IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10913 OF 2017

Virendra Ojha]
Age 50 years,]
Son of Gajendranath Ojha,]
Working as Director of Income-Tax]
(Investigation) ITSC-1, Mumbai]
(Under Transfer),]
R/at A-7, Western Railway Officers Flats,]
IMC Road, Churchgate, Mumbai-400020.] …. Petitioner

Versus

1. Union of India,]
   Through the Secretary,]
   Ministry of Finance,]
   Department of Revenue,]
   North Block, New Delhi 110 001.]
   ]
2. The Chairman,]
   Central Board of Direct Taxes,]
   North Block, New Delhi 110 001.] …. Respondents

Mr. Ravi Kadam, Senior Advocate, i/by Mr. Sandeep Marne, for the Petitioner.

Mr. A.M. Sethna, i/by Mr. A.A. Garge, for the Respondent.

CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 28TH SEPTEMBER, 2017.

ORAL JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. Rule. Rule is made returnable forthwith. Heard finally, by consent of the parties.

2. By this Writ Petition, filed under Article 226 of the Constitution of India, the Petitioner is invoking the extra-ordinary jurisdiction of this Court in order to quash and set aside the interim order dated 26th September 2017 passed by the Central Administrative Tribunal, Mumbai, in his Original Application No.210/00537 of 2017. The said Original Application was filed by the Petitioner for staying the operation and implementation of his 'Transfer Order' dated 4th July 2017. By the said order, the Petitioner has been transferred to Gorakhpur in Uttar Pradesh as *'Commissioner of Income Tax'*. Petitioner has submitted representation for cancellation of the said 'Transfer Order'; however, the said representation came to be rejected. Hence, he has approached the Tribunal.

3. At the outset itself, we would like to place on record that the Petitioner has not alleged any *mala fides* in the 'Transfer Order'. He has also not alleged any bias, any vindictive, punitive or discriminatory action on the part of the Respondents in transferring

him. He has also not challenged the competency of the Authority, who had issued the 'Transfer Order'.

4. Petitioner has alleged only three grounds seeking stay to the 'Transfer Order'. The first is that, his daughter is studying in 10th standard and she will be appearing for S.S.C. Board Examination in March, 2018. However, it is an admitted fact that in the previous year also, the Petitioner was granted relaxation from transfer on the ground that his son was appearing for 12th standard examination. Apart from that, his wife, who is also serving as “Group-A” Officer in Railways, is very much available to take care of their school going daughter. She is also allotted accommodation by the Western Railway and, hence, she will not be required to vacate the premises on transfer of the Petitioner to Gorakhpur. Therefore, we find that the Tribunal was justified in not accepting this ground.

5. The second ground on which the stay is sought to the 'Transfer Order' is that, the Petitioner has not completed 14 years of continuous stay in Mumbai, excluding the period for which he was sent on deputation. For this purpose, the reliance is placed on the *“Guidelines, 2010”* dated 16th February 2010. Clause 4.3(i) provides

that, *“all Group 'A' Officers shall be transferred, if they have completed the field postings of 8 years continuous stay in the metropolitan stations, like New Delhi, Mumbai etc.”* Clause 4.4(i) gives *'Explanation'* for the purpose of *“counting continuous stay”*; whereas Clause 4.4(ii) of the said *'Explanation'* provides that, *“in the case of Delhi and Mumbai, continuous stay shall be 14 years, including exempt post but excluding deputations and postings in the Board”*.

6. According to the Petitioner, admittedly, he has not completed his continuous stay of 14 years in Mumbai. However, the order passed on his representation and on his application by the Tribunal goes to reveal that, the Petitioner has already completed 13 years and 9 months' stay at Mumbai, including the period on deputation. Further, it reveals that since the year 1998, the Petitioner is posted in Mumbai. Though in the year 2002, he was transferred to Thane, which is only about 35 kms. away from Mumbai and is as good as part of Mumbai, again in the year 2005, he was transferred to Mumbai. Therefore, he is working in Mumbai since 1998 to 2002; from 2002 to 2005 in Thane; and from 2005 to 2017 again in Mumbai. Therefore, in our opinion, the Petitioner has no ground to

raise any grievance on this score also. Once it is held that there are no *mala fides* in his 'Transfer Order', then, it follows that it was issued on account of administrative exigency and the said exigency was the post of 'Commissioner of Income-Tax' is lying vacant at Gorakhpur.

7. Clause 7.1 of the *“Guidelines, 2010”* also provides that, *“notwithstanding anything contained in these Guidelines, the Placement Committee may, if it considers necessary to do so in public interest and in furtherance of organizational objectives, transfer, retain, or, post any Officer to any station / region, or, a specific post”.*

8. Clause 7.2 also provides that, *“in between Two Annual General Transfer exercises, on administrative exigencies, the Placement Committee may shift any officer from one place / post to another”*.

9. Therefore, on this count also, we do not find that there is any reason to stay the operation of 'Transfer Order' of the Petitioner.

10. As regards the third ground also, the Supreme Court, while interpreting the policy of retention on the spouse ground, has

observed that, the said provision of posting husband and wife at the same station is discretionary and it is not such that in every case, simply because both the spouses happen to serve at one station, they cannot be shifted till their retirement. It is pertinent to note that since last about 18 to 19 years, if the Petitioner and his wife are posted at one place and now for administrative reason, if the transfer of the Petitioner is made by the Respondents, the effect of which 'Transfer Order', he has succeeded so far to avoid or to postpone, no further interim relief is necessary.

11. The reliance is placed by learned counsel for the Petitioner on the Judgment of the Apex Court in the case of *Director of School Education, Madras and Ors. Vs. O. Karuppa Thevan and Anr., 1994 Supp (2) SCC 666*, to submit that in the said decision, it was observed that, *“in effecting transfer, the fact that the children of the employees are studying should be given due effect, if the exigencies of the service are not urgent”*.

12. However, in the instant case, the post of 'Commissioner of Income-Tax' at Gorakhpur is lying vacant on account of the Petitioner seeking relaxation from the 'Transfer Policy' in the last year and this

year also. Therefore, sufficiently administrative exigency being made out and Petitioner's wife being very much present and available to take care of their daughter's education, we do not find any reason to invoke our extra-ordinary jurisdiction, which is for fair-play and equity, to stay the operation of 'Transfer Order', which prayer is rightly rejected by the Respondents-Authorities and the Tribunal.

13. The Writ Petition, therefore, being devoid of merits, stands dismissed.

14. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.] **[SMT. V.K. TAHILRAMANI, J.]**