IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 2257 of 2019

Decided on: 09.07.2020

Reema …Petitioner

Versus

State of H.P. & Ors. …Respondents

Coram:
Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?[1] **Yes.**

For the Petitioner : Mr. Adarsh Vashist and Mr. Rajesh Sharma, Advocates.

For the Respondents : Mr. Ashok Sharma, Advocate General with Mr. Vinod Thakur, Addl. A.G, Mr. Desh Raj Thakur, Addl. A.Gs and Ms. Svaneel Jaswal, Dy. A.G.

(Through Video Conferencing)

Tarlok Singh Chauhan, Judge (Oral)

Aggrieved by the order of transfer dated 20.06.2020, the petitioner has filed the instant petition for the grant of following substantive reliefs:-

> i) That in view of the mentioned facts and circumstances mentioned here-in-above, the impugned transfer order dated 20.06.2020 (Annexure P-2) qua the present petitioner may kindly be quashed and set aside in the interest of justice and fair play.

[1] Whether reporters of the local papers may be allowed to see the judgment? yes

ii) That the respondents may kindly be directed to allow the present petitioner to work at her present place of posting i.e. Rajana Beat Renukaji Block Range, as the petitioner has not completed her contract period of three years.

2. The petitioner was appointed as a Forest Guard on contract basis on 22.09.2017 and thereafter vide order dated 27.09.2017, was ordered to be posted at Rajana Beat of Renukaji Forest Block. Now, vide impugned order dated 20.06.2020, she has been ordered to be transferred and posted in Parara/Nehar Sawar Beat.

3. It is vehemently argued by Shri Adarsh Vashist, learned Advocate, that the order of transfer is illegal, firstly, because the petitioner has not completed a period of three years at the present place of posting, and secondly, being a spinster of 24 years, she is not in a position to join the transferred station because she is residing with her family.

4. It is trite that transfer is an incidence of service and as long as the authority acts keeping in view the administrative exigency and taking into consideration the public interest as the paramount consideration, it has unfettered powers to effect transfer subject of course to certain disciplines. Once it is admitted that the petitioner is State government employee and holds a transferable

post then he is liable to be transferred from one place to the other within the District in case it is a District cadre post and throughout the State in case he holds a State cadre post. A government servant holding a transferable post has no vested right to remain posted at one place or the other and courts should not ordinarily interfere with the orders of transfer instead affected party should approach the higher authorities in the department. Who should be transferred where and in what manner is for the appropriate authority to decide. The courts and tribunals are not expected to interdict the working of the administrative system by transferring the officers to “proper place”. It is for the administration to take appropriate decision.

5. Even the administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redressal but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. Even if, the order of transfer is made in transgression of administrative guidelines, the same cannot be interfered with as it does not confer any legally enforceable rights unless the same is

shown to have been vitiated by mala fides or made in violation of any statutory provision. The government is the best judge to decide how to distribute and utilize the services of its employees.

6. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations without any factual background foundation or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, such as on the basis of complaints. It is the basic principle of rule of law and good administration, that even administrative action should be just and fair. An order of transfer is to satisfy the test of Articles 14 and 16 of the Constitution otherwise the same will be treated as arbitrary.

7. Judicial review of the order of transfer is permissible when the order is made on irrelevant consideration. Even when the order of transfer which otherwise appears to be innocuous on its face is passed on extraneous consideration then the Court is competent to go into the matter to find out the real foundation of transfer. The Court is competent to ascertain whether the order of transfer passed is bonafide or as a measure of punishment.

8. The law regarding interference by Court in transfer/posting of an employee, as observed above, is well settled and came up before the Hon'ble Supreme Court in ***E.P. Royappa vs. State of Tamil Nadu, (1974) 4 SCC 3; B. Varadha Rao vs. State of Karnataka, (1986) 4 SCC 131; Union of India and others vs. H.N. Kirtania, (1989) 3 SCC 445; Shilpi Bose (Mrs.) and others vs. State of Bihar and others, 1991 Supp (2) SCC 659; Union of India and others vs. S.L. Abbas, (1993) 4 SCC 357; Chief General Manager (Telecom) N.E. Telecom Circle and another vs. Rajendra CH. Bhattacharjee and others, (1995) 2 SCC 532; State of M.P. and another vs. S.S. Kourav and others, (1995) 3 SCC 270; Union of India and others vs. Ganesh Dass Singh, 1995 Supp. (3) SCC 214; Abani Kanta Ray vs. State of Orissa and others, 1995 Supp. (4) SCC 169; National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and Shiv Prakash, (2001) 8 SCC 574; Public Services Tribunal Bar Association vs. State of U.P. and another, (2003) 4 SCC 104; Union of India and others Vs. Janardhan Debanath and another, (2004) 4 SCC 245; State of U.P. vs. Siya Ram, (2004) 7 SCC 405; State of U.P. and others vs. Gobardhan Lal, (2004) 11 SCC 402; Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and others, (2004) 12 SCC 299; Somesh Tiwari vs. Union of India and others, (2009) 2 SCC 592; Union of India and***

others vs. Muralidhara Menon and another, (2009) 9 SCC 304; Rajendra Singh and others vs. State of Uttar Pradesh and others, (2009) 15 SCC 178; and State of Haryana and others vs. Kashmir Singh and another,(2010) 13 SCC 306 and the conclusion may be summarised as under:-

1. Transfer is a condition of service.
2. It does not adversely affect the status or emoluments or seniority of the employee.
3. The employee has no vested right to get a posting at a particular place or choose to serve at a particular place for a particular time.
4. It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.
5. Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.
6. There is a very little scope of judicial review by Courts/Tribunals against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or malafides are established.
7. In case of malafides, the employee has to make specific averments and should prove the same by adducing impeccable evidence.
8. The person against whom allegations of malafide is made should be impleaded as a party by name.

> 9. Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Department personnel.
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> 10. The Court does not have the power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children, as consideration of these views fall within the exclusive domain of the employer.
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> 11. If the transfer order is made in mid-academic session of the children of the employee, the Court/Tribunal cannot interfere. It is for the employer to consider such a personal grievance.

9. The personal inconvenience and hardship of an employee are considerations which lie solely within the purview of the Employer and it is always open to the aggrieved party to make a representation to his Employer.

10. Adverting to the first submission of the petitioner, no doubt, the normal tenure of an employee on contract basis is three years at a particular station but the same, however, does not imply or mean that this period is to be calculated with mathematical precision and accuracy in a straight jacket manner.

11. The petitioner was posted at Rajana Beat of Renukaji Forest Block vide order dated 27.09.2017 and it is only vide order dated 20.06.2020 i.e. about three months prior to completing three years of service at a particular place of posting, that she has been

ordered to be transferred. Therefore, we really do not see any irregularity much less illegality in transferring the petitioner to Parara/Nehar Sawar Beat.

12. As regards the other contentions regarding personal inconvenience and hardship of an employee, we really fail to appreciate this contention looking to the fact that the petitioner is a young spinster aged about 24 years, who has been transferred at a distance of about 9 Kms. only.

13. The further contention of the learned counsel for the petitioner is that the petitioner is of a weaker sex. To say the least, is absurd, fallacious and if accepted would not only violate the statutory provisions of the Constitution, more particularly, Articles 14 and 16 thereof, but hosts of other laws of the Country.

14. The petitioner has failed to realise that there has been a great advancement and the woman have demonstrated their ability to perform various taxing and hazardous duties which till now were wrongly and illegally considered to be the exclusive privilege of men. Today women are capably manning the posts in all walks of life in this country.

15. It was more than four decades ago, that the Hon'ble Supreme Court in **Miss C. B. Muthamma vs. Union of India and others, AIR 1979 SC 1868,** while dealing with the case where the petitioner was a senior member of the Indian Foreign Service,

complained of a hostile discrimination against women challenged the validity of rule 8 (2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961 requiring a woman member of the Service to obtain permission of the Government in writing before her marriage is solemnised and empowering the Government to require her to resign if the Government was satisfied that her family and domestic commitments were likely to come in the way of the due and efficient discharge of her duties as a member of the service, observed as under:-

> "At the first blush this rule is in defiance of Art. 16. If a married man has a right, a married woman, other thing being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker sex for getting how out struggle for national freedom was also a battle against woman's thraldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of India's humanity, viz., our women, is a sad reflection on the distance between Constitution in the book and law in action. And if the Executive as the surrogate of Parliament, makes rules in the teeth of Part III, especially when high political office, even diplomatic assignment has been filled by women, the inference of die-hard allergy to gender parity is inevitable.
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> We do not mean to universalise or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the senstivities

> of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern. This creed of our Constitution has at last told on our governmental mentation, perhaps partly pressured by the pendency of this very writ petition. In the counter affidavit, it is stated that Rule 8(4) (referred to earlier) has been deleted on November 12, 1973. And likewise, the Central Government's affidavit avers that Rule 8(2) is on its way to oblivion since its deletion is being gazetted. Better late than never. At any rate, we are relieved of the need to scrutinise or strike down these rules."

16. The duties of a Forest Guard are in no way more arduous, onerous and cumbersome to the one performed and required by the members of the Armed Forces. We need only remind the petitioner that it was the women who themselves approached the Court seeking permanent Commission in the Army, which was being denied to them by the Government of India mainly for the following reasons:-

> (i) The profession of Arms is a way of life which requires sacrifice and commitment beyond the call of duty;
>
> (ii) Women officers must deal with pregnancy, motherhood and domestic obligations towards their children and families and may not be well suited to the life of a soldier in the Armed force;
>
> (iii) A soldier must have the physical capability to engage in combat and inherent in the physiological differences

between men and women is the lowering of standards applicable to women;

(iv) An all-male environment in a unit would require "moderated behavior" in the presence of women officers;

(v) The "physiological limitations" of women officers are accentuated by challenges of confinement, motherhood and child care; and

(vi) The deployment of women officers is not advisable in areas where members of the Armed forces are confronted with "minimal facility for habitat and hygiene".

17. Negating all the aforesaid contentions, the Hon'ble Supreme Court in **Secretary, Ministry of Defence vs. Babita Puniya and others, AIR 2020 SC 1000,** observed as under:-

"54. The submissions advanced in the note tendered to this Court are based on sex stereotypes premised on assumptions about socially ascribed roles of gender which discriminate against women. Underlying the statement that it is a "greater challenge" for women officers to meet the hazards of service "owing to their prolonged absence during pregnancy, motherhood and domestic obligations towards their children and families" is a strong stereotype which assumes that domestic obligations rest solely on women. Reliance on the "inherent physiological differences between men and women" rests in a deeply entrenched stereotypical and constitutionally flawed notion that women are the "weaker" sex PART E and may not undertake tasks that are "too arduous" for them. Arguments founded on the physical strengths and weaknesses of men and women and on

assumptions about women in the social context of marriage and family do not constitute a constitutionally valid basis for denying equal opportunity to women officers. To deny the grant of PCs to women officers on the ground that this would upset the "peculiar dynamics" in a unit casts an undue burden on women officers which has been claimed as a ground for excluding women. The written note also relies on the "minimal facilities for habitat and hygiene" as a ground for suggesting that women officers in the services must not be deployed in conflict zones. The respondents have placed on record that 30% of the total women officers are in fact deputed to conflict areas.

55. These assertions which we have extracted bodily from the written submissions which have been tendered before this Court only go to emphasise the need for change in mindsets to bring about true equality in the Army. If society holds strong beliefs about gender roles – that men are socially dominant, physically powerful and the breadwinners of the family and that women are weak and physically submissive, and primarily caretakers confined to a domestic atmosphere – it is unlikely that there would be a change in mindsets. Confronted on the one hand with a solemn policy decision taken by the Union Government allowing for the grant of PC to women SSC officers in ten streams, we have yet on the other hand a whole baseless line of submissions solemenly made to this Court to detract from the vital role that has been played by women SSC officers in the line of duty.

56. The counter affidavit contains a detailed elaboration of the service which has been rendered by women SSC officers to the cause of the nation, working shoulder to

shoulder with their male counterparts. Yet, that role is sought to be diluted by the repeated pleas made before this Court that women, by the nature of their biological composition and social milieu have a less important role to play than their male counterparts. Such a line of submission is disturbing as it ignores the solemn constitutional values which every institution in the nation is bound to uphold and facilitate. Women officers of the Indian Army have brought laurels to the force.

18. In view of the foregoing discussion and for the reasons set out above, we find no merit in this petition and the same is accordingly dismissed in *liminie*.

(Tarlok Singh Chauhan)
Judge

(Jyotsna Rewal Dua)
Judge

9th July, 2020.
(sanjeev)