

**IN THE HIGH COURT OF MADHYA
PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 6th OF JULY, 2023
WRIT PETITION No. 14756 of 2023**

BETWEEN:-

ASHISH SAHU, AGED 42 YEARS S/O
SHRI GANGA PRASAD SAHU, R/O
NEAR POOJA SHIV LAWN, INFRONT
OF SADAFAL COACHING CENTRE,
CHHINDWARA M.P. 480002.
OCCUPATION – BANK OFFICERS.

.....PETITIONER

(BY SHRI NARMADA PRASAD CHOUDHARY - ADVOCATE)

AND

1. BANK OF BARODA THROUGH
THE REGIONAL HEAD,
REGIONAL OFFICE, PLOT NO.
1170, 1ST FLOOR, SHIVA MOOLA
TOWER, WRIGHT TOWN,
JABALPUR 482002 M.P.

2. THE SENIOR BRANCH
MANAGER, BANK OF BARODA,
SEONI BRANCH, SEONI, M.P.

.....RESPONDENTS

(NONE)

*This petition coming on for admission this day, the court passed
the following:*

ORDER

This petition under Article 226 of the Constitution of India has
been against order dated 17.06.2023 and 17.06.2023 passed by Bank of

Baroda as well Senior Branch Manager, Bank of Baroda, Seoni Branch, Seoni, by which the petitioner has been transferred to Regional office Bhilwara (Jaipur Zone) and on the very same date, the petitioner has been relieved.

2. It is submitted by the counsel for the petitioner that the petitioner is working as a Bank Officer. It is submitted that the transfer of the petitioner is *de-hors* the transfer policy. By referring to Clause 5.4.3, it is submitted that the Officers who are care givers of differently abled/spastic children/spouse, as family members residing with the said officer may be exempted from the category of Officer from inter-zonal/inter-regional transfers or transfers to another City/Place/Centre, strictly on merits of each case till the time such hardships or difficulties continue.

3. It is submitted by the counsel for the petitioner that the father of the petitioner suffers from paralysis and the petitioner is the only male family member to look after his ailing parents and, therefore, the petitioner is exempted from transfer as per Clause-5.4.3 of transfer policy.

4. Considered the submission made by the learned counsel for the petitioner.

5. Clause-5.4.3 reads as under:-

“Officers who are care givers of differently abled/spastic children/spouse, as family members residing with the said officer.”

6. From the plain reading of this clause it is clear that parents are not included as a family members in this clause. Thus, it is clear that clause 5.4.3. of the transfer policy does not apply to the case of the petitioner. Further exemption is available only when the children/spouse are differently abled or spastic and not otherwise.

7. It is next contended by the counsel for the petitioner that as per Clause-8.8 of the transfer policy, the Bank may consider request from the Officers for request transfer, twice in the entire career and the petitioner has exercised his request, therefore, the same may be considered.

8. Considered the submissions made by the counsel for the petitioner.

9. Clause-8 of the transfer policy deals with request transfers, therefore, Clause-8.8. has to be read in the context of request transfer only and not for any other purpose. The petitioner has not prayed for transfer on request. It is a case where the transfer of the petitioner from Seoni to Bhilwara has been challenged. Therefore, Clause-8.8 of transfer policy would not apply.

10. It is next contended by the counsel for the petitioner that the petitioner has made an application dated 02.06.2023 for cancellation of his transfer (Annexure P/3), therefore, it may be treated as an application for transfer back to Seoni on request.

11. Considered the submissions made by counsel for the petitioner.

12. The representation dated 02.06.2023 reads as under:

Dated 02.06.2023

“To,

The Regional manager,
Jabalpur Region
Bank of baroda

Sub (Cancellation of may inter zonal transfer to Jaipur Zo)

I have Zonal transferred to Bank of baroda Jaipur Zo wide dated 02.06.2023. I beg to state that my father is suffering from severe paralysis problem and my mother is facing kidney infection and she has been operated in past.

I am the only son to look After my parents. This is to informed you I have worked in e-dena bharuch branch in Vadodara for 4 years after that I got transferred to e-dena Narsinpur instead of chhindwara district. Right now there is no such situation that I can leave my parents and go out. His

health is very critical. He has to get his routine check up done in 3-4 days daily. Moreover it is challenging from me to transferred my family. I have already inserted intra region transfer request on medical ground for Chhindwara branch. All the medical documents should also be attached in it.

Intra region transfer request id TR032338103

It is my humble request to retain me in current posting branch Or Chhindwara branch.

Regards

Ashish sahu

EC no.165505

Officer 9924112521

Bob

Seoni Branch”

13. It is nowhere mentioned that his application may be treated for his inter-zonal transfer back to Seoni. It is submitted by the counsel for the petitioner that the inter-region transfer request ID is TR032338103 but admitted that the said document has not been placed on record.

14. From the plain reading of this representation, it cannot be treated an application for his inter zone transfer and the subject matter of this application clearly indicates that it was made for cancellation of his inter zonal transfer to Jaipur Zone.

15. At this stage, it is submitted by the counsel for the petitioner that the petitioner has made a representation for cancellation of his transfer, therefore, the respondents may be directed to consider the same and till then the effect and operation of the transfer order may be stayed.

16. It is submitted that Co-ordinate Benches of this Court while directing the respondents to decide the representation has stayed the effect and operation of the order of the transfer order, therefore, same analogy may be applied and accordingly relied upon the order passed by the Co-ordinate Bench of this Court in the case of *Anushri Jain Vs. General Manager Bank of Baroda* decided on 22.06.2023 in W.P.No.13548 of 2023.

17. Considered the submissions made by the counsel for the petitioner

18. The Division Bench of this Court in the case of *Mridul Kumar Sharma Vs. State of M.P.* reported in ILR 2015 MP 2556 has held as under:-

4. Counsel for the appellant placed reliance on the decision of the Division Bench of this Court dated 15.7.2015 in W.A.No.381/2015. Observations in this decision, however, will be of no avail to the appellant in the face of the decision of the Supreme Court in the case of *Gujarat Electricity Board and another Vs. Atmaram Sungomal Poshani* reported in (1989) 2SCC 602, which is directly on the point. In paragraph 4, the Supreme Court observed thus:

“4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incidence of service. No government servant or employee of Public Undertaking has legal right for being posted any 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 not 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.”

(emphasis supplied)

5. Be that as it may, in the present case, it is not as if the two writ petitions were kept pending and inconsistent “interim relief” granted therein. In fact, both the writ petitions has been given to the writ petitioner therein by another Bench. In our opinion, in the light of the principle expounded by the Supreme Court, referred to above, the Court must eschew from issuing such direction – as it inevitably results in dictating the concerned Authority in respect of administrative matter within his domain. Accordingly, the decision pressed into service, cannot be treated as a binding precedent on the matter in issue and will be of no avail to the appellant.

6. Accordingly, this appeal is devoid of merit. We, however, make it clear that it is for the appropriate Authority to entertain the representation filed by the appellant and including to consider the request of the appellant to allow him to continue at the same place or otherwise. The appellant must, as per the settled legal position, report to the transferred place and pursue his remedy of representation, particularly when the appropriate Authority before whom the representation is pending has so far not favoured the appellant by allowing him to continue at the same place. At best, we may only observe that the appropriate Authority must decide the representation expeditiously, preferably within two weeks.

19. The moot question for consideration before the Division Bench was as to whether the Court can direct for stay of the transfer order specifically when it had decided not to entertain the writ petition and had merely directed the respondents to decide the representation.

20. In paragraph 5 of the judgment it is specifically held that if writ petition is finally disposed of with a direction to the respondents to entertain the representation filed by the petitioner, then the

transferred employee must report to the transferred place and pursue his remedy of representation particularly when the appropriate authority before whom the representation is pending has so far not favoured the appellant by allowing him to continue at the same place. Whenever a public servant is transferred he must comply with the order and if there is an genuine difficulty he must make a representation to the competent authority. If the order of transfer is not stay, modified or cancelled, the concerned public servant must carry out the order of transfer. In 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.

21. It has also been held that the representation filed by the employee does not create any right in his favour to remain at the same place from where he has been transferred until the representation is decided. He must first join at the transferred place even if he has to pursue the remedy of representation. It has also been held that whether the concerned employee should be permitted to remain at the same place or not till his representation is decided is also the prerogative of the appropriate authority. It is not for the Court to sit over the subjective satisfaction or dictate to the concerned authority in that behalf being purely administrative matter.

22. From the judgments which have been cited by the petitioner, it is clear that the Coordinate Benches of this Court has not taken note of the judgment passed by the Division Bench of this Court in the case of *Mridul Kumar Sharma (supra)*.

23. Under these circumstances, it is held that merely because the Coordinate Bench had given relief to another writ petitioner then the same can not be a basis to grant same relief to the petitioner. Therefore, if any interim protection has been granted then it is in ignorance of the law laid down by the Division Bench and accordingly, the order relied upon by the petitioner is held to be *per incuriam*.

24. The counsel for the petitioner has also relied upon another order dated 15.06.2023 passed by this Court in the case of (***Kamal Kishore Singhare Vs. State of M.P.& others***) in W.P. No.12789/2023 by which this Court has granted stay on the effect and operation of the transfer order.

25. At the outset, it is sufficient to hold that the reliance of the petitioner on the order passed by this Court is misconceived. The question in the said case was not that in case if the representation is pending, then whether this Court can stay the operation of the impugned order or not? In the said case this Court had specifically come to a conclusion that the order under challenge was passed in order to circumvent the earlier interim order granted by this Court. Therefore, after considering the merits of the case, the interim order was passed.

26. Merely because this Court had stayed the transfer order would not mean that stay order has to be issued in each and every case. If a case is found fit enough for interim relief then the petitioner is entitled for the same. Unless and until there is a parity, any interim order passed by this Court cannot be cited as an example/precedent.

27. At this stage, it is submitted by the counsel for the petitioners, that if no interim relief is granted, then the very purpose of

approaching the Court will be frustrated and the counsel himself is a retired Bank employee and his various transfer orders were stayed by different Courts.

28. The arguments advanced by the counsel for the petitioner are shocking. Mere filing of a writ petition cannot be a guarantee of stay and interim orders can be passed only if arguable case is made out. Except mentioning that the submission made by the counsel for the petitioner were bad, this Court is refraining itself from passing any further comments under hope and belief that the counsel would improve his manner of advocacy.

29. Be that whatever it may be.

30. Since the petitioner has filed a representation therefore, it is for the respondents to consider the same. However, this Court cannot stay the effect and operation of the transfer order during the pendency of the representation because the representation does not create any vested right in favour of the petitioner, and further the petitioner has not joined at his transferred place.

31. Accordingly, no case is made out warranting interference.

32. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE