

**10.06.
2022**

Ct. No. 04

Ab

WP.ST 185 of 2019

**Samrajny Konar
Vs.**

The State of West Bengal and others.

**Mr. Avijit Basu,
Ms. Sumitra Das,
Ms. Riya Chatterjee.**

... for the petitioner.

**Mr. Tapan Kumar Mukherjee,
Ms. Debdooti Dutta.**

... for the State.

The writ petitioner was appointed to the post of Assistant Programme Officer with effect from 16th December 2010 and subsequently joined service as Joint Block Development Officer on and from 12th July 2011. After her posting in such capacity, she undergone the induction level training programme with the State Institute of Panchayat and Rural Development and was thereafter posted to such post in Haripal Development Block, Hooghly on 23rd August 2011. Subsequently, she was transferred to Sankrail Development Block, Howrah with effect from 8th October 2012. By a notification dated 21st July 2015, the writ petitioner was transferred from Sankrail Development Block, Howrah to Singur Development Block, Hooghly.

The writ petitioner challenged the said order of transfer before the West Bengal Administrative Tribunal on multiple grounds including the ground of sexual harassment. According to her, the said order of transfer is punitive in nature having traced its genesis on the reporting of sexual harassment.

While the matter was pending before the tribunal, the writ petitioner after obtaining due permission participated in the West Bengal Civil Services

(Executive) etc. Examination, 2010 initiated for recruitment to the post of Group-C and emerged successful therefrom. By a notification dated 28th December 2015, the writ petitioner was appointed to the post of Assistant Commercial Tax Officer in the Directorate of Commercial Taxes, West Bengal.

Apropos to the aforesaid letter of appointment, the release order was passed on 6th January 2016 permitting the lien to be kept on the post of Joint Block Development Officer, Sankrail Development Block, Howrah and subject to the disposal of the tribunal application pending before the tribunal. The writ petitioner joined the said post but because of the notification dated 6th January 2016, such appointment was subjected to the disposal of the said tribunal application. The writ petitioner pursued with the same.

When the tribunal application was taken up for final disposal, an argument was advanced that though the lien was granted to the writ petitioner but the same has ended and, therefore, she may be directed to revert to the post, which she occupied in Sankrail Development Block, Howrah. The State took a plea that she is not entitled to go back to the original post but at the transferred post, as she has accepted the order of transfer. The tribunal proceeded to decide the said application and disposed of the same by passing the impugned order negating the claim of the writ petitioner so far as it relates to the transfer order is concerned, but prayer for arrears salary was directed to be paid after adjusting the leave in accordance with law.

The present writ petition is filed by the writ petitioner against the said order and it is contended that the State Authorities have refused the prayer of the writ petitioner to join the parent post as they have taken a stand that the period of lien has expired and the writ

petitioner has been discharged.

According to the learned Advocate for the writ petitioner, there was no stipulation in the notification dated 6th January 2016 on the duration of the lien having kept and, in fact, the application was taken out by the writ petitioner for seeking extension of the period, which has not been decided as yet. It is, thus, submitted that the aforesaid stand of the respondent authorities in refusing the writ petitioner to join her parent post over which she retained lien is an outcome of the order of transfer and the allegations relating to the sexual harassment. It is further contended that the memorandum issued as far back as on 7th December 2001 postulates the normal tenure of the Joint Block Development Officer in a Block to be for a period of four years and in an exceptional case it may be extended up to five years.

The memorandum contains exhaustive provisions relating to the transfer and we do not find any fetter on the appropriate authority to pass an order of transfer before the period reserved therein. Even otherwise, under the Service Jurisprudence, though the normal period at a particular station has been provided yet the power to transfer in exceptional circumstances and for better interest of administration is inbuilt and inherited with the competent authorities. It is inconceivable in the Service Jurisprudence that the employee can insist to remain in a particular station and defy any order passed for transfer.

The scope of the tribunal or the Court in transfer matters is very limited, as the Court cannot substitute themselves in the armchair of the authorities, who are in the helm of the administration. Such policy decision should not be readily interfered with unless tainted with bias, malice and an extraneous factor giving a colour of

such order being punitive or putting a stigma on the said employee.

There was a serious allegation made by the writ petitioner, which, according to her, is the genesis of the said order of transfer. Though Mr. Tapan Kumar Mukherjee, learned Senior Advocate appearing on behalf of the State, submits that the committee constituted for adjudication of the complaint has found the allegation to be unsubstantiated, but we do not intend to go into such aspect. It is open to the writ petitioner to take appropriate steps permissible under the law.

We are basically concerned with two aspects, which has been projected before us. Firstly, whether the order of transfer is susceptible to be interfered with being an outcome of the allegation relating to sexual harassment and, secondly, whether the authority was within its power to pass an order of discharge in absence of any duration of lien and deny the joining of the writ petitioner to her parent post?

So far as the first point is concerned, we find that before the said order of transfer is accepted or being duly implemented at the behest of the writ petitioner, she joined the post of Assistant Commercial Tax Officer, Directorate of Commercial Taxes, West Bengal, which is unconnected and/or unrelated with the earlier service/post held by the writ petitioner. The writ petitioner chose to join the new post having no relation or co-relation with the earlier one but obviously kept the lien, which would be evident from the notification dated 6th January 2016 issued by the Special Secretary, Department of Panchayat and Rural Development, Government of West Bengal, communicating the decision of the Governor of West Bengal. The moment the writ petitioner joined the new service in different department keeping a lien over the previous post, the

order of suspension, in our opinion, lapsed and/or received a natural death.

In view of the above, we do not think that there remains anything to be decided on the said order of transfer in view of the facts emanate from the record and, therefore, it was not proper on the part the tribunal to decide the said issue. Since we do not find that the cause of action so pleaded in the tribunal application survived after the writ petitioner joined to the post of Assistant Commercial Tax Officer, the findings made in the impugned order shall not be treated as sacrosanct nor will operate adversely to the writ petitioner.

So far as the second point is concerned, in our opinion, it is a fresh cause of action that has accrued to the writ petitioner unrelated and/or unconnected to the original cause of action pleaded in the tribunal application. Though certain foundations have been made in the instant writ petition, as the same is relatable to the original cause of action i.e. the order of transfer, we think that once it is construed as fresh cause of action, such point should not be decided by this Court in exercise of power of judicial review bypassing and ignoring the provisions of the West Bengal Administrative Tribunal Act.

Section 28 of the West Bengal Administrative Tribunal Act, 1985 excluded the jurisdiction of the Court to entertain the proceeding in relation to recruitment and the matters concerning recruitment to any service or post or service matters concerning the members of any service or persons appointed to any service or post, which has been vested upon the Tribunal to decide the same. Though the exception has been carved out where the Supreme Court and the Industrial Tribunal, Labour Court or the other authority under the Industrial Disputes Act, 1947 were kept

outside the purview of the said exclusion clause but by virtue of the Constitution Bench decision rendered in case of **L. Chandrakumar vs. Union of India**, reported in **(1997) 3 SCC 261**, the power of the High Court under Article 226 of the Constitution of India was preserved and/or retained. It was further held therein that the tribunal, in fact, acts as Court of first instance and, therefore, such application under Article 226 of the Constitution of India shall lie before the Division Bench against the order of the tribunal constituted under Article 323A and 323B of the Constitution of India. It is, thus, evident that the tribunal acts as a forum of first instance and there is an implied embargo having created in entertaining the writ petition without approaching the said tribunal.

The second point, as indicated above, is a fresh cause of action and, therefore, cannot be entertained for the first time in the instant writ petition. However, it is open to the writ petitioner to ventilate such grievance before the tribunal, if so advised.

We made it clear that since we have found that the writ petitioner has chosen a wrong forum and cannot ventilate such grievance for the first time before this Court in the writ jurisdiction and having acted bona fide on the proper advice having extended to her, the tribunal would take into consideration the aforesaid aspect.

None of the observations recorded herein above either incidentally or accidentally touching upon the second issue shall be construed to have any persuasive effect upon the tribunal, who shall decide the matter independently, if approached, in accordance with law.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)