

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4579 OF 2022

1. Mr.Kailash Chander Kaushik
Age – 55, Occ.Joint Director of ICSI
Resident of B-201, Sector 34,
Sky Avenue, Plot No.7, 8, 17, 17, 18
Kamothe, Navi Mumbai 410 209
E:- kailash.kaushik@icsi.edu
M:- 88797 50509 Petitioner

Versus

1. The Institute of Company
Secretaries of India
Through its President
2. The Secretary of The Institute
of Company Secretaries of India
3. Joint Secretary HR
of The Institute
of Company Secretaries of India
All having address at:-
ICSI house, 22 institutional area
Lodi Road, New Delhi – 110 003
4. Director ICSI CCGRT,
Plot No.101, Sector – 15,
Institutional Area, CBD Belapur,
Navi Mumbai – 400 614 Respondents

Mr. J.P. Cama Sr.Counsel a/w Mr.Vishwanath Patil a/w Mr.Kewal
Ahya i/b Mr.Ashwin C. Hawelkar for the Petitioner

Mr.Sudhir Talsania, Sr.Counsel a/w Mr.Chaula Solanki a/w
Ms.Rinky Kanojia i/b M/s.H.H.Nagi and Associates for the
Respondents

**CORAM: S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

RESERVED ON: AUGUST 22, 2022

PRONOUNCED ON: SEPTEMBER 14, 2022

JUDGEMENT : (PER : S.V.GANGAPURWALA, J.)

1 The Petitioner is challenging the office order dated 19.01.2022 passed by the Respondents thereby transferring the Petitioner to Hyderabad.

2 Mr.Cama, the learned Senior Advocate for the Petitioner strenuously contends that the order of transferring the Petitioner is not issued for any exigency of service or in the interest of administration but issued in colourable exercise of power as Petitioner has unearthed the rampant misappropriation of funds and corruption in the Respondent Institute. The Petitioner is a flag bearer in exposing the corruption and misappropriation of funds in Respondent no.1. The same is also reported in audit report. The learned Senior Advocate submits that because of the Petitioner unearthing and disclosing the rampant corruption and misappropriation of funds in the Respondent no.1, the Petitioner is subjected to frequent transfers i.e. 9 times during his service tenure from 2009 to 2022.

3 The learned Senior Advocate further submits that the impugned transfer order of the Petitioner is without application of mind and logic. The Petitioner hails from the administrative background with combined experience of 23 years working with the Indian Air Force and 13 years with Respondent. Therefore, transferring the Petitioner to research and academic wing is not in the interest of the Respondents.

4 The learned Senior Advocate further submits that the order of transfer is inconsistent with the transfer policy as mandated under the ICSI Service Rules, 1979. As per the transfer policy, employees who have spent more than five years in the Directorate / Chapter / Regional Office may be considered for transfer or as per the exigencies / requirement of the Institute. The transfer order is in the flagrant violation of the said rules. The Petitioner is posted at ICSE – CCGRT, CBD Belapur, Navi Mumbai in September 2020. On 31.01.2022 impugned order is issued transferring the Petitioner as HOD in CoE as Joint Director. It is further submitted that the wife of the Petitioner is a patient of ‘Acute depression’ and is under treatment at Navi Mumbai. The Petitioner’s unmarried daughter has a job at Navi Mumbai. The Respondent no.1 purposely and

vindictively has withheld the promotion of the Petitioner since 2020 and an Officer Junior in cadre who is charged with misappropriation of funds and found guilty of sexual harassment case by JMFC, Belapur, Navi Mumbai was promoted. The order of transfer of the Petitioner is for alien purpose and the same is mala fide and colourable exercise of power and against the public policy.

5 The learned Senior counsel relies on the judgment of the Apex Court in the case of **Punjab and Sind Bank and Ors. vs. Durgesh Kuwar (Mrs.)**¹ wherein it is held that if the Petitioner is victimized this court would interfere with the order of transfer.

6 Mr. Talsania the learned Senior Advocate for the Respondents submits that the order of transfer is due to administrative exigencies. The Petitioner is not the only person to be transferred. The transfer order would demonstrate that 13 persons are transferred. It is not correct on the part of the Petitioner to suggest that the Petitioner was transferred 9 times. The employees of Respondent no.1 are governed by Schedule - E transfer policy of ICSI Service Rules, 1979. The Petitioner was initially appointed on February 4, 2009 at CBD Belapur, Navi Mumbai and was internally transferred in the same City of Mumbai on April 2013 and was

1 (2020) III CLR 164

serving there till July 2014. The Petitioner, as such, completed his five years in the City of Mumbai. The Petitioner was transferred to Delhi in August 2014 and thereafter, he was transferred to Mumbai again in February 2016. Thereafter, in the year 2018, the Institute required the Petitioner to look after the work at CoE, Hyderabad. The Petitioner was transferred to Delhi as per the requirement of the Institute by Deputy Head Administration in the capacity of Joint Director and was internally transferred from ICSI-NIRO, Delhi in April 2019 and again in Delhi from NERO to ICSI Delhi. Hence, for a period from June 2018 to August 2020, Petitioner was in Delhi. In August 2020 Petitioner requested for his transfer from Delhi to CBD Belapur, Navi Mumbai. Hence, on request of Petitioner, he was transferred to CBD Belapur, Navi Mumbai in September, 2020. From February, 2016 till May 2018 Petitioner was in Mumbai and since February 2018 he was stationed at WIRO, Nariman Point. However the work assignment was of Hyderabad in Delhi. The Petitioner did not complete five years of service as he had requested for transfer in August 2020. The said request was considered by the Management and on his request was transferred to CBD, Belapur, Navi Mumbai. This would demonstrate that the Respondent does not have any ill motive against the Petitioner. It is false to say that because of the Petitioner unearthed case of corruption, the

Petitioner is transferred. Auditors had brought to the notice of Respondent no.1 instances of financial irregularities. Council of ICSI, on 17.09.2016, took serious note of the financial and other irregularities reported through draft Audit Report and constituted an Investigation Committee, inter alia, to investigate such financial and other irregularities. The Council, in its meeting held on 27.03.2017, decided to file disciplinary case against Mr. Joshi and Mr. Vyas and against the employee CS Priyanka Das. The learned Senior counsel submits that this court may not exercise its power of judicial review in case of transfer. Transfer is not with mala fide intention or against the rules. Promotion is as per the eligibility based on merit / seniority. The learned counsel relies upon the judgment of the Apex Court in the case of ***Gujarat Electricity Board and Another vs. Atmaram Sungomal Poshani***² and submits that the transfer of a government servant appointed to a particular cadre of the transferable posts from one place to the other is an incident of service.

7 We have considered the submissions canvassed by the learned Senior counsel for the parties. The scope of judicial review in the matters of transfer is in a narrow compass. This court would normally not interfere with the order of transfer unless the transfer

² (1989) 2 SCC 602

is actuated with mala fide intention or in gross violation of statutory provision.

8 The Petitioner to claim that he was transferred frequently has placed a list of transfers. The same is reproduced as under :

Sr.No.	Place of Posting	Month & Year
N.A.	ICSI-CCGRT (Initial Posting) CBD Belapur, Navi Mumbai (Assistant Director Administration)	February, 2009
01	ICSI-CCGRT to WIRO Nariman Point, Mumbai (Head of WIRO)	April, 2013
02	WIRO to ICSI-HO New Delhi (Deputy Head of Administration)	August, 2014
03	ICSI-HO to WIRO Nariman Point (Regional Director in the capacity of Joint Director)	February, 2016
04	WIRO to CoE, Hyderabad, Hyderabad (Special assignment given to Petitioner as Joint Director)	February, 2018
05	ICSI-HO at Delhi (Deputy Head Administration in the capacity of Joint Director)	June, 2018
06	ICCI-NIRO Delhi (Regional Director of NIRC in the capacity of Joint Director)	April, 2019
07	NIRO to ICSI-HO (Head Administration in the capacity of Joint Director)	January, 2020
08	ICSI-CCGRT CBD Belapur, Navi Mumbai (Joint Director)	September, 2020
09	CoE, Hyderabad (Transferred as HOD in CoE as Joint Director)	31.01.2022

9 As has been narrated by the Respondents that the Petitioner in his first posting from 2009 till July 2014 was at Mumbai. In August 2014 was transferred to New Delhi and in 2016 was posted back at Navi Mumbai. Thereafter was transferred to Hyderabad in February, 2018 and was transferred to Delhi and he was in Delhi upto January 2020. The Petitioner was thereafter, transferred to Belapur at his request. Within two years of he being posted at Delhi, Petitioner made request for transfer to Navi Mumbai. The request of the Petitioner for transfer was considered positively by the Respondents.

10 Transfer Policy provides that the employees who have spent more than five years may be considered or as per the exigencies / requirement of the Institute. The said policy further states that the transfer of an employee will invariably be made against the requirement. The criticality of the manpower for both the Directorate / Regional / Chapter Office shall also be kept in view while ordering such transfers.

11 The transfer of the Petitioner under the impugned order is not a solitary instance for transfer of the employee i.e. the Petitioner but 13 employees are transferred under the said order. The same is

reproduced as under :

S.No.	Name & Designation	From	To	To join latest by
1.	Mr.Sanjay Kumar Nagar Joint Secretary	CCGRT	WIRO	03.02.2022
2.	Dr.Rajesh Kumar Agrawal Director	WIRO	CCGRT	08.02.2022
3.	Mr.Kailash Chander Kaushik Joint Director	CCGRT	ICSI-Centre of Excellence (COE), Hyderabad	31.01.2022
4.	Mr.Chitij Executive Assistant	Directorate of Council Affairs	Directorate of Membership	31.01.2022
5.	Mr.Munesh Bindal Junior Executive Assistant	Oral Coaching and Online Classes Cell	Directorate of Council Affairs	24.01.2022
6.	Mr.Abhishek Kumar Senior Office Assistant	Directorate of Administration, Lodi Road	Directorate of Student Services	24.01.2022
7.	Mr.Narsingaraju Gadla Senior Executive Assistant	SIRO	ICSI-Centre of Excellence (COE), Hyderabad	14.02.2022
8.	Mr.Gopi Chand Office Assistant	Directorate of Law	Directorate of Examination	21.01.2022
9.	Mr.Rajnish Kumar Surya Office Assistant	Directorate of Council Affairs	Directorate of Law	24.01.2022
10.	Mr.Chiranjeeb Sarma Roy Senior Office Assistant	NE-Guwahati Chapter	Ranchi Chapter	31.01.2022
11.	Mr.Shashi Bhushan Prasad Senior Office Assistant	Ranchi Chapter	NE-Guwahati Chapter	08.02.2022
12.	Mr.Vinay Kumar Executive Assistant	Ghaziabad Chapter	RTI Cell	24.01.2022
13.	Mr.Vishal Bhasin Senior Executive Assistant	RTI Cell	Directorate of Human Resource	31.01.2022

12 The Petitioner to substantiate his contention that the transfer is malafide and on account of the fact that he is instrumental in unearthing the corruption and misappropriation does not seem to be proper from the facts on record. Auditors have also pointed out the

misappropriation. The Respondent council has taken action against the erring employees. In case the Respondent had some ill motive against the Petitioner they would not have considered the request of the Petitioner for a request transfer from New Delhi to Navi Mumbai in 2020.

13 In the case of **Punjab and Sind Bank and Ors. vs. Durgesh Kuwar (Mrs.)** (Supra) relied by the Petitioner, the Apex Court has observed that it is the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be mala fide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court, in exercise of judicial review, would not be inclined to interfere.

14 In view of the aforesaid observations of the Supreme Court, the only ground for consideration would be, as to whether there is violation of statutory rules or the transfer is mala fide one. From the facts discussed above, it does not appear that transfer is mala fide

one nor it appears that it is in total breach of the rules. The rules state that the transfer would be upon completion of five years. However, it also states that the transfer of the employee will be invariably made against the requirement. The requirement of the employee at a particular place is best left to the employer. The transfer does not appear to be mala fide one.

15 The Petitioner shall join the transferred place within three weeks from today.

16 In light of the above, no case for interference is made out. Writ Petition as such is dismissed. No costs.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)