

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5513 of 2022

Ms. Arti Kumari W/o Sh. Vikash Resident of C/o Purnima Girwar Niwas,
Indira Nagar, Road No.3, Postal Park, Patna- 800001.

... .. Petitioner

Versus

1. Head of HRM Department Bank of Baroda Baroda House, Mandvi Baroda-390001 (Gujarat).
2. Zonal Manager (Rajkot Zone), Zonal Office, Bank of Baroda Building, 2nd Floor, MG Road, Rajkot- 360001 (Gujarat).
3. Zonal Manager (Patna Zone), Bank of Baroda, 5th Floor, Anand Vihar Building, West Boring Canal Road, Patna- 80000

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Ajay Kumar, Adv.
For the Respondent Bank	:	Mr. Shivendra Kishore, Sr. Adv.
(Respondent No. 1 to 3)		Mr. Nishi Nath Ojha, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 28-03-2023 Heard Mr. Ajay Kumar, learned counsel for the petitioner and Mr. Shivendra Kishore, learned senior counsel assisted by Mr. Nishi Nath Ojha, learned counsel for the respondents.

2. Let it be recorded at the outset that a counter affidavit has been filed on behalf of the respondent no. 3. A copy of the same has been served upon Mr. Ajay Kumar, learned Advocate appearing on behalf of the petitioner.

3. Learned counsel for the petitioner submits that he would not require any adjournment and would not file any rejoinder to the same. Hence, the matter be heard on its own merit.



4. The petitioner in the present case has sought quashing of the order dated 13.08.2021 and 26.08.2021 as contained in Annexures '3' and '4' respectively to the writ application whereby and whereunder she has been transferred and posted to an another zone i.e. at Rajkot Junagarh (Gujarat) from Beur Branch Patna (Bihar).

Brief Facts of the Case are as under:-

5. The petitioner joined Dena Bank as Assistant Manager. In the year 2019, Dena Bank merged with the Bank of Baroda. The petitioner was transferred to Patna. She was transferred to Hajipur in the District of Vaishali (State of Bihar) where she remained posted from June 2014 to December, 2015. The records would reveal that the petitioner remained posted either at Hajipur or at Patna till her transfer vide communication as contained in Annexure '3' to the writ application.

6. During her posting at Patna, her husband who is an officer in the State Bank of India applied for his transfer from the State of Karnataka to Patna on spousal ground and health issues. Admittedly, her husband has been transferred from Raichur (Karnataka) to Patna as Deputy Manager in SBI. On his transfer, he joined at Patna on 19.07.2021.



Submissions on behalf of the Petitioner

7. It is the contention of learned counsel for the petitioner that within one month of the transfer of her husband on spousal ground, the impugned order of transfer was issued in respect of the petitioner. She was asked to go to Rajkot in the State of Gujarat. By the times she was asked to go and was relieved on 26.08.2021 (Annexure '4') she had been showing the symptoms of her expecting a baby. She made a representation requesting the competent authority of the Bank to reconsider the decision as to her transfer. In this regard, Annexures '4' and '5' to the writ application have been placed before this Court. In her representation, she pointed out that she had a child aged about 21 months and her husband had recently joined, therefore, considering the preferential transfer policy for female employees of the organization the authorities may consider her request so that she can balance her responsibilities towards her professional life as well as her personal responsibilities towards her infant child.

8. The receipt of Annexure '5' which is the representation of the petitioner has not been denied by the Bank. The admitted position is that the Bank never responded to the



representation of the petitioner.

9. Instead, correspondences were made with the petitioner saying that because she had not joined at her transferred place, her absence with effect from 26.08.2021 has been treated as unauthorized absence. She was asked to report to the Dy.G.M. immediately failing which it was informed that a disciplinary proceeding would be initiated.

10. Later on, a disciplinary proceeding was initiated but no final order has been passed.

11. Learned counsel for the petitioner has drawn the attention of this Court towards Annexures '1' and '2' to the writ application which are the communications from the Government of India, Ministry of Finance, Department of Financial Services to the Chairman, SBI/CMDs of all Public Sector Banks including IDBI and SBI Associates. It is submitted that these communications are specific that female employees of Public Sector Banks (PSBs), married or unmarried, when placed/ transferred away from their husband or parents as the case may be to distant locations face a genuine hardship and develop a feeling of insecurity, with a view to accommodate them as far as possible placement/transfer of married female employee on her request at a place be made on request where her husband is



stationed or as near as possible to that place or vice-versa. This Court will reproduce Annexures '1' and '2' in this judgment hereinafter.

12. Learned counsel for the petitioner submits that so far as the transfer policy of the Bank is concerned, it says that an employee who has remained in one zone for 6 years he/she is required to be transferred. There is no quarrel with the policy but here is a case which is to be treated as an exception in terms of the guidelines of the Government of India, Ministry of Finance as contained in Annexures '1' and '2' respectively. It is submitted that the words "as far as possible" is in the nature of a duty cast upon an employer to ensure that the female employees are to be accommodated on her request at a place where her husband is stationed or as near as possible to that place. In other words, it imposes a duty upon the employer to demonstrate in such cases where employer deviates from such policies that it was not possible to place/transfer the married /female employees on her request at the place where her husband is stationed.

13. Learned counsel, therefore, submits that the words "as far as possible" is to be understood keeping in view the purpose and object to be achieved which would be reflecting



from the opening paragraphs of Annexures '1' and '2' itself. It is submitted that such instructions/guidelines issued by the Department of Finance are meant to be obeyed and not to be discarded by citing general transfer policy.

14. Learned counsel submits that the fact that this petitioner is having a 21 months old child and now she has given birth to a baby on 30th May, 2022 are not in dispute. The employer instead of understanding the difficulties and hardships of the female employee such as the petitioner, acted in a totally indifferent manner and that would be reflecting from the action taken by the Bank during the period the petitioner was expecting her child and was unable to join at Rajkot. On 01.12.2021, when an explanation was called for, she was carrying the pregnancy for a substantial period.

Submissions on behalf of the Bank

15. Mr. Shivendra Kishore, learned senior counsel assisted by Mr. Nishi Nath Ojha, learned counsel for the Bank has made all efforts to defend the action of the Bank. The only difficulty with the learned senior counsel is that he cannot exceed the brief which he has. The Bank and its authorities have only one reason to cite i.e. to rely upon its general transfer policy. The submission is that the petitioner had stayed for



more than 6 years in one zone, therefore, she was covered under the transfer policy and her transfer cannot be found fault with. So far as the fact that she was transferred within one month from the date of joining of her husband at Patna on spousal ground and that she was having a child of 21 months old and then expecting another child are not denied.

Consideration

16. Having heard learned counsel for the petitioner and learned senior counsel for the Bank and its authorities as also upon perusal of the materials available on the records, this Court finds that so far as the guidelines/instructions contained in Annexures '1' and '2' are concerned, those are governing the transfer policy of the Banks. Learned senior counsel for the Bank has not argued that Annexures '1' and '2' are not binding upon the Bank of Baroda. This Court would, therefore, reproduce Annexures '1' and '2' hereunder for a ready reference:-

“ **ANNEXURE '1'** ”

MOST IMMEDIATE
BY EMAIL

F. No. 4/9/1/2014-IR
Government of India
Ministry of Finance
Department of Financial Services

Jeevan Deep, IIIrd Floor,



Parliament Street, New Delhi
Dated the August 8, 2014

To

Chairman SBI/CMDs of all Public Sector Banks
including IDBI and SBI Associates.

**Subject: Transfer of female employees in Public Sector
Bank-minimizing their hardship.**

Sir

It has been brought to the notice of this Department that female employees of Public Sector Banks (PSBs), married or unmarried, when placed/transferred away from their husband or parents, as the case may be, to distant locations face a genuine hardship and develop a feeling of insecurity keeping this in view, it has been decided.

- (i) to accommodate as far as possible placement/transfer of married female employee on her request at a place where her husband is stationed or as near as possible to that place or vice versa and
- (ii) to accommodate as far as possible placement/transfer of unmarried female employee on her request at a place where her parents, are stationed or as near as possible to that place.

2. PSBs are, therefore, advised to frame a policy on the subject with the approval of their Board suitably incorporating the above and take immediate action for implementation and compliance. Pending requests may also be considered under these guidelines. A line of confirmation may be sent to this Department immediately after adoption of the policy by the Board of the Bank.

3. This issues with the approval of Secretary (Financial Services)

Yours faithfully

Manish Kumar
Under Secretary to the Government of India

Encl

Copy to The Chief Executive, Indian Banks' Association
Bombay.



ANNEXURE '2'

MOST IMMEDIATE
BY EMAIL

F. No. 49/6/2018
Government of India
Ministry of Finance
Department of Financial Services
Jeevan Deep, IIIrd Floor,
Parliament Street, New Delhi
Dated 6 April, 2018

To

Chairman, SBI/CMDs of all Public Sector Banks
including IDBI and SBI Associates.

**Subject: Transfer of female employees in Public Sector
Banks-minimizing their hardship.**

Sir

It has been brought to the notice of this Department that female employees of Public Sector Banks (PSBs), married or unmarried, when placed/transferred away from their husband or parents, as the case may be, to distant locations face a genuine hardship and develop a feeling of insecurity keeping this in view, it has been decided.

- (i) to accommodate as far as possible placement/transfer of married female employee on her request at a place where her husband is stationed or as near as possible to that place or vice versa and
- (ii) to accommodate as far as possible placement/transfer of unmarried female employee on her request at a place where her parents are stationed or as near as possible to that place.

2. PSBs are, therefore, advised to frame a policy on the subject with the approval of their Board suitably incorporating the above and take immediate action for implementation and compliance. Pending requests may also be considered under these guidelines. A line of confirmation may be sent to this Department immediately after adoption of the policy by the Board of the Bank.



3. This issues with the approval of Secretary (Financial Services)

Yours faithfully

Manish Kumar
Under Secretary to the Government of India

Encl

Copy to The Chief Executive, Indian Banks' Association Bombay."

17. The General transfer policy showing that an employee has to be transferred after his/her stay for 6 years in one zone is not the bone of contention. The question which arises for consideration is as to whether the said transfer policy is required to be given effect to keeping in view the guidelines as contained in Annexures '1' and '2' to the writ application. This Court has no iota of doubt that Annexures '1' and '2' are creating an exception in respect of a class of female employees who are facing genuine hardships and develop a feeling of insecurity because of her posting at a far-flung place from that of the place of posting of her husband or parents. Such cases of hardships are to be dealt with in terms of the guidelines provided in Annexures '1' and '2' to the writ application.

18. Coming to the facts of the present case, there are some admitted facts in this case. The petitioner and her husband both remained posted at two far distant places till the month of April, 2021. It is this month of 2021 when her husband is said to



have transferred from Raichur, Karnataka to Patna. In the month of July, 2021, he was posted as Deputy Manager in SBI at Patna. The fact remains that during her stay at Patna for about 7 years, she was alone. The hardships which she had to face compelled her husband to seek transfer invoking a spousal ground as contained in Annexures '1' and '2'. When her husband was allowed the transfer, the respondent Bank frustrated the said transfer by sending this petitioner to a far distant place and thereby frustrated and negated the policy contained in Annexures '1' and '2'. This cannot be expected from a model employer. The representation of the petitioner as contained in Annexure '5' to the writ application clearly provides this information to the Bank, still the same was not considered and the authorities of the Bank remained sitting over the same. Instead, they chose to seek explanation from the petitioner and told her that her absence is unauthorised for which she would be proceeded against.

19. To this Court, it appears that action of the employer in transferring the petitioner from Patna to Junagarh at Rajkot is contrary to and in the teeth of the guidelines/policy of the Government of India, Ministry of Finance. The words "as far as possible" cast a duty upon the employer to make all



endeavours to accommodate the female employee in cases of genuine hardships and to post her at a place where her husband is stationed or as near as possible to that place. This was not done in the present case. Even after the representation, the employer did not correct their mistake.

20. This Court understands that transfer is an incidence of service but in this case the transfer is apparently seems to be causing such hardships to the petitioner which would be nothing less than a punishment for her. Such punishments may not be in black and white but being in the teeth of Annexures '1' and '2', by playing with her feelings and causing much hardships as she would be unable to provide due love and affection to her 21 months old child and the infant baby who is in her lap, perhaps she needs to stay with her husband in such circumstances and that was the object and reasons behind bringing into existence the Government's policy as contained in Annexures '1' and '2' to the writ application.

21. Finding the action of the Bank and its authority in complete contravention of the guidelines as contained in Annexures '1' and '2', in the nature of the materials present in this case, this Court is of the considered opinion that the order dated 13.08.2021 and 26.08.2021 as contained in Annexures '3'



and '4' in so far as they relate to the petitioner are liable to be quashed and the same are accordingly quashed/set-aside.

22. As a result of quashing of Annexures '3' and '4', the petitioner shall be allowed to brought back/continue at her present place and the period after 26.08.2021 shall not be treated as unauthorised leave.

23. The petitioner would be entitled for the consequential benefits.

24. At this stage, learned senior counsel for the Bank submits that the Bank may consider her posting at any vacant position either at Patna or in the vicinity of Patna within Patna Zone.

25. Learned counsel for the petitioner has no objection to the same. His statements are recorded for clarity.

(Rajeev Ranjan Prasad, J)

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AFR/

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