



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: July 07, 2023

+ W.P.(C) 8974/2023 & CM Appls. 34026-34027/2023

CHIEF SECRETARY GOVT OF WEST BENGAL Petitioner
Through: Ms. Madhumita Bhattacharjee, Adv.

versus

AMRITPAL KAUR & ORS. Respondents
Through: Mr. Apoorv Kurup, CGSC with
Ms. Apoorv Jha, Adv. for R-1 & R-2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM Appls. 34026-34027/2023

Allowed, subject to just exceptions.

Applications disposed of.

W.P.(C) 8974/2023

1. The challenge in this petition is to an order dated April 13, 2023 passed by Central Administrative Tribunal in O.A. 35/2023, whereby the Tribunal has allowed the original application filed by the respondent No.1 herein by directing the petitioner herein who was respondent No.3 the following:-

“16. In the result, for the foregoing reasons, the present OA is partly allowed and the respondent no.3 is directed to grant No Objection Certificate to the applicant within a period of four weeks from the date of receipt of a copy of this Order, failing



which 'No Objection Certificate (NOC) shall be deemed to have been issued by the respondent No.3, and thereafter the competent authority amongst respondent nos.1 and 2 are directed to take immediate action for cadre transfer of the applicant from West Bengal Cadre to Odisha Cadre by passing necessary orders in this regard within four weeks thereafter.'"

2. Ms. Madhumita Bhattacharjee, learned counsel appearing for the petitioner submits that the Tribunal could not have given a mandatory direction to the petitioner herein to allow the cadre transfer of the respondent No.1 from West Bengal to Odisha cadre, it could have at the most directed the petitioner herein to consider the request of the respondent No.1 for inter-cadre transfer.

3. She has drawn our attention to page 18 of the paper book to contend that there is dearth of officers in the cadre and the petitioner cannot afford to allow an officer in its cadre to seek transfer to a different cadre.

4. We are unable to agree with Ms. Bhattacharjee for the reasons already stated by the Tribunal in paragraph 10, which we reproduce as under:-

"10. The facts as noted in para 2 above are not in dispute. So far as respondent nos.1 & 2 are concerned, having regard to the reply and submissions made on behalf of respondent nos.1 & 2, the said respondents have stated that since Govt. of West Bengal is not agreeable to grant No objection to the applicant for her inter cadre transfer from West Bengal to Odisha on the ground of marriage with Shri Amritpal Singh, IPS:OD:2021, her spouse may apply for his inter cadre transfer from Odisha to West Bengal cadre on the said ground and the West Bengal Cadre have already provided their consent for such inter cadre transfer. The grounds for not issuing No Objection to the



applicant as raised in the instant case by the respondent no.3 have already been dealt with by the Hon'ble Delhi High Court in Arsh Verma (supra), the relevant portion of the said Order/Judgment reads as under:-

“4. The learned counsel for the petitioner states that:

i) there is an extreme shortage of officers since a number of officers have sought transfer from West Bengal Cadre on various grounds, including the ground on account of their marriage to officers belonging to other State cadres; ii) the petitioner is a male and there are no urgencies of duties towards the family which could require the State to relieve him and iii) it is the discretion of the State to do so in light of the fact that there is a shortage of officers in the State.

5. On the other hand, the learned counsel for the respondent no. 1 submits that the respondent has not been able to start a family, as his wife is posted in a different State, nor is he able to take care of his family and his ailing widowed mother; he says that he needs to be stationed at the same place as them. He further submits that while deciding such cases, the authorities may well keep it in mind that the young officers, who are stationed at different places having different State Cadres will find it difficult to even start their family.

6. The learned counsel for the respondent no. 2 submits that the issue raised by the petitioner in the present case is no longer res integra and the same has been decided by the various judgments of this Court.

7. The issue raised in this petition stands decided against the petitioner herein by way of the following Division Bench judgments:

(i) In **Bhavna Gupta vs. The Union of India & Ors., [W.P.(C) No. 13444/2019 decided on 3.02.2020]**: The relevant portion of the same is reproduced herein below:

"11. Reading of the above-cited Government Policy leaves no room for doubt that the same would apply to the petitioner. The petitioner waited patiently for two years after making her first representation to the State of West Bengal; and only after having received no response did she approach the Tribunal. The Tribunal granted six



weeks time to the State of West Bengal to consider the petitioner's representation; however no response has yet been received to that representation.

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13. Counsel for the State of West Bengal now submits that a 'No Objection' cannot be granted in view of certain proceedings pending before the Calcutta High Court. With the highest regard for the Calcutta High Court and with full deference to the comity of courts, we have queried counsel for the State of West Bengal to point-out any order where the Calcutta High Court has restrained the transfer of the petitioner; or by which the petitioner has been ordered to remain present in court; or any order to even show that the petitioner's presence is necessary in West Bengal for the proceedings pending in court. No such order or direction or requirement has been brought to our notice.

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16. In view of the above, we dispose of this petition directing that the petitioner be relieved within two weeks from the date of receipt of this order."

(ii) In Ms. Loganayagi Divya V. vs. Union of India & Ors., [WP(C) No.3927/2020 decided on 22.7.2020}.

It was directed inter alia, as under:-

"4. In our view, there can be absolutely no justification for the State of West Bengal not relieving the petitioner to enable her to join the IPS Cadre in the State of Odisha. This shows complete apathy on the part of the State of West Bengal – which cannot be countenanced. We are left with no alternative, but to issue directions to enable the petitioner to join her post in the IPS Cadre in the State of Odisha.

5. Accordingly, we declare that the petitioner stands forthwith relieved from her post in the IPS Cadre of the State of West Bengal. No further orders would be required to be passed by the State of West Bengal in this regard. We direct the State of Odisha to treat this order as a relieving



order of the petitioner to enable her to join her post in the IPS Cadre in the State of Odisha."

(iii) In *The State of West Bengal vs. Raj Karan Nayyar & Anr.*, [WP(C) No.11966/2018 decided on 02.11.2018].

It was directed, inter alia, as under:-

"Considering the overall circumstance, we grant time to the petitioner up to 28.02.2019 to relieve the respondent No.1 so that he can join his services with the State of U.P. It is made clear that no further extension shall be sought or granted and, in case, no express order is passed relieving the respondent No.1 from his services by the State of West Bengal, he shall be deemed to have been relieved on 28.02.2019 and it shall be open to him to join the services with the State of U.P.

8. Keeping in view the aforesaid mandate of law, the present writ petition is dismissed and the State of West Bengal is directed to relieve the respondent no. 1 within eight weeks. In the event, the respondent no. 1 is not relieved within the aforesaid stipulated period, she shall be deemed to have been relieved by virtue of the order of this Court."

8. In a recent judgment in the case of *S K Nausad Rahaman & Ors. Vs. Union of India & Ors.*, reported in 2022 SCC Online SC 297, a similar issue arose and the Supreme Court has observed as under:-

"...55. The State in the present case has been guided by two objectives: first, the potential for abuse of ICTs and second, the distortion which is caused in service leading to plethora of litigation.

The State while formulating a policy for its own employees has to give due consideration to the importance of protecting family life as an element of the dignity of the person and a postulate of privacy. How a particular policy should be modulated to take into account the necessities of maintaining family life may be left at the threshold to be determined by the State. In crafting its policy however the State cannot be heard to say that it will be oblivious to



basic constitutional values, including the preservation of family life which is an incident of Article 21.

56. The circular dated 20 September 2018 has taken into account, what it describes “exceptional circumstances” such as “extreme compassionate grounds”. Leaving these categories undefined, the circular allows for individual cases to be determined on their merits on a case by case basis, while prescribing that transfers on a “loan basis” may be allowed subject to administrative requirements with a tenure of three years, extendable by a further period of two years. While proscribing ICTs which envisage absorption into a cadre of a person from a distinct cadre, the circular permits a transfer for a stipulated period on a loan basis. Whether such a provision should be suitably enhanced to specifically include cases involving:

- (i) postings of spouses;*
- (ii) disabled persons; or*
- (iii) compassionate transfers, is a matter which should be considered at a policy level by the Board.*

57. In considering whether any modification of the policy is necessary, they must bear in mind the need for a proportional relationship between the objects of the policy and the means which are adopted to implement it. The policy above all has to fulfil the test of legitimacy, suitability, necessity and of balancing the values which underlie a decision making process informed by constitutional values. Hence while we uphold the judgment of the Division Bench of the Kerala High Court, we leave it open to the respondents to revisit the policy to accommodate posting of spouses, the needs of the disabled and compassionate grounds. Such an exercise has to be left within the domain of the executive, ensuring in the process that constitutional values which underlie Articles 14, 15 and 16 and Article 21 of the Constitution are duly protected....”

9. It may be noted here that in the present case, the petitioner had already obtained a No Objection Certificate vide letter dated 20.08.2019 whereby the State of Haryana conveyed its



agreement for the transfer of the Respondent no. 1 to the Haryana cadre where his wife is posted as an IPS Officer. However, despite repeated requests, his representation has been turned down and a No Objection Certificate has not been granted by the State of West Bengal.

10. Keeping in view, the mandate of law as discussed above, the right to a healthy family life, to start a family and the right to parenthood have to be respected while balancing the careers and duties of the officers concerned. Time and tide wait for none. Child-bearing age for the young couple should not be irretrievably prejudiced by the non-grant of a relieving order for the officers to start their family. Compassion is expected from the State.

11. The urgency of the present case is of starting a family at present, which cannot wait indefinitely depending upon the decision of the concerned authorities.

12. The present writ petition along with the application is dismissed and the State of West Bengal is directed to relieve the respondent no. 1 within a period of three weeks from the date of receipt of a copy of this order. In the event of the respondent no.1 not being relieved within the aforesaid stipulated period, he shall be deemed to have been relieved by the virtue of this order."

5. In fact, we find, this Bench has also in **W.P.(C) No.3137/2023**, titled **State of West Bengal vs. Sagar and Anr.**, decided on March 15, 2023 of which a reference has been made by the Tribunal, has in Paragraph 9 stated as under: -

"9. The submission of Mr. Sunil Fernandes, learned counsel appearing for the State of West Bengal is by highlighting the fact that cadre strength in the State of West Bengal is presently much below the actual requirement and as such it is not possible to consent for transfer of cadre. He would also rely upon paragraph (iii) of the DoP&T OM which we have already reproduced above to submit that it is not obligatory on the part of the State of West Bengal to agree



for an inter-cadre transfer of the respondent No.1 to State of Rajasthan, when his wife can similarly seek transfer to the State of West Bengal.”

6. In view of the aforesaid position we are not inclined to interfere with the order passed by the Tribunal.

7. At this stage, learned counsel appearing for respondent No.1 would submit that Ministry of Home Affairs, Government of India has issued a notification dated May 18, 2023 whereby they have allowed the transfer of the respondent No.1 from West Bengal cadre to Odisha cadre on the ground of her marriage with Shri Amritpal Singh, IPS:OD:2021. She only requires a relieving order.

8. In any case, in view of our conclusion above, the writ petition is dismissed.

9. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JULY 07, 2023/ds

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