

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION {L} NO.1187 OF 2016

CS Kamlesh Joshi

.... Petitioner

Vs.

Directorate of Human Resources,
Institute of Company Secretaries
of India & Others

.... Respondents

Mr. Simil Purohit with Mr. Amit Vyas & Mr. Rohan Mathur i/by M/s. Vertices Partners for the Petitioner.
Mr. Mayur Khandeparkar with Ms Sonali Kunekar & Mr. Vikas Mahangare i/by M/s. AMK Legal for the Respondent No.2.

Mr. Gaurav Joshi, Senior Counsel with Mr. Suhas Tulzapurkar, Mr. Amol Bavane and Mr. Chirag Dave i/by M/s. Legasis Partners for the Respondent No.3.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : MAY 06, 2016

P.C:

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges what is styled as an order and copy of which is annexed to the petition. The order at page 23 of the paper-book is dated 9-2-2016. It is under the signature of

the Consultant-HR of the Institute of Company Secretaries of India.

2. That is an order of transfer of one Mr. K.C. Kaushik, the respondent No.2 to the petition, to Western India Regional Office of this Institute at Mumbai and designating him as Regional Director. He has to report to the Chairman, Western Indian Regional Council (WIRC).

3. It is the claim of the petitioner that the WIRC, through its Chairman, is agitated simply because this gentleman was, according to it, involved in serious violations and acts of omissions and commissions. These acts are termed as criminal in nature. For all this, investigation has commenced and in order to scuttle it or unduly interfere with it, the posting has been made at Mumbai. He would necessarily interfere with the ongoing investigation and make it impossible for the WIRC to carry on its activities in accordance with law. Alternatively, it is submitted that the petitioner is not averse to the posting of the second respondent in Mumbai but he could get access to the record

which are kept at the Nariman Point office of this Council. The Council also has an office at Navi Mumbai and from which place this official can conveniently function.

4. From a reading of this petition and all the annexures thereto, what we find is that alleged prejudice, some internal disputes and difference of opinion have arisen out of the posting order in this Institute. This premier institute, though discharging a public duty and a public function, when such are the disputes involved, we do not think that in writ jurisdiction this Court can interfere. Who decides on the postings, whether the posting to WIRC was with prior consultation and concurrence, whether that is mandated by Law, Rule, Regulation or not are matters which would require an indepth inquiry. That too in matters of internal governance. What are the charges against the respondent No.2, whether they are indeed serious as projected requiring independent investigation by a third party Agency would require a detailed probe in the allegations made by the parties against each other.

5. If the petitioner is aggrieved and dissatisfied with the functioning of the Regional Director or the Council or that by such a posting an unwanted official has been foisted on them, then for all this it can approach a Competent Civil Court. The Civil Court would be able to resolve the factual dispute. We do not think that any public duty is involved in such internal power squabbles so as to enable this Court to issue any prerogative writ under Article 226 of the Constitution of India. This Court is not the only forum to set right the state of affairs and to take care of the disputes. Leaving the petitioner to avail of such remedies as are permissible in law, including filing of a suit in a Competent Civil Court, the petition is dismissed. Needless to clarify that beyond highlighting the issue and the pleas of the petitioner, this Court has expressed no opinion on the rival contentions.

(DR. SHALINI PHANSALKAR-JOSHI, J.)

(S.C. DHARMADHIKARI, J.)