

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 3114 of 2022

Bimalendu Mahapatra (Brigadier)
Vs.
Union of India & Ors.

Mr. Soumya Majumder
Mr. Abhik Sarkar
... For the petitioner

Mr. D.N. Ray
Ms. Sumita Sarkar
... For the respondents

This is the third writ petition within a span of about two months. The petitioner's first writ petition, being WPA 19983 of 2021, was disposed of by an order dated 14th December, 2021, the operative portion whereof is as follows:-

“Transfer orders are seldom interfered by the Court and that too if, interfered is in a very limited sphere. The transfer policy is left to the employer for the purpose of effective and smooth administration. In the aforesaid facts and circumstances, let the representation made by the petitioner dated 4th December, 2021 appearing at pages 53 and 54 of the writ petition be disposed of by 31st December, 2021 after affording the petitioner a reasonable opportunity of hearing following the prevalent Covid 19 protocol.

It is made clear that till a decision is taken on the petitioner's representation or 31st December,

2021 whichever is earlier, the transfer order dated 30th November, 2021 shall not be given effect to so far as the petitioner is concerned since he has been asked to join at the transferred place immediately. This interim protection is granted so that the whole exercise of considering the petitioner's representation does not amount to a fruitless venture, which otherwise will happen if the petitioner is directed to join at the transfer place keeping the representation pending for consideration. In any event to join at the transferred place some time is required and 15 days delay will not amount to gross inconvenience to the employer. The inconvenience and hardship will be more to the petitioner and lies in favour of granting the petitioner this interim protection. Nothing further remains to be adjudicated in this writ petition."

Although, the respondents were directed to consider and dispose of the petitioner's representation dated 4th December, 2021 by 31st December, 2021, but the same was ultimately done on 9th February, 2022 and the said decision was communicated to the petitioner by a letter dated 11th February, 2022. Prior to the representation being disposed of in terms of the order dated 14th December, 2021, the petitioner had approached this Court by filing a writ petition, being WPA 21415 of 2021, inter alia, challenging a memo dated 21st December, 2021 issued subsequent to the passing of the order dated 14th December, 2021 but prior to disposing of the petitioner's representation in terms of the said order. As the final order, which was communicated to the petitioner

by the letter dated 11th February, 2022, had been passed prior to the said writ petition, being WPA 21415 of 2021, could be heard, this Court granted liberty to the petitioner by an order dated 15th February, 2022 to file a comprehensive writ petition as the petitioner intended to challenge the final order communicated to him by the letter dated 11th February, 2022 by disposing of the said writ petition. The instant writ petition, according to the writ petitioner, is the said comprehensive writ petition.

This writ petition was taken up on 22nd February, 2022 when an order was passed. The operative portion of the said order dated 22nd February, 2022 is as follows:-

“After hearing the parties and considering the materials on record a full-fledged scrutiny of the matter which is likely to attract the transfer policy of the respondents to which confidentiality is attached, may be avoided in the instant case if the respondents can withhold the transfer of the petitioner till 30th April, 2022.

In the facts and circumstances, the matter is adjourned till 25th February, 2022 to enable the respective advocate to take necessary instruction in the matter so that the scope of hearing can be reduced.”

Learned advocate representing the respondents makes over a written instruction to the Court which is retained with the record. The sum and substance of the written instruction is that the respondents are not agreeable to keep transfer order of the petitioner in

abeyance beyond 28th February, 2022 thereby reiterating the view taken in the final order communicated to the petitioner on 11th February, 2022.

The petitioner, on the other hand, has submitted a written undertaking to the effect that he shall not seek exemption from rotational transfer after 31st May, 2022. The undertaking is retained with the records.

The learned advocate for the respondents further submits that he has the oral instruction that the petitioner will be allowed to avail leave but he has to join at the transferred post at Jabalpur by 28th February, 2022.

This Court in the order dated 22nd February, 2022 had, in unambiguous terms, expressed its views that the Court does not intend to scrutinise the transfer policy of the respondents, vis-à-vis the petitioner claim as the confidentiality attached to such transfer policy should not be made public. At the end of the day, in view of the stand taken by the parties, the judicial scrutiny of the transfer policy of the respondents attached with confidentiality is inevitable. This Court keeping in mind the confidentiality factor is, however, not inclined to scrutinise the transfer policy of the respondents as the same will bring on record all factors considered for transfer of high ranked officers like the petitioner as several of which are definitely confidential in nature and should not be made public.

In that view of the matter, this Court is of the view that the petitioner's transfer order dated 30th November,

2021 from his present posting at Ichapur to that of Jabalpur shall be kept in abeyance till 30th April, 2022 with a specific direction on the basis of the undertaking given by the petitioner that the petitioner shall not seek any extension or exemption from the routine transfer already effected against him by the order dated 30th November, 2021 after 30th April, 2022.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)