

31.01.2023
DL-9
(PP)
Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1256 of 2023

Sri Shyamal Kumar Malik

Vs.

Life Insurance Corporation of India & Ors.

Mr. Arun Kumar Chowdhury

....for the petitioner.

Mr. Avishek Guha,

Ms. Debarati Das

....for the respondent/LICI.

Affidavit of service filed in Court today is retained with the records.

Pursuant to an order dated September 26, 2022, passed by this Bench, a reasoned order was passed by the employer/Life Insurance Corporation of India (LICI). The petitioner at present is working as an Administrative Officer at the LICI Jhargram Branch Office, Kharagpur Divisional Office since his promotional transfer with effect from July 15, 2020.

Mr. Chowdhury, learned counsel appearing on behalf of the petitioner submits that there has been a violation of transfer and mobility policy for Class – I officers in the present case. Clause 5(a) and 12(b) and (d) of the said circular has been violated by posting the petitioner out of his town. The petitioner is not only a caregiver of his disabled child but also is a candidate/officer belonging to SC/ST community. He

further refers to an office memorandum dated June 6, 2014 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India in support of his contention that a caregiver of a disabled child may be exempted from routine exercise of transfer/rotational transfer subject to administrative constraints.

Mr. Guha, learned counsel appearing on behalf of LICCI submits that office memorandum dated June 6, 2014 is only applicable to *routine transfer/rotational transfer*. The same is not applicable in the case of a *promotional transfer*. He draws the attention of the Court to the reason recorded in the impugned order dated October 28, 2022. He submits that the petitioner has accepted the *promotional transfer* to the cadre of an Administrative Officer from the post of an Assistant Administrative Officer after a continuous stay of approximately 10 years in Kolkata in the previous cadre of Assistant Administrative Officer.

Having considered the rival submissions of parties and the materials placed on record, this Court finds:

- (a) The petitioner has accepted a *promotional transfer* from the cadre of Assistant Administrative Officer to the cadre of Administrative Officer. The petitioner

accepted his *promotional transfer* without any representation against the said posting order. The petitioner continuously resided in Kolkata for a period of 10 years before accepting the promotional transfer and joined the place of posting on July 15, 2020.

- (b) The petitioner could have refused the promotional transfer due to his family commitments but without any protest or demur, the petitioner joined his place of posting after accepting the *promotional transfer*.
- (c) After joining the place of posting in July 2020, the petitioner made a request for transfer on January 7, 2021 and followed the said request by another representation dated May 27, 2021. The said requests were made within one year of the promotional posting.
- (d) The said representations could not be considered since the petitioner had not completed even one year of service that was mandatory under the office circular dated October 22, 2016.
- (e) During his 12 years' tenure as an officer of LIC, the petitioner had all along been residing in Kolkata till he accepted his promotional posting in July 15, 2020.
- (f) Office Memorandum dated June 6, 2014 is only applicable to government employees regarding *routine transfer* or *rotational transfer* and not *promotional transfer*.

In the light of the discussions above, this Court holds that no violation of any rule or policy has been

made by the employer/LICI. The petitioner should not be allowed to approbate and reprobate. Such view of this Court finds support in a recent Supreme Court judgment reported in (2022) 2 SCC 25 (**Union of India & others vs. M. Murugesan & others**). The petitioner cannot accept *promotional transfer* without any protest and/or demur and immediately upon accepting the said promotional transfer, the petitioner cannot make request for being transferred back to Kolkata within a few months of accepting his *promotional transfer*.

In the light of the discussions above, **WPA 1256 of 2023** is **dismissed** without any order as to costs.

Since no affidavits have been directed to be exchanged in the said writ petition, all the allegations contained therein are deemed not to have been admitted by the parties.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)