

(2022) 08 DEL CK 0149

In the Delhi High Court

Case No : Civil Writ Petition No. 10541, 11278 Of 2022, Civil Miscellaneous
Application No. 30456 Of 2022

State Of West Bengal

APPELLANT

Vs

Alankrita Pandey & Ors

RESPONDENT

Date of Decision : 17-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 21
Indian Police Service (Cadre) Rules, 1954 — Rule 5(2)

Citation : (2022) 08 DEL CK 0149

Hon'ble Judges : Sanjeev Sachdeva, J;Tushar Rao Gedela, J

Bench : Division Bench

Advocate : Madhumita Bhattacharjee, Anwesh Madhukar, Prachi Nirwan, Yaseen Siddiqui, Bhagwan Swarup Shukla, Kamaldeep

Final Decision : Disposed Of

Judgement

Sanjeev Sachdeva, J

1. Petitioner in W.P(C) 11278/2022 i.e. State of West Bengal impugns order dated 07.06.2022 whereby the original application of the respondent, an IAS officer seeking inter cadre transfer from West Bengal cadre to the Bihar cadre on account of her marriage to a Bihar cadre IAS officer has been allowed.

2. W.P(C) 10541/2022 has been filed by the officer raising a limited challenge to order dated 07.06.2022 whereby her deemed release was not permitted by the Tribunal and a direction was issued to the State of West Bengal to grant an NOC within a period of four weeks. On behalf of the officer it is contended that the officer is in family way and the direction to defer the grant of deemed release was prejudicial to her.

3. The officer was allotted the West Bengal cadre in the year 2016 and subsequently on 15.05.2018 married an officer of the Bihar cadre. Post her marriage she gave a request for inter cadre transfer from West Bengal cadre to

the Bihar cadre. The Government of Bihar has already issued its no objection certificate for the inter cadre transfer on the ground of marriage. As per the record the officer gave birth to a son on 17.01.2020 and is presently in family way.

4. The contention of the State of West Bengal is that the NOC has not been granted for an inter cadre transfer on account of the fact that there is shortage of officers in the State of West Bengal and further in view of the fact that the services of the officer are required for dealing with COVID-19 duties.

5. The Tribunal by the impugned order referred to several similar proceedings pending before the Tribunal of other officers seeking inter cadre transfer as also a decision of coordinate bench of this Court in W.P. (C) No. 11966/2018 titled as The State of West Bengal Vs. Raj Karan Nayyar and Ors; W.P(C) No.3927/2020 titled as Ms. Loganayagi Divya V. Vs. Union of India and Others and W.P(C) 4048/2021 titled State of West Bengal Vs. Gandharva Rathore & Others.

6. It is observed that in similar circumstances the Tribunal by its order dated 02.02.2021 had allowed original application i.e. O.A. No. 1299/2020 titled Lakshmi Bhavya Tanneeru Vs. Government of West Bengal and Others.

7. The Government of West Bengal failed to comply with the directions of the Tribunal to release the said officer Lakshmi Bhavya Tanneeru. Consequently she approached this Court by filing a petition i.e W.P(C) 5533/2021. Said petition was disposed of by judgment dated 16.11.2021 wherein a coordinate bench of this Court considered the import of Rule 5(2) of the 1954 Cadre Rules. It also noticed the contention of the State of West Bengal with regard to shortage of officers as also the Corona virus pandemic and rejected the contention of the State of West Bengal as not sustainable. The Coordinate bench in Lakshmi Bhavya Tanneeru by its judgment dated 16.11.2021 inter-alia held as under:-

11. Having said so, it is evident upon a plain reading of Rule 5(2) of the 1954 Cadre Rules that, the inter-cadre transfer cannot take place without the concurrence of the concerned State Government to whom the officer is attached/ assigned. Given the federal structure of governance, one cannot gainsay that the view of the transferor State Government, with whom the officer is encadred, is to be given its due weight. However, the refusal of the request made for inter-cadre transfer by an officer on the ground of marriage can only be sustained if it is backed by cogent reasons—as such a decision is subject to judicial review.

11.1. Since the State of West Bengal has not been able to place the relevant data on record, which would justify its stand that the petitioner's request had been considered objectively, and thereafter, rejected because of shortage of officers, we find it difficult to sustain the decision as reasons put forth by the State of West Bengal did not seem to come in its way while taking decision(s) on the requests made by other officers.

11.2. The provisions made in the 1954 Cadre Rules, when read with OM dated

30.09.2009, suggest that, the object and purpose of permitting inter-cadre transfer are, to ensure holistic progress and well-being of the members of AIS. The object and purpose appear to be to enhance the efficiency of the officers by ensuring that they are not weighed down because of marital discord and unhappiness on the home front.

11.3. As noticed above, there is much weight in the petitioner's contention that, while in the case of other officers no-objection directives for facilitating inter-cadre transfer were issued, her request was declined, without a cogent reason.

11.4. Ms Bhattacharjee's argument that the cadre allocation is an incident of service and not a right vested in an employee is a proposition with which one cannot quibble.

11.5. That being said, this broad proposition has to be understood in the context of provisions of Rule 5(2) of the 1954 Cadre Rules and the OM dated 30.09.2009, which carried forward the object and purpose of permitting inter-cadre transfer qua members of AIS on the ground of marriage.

12. The Petitioner's assertion that denial of her request for inter-cadre transfer has resulted in an infraction of her right to family life; in our opinion, has much weight. The fact that such rights are recognized as part of human rights, clearly emerges, upon a perusal of Article 8 of the European Convention on Human Rights [hereafter referred to as "Convention"]¹. A plain reading of Article 8(1) of the Convention discloses that every individual has the right to insist that the State respects her/his private and family life, home and correspondence.

12.1. In this context, it would be useful to advert to the observations made by the House of Lords in the matter of Huang (FC) v. Secretary of State for the Home Department [(2007) UKHL 11]. This was a case, where a Chinese citizen's application seeking permission to remain in the United Kingdom, where other members of her family were residing, was declined by the Secretary of State. The House of Lords, while rendering its decision, made the following observations:-

".....Human beings are social animals. They depend on others.

Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant's dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant.....In most cases where the applicants complain of a violation of their Article 8 rights, in a case where the impugned decision is authorized by law for a legitimate object and the interference (or lack of respect) is of sufficient seriousness to engage the operation of the Article 8,

the crucial question is likely to be whether the interference (or lack of respect) complained of is proportionate to the legitimate end sought to be achieved.....”

(emphasis is ours)

12.2. These observations, in a sense, explain the scope of the expression “family life”. We have no doubt that the right to meaningful family life, which allows a person to live a fulfilling life and helps in retaining her/his physical, psychological and emotional integrity would find a place in the four corners of Article 21 of the Constitution of India². Therefore, when the State unreasonably denies a request of an employee [in this case, the petitioner] seeking inter-cadre transfer, it impinges upon such person’s right to demand respect for her/his family life.

8. It is noticed that State of West Bengal had impugned the judgment dated 16.11.2021 in SLP (C) 20825/2021, however, the Supreme Court by order dated 22.03.2022 declined to interfere with the order passed by the coordinate bench and directed the State of West Bengal to implement the said order qua the officer therein i.e. Lakshmi Bhavya Tanneeru. It is noticed that despite the direction of the Supreme Court the State of West Bengal had failed to comply with the order of release of the said officer and subsequently the Supreme Court by order dated 26.04.2022 directed the State of West Bengal to relieve the officer within a period of two weeks failing which she would be deemed to have been relieved.

9. The ratio of the judgment in the case of Lakshmi Bhavya Tanneeru (Supra) squarely applies to the facts and circumstances of the present case.

10. Consequently, we dispose of the petitions by directing the State of West Bengal to pass an order to relieve the officer i.e. Alankrita Pandey within a period of two weeks from today failing which said officer would be deemed to have been relieved from the said cadre and consequently she shall thereafter be permitted to join the Bihar cadre.

11. Learned counsel appearing for the Union of India submits that they have no objection to the officer joining the Bihar cadre pursuant to her release from the West Bengal cadre. The statement is taken on record.

12. Order dasti under the signatures of the Court Master.