

(2023) 02 CHH CK 0059
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 4458 Of 20 22

Bhagyashree Bhimrao Meshram

APPELLANT

Vs

State Bank Of India

RESPONDENT

Date of Decision : 22-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2023) 02 CHH CK 0059

Hon'ble Judges : Parth Prateem Sahu, J

Bench : Single Bench

Advocate : J.K. Gilda, Prasun Kumar Bhaduri, P.R. Patankar

Final Decision : Disposed Of

Judgement

1. Petitioner has filed this writ petition seeking following reliefs.

“10.1 That, this Hon’ble Court may graciously be please to issue appropriate writ/order/direction setting aside/quashing Letter No/RO/Kanker/HR-A/2021-22/1112 dated January 31st 2022 Annexure P-1.

10.2 That, this Hon’ble Court may graciously be please to issue appropriate writ/order/direction declaring that the impugned condition of employment putting compete prohibition on Inter Circle Transfer as mentioned in the Advertisement No. CPRD/CR/2019-20/03 (Annexure P-1A) to be illegal and arbitrary and in violation of the Fundamental Rights of the petitioner.

10.3 That, this Hon’ble Court may graciously be please to issue appropriate writ/order/direction declaring that the impugned condition (p) only in her appointment issued vide Letter of Appointment No. DGM (B&O)/HR/6912 dated January 13th, 2020 (Annexure P-3) to be illegal and arbitrary and in violation of the Fundamental Rights of the petitioner.

10.4 Costs of the petition may be awarded to the petitioner.

10.5 Any other relief that this Hon’ble Court deems fit in the facts and

circumstances of the case.”

2. Petitioner is an employee of respondent-Bank and at present is posted in State Bank of India, Branch Rajhara, Balod (Respondent No. 3) as Junior Associate (CS&S). Petitioner was appointed on 13.01.2020 and thereafter she got married on 07.01.2022. Petitioner submitted an application before the Circle Head, State Bank of India, Bhopal on 21.01.2022 requesting for her transfer on compassionate ground ie., marriage and to cater the responsibilities towards her husband and in-laws. The application/ request for her transfer was rejected vide Annexure P-1 dated 31.01.2022 on the ground that “There is no provision for Inter-Circle Transfer/ Inter-State Transfer for Junior Associate to be recruited.” Rejection of request/ application for her transfer made the petitioner to file this writ petition.

3. Learned Sr. Counsel for petitioner submits that application was submitted by petitioner only after her marriage so that she could live along with her husband and in-laws and to discharge her liabilities towards her in-laws. Husband of petitioner is also an employee of the State Bank of India and is posted as Deputy Manager at Regional Office, Solapur in Maharashtra. Prior to 2018, there was no restriction on Inter-Circle Transfer of Junior Associate, the Government of India, Ministry of Finance, Department of Financial Services issued memorandum on 08.08.2014 addressing to Chairman, State Bank of India/ CMDs of all Public Sector Banks including the IDBI and SBI Associates on the subject of Transfer of female employees in Public Sector Banks– minimizing their hardship”. In the memorandum, it is mentioned that the female employees are to be accommodated as far as possible for her placement/ transfer on her request at a place where her husband is stationed or as near as possible. It is contended that present place of posting of petitioner is about 1100 kms away from the place of her husband and in-laws. The respondents while considering the application of petitioner for her transfer from one circle to another circle had failed to take note of the memorandum issued by the Government of India accommodating the female employees for their posting. In support of his contention, learned counsel places reliance upon the decision of Hon’ble Supreme Court in case of SK Nausad Rahaman vs. Union of India reported in 2022 SCC OnLine SC 297. The decision taken by State Bank of India prohibiting Inter-Circle Transfer/ Inter-State Transfer of the Junior Associates is contrary to the memorandum issued by the Government of India. It is contended that complete prohibition on Inter-Circle Transfer/ Inter-State Transfer is violative to petitioner’s right to life with dignity under Article 21 of the Constitution and the order rejecting the application dated 31.01.2022 fails to meet the test of integrated proportionality analysis ie. the policy must be in furtherance of a legitimate aim.

4. Mr. P.R. Patankar, learned counsel for Respondent-Bank would submit that petitioner participated in the recruitment proceedings initiated by the Respondent-Bank vide advertisement issued in the year 2019. In the advertisement, it is clearly mentioned in bold letters that “there is no provision

for Inter-Circle Transfer/ Inter-State Transfer for Junior Associates to be recruited". In the letter of appointment dated 13.01.2020 also in terms of appointment Clause- 'p', petitioner gave undertaking that there is no provision for Inter-Circle Transfer/ Inter-State Transfer. Petitioner participated in the recruitment proceedings, selected and submitted undertaking with open eyes and therefore the petitioner cannot claim that she should be transferred on the ground that after her appointment she got married with a person residing out of the circle ie., Solapur, Maharashtra. Husband of petitioner is also an employee of State Bank of India who is holding a transferable post of Dy. Manager, he has not applied for transfer. He could have made an application for his Inter-Circle Transfer/ Inter-State Transfer. He submits that the decision relied upon by the learned counsel for petitioner will not apply to the facts of present case. He places reliance upon the decision in case of Bank of India vs. Jagjit Singh Mehta reported in 1992 (1) SCC 306, State of Uttar Pradesh vs. Karunesh Kumar reported in AIR OnLine 2022 SC 1098 and Dhananjay Malik vs. State of Uttaranchal reported in (2008) 4 SCC 171. The Junior Associates are front line workers in the Branch of Bank and they have to deal with the local people and if they are not known the local language they be not able to communicate to the customers and therefore the Bank took decision of not to transfer Junior Associates appointed after 2018 from one circle to another.

5. I have learned counsel for the parties and also perused the record.

6. To appreciate the rival submission of learned counsel for respective parties, I have perused the copy of advertisement, order of appointment filed by petitioner along with writ petition. Perusal of Annexure- 1A, which is the advertisement issued by the State Bank of India for appointment of Junior Associates (Customer Support & Sales), in the first opening paragraph of the advertisement, it is specifically mentioned in bold letters that "There is no provision for Inter-Circle Transfer/ Inter-State Transfer for Junior Associates to be recruited", even after knowing the specific restriction on transfer of Junior Associates, petitioner submitted her application, participated in the recruitment proceedings and got selected. In the letter of appointment Annexure P-3 also it is specifically mentioned under Clause-(p) that the appointee have to give undertaking to the Bank and further it is mentioned that there is no provision of Inter-Circle Transfer/ Inter-State Transfer. Undisputedly, petitioner gave undertaking mentioning the above clause also. The memorandum issued by the Government of India dated 08.08.2014 mentions that it is an advisory to the Public Sector Banks to frame policy on the subject with the approval of their Board and to take immediate action for implementation and compliance. The subject matter as it is appearing is not an issue of transfer of petitioner when the appointment is made for the circle where petitioner was appointed because the petitioner who submitted her application for appointment within Bhopal Circle as vacancy is also advertised for appointment of Junior Associates in Bhopal Circle "Madhya Pradesh & Chhattisgarh" and the language to be known is Hindi. In the advertisement, posts are advertised for 17 Circles/ Centre including Mumbai which includes State

of Maharashtra, Goa, Assam and Meghalaya but the petitioner chose to opt for Bhopal circle.

7. In the aforementioned facts of the case, in exercise of power of judicial review, this Court is to only consider whether the decision making process is in accordance with law or not. In order Annexure P-1 which is under challenge, the reason assigned for rejection of application/ request for Inter-Circle Transfer is that, there is no provision for Inter-Circle Transfer/ Inter-State Transfer of Junior Associates which cannot be said to be erroneous when in the advertisement itself the respondent-Bank have clearly mentioned that note and it is also the terms of appointment as mentioned in the letter of appointment. Apart from it, the petitioner herself given an undertaking for complying the terms of appointment. Hon'ble Supreme Court in case of Jagjit Singh Mehta (supra) has observed thus:

"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."

8. In the aforementioned decision, Hon'ble Supreme Court had said that even if there is guidelines for posting of two spouses at one place as far as practicable would not enable any spouse to claim such a posting as of right if departmental authorities do not consider it feasible and further it is observed that while choosing the career and 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.

9. In the case at hand, since the beginning when petitioner applied for the post of Junior Associate pursuant to the advertisement was well aware that the post for which she was participating in the recruitment proceedings does not provide Inter-Circle Transfer/ Inter-State Transfer and also gave undertaking in this regard. The Hon'ble Supreme Court in case of SK Nausad (supra) has observed as : "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" and therefore in concluding paragraph while upholding the decision of High Court left it open to the respondents therein to revisit the policy to accommodate the posting of spouses, the needs of the disabled and compassionate grounds.

10. In the above facts of the case, the decision of Hon'ble Supreme Court, I do not find any error in rejecting the application for Inter-Circle Transfer/ Inter-State Transfer of petitioner vide Annexure P-1. It is for the respondents-Banks to revisit the policy with regard to Inter-Circle/ Inter-State posting of Junior Associates under extraordinary circumstances.

11. In view of above, writ petition stands disposed of.