IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

124 **CWP-11496-2023**
Date of Decision: 25.07.2023

Rohit Kaushal and Others **…Petitioners**

Versus

State Bank of India and Another **…Respondents**

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. D.S. Patwalia, Senior Advocate with
Mr. A.S. Chadha, Advocate for the petitioners

Ms. Madhu Dayal, Advocate with
Ms. Jannat Brar, Advocate for respondents-Bank
(assisted by Geet Verma, AGM (Law) and
Rajesh Arora, Manager (Law), SBI, Chandigarh
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JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of transfer policy dated 12.05.2023 (Annexure P-4) whereby respondent-bank has provided for inter-module transfer of its officers.

2. The brief facts of the case which are necessary for adjudication of the present case are that the petitioners are working with respondent-bank on Scale-I Post. The respondent-bank has divided entire country into 17 Circles and Chandigarh Circle is one of them. Every circle is further bifurcated into networks called Network 1, 2, 3 etc. Every network is further bifurcated into modules called as Module-Bathinda, Module-Ludhiana and Module-Mohali etc. There are various regional offices falling within a particular module. Every regional office consists of different branches. The respondent-bank on 10.06.2022

framed Transfer Policy for Scale-I & II Officers. The said policy was followed by Model Transfer Policy dated 22.12.2022. Pursuant to Model Transfer Policy, the respondent-bank framed Transfer Policy dated 12.05.2023 qua Chandigarh Circle.

3. Mr. D.S. Patwalia, Senior Advocate, *inter alia* submits that grievance of the petitioners is that as per policy of 2022, an officer could be transferred intra-module whereas as per impugned policy, an officer may be transferred inter-module. The maximum tenure of stay of a particular employee provided in the policy is contrary to the object of the policy. The respondent has framed different policies for different circles. In case of New Delhi Circle, the maximum period of stay has been prescribed 10 years, whereas for Chandigarh Circle 7 years stay has been prescribed. Thus, the policy is arbitrary resultantly, violative of Article 14 of the Constitution of India. The policy is contrary to object clause, thus, it needs to be tested on the touchstone of object sought to be achieved.

4. Ms. Madhu, Dayal, Advocate, who on advance notice is present in Court submits that it is prerogative of the Bank to form transfer policy. As per Rule 47 of State Bank of India Officers Service Rules, 1992 (for short '**1992 Rules**'), an employee may be transferred throughout the country, thus, petitioners have no right to claim that policy is bad just because an officer as per policy may be transferred inter-module. The petitioners are members of Officers Association and impugned policy was framed after consultation with the Office Bearers

of the Association. The bank cannot satisfy need of every employee. The respondent-bank has made changes in the transfer policy to comply with instructions of Central Vigilance Commission (CVC).

5. I have heard the arguments of learned senior counsel for the petitioners as well as learned counsel for the respondent and perused the record with their able assistance.

6. The petitioners are not assailing their transfer consequent to impugned policy, however, petitioners are assailing transfer policy on the ground that tenure prescribed for stay at a particular place is contrary to the stay period prescribed by other circles and transfer of inter-module is contrary to intent and purport of the policy.

7. It is a settled proposition of law that scope of interference in policy matters is very limited. The persons who are making policy are more competent to know need of the people as well as need of the organization.

8. Hon’ble Supreme Court has time and again adverted with scope of judicial interference in policy matters. Recently, a Constitutional Bench of Hon’ble Supreme Court in ***Vivek Narayan Sharma Versus Union of India; 2023 LiveLaw (SC) 1***, while adverting with question of legality of demonization of currency of denomination of Rs.500/- and Rs.1,000/- has considered the scope of judicial review. The Hon’ble Supreme Court has considered its judicial precedents and concluded that it is not function of the Court to sit in judgment over matters of economic policy and they must necessarily be left to

Government of the day to decide. The Court can certainly not be expected to decide them. The relevant extracts of the said judgment read as:-

> *"Scope of Judicial Review*
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> *215. The law with regard to scope of judicial review has been very well crystalized in the case of Tata Cellular (supra). In the said case, it has been held by this Court that the duty of the court is to confine itself to the question of legality. Its concern should be whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal would have reached or abused its powers. The Court held that it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken.*
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> *216. After referring to various pronouncements on the scope of judicial review, the Court has summed-up thus:*
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>> *"94. The principles deducible from the above are:*
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>> *(1) The modern trend points to judicial restraint in administrative action.*
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>> *(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*
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>> *(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

217. Though various authorities are cited at the Bar with regard to scope of judicial review, we do not find it necessary to refer to various judgments. We may gainfully refer to the judgment of this Court in the case of Rashmi Metaliks Limited and Another v. Kolkata Metropolitan Development Authority and Others [(2013) 10 SCC 95], wherein this Court has deprecated the practice of citing several decisions when the law on the issue is still covered by what has been held in the case of Tata Cellular (supra).

218. Our enquiry, therefore, will have to be restricted to examining the decision-making process on the limited *grounds as have been laid down in the case of Tata Cellular (supra).*

Scope of Judicial Interference in matters pertaining to economic policy

219. Since the issue involved is also related to monetary and economic policy of the country, we would also be guided by certain other pronouncements of this Court.

220. We may gainfully refer to the following observations of the Seven-Judge Bench in the case of M/s. Prag Ice & Oil Mills and Another v. Union of India [(1978) 3 SCC 459].

> *"24. We have listened to long arguments directed at showing us that producers and sellers of oil in various parts of the country will suffer so that they would give up producing or dealing in mustard oil. It was urged that this would, quite naturally, have its repercussions on consumers for whom mustard oil will become even more scarce than ever ultimately. We do not think that it is the function of this Court or of any Court to sit in judgment over such matters of economic policy as must necessarily be left to the Government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts."*

[emphasis supplied]

221. In the case of R.K. Garg v. Union of India and Others [(1981) 4 SCC 675], another Constitution Bench of this Court observed thus:

> *"8. Another rule of equal importance is that laws relating to economic activities should be viewed*

with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. ……….”

[emphasis supplied]

222. Again, the Constitution Bench of this Court in the case of Shri Sitaram Sugar Company Limited and Another v. Union of India and Others [(1990) 3 SCC 223], observed thus:

"57. Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The court does not supplant the "feel of the expert" by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the laws of the

> *land. As stated by Jagannatha Shetty, J. in Gupta Sugar Works [1987 Supp SCC 476, 481] : (SCC p. 479, para 4)*
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> *"... the court does not act like a chartered accountant nor acts like an income tax officer. The court is not concerned with any individual case or any particular problem. The court only examines whether the price determined was with due regard to considerations provided by the statute. And whether extraneous matters have been excluded from determination."*
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> *[emphasis supplied]*
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> *223. Recently, this Court in the case of Small Scale Industrial Manufactures Association (Registered) v. Union of India and Others [(2021) 8 SCC 511] had an occasion to consider the issue with regard to scope of judicial review of economic and fiscal regulatory measures. This Court observed thus:*
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> *"69. What is best in the national economy and in what manner and to what extent the financial reliefs/packages be formulated, offered and implemented is ultimately to be decided by the Government and RBI on the aid and advice of the experts. The same is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review. Merely because some class/sector may not be agreeable and/or satisfied with such packages/policy decisions, the courts, in exercise of the power of judicial review, do not ordinarily interfere with the policy decisions, unless such policy could be faulted on the ground of mala fides, arbitrariness, unfairness, etc.*

70. There are matters regarding which the Judges and the lawyers of the courts can hardly be expected to have much knowledge by reasons of their training and expertise. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.

71. The correctness of the reasons which prompted the Government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering of the points from different angles. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the Government.

72. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review of the governmental policy is now well defined. The courts do not and cannot act as an appellate authority examining the correctness, stability and appropriateness of a policy, nor are the courts advisers to the executives on matters of policy which the executives are entitled to formulate."

224. This Court observed that the Court would not interfere with any opinion formed by the government if it is based on the relevant facts and circumstances or based on expert's advice. The Court would be entitled to interfere only when it is found that the action of the executive is arbitrary and violative of any constitutional, statutory or other provisions of law. It has been held that when the *government forms its policy, it is based on a number of circumstances and it is also based on expert's opinion, which must not be interfered with, except on the ground of palpable arbitrariness. It is more than settled that the Court gives a large leeway to the executive and the legislature in matters of economic policy. A reference in this respect could be made to the judgments of this Court in the cases of P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India and others [(1996) 5 SCC 268] and Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited and another (supra).*

225. It is not the function of this Court or of any other Court to sit in judgment over such matters of economic policy and they must necessarily be left to the Government of the day to decide since in such matters with regard to the prediction of ultimate results, even the experts can seriously err and doubtlessly differ. The Courts can certainly not be expected to decide them without even the aid of experts."

9. In the case in hand, the respondent-bank has framed impugned transfer policy whereby transfer of an officer in the inter-module has been laid down. The petitioners are not challenging competence of respondents to frame policy. The petitioners have not pointed out any clause of the policy which is violative of any fundamental right of the petitioners guaranteed by Chapter III of the Constitution of India except to say that policy is arbitrary to the extent that period prescribed and place of posting is running contrary to the object clause.

10. Rule 47 of the 1992 Rules clearly provides that an officer may be transferred throughout the country. The same reads as under:-

"Transferability and Deputation

47. Every officer is liable for transfer to any office or branch of the Bank or to any place or deputation to any other organization, in India. Every officer who is selected against the vacancy declared for a Circle and therefore identified as belonging to that Circle Cadre is liable for transfer to any office or branch of the Bank within that Circle upto Senior Management Grade Scale IV. No such officer shall be entitled to seek any transfer to any Circle other than the Circle to whose cadre he/she belongs"

From the perusal of above quoted rule, it is evident that every officer is liable for transfer to any office or branch of the bank in India. As per 1992 Rules, the petitioners may be posted at any place in India. As per impugned policy, the bank has provided for inter-module transfer. The petitioners are going to be transferred inter-module. The respondent-bank is not making transfer inter-circle even though as per Rule 47 of the 1992 Rules, officers may be posted at any place in India. The petitioners have no fundamental or vested right to claim that they should not be transferred inter-module. There is nothing unreasonable, arbitrary which can be called as violative of Article 14 of the Constitution of India. It is apt to notice that the policy was framed with the participation of the association of officers and petitioners are member of the association. The policy could be violative of Article 14, had it been made applicable to few of the employees whereas it is applicable to all the officers, thus, petitioners have no right to claim that policy is violative of Article 14 of the Constitution of India.

11. The claim of the petitioners that Delhi Circle has provided maximum stay of 10 years whereas impugned policy is providing for maximum stay of 7 years cannot be countenanced because respondent-bank has right to fix different maximum stay for its different circles because need of every circle is different. On account of multiple reasons like density of population, cost of living, atmospheric conditions, number of metropolitan & Class-A/Class-B cities falling in the circle and other facilities, the parameters of stay at a particular place are always likely to be different from other places. It is not an exclusive case of respondent-bank whereas other Government Departments have also provided for different period of maximum stay, thus, claim of the petitioners is not sustainable.

12. From the perusal of structure of the circles, it comes out that Chandigarh Circle consists of Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir and U.T., Chandigarh. All the States are adjoining to each other. It is not the case of the petitioners that they are going to be transferred to remote or far-flung areas. The petitioners are going to be transferred within the Chandigarh Circle. The respondents indubitably are competent to formulate transfer policy and officers can be transferred throughout the country, thus, there is no illegality or unreasonableness or arbitrariness in the impugned policy.

13. In view of afore-stated facts and circumstances, this Court does not find any infirmity in the policy warranting interference by this

Court. The present petition deserves to be dismissed and accordingly, dismissed.

(JAGMOHAN BANSAL)
JUDGE

25.07.2023
Mohit Kumar

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*