

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**

**AND**

**THE HON'BLE DR JUSTICE SHAMEEM AKTHER**

**Writ Appeal No.272 of 2017**

**JUDGMENT:** (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.44833 of 2016 dated 24.01.2017. The appellant herein is the petitioner in the writ petition wherein he questioned the proceedings dated 23.09.2016 issued by the General Manager, Hindustan Aeronautics Limited (HAL), the proceedings of the Additional General Manager dated 20.09.2016 and the earlier transfer order issued by the Additional General Manager dated 29.06.2015, as being arbitrary and unconstitutional.

By proceedings dated 29.06.2015 the appellant-writ petitioner was transferred from the Hyderabad Unit to the Bangalore unit of HAL. He filed W.P.No.24117 of 2015 questioning his transfer, among others, on the grounds that his wife was employed at Hyderabad and his transfer was contrary to the guidelines of the HAL dated 09.04.2007. W.P.No.24117 of 2015 was disposed of by order dated 11.08.2016 granting liberty to the appellant-writ petitioner to submit a representation within one week from the date of receipt of a copy of the order, and respondents 2 and 3 were directed to consider the same in accordance with the Rules and guidelines applicable to the officers whose spouses were working in other organisations, and to pass appropriate orders thereon within a period of four weeks.

In his order dated 23.09.2016, the 2<sup>nd</sup> respondent observed that the appellant-writ petitioner's transfer to the Light Combat Aircraft (LCA)-Tejas Division, Bangalore was effected based on

organisational requirements; HAL was the manufacturing agency in the LCA programme entrusted with the responsibility of Series Production of the Aircraft; concurrent engineering philosophy, adopted in the LCA programme, required co-operation with various R&D centers and other divisions involved in the programme, for which adequate manpower strength was required; the manpower strength of the Division was being augmented by inducting workmen & officers; transfer and assignment of workmen and officers was effected, from other divisions, during the years 2015 and 2016; consequently 51 officers and 185 workmen were posted to the LCA-Tejas Division; out of the 39 officers transferred during 2015-16, 11 officers were in the senior positions of Chief Manager and above; the Department of Personnel and Training, vide memo dated 30.09.2009, had indicated that, as far as possible and within the constraints of administrative feasibility, both husband and wife should be posted at the same station; the guidelines were required to be considered as far as possible, and within the constraints of administrative convenience; and it was not feasible to consider the appellant-writ petitioner's request for retention at Hyderabad owing to critical organisational requirements. The appellant-writ petitioner was informed that his request could not be acceded to. Aggrieved thereby the appellant-writ petitioner filed W.P.No.44833 of 2016.

In the order under appeal dated 24.01.2017, the Learned Single Judge observed that the appellant-writ petitioner's wife was working as a Scientific Assistant in the Department of Atomic Energy at Hyderabad; the Personnel Circular dated 09.04.2007 issued by the 2<sup>nd</sup> respondent, as well as Office Memorandum dated 03.04.1986 of the 1<sup>st</sup> respondent, required spouses to be posted at the same place as far as possible, and within the constraints of administrative

convenience; the order impugned in the writ petition stated that the appellant-writ petitioner was transferred to the LCA-Tejas Project on the basis of organisational requirements; not only the appellant-writ petitioner, but several other officers in senior positions, were also transferred; as per the terms and conditions stipulated in the offer of appointment, the appellant-writ petitioner was liable to serve in any position in any Department/Office/Division in any part of India or abroad as per the requirements of the employer; and the appellant-writ petitioner should seek to broaden his work related experience, and acquire new skills set at the new location in Bangalore.

The Learned Single Judge observed that the reasons assigned by respondents 2 and 3, in rejecting the appellant-writ petitioner's representation for his retention at Hyderabad, could not be said to be arbitrary and unreasonable; transfer is an incident of service; it was not even the case of the appellant-writ petitioner that it was *mala fide* or was being effected as a measure of punishment; the scope of interference, with orders of transfer, under Article 226 of the Constitution of India was very limited since the Court defers to the view of the management/employer regarding posting of its employees in the best interest of the organisation, and would normally not interfere unless the transfer is found to be *mala fide* or made as a measure of punishment; such allegations were, admittedly, absent in the present writ petition; and it was not a fit case for exercise of jurisdiction under Article 226 of the Constitution of India. Aggrieved thereby, the present writ appeal.

Sri J.Sudheer, learned counsel for the appellant-writ petitioner, would contend, placing reliance on the policy guidelines of HAL dated 09.04.2007, that job rotation (transfer) was required to be made considering the core disciplines; as the appellant-writ petitioner's

core discipline was designs, the policy guidelines required him to be posted only at Hyderabad, Korwa and Lucknow, and not at Bangalore; while deciding job rotation, there was a need to ensure that all officers are rotated uniformly, and the officer's aptitude and competence is also required to be taken into consideration; there were several other officers who could have been transferred instead of the appellant-petitioner; paragraph 18 of the policy guidelines required spouse employment and health problems to be taken into consideration while effecting transfers; the appellant-writ petitioner suffers from kidney ailments, and his wife is working at Hyderabad; and, even on this score, the action of the respondents, in transferring him from Hyderabad to Bangalore, was arbitrary and illegal.

While fairly stating that this Court would interdict an order of transfer, in the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India, only if the order of transfer is passed *mala fide*, as a measure of punishment, or is in contravention of statutory provisions, Sri J.Sudheer, learned counsel for the appellant-writ petitioner, would contend that this Court would also examine whether the order of transfer is in violation of Article 14 of the Constitution of India.

The scope of judicial review, with regards orders of transfer, is extremely limited. This Court would not, while examining the validity of an order of transfer, sit in judgment over the decision of the employer regarding the places to which its employees should be posted. As has been noted by the Learned Single Judge in the order under appeal, the terms and conditions of appointment of the appellant-writ petitioner stipulated that he was liable to serve in any position in any Department/Office/Division in any part of India or abroad as per the requirements of the employer. The appellant-writ

petitioner was appointed in June, 2006 and the policy guidelines, on which he places reliance, were issued only thereafter on 09.04.2007. It is not even the appellant-writ petitioner's case that these guidelines were in existence in the year 2006 when he was appointed in the organisation. While the organisation should, ordinarily, adhere to the prescribed guidelines while effecting job rotation(transfer), the jurisdiction of this Court, under Article 226 of the Constitution of India, would not be permitted to be invoked for enforcement of these policy guidelines as they are neither statutory in character nor do they have the force of law. (***Union of India vs. S.L.Abbas : AIR 1993 SUPREME COURT 2444***)

While the policy guidelines, no doubt, place emphasis on core disciplines, and the appellant-writ petitioner's core discipline appears to be designs, his transfer to Bangalore is for effective implementation of LCA-Tejas Project and, as is evident from the order of the 2<sup>nd</sup> respondent dated 23.09.2016, of the 51 officers identified for the LCA- Tejas Project, 39 were transferred from other Divisions, R&D Centers and offices on as-is-basis or on promotion. It is not as if the appellant-writ petitioner has been singled out for transfer. While his complaint regarding his health would also be a factor which the employer would take into consideration, the appellant-writ petitioner's transfer is to Bangalore, a City which has medical facilities, if not better, atleast on par with the City of Hyderabad. While the policy guidelines no doubt require employment of the appellant-writ petitioner's wife to be taken into consideration, it is always subject to the organisational requirements. As the appellant-writ petitioner appears to have been transferred to Bangalore, to form part of the prestigious LCA-Tejas project team, this Court would defer to the wisdom of respondents 2 and 3 in their assessment of the

organisational requirements necessitating transfer of the petitioner to Bangalore. Even otherwise, in an intra-court appeal under Clause 15 of the Letters Patent, interference with the order of the Learned Single Judge is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

**(RAMESH RANGANATHAN, ACJ)**

**(DR. SHAMEEM AKTHER, J)**

09<sup>th</sup> March, 2017  
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**Date: 09.03.2017**

**JSU**