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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 6773/2021 & CM No.21349/2021 (for interim directions)
COMDT. JAGDISH DHAKA Petitioner

Through: Mr. Rajiv Manglik, Adv.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Abhay Prakash Sahay, Ms.
Mannu Singh, Ms. Indira Goswami,
Mr. Kunal Dhawan & Mr. Vivek
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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20.07.2021

[VIA VIDEO CONFERENCING]

CM No.21350/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) 6773/2021

3. Both, the petitioner and her husband are employed with the respondents Indian Coast Guard (ICG), with the petitioner wearing the rank of Commandant and her husband wearing the rank of Deputy Inspector General (DIG).
4. The petitioner has been posted at Delhi and her normal tenure of posting at Delhi ended in the year 2020. However on request of the petitioner that her daughter was studying in Class X, in a school in Delhi, she was not transferred out from Delhi in 2020. The husband of the petitioner is posted at Visakhapatnam and the counsel for the petitioner on

enquiry, states that he is posted at Visakhapatnam for the last about one year.

5. The respondents ICG have now transferred the petitioner, from Delhi to Visakhapatnam, where her husband is residing. According to the counsel for the respondents ICG appearing on advance notice, this transfer is on request of the petitioner for a couple posting; however according to the counsel for the petitioner, there was no such request.

6. The petitioner impugns the order of her transfer from Delhi to Visakhapatnam, where her husband is posted, contending that (i) the daughter of the petitioner who was earlier in Class X, on 5th June, 2021 i.e. one day after the transfer order dated 4th June, 2021 but before it was communicated to the petitioner, has exercised the choice of subjects in Class XI and has opted for the subject of Biotechnology in Classes XI and XII; (ii) the subject of Biotechnology is not available in all the Central Board of Secondary Education (CBSE) schools; (iii) on making enquiries, it is found that the subject of Biotechnology is not available in any of the CBSE schools in Visakhapatnam; (iv) the petitioner thus, for the sake of her daughter, is required to continue at Delhi and is unable to move to Visakhapatnam; and, (v) the petitioner, after her representation against the transfer order was rejected, has also sought Earned Leave and Child Care Leave (CCL) but the respondents ICG have directed the petitioner to seek the same, after complying with the transfer order and shifting to Visakhapatnam.

7. The counsel for the petitioner has fairly placed before us the difficulty, in the petitioner seeking CCL after joining at Visakhapatnam. It is stated that presently the petitioner and her husband are allotted official

accommodation at Delhi and Visakhapatnam respectively; once the petitioner joins at Visakhapatnam, she will neither be entitled to separate official accommodation nor to House Rent Allowance (HRA), being expected to live in the same official accommodation as her husband; that the petitioner, even if is granted CCL thereafter, will have to fend for residential accommodation at Delhi, without even getting HRA.

8. Though we appreciate the predicament aforesaid of the petitioner but are unable to grant any relief. As noticed in several judgments of this Court in *Shyam Sunder Tiwari Vs. Union of India* MANU/DE/1417/2020 (DB) [Special Leave Petition (Civil) No. 12022- 12023/2020 preferred whereagainst was dismissed on 18th November, 2020], *Kiran Pooja Vs. Union of India* MANU/DE/1715/2020 (DB), the decision dated 15th July, 2020 in W.P.(C) 3625/2020 titled *Rachpal Singh Vs. Union of India* [Special Leave Petition (Civil) No. 8923/2020 whereagainst was dismissed on 14th August, 2020], the decision dated 19th April, 2021 in W.P.(C) 4788/2021 titled *Meena Matai Vs. Union of India* and the decision dated 7th July, 2021 in W.P.(C) 5985/2021 titled *Ram Prakash Vs. Union of India*, grant of sympathy to the petitioner before us, is always at the cost of others who are not before the Court. It is found that there is a long queue of personnel waiting to be posted at Delhi. The official accommodation, particularly prime accommodation at Delhi being rare, there is a longer queue therefor also. If we show sympathy to the petitioner and interfere with the transfer order, resulting in the petitioner continuing to retain the official accommodation, it would be to the deprivation of another in waiting, may be for sometime therefor.

9. The respondents ICG are found to have already accommodated the petitioner by allowing the petitioner to continue at Delhi for her daughter to complete her Class X. The posting of the petitioner at Delhi cannot be perpetuated, now by the petitioner being retained at Delhi for Class XI and XII of her daughter and thereafter perhaps for the graduation of her daughter from University of Delhi.

10. Supreme Court, in a catena of decisions has held that a Government Servant has no vested right to remain posted at a place of his/her choice nor can he insist that he/she must be posted at one place or the other; he/she is liable to be transferred in the administrative exigencies, from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service, in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he/she should continue in such place or position as long as he/she desires. The Courts are always reluctant to interfere with the transfer of an employee, unless such transfer is vitiated by violation of some statutory provisions or suffers from *mala fides*. Reference in this regard may be made to the decisions in *Shilpi Bose (Mrs) Vs. State of Bihar* AIR 1991 SC 532, *Rajendra Roy Vs. Union of India* (1993) 1 SCC 148, *Union of India Vs. S.L. Abbas* (1993) 4 SCC 357, *State of U.P. Vs. Gobardhan Lal* (2004) 11 SCC 402, *Rajendra Singh Vs. State of U.P.* (2009) 15 SCC 178 and to the decision of this Court in *Meena Matai* supra. No such case is also made out.

11. There is no merit in the petition.

Dismissed.

12. The counsel for the petitioner seeks clarification that the application of the petitioner, after joining at Visakhapatnam, for Earned Leave/CCL, would be decided without being influenced by what is recorded hereinabove.
13. We have heard the counsel for the respondents ICG.
14. It is so clarified.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JULY 20, 2021
'gsr'