exercise my discretionary jurisdiction in the present case. The reasons for refusing to exercise the discretionary jurisdiction under Article 226 of the Constitution of India is

that petitioner has not reported for duty with the employer now for nine months after passing of the impugned order dated 11.4.2014. If the actions of the petitioner were *bona fide*, then the petitioner should have reported for duty pursuant to the order and thereafter sought necessary permission for taking study leave, and the counsel for the respondent/employer says that then the same would have been sympathetically considered, but counsel for the respondent/employer rightly argues that an employee cannot take a recalcitrant stand that he will not at all report for duty for over nine months and yet claim that this Court should exercise discretionary relief in his favour. Also, the order dated 7.9.2012 of the Division Bench in L.P.A. no. 620/2012 cannot be read to mean that an employee is not liable to be, in administrative exigencies, temporarily posted out of Delhi, and surely the intention of the Division Bench while passing the order dated 7.9.2012 in L.P.A. no. 620/2012 was not to enable the petitioner to achieve an oblique purpose that he will claim that he will not be posted outside Delhi simply because the petitioner was allowed to pursue an LL.B. course. Therefore, on account of the petitioner failing to come to this Court with clean hands and having not reported for his duties with the employer, and which employer in any case is under-staffed, the same persuades me not to grant any discretionary relief to the petitioner.

10. Finally, I must note that a transfer is an incident of service, more so when the same is in the nature of temporary posting on account of administrative exigencies. Courts cannot substitute themselves of the opinion of the employers with respect to services to be rendered by an employee to an employer because otherwise no employer will be able to function.

11. In view of the above, there is no merit in the writ petition and the same is therefore dismissed. All the pending applications also stand disposed of. No costs.

JANUARY 14, 2015
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VALMIKI J. MEHTA, J