

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2016

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THE HON'BLE MR. JUSTICE M.M.SUNDRESH

W.P.No.13591 of 2015
and M.P.Nos.2 and 3 of 2015

D.Baskaran

... Petitioner

Vs.

1. GAIL (India) Limited (Gas Authority of India Limited),
rep.by its Chairman cum Managing Director,
GAIL Bhawan,
No.16, Bhikaji Cama Place,
New Delhi - 110 066,
2. The Chief Manager (HRD),
GAIL (India) Limited (Gas Authority of India Limited),
GAIL Bhawan,
No.16, Bhikaji Cama Place,
New Delhi - 110 066,
3. The Manager-HR,
GAIL (India) Limited (Gas Authority of India Limited),
4th Floor, Savitha Plaza,
Indira Gandhi Square,
Puducherry - 605 005.

... Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus calling for the concerned records from the 2nd and 3rd respondent, quash the order of transfer dated 14.04.2015 issued by the 2nd respondent bearing No.GAIL/CO/TRF/04/14 and the relieving order dated 23.4.2015 bearing No.GAIL/RO/POO1/04/15 sent by email by the 3rd respondent and consequently direct the respondents to retain the petitioner at Puducherry.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.Sai Srujan Tayi
for Mr.Giridhar & Sai

O R D E R

By consent of the learned counsel appearing on either side, the writ petition itself is taken up for hearing.

2. The petitioner herein was appointed by the respondent as Deputy Manager (P&A) by the Order dated 13.7.1995. The said order makes it clear that the appointment carries the liability to serve in any part of India or abroad. The respondent is situated throughout the country and the execution of work is based upon discovery of oil. Thus, it is needless to state that concentration of manpower would depend upon the discovery followed by work attached to it. The petitioner was earlier working at Bangalore. Thereafter, he was transferred to Gujarat. The petitioner did not join the place at Gujarat even after few months. Challenge was made to the order of transfer made. On the request made by the petitioner, he was transferred to Puducherry. It was also put into challenge. By the order dated 8.1.2011, the writ petition in W.P.No.11838 of 2011 filed by the petitioner was dismissed. Though reliance has also been made on the medical report dated 19.7.2010, by the impugned order, about 545 employees were transferred by the respondent to various places based upon the necessity. The petitioner is one among the said transferred persons. By the said order, the petitioner was transferred and posted as Chief Manager E-VI Grade at Hyderabad Zonal Office. The said order is put into challenge by the petitioner in this writ petition.

3. Learned counsel appearing for the petitioner submitted that the order impugned is one without jurisdiction, since the petitioner has been posted to E-VI Grade, which is not available at Hyderabad. Thus, in effect, it is a transfer with post. Secondly, it is submitted that the order is tainted with legal malice. As the petitioner has raised certain uncomfortable issues against the respondents, he has been transferred. Learned counsel thirdly submitted that the health condition of the petitioner and his wife have not been taken into consideration. Fourthly, it is submitted that the petitioner's request ought to have been considered for posting at Bangalore, where the vacancies are available in the same Grade. Reliance has been made by the learned counsel for the petitioner on the order dated 4.2.1992 passed by this Court in W.P.No.6554 of 1990.

4. Learned counsel appearing for respondents submitted that the transfer, being an incidence of service and in the absence of any malice in law demonstrated by the petitioner, the writ petition is not maintainable. The order has been passed on administrative reasons.

5. There is no violation of Standard Manning Template of Zonal Marketing Offices of respondents. There were past practices. The petitioner has been posted as Chief Manager in E.VI Grade alone. There is no change in the emoluments. The transfer order has been passed on administrative exigency since the respondents are working based upon the discovery made. The petitioner is bound by the terms of the appointment order. No malice in law has been established. The request made by the petitioner was considered and rejected by way of a speaking order. A better medical facility is available at Hyderabad. The petitioner, having made a request of retention only for six months, cannot seek a larger relief on the principle of acquiescence and estoppel. Now, more than the said period is over. Therefore, no interference is required. Reliance has been made on the following decisions:

1. Union of India VS. S.L.Abbas ((1993) 4 SCC 357);
2. Abanikanta Ray Vs. State of Orissa and others, (1995 Supp (4) SCC 169);
3. Public Services Tribunal Bar Association Vs. State of U.P. and others, ((2003) 4 SCC 104);
4. State of U.P and Others Vs. Siya Ram and another, ((2004) 7 SCC 405);
5. State of U.P and others Vs. Gobardan Lal ((2004) 11 SCC 402);
6. Registrar General of High Court Vs. Chitra Biswas & Others, ((2006(1) CHN 110 = MANU/WB/03 44/2005)
7. Rajendra Singh & Others Vs. State of U.P & Others, ((2009) 15 SCC 178);
8. State of Haryana and others Vs. Kashmir Singh and others, ((2010) 13 SCC 306);
9. R.Vasanth Vs. Board of Directors HAL Bangalore and others, (2013 SCC Online Kar 2193);
10. G.Vijayamani Vs. The General Manager, (MANU/TN/3017/2014) and
11. State Bank of India Vs. S.V.Tharanath, ((2015(2) LLN 443 (Mad)).

6. The power of judicial review over an order of transfer is rather limited. Unless there is an apparent lack of jurisdiction, malafide established, or total non-application of mind, this Court is not required to interfere with the same by acting as an appellate authority.

7. In the case on hand, the petitioner is aware of the service conditions as stipulated in the order of appointment. Subsequent request of the petitioner was only for retention of six months. Therefore, the petitioner is estopped from challenging the impugned order after a period of six months. He has also enjoyed the said period by the interim orders of this Court.

8. Reliance has been made by the learned counsel for the petitioner on the Standard Manning Template of Zonal Marketing Offices of respondent contending that for the creation of a post, prior approval of the Board is required. The said contention is not liable to be accepted in view of the reply affidavit filed by the respondents, wherein it has been stated that the post of Chief Manager is E-VI Grade. It is to this post the petitioner is transferred. It is not as if the petitioner is made to suffer monetarily. There are no civil consequences involved. One has to see the object and rationale behind the transfer coupled with the nature of work undertaken by the respondents. When the same nature of work itself is based upon the discovery, nobody has got a right to insist that he or she should be allowed to work in a particular place. It does not make any commercial sense. Therefore, the contention raised by the learned counsel for the petitioner in this regard is rejected. Even assuming that the said contention is true, the violation, if any, can at best be procedural. As long as there is no dispute on the fact that there is a need for the petitioner to work in the said place to which he was transferred, no challenge can be made to it in law. The decision relied on by the learned counsel for the petitioner does not have any application to the case on hand. There is no question of transfer of post involved in this case. Therefore, the contention raised on the issue is rejected.

9. There can be two types of malice, malice in fact and malice in law. Now the petitioner has alleged malice in law. While alleging malice in law, it is for the petitioner to substantiate with relevant records. It is seen from the order impugned that it is a mass transfer involving 545 employees. Therefore it is not as if the petitioner has been handpicked for transfer. The very fact that the petitioner's earlier transfer was revoked by acceding to his request and posted at Puducherry itself shows that the respondents do not have anything against the petitioner. Therefore, the submission raised on the ground of malice in law is also rejected.

10. Coming to the other submissions made, this Court does not find any merit in those as well. The petitioner was allegedly having medical ailment from the year 2010 onwards. He was transferred from Bangalore to Puducherry. Therefore, when he could take the transfer from Bangalore to Puducherry, he cannot have any grievance on his transfer to Hyderabad, which has got sufficient medical facilities to take care of the petitioner's illness. Merely because some of the other employees were considered for transfer, the petitioner cannot claim it as a matter of right. The transfer has to be considered on its own facts. The petitioner has not demonstrated that he is similarly placed like the other

employees and administration would not suffer by posting him at Bangalore. Considering these facts, this Court does not find any merit in this writ petition.

11. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar
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To

1. The Chairman cum Managing Director,
GAIL (India) Limited (Gas Authority of India Limited),
GAIL Bhawan,
No.16, Bhikaji Cama Place,
New Delhi - 110 066
2. The Chief Manager (HRD),
GAIL (India) Limited (Gas Authority of India Limited),
GAIL Bhawan,
No.16, Bhikaji Cama Place,
New Delhi - 110 066
3. The Manager-HR,
GAIL (India) Limited (Gas Authority of India Limited),
4th Floor, Savitha Plaza,
Indira Gandhi Square,
Puducherry - 605 005.

+1cc to Mr.Giridhar & Sai, Advocate, S.R.No.9295

+1cc to Mr.Balan Haridas, Advocate, S.R.No.9257

W.P.No.13591 of 2015

VS(CO)
CA(23/02/2016)