



2024:DHC:1741



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 15th February, 2024.**
+ **W.P.(C) 7693/2016**
SHIV SINGH Petitioner
Through: **Mr.S.S Pargai, Advocate**

versus

M/S ANSAL PROPERTIES & INFRASTRUCTURE LTD
..... Respondent
Through: **Mr.Malak M Bhatt, Ms.Neeha
Nagpal and Mr.Tarun Mehra,
Advocates**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:-

"a) Issue a writ of certiorari or any other writ /direction / orders thereby setting aside the award dt. 26.02.2016 passed by Sh. Sudesh Kumar-I, Presiding Officer Labour Court-X, Karkardooma Courts, Delhi in D.I.D. No. 1046/16 titled as Sh. Shiv Singh Vs. M/s Ansal Properties & Infrastructure Ltd. in the interest of justice.

b) pass any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioner and against the respondent."



2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

- a) The petitioner ('petitioner workman' hereinafter) was working at the post of 'Record Clerk' in the respondent management since 1992 and his last drawn salary was Rs. 3,508/-.
- b) In the year, 1998, the respondent management terminated the services of the petitioner workman *vide* letter dated 14th December, 1998. Aggrieved by the same, the petitioner raised an Industrial Dispute No. 26/2000 before the learned labour court, Karkardooma Courts, Delhi.
- c) After conclusion of the proceedings, the learned labour court passed an award dated 03rd October, 2002, in favour of the petitioner workman and reinstated him in service with 75 % back wages.
- d) In compliance with the said award, the respondent management reinstated the petitioner workman in the month of June, 2003, however, it is alleged that he was denied statutory benefits as directed by the learned Court below.
- e) Upon refusal of the said compensation, the petitioner workman filed a claim under Section 33-C(2) of the Industrial Disputes Act, 1947 ("I.D Act" hereinafter) challenging the alleged actions of the respondent management, however, the aforementioned claim was dismissed by the learned Labour Court *vide* order dated 21st October, 2009.
- f) In the year 2009, the respondent management claims to have served the petitioner with a transfer letter dated 12th December, 2009, and he



was directed to join the new place of posting, i.e. Jodhpur on 17th December, 2009, however, the petitioner refused to accept or acknowledge the same and allegedly arrived for work on 17th December, 2009 at the same location as he was earlier posted. On the said day, the respondent management refused to allow him to enter into the office and directed him to join the new place of posting.

- g) Thereafter, the petitioner workman informed the Senior Vice President, HR of the respondent management, of his account of the incidents, and requested the respondent management to take the petitioner workman back on duty at his original location, but the respondent refused to comply with this request. The same request was subsequently made the next day, however, the request was again not considered.
- h) Thereafter, the petitioner workman sent a legal notice dated 04th January, 2010, to which the respondents sent a reply dated 15th January, 2010, thereby, attaching the transfer letter.
- i) Subsequently, the petitioner workman preferred to challenge his alleged termination/transfer and instituted a case before the learned Labour Court, Karkardooma Courts, New Delhi *via* the Industrial Dispute No. 1046/2016 which came to be dismissed *vide* award dated 26th February, 2016.
- j) Aggrieved by the same, the petitioner workman has preferred the instant writ petition under Article 226 and 227 of the Constitution seeking to set aside the impugned award.



3. Learned counsel appearing on behalf of the petitioner submitted that the learned Labour Court erred in passing the impugned award as the same has been passed without taking into consideration the entire facts and circumstances.

4. It is submitted that the impugned award in question goes against both the law and the facts presented in the instant case as the learned Labour Court failed to address the core issues of the case and unjustly dismissed the petitioner's claim.

5. It is further submitted that the learned Labour Court made an erroneous conclusion by stating that the petitioner's services were not terminated rather he was transferred from Delhi to Jodhpur project by the respondent management, however, the learned Court failed to appreciate that the respondent management failed to prove that he was duly served with the copy of the alleged transfer letter.

6. It is submitted that the learned Labour Court has erred in concluding that the petitioner voluntarily abandoned the job without there being any pleadings or evidence in such regard.

7. It is submitted that the learned Labour Court erred by observing that there is no evidence to dispute the respondent management's claim that the petitioner was shown a transfer letter, reviewed its contents, and declined to accept it.

8. It is further submitted that the learned Labour Court failed to recognize the significance of MW1's admission during cross-examination where the said witness acknowledged that the address of the Jodhpur project



was not mentioned in the transfer orders and the petitioner's non-joining at the said place was also not communicated by the concerned officer.

9. It is submitted that the learned Labour Court overlooked the fact that from the year, 2003 to 2009, the respondent management had paid a sum of Rs. 3508/- per month to the petitioner, which is considerably less than the stipulated minimum wages.

10. It is further submitted that the learned Labour Court neglected to note that even after the petitioner was reinstated, the respondent continued to subject the petitioner to exploitation and harassment. This included the failure to provide the petitioner with the revised pay scales and other benefits as sanctioned by the respondent management for employees equivalent to that of the petitioner workman.

11. It is submitted that the learned Labour Court failed to recognize that the services of the petitioner workman were terminated on 17th December, 2009, under the pretext of transferring the petitioner to the Jodhpur project. The transfer letter dated 12th December, 2009, clearly indicates that there is no office or project address of the respondent in Jodhpur, Rajasthan. Therefore, it is submitted that the said transfer letter is a sham, and the learned Presiding Officer's reliance on the same constitutes a serious error in the impugned judgment.

12. It is further submitted that the learned Labour Court overlooked the crucial admission made during the cross-examination of the respondent witness where it was admitted that the management did not obtain the signature of any witness to the denial of the receipt of the transfer order by



the petitioner.

13. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner workman seeks that the instant petition may be allowed, and the relief be granted, as prayed.

14. *Per contra*, the learned counsel appearing on behalf of the respondent no.1 vehemently opposed the instant petition submitting to the effect that the award impugned by the petitioner workman is well reasoned and has been passed after profoundly considering all factors and evidence placed before the learned Labour Court.

15. It is submitted that on 12th December, 2009, the respondent issued a transfer letter to the petitioner, however, upon reading the contents of the letter, he returned it and refused to acknowledge it.

16. It is submitted that during cross-examination, the petitioner admitted to the fact that the respondent management is authorised to transfer its employees to its various branches and employees other than the instant petitioner have been transferred previously.

17. It is further submitted that the learned Labour Court has determined correctly by concluding that the petitioner's services were not terminated by the respondent rather he was transferred from Delhi to Jodhpur, Rajasthan with effect from 17th December, 2009 as indicated by the transfer letter dated 12th December, 2009.

18. It is submitted that in addition to his salary drawn, the petitioner workman was provided with a transfer allowance of Rs. 2500/- per month, therefore, indicating that there existed no *malafides* against the petitioner



workman on the part of the respondent management.

19. It is submitted that it is the petitioner workman who failed to report for duty at the transfer location and the question of termination of services could not be proved by the petitioner workman, therefore, the Labour Court's finding are entirely accurate.

20. It is submitted that the respondent replied to the notice received from the petitioner workman on 15th January, 2010, reiterating to request the petitioner to join the duty at the transferred location, i.e., Jodhpur, however, despite such communication, the petitioner workman did not report for duty at the transferred location.

21. It is submitted that the learned Labour Court formulated four issues for consideration in the case, and it rendered accurate findings on each one. Additionally, the petitioner never claimed in their statement of claim that the respondent failed to pay the revised pay scale.

22. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent prayed that the present petition, being devoid of any merit, may be dismissed.

23. Heard the learned counsel for the parties and perused the records.

24. The present petitioner has approached this Court seeking setting aside of the impugned award dated 26th February, 2016, passed by the learned Labour Court against the petitioner workman on the ground that the petitioner failed to comply with the transfer order and consciously chose not to report to the place of transfer thereby abandoning the employment.

25. At the outset it is apposite for this Court to set out that the learned



Labour Court after completion of pleadings framed four issues namely:

- “(i) Whether this Court has jurisdiction to try the present dispute as alleged? OPM*
- (ii) Whether the workman has completed 240 days of service with the management in the year preceding the date of his alleged termination? OPW*
- (iii) Whether the services of the workman have been terminated illegally and/or unjustifiably by the management? OPW*
- (iv) Relief.”*

26. In the above backdrop, the learned Labour Court adjudicated upon each of the aforementioned issues and concluded its findings. This Court deems it necessary to set out the findings of the impugned award and ascertain the reasoning afforded by the learned Labour Court. The relevant paragraphs of the findings in the impugned award are reproduced herein below:

“ISSUE NO.1.

It has been argued on behalf of the management that since the workman has been transferred to Jodhpur Project (Rajasthan) of the management, as such, this court has no territorial jurisdiction to entertain the present dispute and only the Government of Rajasthan has the jurisdiction to entertain the dispute between the workman and the management since only the transferred place gives the jurisdiction to the Court to adjudicate upon the industrial dispute. Submissions considered. File perused. In the present case the workman has not joined the services at Jodhpur Project (Rajasthan) of the management and he has raised the industrial dispute put to joining his services at Rajasthan, as such, Labour Court at Delhi has the jurisdiction to entertain and try the present dispute. Accordingly, I find no substance in this submission of the AR of the management that this Court has no jurisdiction to entertain



and try the present dispute. Issue no.1 is accordingly, decided against the management and in favour of the workman.

ISSUE NO. 2.

The submission of the AR of the management is that the workman has not completed 240 days of service with the The submission of the AR of the management is that the workman has not completed 240 days of service with the management in the year preceding the date of alleged termination. From the perusal of the record, I am of the considered opinion that this objection in the written statement by the management is taken just for the sake of objection as the service of the workman were admitted by the management and this cannot be said that the workman has not completed 240 days of service with the management in a continued year, as such, issue no. 2 decided against the management and in favour of the workman.

ISSUE NO.3.

The stand of the workman that his services were terminated by the management on 17.12.2009 as on 17.12.2009 and 18.12.2009, he was not permitted at the office of the management to join his duty and he was told that he was transferred to Jodhpur Project (Rajasthan) of the management where asno transfer letter was served upon him. Further it has been submitted on behalf of the workman that he cannot be transferred to Jodhpur Project (Rajasthan) of the management as Jodhpur (Rajasthan) is 500-600 miles from Delhi and the workman cannot be transferred from one place to another which is not within the radious of five miles. Further it has been submitted that no such transfer order was served upon the workman.

On the other hand, it has been argued on behalf of the management that the workman was transferred from Delhi to Jodhpur Project (Rajasthan) of the management vide transfer order dated 12.12.2009, copy of which on record is Ex. WW1/M-1 and the workman was informed about the transfer



order and the workman after reading the transfer order refused to accept the transfer order and left the place and later on the transfer order was served upon the workman through registered post also but the workman did not join his duty at the transferred place.

The workman during his cross examination has denied that he received the transfer letter or he was given the transfer letter on 12.12.2009.

On the other hand, the management has specifically deposed that the said letter was given to the workman and workman after reading the contents of the same refused to accept the same. Since the workman refused to accept the transfer letter, the management cannot compel him to accept the transfer letter and sign on the copy and MW1 Sh. P.K. Saha, during his cross examination was sent by registered post to the workman but he has admitted that no AD Card or postal receipt in respect of the said document placed on record. Accordingly, there is nothing on record to suggest that the said transfer letter was served upon the workman through registered AD Post but there is nothing on record to contradict this version of management that the transfer letter was shown to the workman and he had gone through the contents of the transfer letter and refused to accept the same. In view of the above discussion, I am of the considered opinion that the services of the workman were not terminated by the management but he was transferred from Delhi to Jodhpur Project (Rajasthan) of the management and the workman himself did not join the duty at Jodhpur Project (Rajasthan) of the management despite transfer. Accordingly, it cannot be said that the services of the workman have been terminated by the management illegally and unjustifiably. It is the right of the management to transfer the workman from one place to other and the workman cannot object to the same without any reasonable cause and in the present matter, the workman has failed to show any reasonable cause which prevented the workman to join the services at transferred place



i.e. Jodhpur Project (Rajasthan) office of the management/company. Even in reply dated 15.01.2010 to the legal notice dated 04.01.2010 of the workman sent to the management Ex. WW1/9, the management has specifically stated in paragraph no. 9 that the workman has not given correct information to his counsel. It was submitted that on 12.12.2009 the workman was given a letter of transfer dated 12.12.2009 and after reading the contents of the said transfer letter, the workman returned the said transfer letter and refused to receive the same. This further suggest that even in the reply to the notice of the workman, the management has taken a specific stand that the workman was transferred from Delhi to Jodhpur Project (Rajasthan) of the management.

Workman during his cross examination has admitted that it is correct that the management is transferring its employees as also it has the right to transfer its employees. As such, this suggest that the management also used to transfer some other employees from one place to other and the workman has admitted that the management has right to transfer its employees, as such I am of the considered opinion that there is nothing wrong in transfer of the workman from Delhi to Jodhpur Project (Rajasthan) of the management. Moreover, it is the employer who knows that where the services of an employee can be better utilized and the management has every right to transfer the employee unless and until restrained by the condition of the service and in the transfer order Ex. WW1/M-1 it has been specifically mentioned as under:-

"Considering yourself as mature and experience resource of the company, the management has decided to utilize your skills, capabilities, work experience and work knowledge at our Jodhpur Project with immediate effect where you shall report for duties to Mr. Navin Mathur, Assistant General Manager (Project)".

This further suggest that the transfer of the workman from Delhi to Jodhpur Project (Rajasthan) of the management was



not malafide but in the interest of the management company.

In view of the above discussion, I am of the considered opinion that the services of the workman were not terminated by the management but he was transferred from Delhi to Jodhpur Project (Rajasthan) of the management and the workman did not join at Jodhpur Project (Rajasthan) of the management and thereby, the workman himself abandoned the job. Issue no. 3 is accordingly, decided in favour of the management and against the workman.

ISSUE NO. 4/Relief.

Keeping in view the above discussion, I am of the considered opinion that the workman is not entitled to any relief. The claim of the workman is dismissed. The Award is passed accordingly. The requisite number of copies be sent to the competent authority for publication.”

27. The learned Labour Court, dealing with the issue no.1 opined that since the petitioner workman had not joined the services at the Jodhpur project, the respondent management is precluded from contending that the Labour Court situated in Delhi lacks the jurisdiction to adjudicate upon the present matter.

28. The learned Labour Court with regard (s) to issue no.2 noted that the respondent management has contended the non-compliance of 240 days of continuous service in the preceding year by the petitioner workman, to this the learned Court opined that the above submission has been taken just for the sake of objection, since, it is an admitted fact by the respondent management that the petitioner was in service of the management.

29. With regard(s) to the issue no.3, the learned Labour Court noted that



the petitioner workman has alleged that his services were terminated illegally on 17th December, 2009, and (**as**) no transfer order was ever served upon him. On the other hand, the respondent management contended that the services of the petitioner were transferred *vide* order dated 12th December, 2009, and he was required to join the services from 17th December, 2009. It is the petitioner who *firstly* refused to accept the transfer notice and *secondly* failed to report to the transferred location, thus abandoning his services.

30. With regard (s) to the above issue, the learned Labour Court opined that there is nothing produced on record suggesting that the said transfer order was not shown to the petitioner and that he did not refuse to accept the terms of the said order.

31. It further observed that after having relied upon the evidence produced before it and the cross examination of witnesses from both the management and the workman, it can be concluded that the services of the petitioner were not terminated rather he was transferred to Jodhpur project keeping in view his expertise and dedication, which he refused to accept. The learned Court further viewed that the respondent management has every right to serve a transfer order to its employees and it is the petitioner who failed to join the transferred location and has also failed to produce any reasonable cause to suggest otherwise, thereby, concluding that he abandoned his employment on his own account.

32. It is a settled position of law that transfer of an employee is an incidence of service and the employee so transferred is duty bound to join the place of transfer and it is post joining the transferee office, the employee



may raise, contend or agitate his claim against such transfer. The Coordinate Bench of this Court in ***K.N. Bhardwaj v. Life Insurance Corporation of India***, 2010 SCC OnLine Del 4276, extensively dealt with the settled position of law with regard to a transfer orders. The relevant paragraphs of the judgment are reproduced herein below:

“27. In any case it is settled law that transfer being an incidence of service and an employee so transferred has to join his place of transfer and dispute if any can be raised and agitated even after joining the transferee office. Reference in this regard is made to the following judgments:

i.) In Management, Addisons Paints & Chemicals Ltd. v. Workmen, Addisons Paints & Chemicals Ltd.; 2001 (88) FLR 536, it was observed:

“5. In our view, there is no infirmity either in the Award or in the judgment of the Single Judge or in the judgment of the Division Bench. The employee Nagarajan had refused to accept the transfer order and refused to report for duty after his transfer. We see no substance in the contention that he was entitled not to join. In our view, the dispute could have been raised and agitated even after joining. There was no justification for not reporting for duty. In spite of Nagarajan not having worked he has been awarded 25% of back-wages. This was within the discretion of the court and we see no reason to interfere. At the request of the appellants in C.A. No. 392 of 1997, they are granted time of eight weeks from today to pay 25% of the back-wages.”

ii) In Gujarat Electricity Board v. Atmaram Sungomal Poshani; (1989) 2 SCC 602, it was observed:

“4. Transfer of a government servant appointed to a particular cadre of transferable posts from one



place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.”

iii) *In Y.P. Sarabhai v. Union Bank of India; (2006) 5 SCC 377, it was observed:*

“8. We are of the opinion that the appellant is not entitled to any relief in these proceedings. The appellant remained absent from his duty for a very long time i.e. from 3-6-1997 to 23-11-1997 without any reasonable cause and justification in spite of the respondent's requests to join the duty and in



spite of the respondent's granting him further time to join the duty. The conduct of the appellant in remaining absent for such a long time shows that he was bent upon to evade the transfer order in any possible manner. The grounds of ailment were taken as a ruse to avoid transfer which is amply proved by the conduct of the appellant, when he had unauthorisedly remained absent on the ground that he was unable to attend the duty due to illness for such a long time but he was quite capable of attending the court proceedings on the various days and was also capable of coming to Delhi to file a petition before this Court. The concurrent finding of the enquiry is that he has been shifting stands because initially on the very day of the service of the transfer order he gave a representation mentioning illness of his wife and the studies of his son for the purpose of deferment of the transfer to Chennai from Mumbai. But in the other representation to other officer of the Bank, which he has produced to the Bank, he has stated the reason of his illness as an excuse. Thus, the conduct of the appellant in trotting out all these defences show that he was trying to avoid transfer to Chennai through all possible means. The reason for deferment of transfer given by him before the High Court and this Court in the writ petition and the appeal filed by him against the transfer order was a simple ruse to avoid the transfer. It has been affirmed by the Court in that proceeding that the transfer was done as per exigencies of the Bank. The transfer of the appellant was effected to a large city, namely, Chennai, which as per his own admission has very good medical facilities which are comparable to those in Mumbai. The service of



specialist officers and for that matter all officers in the Bank are transferable on all-India basis and they are liable to be posted anywhere in India subject to the personnel and manpower requirement and exigencies of the Bank.”

iv) *In Tushar D. Bhatt v. State of Gujarat & Another; JT 2009 (2) SC 474, it was observed:*

“15. The legal position has been crystallized in number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies. In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant's transfer order cannot be termed as mala fide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11.10.1999 to 27.4.2000 i.e. more than six months. In the interest of discipline of any institution or organization such an approach and attitude of the employees cannot be countenanced.”

v) *In Govt. of A.P. v. G. Venkata Ratnam; (2008) 9 SCC345, it was observed:*

“6. The High Court judgment is wholly untenable and, we regret to say, it is rather unusual and strange. The judgment was apparently delivered in anger. The anger might have been caused by the Government Pleader or the Director (the second respondent before the High Court) but as a result the Court not only lost the judicial poise and restraint but also arrived at completely unfounded conclusions. The judgment quotes a passage from William Dalrymple's book, The Last Mughal about how the Red Fort at Delhi was vandalised by the



British and how the damages OF the colonial times are perpetuated by the Archaeological Survey of India. One fails to see how the Red Fort, the maintenance of which the Government of Andhra Pradesh is not even remotely connected with, comes into all this.

8. The Court seems to have been completely taken in by the ipse dixit of the respondent and his tall claims about his own ability and virtually allowed him to choose his own place of posting. The judgment at its beginning recounts the respondent's qualifications that include two Master's degrees, one in Sanskrit and the other in Archaeology, a BEd degree in Sanskrit and the degree of Sahitya Shiromani from Sri Venkateswara University. The judgment then proceeds to observe as follows:

“The petitioner as it appears from the pleadings is a highly qualified man. The confidence with which he made assertion in the affidavit dated 13-3-2006 to the effect that ‘if any other employee has my skill, knowledge, expertise and experience I forego my job’ makes this Court examine this matter in depth and not treat the impugned order as a mere order of transfer in the course of administration.”
(emphasis supplied)

It further observes as follows:

“The petitioner asserted in his affidavit dated 13-3-2006 that he has expertise in deciphering early rock and stone and copper plate inscriptions in Brahmi, early Telugu and Kannada, Nagari, Tamil and Tamil Grandha. He further asserted that other than the petitioner that (sic there is) no other employee in the entire Archaeology Department with the expertise, knowledge or experience in



these matters and that his services are required more at the head office.” (emphasis supplied)

The Court then purports to remind itself that transfer is an incidence of service and is not to be lightly interfered with. It proceeds to elaborate that this judicial policy is based on two reasons, one the continuance of an employee of the State Government at one particular place for a long time is likely to create undesirable consequences like creation of vested interests and misuse of the power that comes with the employment under the State and the other being the exigencies of the administration requiring the service of a particular person at a particular place. It then proceeds to explain away that the first reason, that is, the undesirability of stay at any one place for a long time should not apply to the case of the respondent because in Archaeology, in any event one worked in ancient times and dealt with “the dry bones of history”

9. The Court then went on to hold that the respondent's transfer was also not made in administrative exigencies. For arriving at this finding the Court refers to the catalogues of manuscripts, in different languages that are kept in Hyderabad and in Kakinada and accepts the petitioner's assertion that with his knowledge and ability he is most suited to work at the head office in Hyderabad than in any other place in the State. The Court refers to the respondent's assertion in his affidavit that in the entire Archaeology Department there is no other employee equalling him in expertise, knowledge and experience in these matters and that his services are required more at the head office and points out that in the



counter-affidavit filed by the Director there was no express contradiction of the assertion. It is observed as follows:

“She is conspicuously silent about the nature of the work that is required to be carried at the State Museum at Hyderabad and also whether there is any other person who is qualified to carry on the said work.”(emphasis supplied)

10. Lastly, the Court finds that in the original proposal for transfer made by the Director the respondent's place of posting was shown as Kurnool. The Court observes that there was no explanation why the respondent was finally transferred to Kakinada in place of Kurnool. On these materials, the Court came to the conclusion that the transfer of the respondent was clearly not bona fide, to say the least.

11. We are surprised to see the High Court castigating the respondent's transfer order as lacking in bona fides on such flimsy and fanciful pleas advanced by the respondent. We are more than satisfied that the High Court's finding regarding lack of bona fides in the matter on the part of the State Government is completely unfounded and untenable. The legal position regarding interference by courts in the matter of transfer is too well established to be repeated here. The respondent's transfer neither suffers from violation of any statutory rules nor can it be described as mala fide by any stretch of imagination. We are, accordingly, unable to sustain the High Court's order. In the result this appeal is allowed, the order coming under challenge is set aside and the writ petition filed by the respondent in the High Court is dismissed.



12. At the conclusion of the hearing of the case, counsel for the respondent stated that the Government had reconsidered the matter. It was willing to bring back the respondent to Hyderabad and an order to that effect was likely to be issued. We have got nothing to say in the matter.”

28. The petitioner in the present case has impugned his transfer order for the first time after more than a year by relying on certain guidelines though the plea of the same was not taken in the writ petition. The petitioner referred the circulars and guidelines at a later stage.

29. It is well settled by a catena of judgments that administrative guidelines for regulating transfer may at best afford an opportunity to the employee to approach his higher authorities for redress but cannot have the effect of denying the competent authority the right to transfer an employee, so much so an order of transfer made in transgression of such guidelines cannot be interfered with as they do not confer a legally enforceable right on an employee. The following judgments have been referred by the respondents:

a) In *State of U.P. and Others v. Gobardhan Lal*; (2004)

11 SCC 402, it was observed:

“8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be



entertained on the mere making of it or on consideration borne out of conjectors or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

9. The very questions involved, as found noticed by the High Court in these cases, being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write-ups in journals or newspaper reports. Conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities affecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the authorities concerned, the courts and tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or “reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with



law. No such generalized directions as have been given by the High Court could ever be given leaving room for an inevitable impression that the courts are attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously courts endeavour to safeguard the rights of parties.”

b) *In Union of India and Ors. v. S.L. Abbas; (1993) 4 SCC 357, it was observed:*

“An order of transfer is an incident of Government service. Fundamental Rule 11 says that “the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority” Fundamental Rule 15 says that “the President may transfer a Government servant from one post to another” That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, -- though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed “mischief” to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a setback some



time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force. (emphasis added)

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right. (emphasis added)

8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. This is evidence from a perusal of Article 323-A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A. (We find it all the more surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction.) The Administrative Tribunal is not an appellate authority sitting in judgment over the



orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority)."

c) In Anil Dhall v. Union of India & Ors.; 81 (1999) DLT 501, it was observed:

"7. Before dealing with the aforesaid contention it may be stated that law relating to transfers is now well settled by catena of judgments pronounced by Supreme Court. Transfer is an administrative function. An employer is the best judge about the requirement and posting of its employees. Courts are not to interfere with the discretion of the employer in such matters. Scope of judicial review is very limited and the transfer can be challenged only under two circumstances namely, (a) when their transfer is an act of mala fides on the part of the respondents; (b) when it is made in violation of statutory provision.

13. In view of this position arguments of the petitioner that he has right to stay at Delhi for 3-5 years, based on these guidelines, has no merit. In the case of Union of India v. S.L. Abbas (supra) it was held that such guidelines/instructions do not confer any right on the employee to challenge the transfer order on the ground of violation thereof, merely because the guidelines are violated is not sufficient to quash the order as being mala fide. Order of transfer on an administrative grounds can still be passed even if it is in violation of such guidelines which have no statutory force and



administrative exigencies have to give way to these guide-lines. In the case of Bank of India v. Jagjit Singh Mehta, (1992) 1 SCC 306 : AIR 1992 SC 519 dealing with the case of posting of husband and wife at one station as per government guidelines, it was held by Supreme Court, that such guidelines would not confer any right on the employee to remain at same place. The only requirement is that departmental authority should consider this aspect alongwith exigencies of administration. In the present case it is mentioned in guidelines itself that they would not confer any right on the officers to represent against posting quoting these orders. Therefore petitioner cannot, as of right, state that he should be allowed to remain in Delhi for a period of 3-5 years as per these guidelines. As no such right can be claimed by the petitioner, it is not open to the petitioner to allege the violation of these guidelines and make the same as basis to challenge transfer.” (emphasis added)

d) In Bank of India v. Jagjit Singh Mehta; (1992) 1 SCC 306 it was observed:

“5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at



times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the officers' grade and thereafter he seeks to be relieved of that necessary incident of all-India service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of



administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.”

e) In the case of A.V.V. Satyanarayana v. Syndicate Bank, Hyderabad & Ors., 1999 (83) FLR 634 it was held:

“2. He submits that, after twenty years petitioner has been transferred on administrative grounds and he has been posted within the same district and therefore there would not be much inconvenience to him. Many judgments of this Court have been pressed into service, but this Court need not refer to those judgments in view of the judgment of the Supreme Court Union of India v. S.L. Abbas. The facts of the case before the Supreme Court were similar to the facts of the case on hand. The employees who had been transferred approached the Central Administrative Tribunal for cancellation of the transfer on the ground that his wife was employed at Shillong wherefrom he had been transferred, his children were also studying at Shillong. He had himself suffered back bone fracture injuries some time ago and he submitted that guidelines contained in Government of India O.M. dated 3.4.1986 had not been kept in mind while ordering his transfer. The guidelines had prescribed that, as far possible husband and wife must be posted at the same place. The Supreme Court found that these guidelines do not confer upon a Government servant a legally enforceable right. The Court found that these guidelines should be kept in kind whenever an order of transfer is passed by the employer but once an order is passed the employee cannot complain and cannot seek a direction from



the Court for enforcement of these guidelines.”

f) In the case of Samay Singh & Anr. v. State of U.P. & Ors., 2008 (119) FLR 721 it was held as under:

“2. The impugned order is assailed on the ground that it has been passed on wrong assertions; the petitioners had orally informed the University authorities that that farm land of the university is being grabbed by certain persons; that impugned transfer is against the guidelines contained in Government transfer policy dated 14.4.1998 wherein it is provided that “SAMUH GHA KARMIO KO UNKE GRIH JANPAD MAIN HEE TAINAAT KIYA JAYEGA”

Counsel for the petitioners has relied upon paragraph No. 15 of Division Bench judgment of this Court rendered in Rajendra Prasad v. Union of India and others, which is as under:

“Therefore, in view of the above, the law stands summarized that in a case of class IV or low paid employees, the power of transfer should be used sparingly when required in administrative exigency and not in a routine manner. More so, the power is to be exercised in good faith not arbitrarily and the employer should try to accommodate at a nearby place as his transfer at a far distance may cause him great financial hardship and may make his survival difficult.”

In the same judgment, it has also been held that transfer is an incident of service and an employee cannot claim a right to be posted at a particular place, it is choice of the employer to determine as on what place and for how long services of an employee are required. It has further been held that power of transfer should be used sparingly when required in administrative exigency and not



in a routine manner.

2. In the present case, transfer of the petitioners is not in routine manner as appears from impugned order which shows that petitioner have also admitted before the authority that agricultural farm land of the university is being grabbed by others and that they are unable to prevent it.

So far as question of transfer at a distant place is concerned, it may be stated that University can only post the petitioners at a place it has agricultural farm land where the petitioners' services can be utilised.

3. Next decision relied upon by the Counsel for petitioner is Bhagwan Verma v. Secretary, Board of High School and Intermediate Education. U.P. Allahabad. In that case, the Court was considering transfer of class IV employee to a distant place on the basis of a complaint that he remained absent without permission and the Court found that from the language used in the order it is evident that the transfer order is punitive and had been passed without a preliminary enquiry and therefore quashed the order.

7. In my considered view, the authorities cited and relied upon by the Counsel for petitioner are clearly distinguishable and have no application to the facts and circumstances of the present case.”

g) In Rajendra Singh v. State of U.P.; (2009) 15 SCC 178 it was observed:

“8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an



incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see State of U.P. v. Gobardhan Lal, SCC p. 406, para 7).

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In Shilpi Bose v. State of Bihar this Court held : (SCC p. 661, para 4)

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-today transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court



overlooked these aspects in interfering with the transfer orders.”

10. In N.K. Singh v. Union of India this Court reiterated that : (SCC p. 103, para 6)

“6. ... the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision....”

13. It is difficult to fathom why the High Court went into the comparative conduct and integrity of the petitioner and Respondent 5 while dealing with a transfer matter. The High Court should have appreciated the true extent of scrutiny into a matter of transfer and the limited scope of judicial review. Respondent 5 being a Sub-Registrar, it is for the State Government or for that matter the Inspector General of Registration to decide about his place of posting. As to at what place Respondent 5 should be posted is an exclusive prerogative of the State Government and in exercise of that prerogative, Respondent 5 was transferred from Hapur II to Ghaziabad IV keeping in view administrative exigencies.

14. We are pained to observe that the High Court seriously erred in deciding as to whether Respondent 5 was a competent person to be posted at Ghaziabad IV as Sub-Registrar. The exercise undertaken by the High Court did not fall within its domain and was rather uncalled for. We are unable to approve the direction issued to the State Government and the Inspector General of Registration to transfer a competent officer at Ghaziabad IV as Sub-Registrar after holding that



Respondent 5 cannot be said to be an officer having a better conduct and integrity in comparison to the petitioner justifying his posting at Ghaziabad IV. The High Court entered into an arena which did not belong to it and thereby committed serious error of law.”

33. Upon perusal of the aforementioned paragraphs, it can be summarily stated that a transfer order is not just a requirement of service but also a consequence of service. The authority concerned is well within its jurisdiction to determine as to which individuals should be transferred and what may be their destination. The Courts cannot intervene with a transfer order unless it is tainted by *malafides* or violates provisions of a statute. The Hon’ble Supreme Court emphasised that before ordering a transfer, the authority must consider the recommendations published by the Government on the matter. If an individual provides information regarding their transfer, the relevant authorities must take it into account considering the requirements of administration.

34. Another aspect that has been categorically noted above by the various Courts is that the guidelines issued by the administrative bodies relating to regulation of transfer at the most, may afford an opportunity to the concerned employee to seek a remedy before the higher authorities for redressal of his challenge. It must be noted that the same may not have the effect of denying the competent authority the right to transfer an employee as a transfer of service order made in transgression of any such guidelines must not be interfered with by the Court as it does not confer a legally



enforceable right upon the employee.

35. The Courts above have further extensively observed that the employee must at the first instance report to the place of work at the transferred branch/location and it is after having complied with the transfer order, the employee is free to agitate or raise a dispute challenging the said transfer order as there exists no justification for not reporting for duty. Rather, refusing or not reporting to work would amount to abandoning of service on part of the employee, therefore, precluding him from challenging any termination that may follow.

36. In this backdrop, this Court is of the considered view that a transfer order is an incidence of service and it must be complied with by the employee to whom the same is issued. The transferred employee is duty bound to report and take charge at the transferred place of work and post having complied with the terms of the transfer order, he is entitled to raise a dispute, (if any) against the said transfer order.

37. This Court is further of the view that in order to adjudicate upon the instant matter, it must be noted that the petitioner workman remained absent from work which amounts to abandoning his employment, therefore, it amounts to non-compliance of the transfer order.

38. This Court is also of the opinion that the petitioner workman has not shown any reasonable cause for it to conclude that his non-compliance of the transfer order was on account of any exigencies. In such light, the petitioner workman is precluded from challenging his alleged termination as it is a default on the part of the petitioner workman.



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39. In view of the foregoing discussions of facts, material placed on record and law, this Court is of the view that the impugned award dated 26th February, 2016, does not suffer from any infirmity as the learned Labour Court has minutely scrutinised the evidence placed before it and has extensively dealt with the issues surrounding the reference both on facts and the law.

40. This Court is of the view that the propositions put forth by the petitioner discern no material to characterise the award of the learned Labour Court as perverse. It is held that the learned Labour Court is well justified in passing the impugned award.

41. In light of the above, the impugned award dated 26th February, 2016, passed by Presiding Officer Labour Court-X Karkardooma Courts, Delhi in I.D No. 1046/2016 is upheld and the instant writ petition is dismissed.

42. Pending applications, if any, also stands dismissed.

43. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 15, 2024

dy/da/av

Click here to check corrigendum, if any