

03.02.2021.
Item no. 8.
Court No.13
ap

**W.P.A. No. 2445 of 2021
(Through Video Conference)**

**Dr. Chaitali Roy
Versus
Union of India & Ors.**

Mr. Sakya Sen,
Mr. Sunil Gupta,
Mr. Dipanjan Biswas.

...For the petitioner.

Mr. Y. J. Dastoor, Id. A.S.G.
Mrs. Chandreyi Alam,
Mrs. Runu Mukherjee,

...For the Union of India.

Mr. Partha Ghosh,
Mr. Tirthapati Acharya.

..For the respondent nos.2 & 3.

The writ petitioner is aggrieved by an order of transfer dated 1st January, 2021 signed by the Registrar of Bose Institute of Calcutta. The said Institute is under the control of the Department of Scientific Technology of the Government of India. Admittedly, Bose Institute is a highly specialized institute addressing scientific needs of the country.

The petitioner was originally posted as Senior Laboratory Assistant and having a distinctive and different pay scale. The petitioner has been transferred to the Purchase Section under the Administration.

The petitioner would argue as follows:

That the transfer is not by deputation and that it is one in the nature of a fresh recruitment. Reliance in this regard is placed on a decision of the Hon'ble

Supreme Court in the case of **V. Jagannadha Rao & Ors. – Vs. – State of A.P. & Ors.** reported in **(2001) 10 SCC 401** particularly paragraphs 10 thereof.

This Court notices that the said decision was rendered in the context of a recruitment policy of the newly formed Government of A.P. and it was, inter alia, held at paragraph 12 that transfer is primarily an incident of service and Rules cannot be read as Statute strictly by letter and word. It was also held from the said judgment that the transfer is an incident of service and temporary ad hoc appointment to other cadres is permissible. The contention of the appellant employees in the said case was dismissed in the said decision by the three Judges' Bench of the Hon'ble Supreme Court of India.

The petitioner would next relied upon another decision of the Hon'ble Supreme Court of India in the case of **Palure Bhaskar Rao & Ors. – Vs. – P. Ramaseshaiah & Ors.** reported in **(2017) 5 SCC 783** particularly paragraph 14 thereof.

This Court notes that the said decision was rendered in the context of a basic requirement for a promotion of a minimum of six years in the feeder post of Sub-Inspector of Police (Civil) to the next Higher Grade. The issue therein was whether the period spent as a Reserve Sub-Inspector, should have been taken into consideration for the purpose of six years' requirement in the feeder post. The same was negated

by the Hon'ble Supreme Court of India. Reliance is also placed on the said decision particularly paragraphs 14 and 15 to indicate that the transfer and recruitment are two different matters altogether and the petitioners' transfer in the instant case amounts to recruitment in the Purchase Department under the Administration.

This Court notes the submissions of the learned Additional Solicitor General that the petitioner has been sent to the Administrative post only for a temporary period and the posting is a temporary assignment.

In any event, this Court is of the view that the general principles of cadre transfer and the restrictions thereon may not be applicable to a highly specialized institute like the Bose Institute. The reason therefor is that the person with the petitioner's experience may be better placed than a general candidate in the Administrative post since the decision involves purchase of special equipment and the petitioner's expertise may be required even for the purpose of procurement. Such Administrative post cannot be compared to any other Administrative post in the Government or any Autonomous Body under the Government.

The petitioner would lastly rely upon a decision of a Single Judge of the Hon'ble Gujarat High Court in the case of ***Rohit J. Gediya – Vs. – State of Gujarat***

reported in **2005 GLH(2) 173**. The said decision was rendered in the context of a transfer from the post of tutor under a Dental College to that of a tutor in a Medical College, which was held to be a transfer from one cadre to another.

This Court sees that the transfer in the said Gediya decision was from one Institution to a completely different Institution and has no manner of application in the facts of the present case.

The Gujarat High Court had considered as to whether the petitioner therein would have prejudiced by the transfer order and it was found that the petitioner may have some promotional opportunities by reason of transfer. The said decision has no manner of application in the facts of the present case.

Since it is found from the submissions of the learned Additional Solicitor General that the transfer of the petitioner to the Administrative post is ad hoc and temporary, this Court is not inclined to consider the claims of the petitioner.

This Court has already held hereinabove that the requirement of even Administrative post in a Specialized Scientific Institute like Bose Institute may warrant appointment of technical officers as well.

The Bose Institute submits that the petitioner's pay and allowances, seniority and service benefits will not in any way be prejudiced or affected and that even if the post in question to which she is being

transferred, had a lesser amount of pay, the petitioner's pay and allowances would be continued to be protected. Hence the writ petitioner's grievance are utterly misplaced.

For the reasons stated hereinabove, the instant writ application shall stand dismissed.

There will be no order as to costs.

All parties are directed to act on a server copy of this order on usual undertakings.

(*Rajasekhar Mantha, J.*)