

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.14201 OF 2017

ORDER:

Heard Mr.Kowuturu Pavan Kumar for petitioner and Mr.G.Vidyasagar, learned Senior Counsel for respondents.

The petitioner prays for Mandamus declaring office order vide SVBC/554/AD1/Admn/2014 dated 06.04.2017 and the consequential transfer order SVBC/554/AD1/Admn/2014 dated 06.04.2017 issued by 1st respondent, as illegal, arbitrary, discriminatory and unconstitutional.

The averments in brief, are that on 19.10.2007, the petitioner was appointed in Sri Venkateshwara Bhakthi Channel, Tirumala Tirupathi Devasthanam/2nd respondent as Senior Correspondent. On 01.11.2009, on declaration of probation, the petitioner was appointed as a permanent employee. The post in which the petitioner was working was re-designated and with re-designation, the petitioner was sent on deputation in between 2010 and 2012. In the year 2012, the petitioner on repatriation alleges to have joined back in the 1st respondent Devasthanam as Manager (Public Relations). Through office order dated 24.08.2016, the petitioner was working as Chief Programming Officer and assigned the duties of Script Writer. On 01.03.2017 and 03.03.2017, the petitioner represented to 1st respondent that he is not experienced in script writing and requested for suitable changes in the duties. While the matters stood thus, on 06.04.2017, the 1st respondent issued orders re-designating the petitioner as Manager (Marketing

and Distribution) and thereafter through the proceedings dated 06.04.2017 transferred him to Chennai. The petitioner challenges the re-designation and the order of transfer in the present writ petition.

Counsel for petitioner, having regard to the scope of judicial review in the matters of re-designation of posts and/or against the transfer order has limited to the following contentions. The first contention of petitioner is that the qualification and knowledge of petitioner are in journalism and the petitioner was appointed only as Senior Correspondent and now re-designating his post as Manager (Marketing and Distribution) is outside the scope of his native domain and further transferring the petitioner from Tirupati to Chennai, outside his cadre or post is arbitrary, illegal and unconstitutional. The petitioner filed reply affidavit to the averments in the counter affidavit. Much emphasis was laid on the averments in the reply affidavit to challenge the proceedings impugned in the writ petition. For brevity and convenience, having regard to the scope of judicial review of this Court under Article 226 of the Constitution of India either against an order of re-designation of a post or against the order transferring an employee from one division to another division or department, I am not proposing to advert to in detail various aspects in the reply affidavit.

The counsel for petitioner relies on the decisions in HARSHARANJIT SINGH V. RASTRIYA CHEMICALS & FERTILIZERS LIMITED (GOVT. OF INDIA UNDERTAKING), REP. BY ITS CHAIRMAN &

MANAGING DIRECTOR, BOMBAY AND OTHERS¹ and RSUDHAKAR v. M/s IMMUNOLOGICAL, HYD² in support of his contention that specific rules should be in place on classification of services, defining the concept of particular disciplines, cadre or services, so that the scope of arbitrariness or discriminatory in application of a rule is brought down to minimum. The re-designation and transferring the petitioner from Tirupati to Chennai, in the case on hand, suffers from colourable exercise of power and according to him, it is liable to be set aside.

The 1st respondent filed counter affidavit and the gist of the counter affidavit is that the public relations department is no longer relevant for respondent organization in view of the changing trends in the IT era and hence the organization was working towards re-allocation of job to the existing public relations team and the petitioner was asked to work as Manager (Marketing & Distribution) which is also a key post. As part of expansion programme of the channel into Tamil and Kannada segments along side Telugu, the respondent organization intended to utilize the public relation skills of petitioner in Marketing and Distribution, which is also close to public relation activities. The respondent is trying to place the petitioner in higher position and the inability expressed by the petitioner points out that he was not sure of his own public relation skills.

It is stated that transfer is incidence of service and it is the discretion of the employer to place the employee and utilize his

¹ 1994(3) ALT270 DB

² 1997(5) ALD 1975

service as required. The petitioner was transferred on administrative grounds in the interest of organization without loss of status or emoluments. It is further stated that the petitioner claimed his credentials as TV Journalist and obtained certificates to that effect and it is surprising to note that the petitioner now makes a new claim that he is not a writer, which is against his previous claims of being a certified TV Journalist with reputation. The petitioner, when instructed to submit script for special programmes designed for pilgrims, raised his voice and temper thereby showing disrespect to the organization. The petitioner on many occasions was asked to perform the tasks assigned to him, but without much success. In order to give the petitioner an opportunity to work for the betterment of the channel, the respondent organization decided to re-designate him as Manager (Marketing & Distribution).

It is stated that in the SVBC Board meeting held on 02.08.2016, the respondent organization decided to use the existing staff for the upcoming Tamil channel and on the advice of the Board, transferred some senior employees of the channel to Chennai and Bengaluru. In that process, the respondent organization decided to use the services of petitioner in Marketing Department as he had knowledge on public relations as Manager and believing his claims of expertise in public relation skills. The induction of petitioner into the professional team of marketing would add additional strength to the department. The present assignment may help the petitioner in honing up his skills further. The petitioner was transferred on

administrative grounds and not as a measure of vindictive and harassment.

It is stated that the petitioner having accepted the terms and conditions of appointment has no legal or vested right to question the transfer order. It is stated that the post of Manager (Public Relations) was abolished on 24.08.2016 and the same was intimated to the petitioner. There is no cadre strength and the petitioner was transferred in the interest of respondent organization and there are legal and valid grounds for transferring the petitioner. The respondent organization prays for dismissing the writ petition.

Mr.G.Vidyasagar appearing for 1st respondent contends that the appointment of petitioner as a Journalist is admitted. He relies on the office note dated 03.05.2012 to contend that the 1st respondent re-designated the post as Manager (Public Relations). On 14.05.2012, upon completion of deputation, he was brought back and later on he was assigned the post of Manager (Marketing and Distribution). Now, the 1st respondent is utilizing the services of petitioner as Manager, but in different disciplines and according to him, the 1st respondent being a Bhakti Channel has to utilize the available hands to further the object of the 1st respondent channel and as long as there is no reduction in emoluments or the petitioner does not suffer from any deprivation, much less dignity in working conditions, either the re-designation or transfer cannot and could not be made subject matter of challenge under Article 226 of the Constitution of India. He places reliance on the decisions of the REGISTRAR GENERAL, HIGH COURT OF JUDICATURE OF MADRAS v.

R.PERACHI AND OTHERS³ and STATE OF M.P AND ANOTHER v. S.S.KOURAV AND OTHERS⁴. He further contends that the scope of judicial review vis-à-vis transfer orders is no more *res integra*.

I have heard the counsel appearing for parties. The issue is in a very limited sphere. The petitioner was appointed on 19.10.2007 as Senior Correspondent and in the year 2009, he was made a permanent staff of 1st respondent channel. The first re-designation of post in which petitioner was working was admittedly undertaken in the year 2010 and in the re-designated post, the petitioner worked for two years on deputation and later on joined as Manager (Public Relations) in 1st respondent channel and worked in the same capacity up to 2016. In 2016, the 1st respondent re-designated the petitioner as Manager. On repatriation, the petitioner requested for the post of Chief Programming Officer and the request was turned down by the Executive Officer of Tirumala Tirupati Devasthanam. Through order dated 07.06.2012, the petitioner was re-designated as Manager (Public Relations). The 1st and 2nd respondents after examining the utility of petitioner as Manager (Public Relations), re-designated the petitioner as Manager (Marketing and Distribution) and transferred him to Chennai. The petitioner now complains not on re-designation as Manager, but for changing suffix viz., Marketing and Distribution instead of Public Relations. The argument of petitioner is that he is qualified as a Journalist, his skills are in journalism and, therefore, calling upon the petitioner to discharge the functions or obligations

³ 2011(12) SCC 137

⁴ 1995(3) SCC 370

of Manager (Marketing and Distribution) virtually amounts to transferring the petitioner to a non-cadre post and the same is illegal and unsustainable.

The dates referred to above and the orders issued from time to time clearly show that re-designation of post in the service of petitioner happened with re-designation as Manager (Public Relations). The petitioner was re-designated as Manager (Public Relations) and worked as such for two years. The petitioner now points out a few grounds and the petitioner having accepted the earlier re-designation without demur, cannot now object to re-designating him as Manager (Marketing and Distribution). On repatriation, the petitioner also worked as Manager in the same capacity and now taking note of organizational needs and also to further utilize the infrastructure etc., the respondent has re-designated the petitioner as Manager (Marketing and Distribution) and transferred him to Chennai. This Court is of the view that the petitioner is not justified in making grievances against re-designation and also transferring him from Tirupati to Chennai. Keeping in view the ratio of the Supreme Court in the decisions referred supra, without reiteration of the well settled principles of law, this Court is not persuaded by challenge to the orders impugned in the present writ petition. The challenge fails and accordingly this contention is rejected.

The 1st respondent keeping in view its resources and hands is entitled to take a decision in the interest of organization. The petitioner, if is of the view that in the absence of rules change

of description is impermissible, he ought to have protested at the earliest point of time. The failure to protest in 2010 or 2012 renders the contention on change of cadre etc., untenable and it is held accordingly.

Mr.Pavan Kumar alternatively has contended that the petitioner at least be given *ex post facto* opportunity to represent to 1st and 2nd respondents of his grievances and the respondents can be directed to consider his representation. Mr.Vidyasagar submits that the petitioner continues to be an employee of 1st respondent and the respondents are not averse to consider petitioner's representation and will do the needful, if the representation is reasonable.

In view of the statement of Mr.Vidyasagar, the petitioner is given liberty to represent to 1st respondent and the 1st respondent in consultation with the 2nd respondent takes a decision on the representation and communicates to petitioner expeditiously.

The writ petition is dismissed with the above observation. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, stand closed.

S.V.BHATT, J

22nd September, 2017

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