

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 8314 OF 2017

ABHAY S/O JANARDHAN MULEY

VERSUS

THE UNION OF INDIA AND ANOTHER

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Advocate for petitioner: Mr. A.A. More
Advocate for Respondent No.1 : Mr.A.G. Talhar
Advocate for Respondent No.2 : Ms. Pradyna S.
Talekar

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CORAM : S.S. SHINDE & MANGESH S. PATIL, JJ.

Dated: November 21, 2017

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PER COURT :-

Heard the learned counsel appearing for the petitioner, the learned counsel appearing for respondent no.1 and the learned counsel appearing for respondent no.2.

2. The learned counsel appearing for the petitioner submits that, the transfer was malafide since there is prolonged continued harassment at the hands of the superiors and HRD Department of Respondent No.2 Management, mainly on the basis that, he belongs to the scheduled caste. He further submits that, the

petitioner has valid grounds to stay in Maharashtra since he is not physically fit and better medical facilities are available in the State of Maharashtra. It is submitted that, the petitioner was assured by Respondent No.2 that, he will be posted somewhere in the Maharashtra, and that too in Marathwada and in Vidarbha region. He submits that, to that effect Respondent No.2 has mentioned in the earlier transfer order issued on 1st February, 2013. The learned counsel appearing for the petitioner invites our attention to the various contentions raised in the Petition and annexures thereto and submits that, the Petition deserves to be allowed.

3. On the other hand, the learned counsel appearing for Respondent No.2 submits that, the transfer is made on administrative exigency and there was no malafide intention as such. She submits that, though the order impugned in this Petition was issued in the month of January, 2017, nevertheless at the request of the petitioner, the said order was not implemented till the end of month of August, 2017. She invites our attention to the averments in the affidavit in reply and

annexures thereto and submits that, the Petition may be dismissed.

4. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner, learned counsel appearing for respondent no.1 and the learned counsel appearing for Respondent No.2. We have carefully perused the appointment letter of the petitioner at Exhibit 'R-5' on Page 210. In the said appointment letter in clause 5(d), it is mentioned thus :-

"5(d) You are liable to be transferred to any place in India at the discretion of the Competent Authority;"

5. Therefore, the appointment of the petitioner was on condition that, he will be liable to be transferred to any place in India at the discretion of the Respondent Authority. The argument of the learned counsel appearing for the petitioner that, the petitioner was transferred out of malafide intention deserves no acceptance in view of the fact that, though the impugned

order of transfer has been issued by Respondent No.2 way back in the month of January, 2017, Respondent No.2 did not act on the said order at the request of the petitioner. Therefore, in our considered view, the transfer of the petitioner cannot be said to be outcome of malafide exercise by Respondent No.2. The transfer is an incident of service and in the present case, as already observed, the appointment letter of the petitioner stipulates that, he will be liable to be transferred anywhere in India. In that view of the matter, the Petition is devoid of any merits and hence the same stands rejected.

(MANGESH S. PATIL, J.)

(S.S. SHINDE, J.)

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