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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 12th October, 2021

+ **W.P.(C) 6388/2021 & CM APPLs. 20062/2021, 24700/2021**

**BHARTIYA KHADYA NIGAM KARAMCHARI
SANGH**

..... Petitioner

Through: Mr. Bahar U.Barqi, Advocate
versus

FOOD CORPORATION OF INDIA

..... Respondent

Through: Mr. Manoj Standing counsel for SCI
and Ms. Arpana Sinha, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the new Transfer Policy dated 22nd March 2021, introduced vide circular no. EP-03-2021-06, titled “*Comprehensive Transfer Policy Guidelines for employees of Food Corporation of India*”, which has been brought into effect for employees under categories I to IV of the Food Corporation of India (*hereinafter*, “*FCI*”). The prayers in this writ petition are:

“It is therefore prayed that the present writ petition of the Petitioner may kindly be accepted and allowed and a writ of mandamus or any other appropriate writ, order or directions may kindly be issued to the Respondent: -

(I) holding and declaring the said new transfer policy dated 22.03.2021 to be illegal and unconstitutional and not binding on the employees; and

(II) permanently restraining the respondent from enforcing and implementing the said promotion policy

dated 22-03-2021.

III) Directing the Respondent not to implement the impugned policy in breach of the Section-33 of the Industrial Disputes Act 1947 during the pendency of the proceedings of the Industrial Disputes between the parties challenging the impugned transfer policy;

IV) Such other and further relief(s) as is deemed fit, may also be awarded to the Petitioner.

V) Costs throughout be also awarded to the Petitioner.”

3. The challenge has been raised on behalf of the Petitioner- labour Union which claims to be representing several Workmen, falling in various categories of workers with the FCI. The challenge is to the effect that the new Transfer Policy is contrary to law on the following grounds:

- (i) Violative of Section 9A of the Industrial Disputes Act, 1947 and the conditions stipulated thereinunder.
- (ii) That inspite of the copy of the policy having been issued to the Labour Union only on 24th February, and only one week time having been granted to furnish comments, the said Transfer Policy was notified on 1st March, i.e., within a week itself. This is disputed by Mr. Manoj, Id. counsel for the Respondent-FCI, who submits that the Policy was, in fact, notified only on 22nd March. and the requisite period for furnishing comments was duly granted to the Union.

4. On the first date of hearing, i.e., 12th July 2021, a preliminary objection *qua* maintainability of the present petition was raised by Id. Counsel for the Respondent. Accordingly, submissions have been heard on the maintainability of the present petition before this Court.

Submissions on Maintainability

5. Mr. Manoj, Id. Counsel appearing for the Respondent- FCI, submits that the FCI has been declared as an essential service, with the outbreak of the COVID-19 pandemic. The FCI had earlier issued a policy dated 12th February 2014 which has been superseded by the current policy. The intention of the current Transfer Policy, introduced on 22nd March 2021, is to make sure that there is fairness, reasonableness, and any arbitrariness is removed. The Transfer Policy, in his submission, is meant to uphold transparency, so as to remove discretion in the officers, as the Government noticed that some of the employees of the FCI were being stationed in specific zones and divisions without being transferred for several years. This according to the FCI was contrary to Regulation 17 of the FCI Staff Regulations, 1971 which clearly provides that the employees could be transferred anywhere in India.

6. Mr. Manoj, Id. Counsel, further submits that the Transfer Policy applies to employees belonging to categories I to IV, however, the Petitioner-Union represents only the employees falling in categories III, IV and V.

7. He urges that the settled position in law is that a policy decision cannot be challenged, unless and until it is held to be malafide, unfair or discriminatory. The following judgments are relied upon by Mr. Manoj, to canvass this proposition:

- (2001) 3 SCC 635, titled *Ugar Sugar Works Limited v. Delhi Administration and Ors.*, (paragraph 18)
- (2009) 7 SCC 561, titled *Villianur Iyarkkai Padukappu Maiyam v. Union of India and Ors.*, (paragraph 169)

- (2007) 8 SCC 418, titled *Dhampur Sugar (Kashipur) Limited v. State of Uttaranchal and Ors.*, (paragraph 63)
- (1997) 9 SCC 495, titled *Krishnan Kakkanth v. Government of Kerala and Ors.*, (paragraph 36)

8. In addition, reliance is placed on the judgment of the Division Bench of the Bombay High Court in *Maharashtra Rajya Shikshak v. State of Maharashtra (WP(C)6640/2017)*, decided on 22nd June 2017, wherein in respect of a challenge to a Transfer Policy of teachers, the Bench held that the Transfer Policy cannot be interdicted by the court as a whole, however, this would not mean that in individual cases writ petitions cannot be entertained. Reliance is placed upon paragraphs 9, 17, 18, 19, 24-26, 40-45 of the said judgment by Mr. Manoj.

9. Mr. Manoj, Id. Counsel, further submits that as the Transfer Policy itself states, the intention of the policy is to ensure that there is no arbitrariness in the transfer of employees, and discretion is curtailed to the extent possible. The policy has been framed keeping in mind the guidelines issued by the CVC. The Transfer Policy itself is referred to, at pages 69-70 and 74-75 of the paperbook, to argue that various factors have been taken into consideration as per the Transfer Policy. The transfer within the zone is possible after a period of 5 years, and within one Division is after 15 years which is the reasonable period. Further, in his submission, the Transfer Policy also takes into consideration factors such as marital status, medical grounds, single parent, disabilities or special abilities, etc. which shows that policy is also humane in nature.

10. Finally, it is submitted by Mr. Manoj, Id. Counsel, that the transfer policy is one falling in the domain of policy making, which rests with the

Government, and the same ought not to be simply interfered with by this Court, unless the policy is arbitrary.

11. Mr. Bahar U. Barqi, Id. Counsel for the Petitioner, on the other hand, submits that this Transfer Policy is clearly violative of statutory provisions of the Industrial Disputes Act, 1947, especially Section 9A, and accordingly ought to be quashed.

12. Mr. Barqi, Id. Counsel, submits that the Policy is unilateral, and the trade union has already challenged the policy before the Conciliation Officer, and notice has already been issued by the Conciliation Officers in Delhi and in Noida, to the FCI in the matters. He submits that the transfer policy is also violative of Section 33 of the ID Act, as once the workmen have approached the Conciliation Officer, their service conditions cannot be changed without permission of the authorities.

13. He further submits that the manner in which notice was given by the FCI, giving only one weeks' time for comments, itself shows the arbitrary nature of the Transfer Policy. He submits that when the Union approached the FCI for discussions in respect of the said Policy, no meeting was called, and the Transfer Policy was directly notified.

14. At this stage, Mr. Manoj, Id. Counsel for the FCI submits that if there is any violation of Section 9A of the ID Act by the Transfer Policy, the same is liable to be challenged before the appropriate forum, and not before this court by means of a writ petition.

Proceedings before the Court

15. This Court, after hearing the submissions of the parties on maintainability of this petition, had directed affidavits to be filed by both the parties, vide order dated 1st October 2021, respect of the following:

“3. Ld. Counsel for the Respondent in support of his arguments on maintainability relies upon the fact that the new transfer policy, which is under challenge in this petition, was uploaded approximately one month before it was finally notified. If so, a copy of the draft which was uploaded, along with an affidavit stating the date on which it was uploaded, deposed by a responsible officer of the Food Corporation of India shall be placed on record by 6th October 2021.

4. Mr. Barqi, ld. Counsel to also place on record an affidavit deposed by the authorized officials of the Union, stating as to the number of Workmen represented by this Union and the categories to which they belong. Let the same be also filed by 6th October 2021.”

16. Further to the said order, affidavits have been filed on behalf of the Petitioner- Union as well as the Respondent and have been perused by the Court.

17. As per the affidavit of the Petitioner Union, it represents interests of employees who are in Categories II, III and IV. The affidavit further states that invitation for comments that was sent by the FCI, in respect of the new Transfer Policy, was not in terms/ in compliance with, the order of the Supreme Court in ***Food Corporation of India Staff Union v. Food Corporation of India and ors. (Civil Appeal No. 2336 (NL) of 1985)***. Moreover, in the past, meetings are stated to have been held for amicable formulation of the Transfer Policy, however the same was not carried out this time around. Comments are also stated to have been sent by the Petitioner- Union, which according to Mr. Barqi, ld. Counsel, have not been considered by the FCI.

18. Insofar as the affidavit placed on record by the FCI is concerned, it states that the draft Transfer Policy was communicated to the Union on 24th

February 2021, and 26 days' time was given before the issuance of the final circular. The final circular was only notified on 22nd March 2021. Thus, according to the affidavit of FCI, there is no violation of Section 9A of the ID Act. Mr. Manoj, Id. Counsel, submits that although on the portal only one weeks' time for submission of comments was given, many persons had submitted their comments in respect of the Transfer Policy. Thus, the required notice period under Section 9A of the ID Act has clearly been complied, with according to him.

Findings and Directions

19. The present case relates to the Transfer Policy which has been notified by the Food Corporation of India on 22nd March 2021. The disputes between the employees and the FCI have also reached the Conciliation Officer in Noida and in Delhi under the Industrial Disputes Act, 1947.

20. The grievance of the Petitioner- Union, primarily, is that various suggestions which were given on their behalf have not been considered by the FCI. On the other hand, the stand of the FCI is that the Transfer Policy is completely non-arbitrary, is transparent, and ensures equal treatment to all workers. It is also the stand of the FCI that the Transfer Policy is meant to remove various problems and issues which were being faced by the employees at various locations for a long period.

21. It appears, *prima facie*, from a reading of the Transfer Policy, that it is intended to bring about a non-arbitrary and reasonable manner of transfer of employees, across the various establishments of the FCI.

22. However, since the Petitioner is a Union, representing various workmen, this Court is of the opinion that the apprehension of the members of the Union, as also the employees, can be assuaged by simply directing

that a peaceful meeting be held between the members of the Union and the FCI. Needless to add that the respective stands of the parties, in respect of the legality of the Policy is not being finally adjudicated at this stage.

23. Accordingly, the following directions are issued:

- i) Two representatives of the Petitioner-Union shall be nominated, who will have a discussion, and place the stand of the members of the Union, in respect of the Transfer Policy, before the FCI. The meeting can be attended by not more than six members of the Union.
- ii) The meeting between the representatives of the Petitioner- Union, and the representatives of the Management - FCI, shall be held on 27th October 2021 at a mutually convenient time. The names of the two representatives of the Petitioner- Union, who shall be coordinating with the Management of the FCI, for the purposes of such a meeting shall be communicated by Mr. Barqi, Id. Counsel to Mr. Manoj, Id. Counsel.
- iii) If there is a further meeting which is required, the same shall be fixed with mutual consultation.
- iv) The Petitioner- Union is also permitted to place on record, in writing, any comments they may have, in the said meeting itself, in the form of a note which shall be handed over. Further, the contentions of the Union contained in the present writ petition, shall also be considered as part of their representation.
- v) The FCI shall award due consideration to the same and consider if any changes are to be made in the Transfer Policy, that has been notified on 22nd March 2021.

vi) The discretion to decide as to whether any changes are to be effected in the Transfer Policy, shall remain with the management of the FCI, so long as the FCI ensures that the suggestions of the Petitioner- Union are afforded reasonable consideration, and the same are not ignored while looking at the interests of the employees.

vii) The decision of the FCI shall be communicated to the Petitioner- Union by 30th November 2021.

The remedies of the Union and its members, if needed, *qua* the said decision, are left open. This Court has not examined the merits of the stand of either of the parties.

24. Since the matter is now going to be considered in a meeting between the parties, the Conciliation Officers both in Delhi and Noida shall merely defer the proceedings pending before them, until after 30th November 2021.

25. The writ petition is, accordingly, disposed of in the above terms. All pending applications are also disposed of. It is made clear that the Transfer Policy as notified currently, shall continue to operate until any decision is taken by the FCI to the contrary. All remedies of parties are left open.

PRATHIBA M. SINGH
JUDGE

OCTOBER 12, 2021

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