

W.P.NO.28838 OF 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2025

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.NO.28838 OF 2024
AND WMP NOS.31447, 31448, 31449 AND 37070 OF 2024
AND 7821 OF 2025

1.All India Union Bank Officer

Staff Association

Rep. by its General Secretary D.S.Ganesan

AIBOA House, II Floor,

No.109, Angappan Naicken Street,

Chennai – 600 001.

2.M.Kavitha

... Petitioners

VS.

1.Union Bank of India

Rep. By its Managing Director and

Chief Executive Officer

Central Office

No.239, Vidhan Bhawan Marg,

Nariman Point, Mumbai – 400 021.

2.Union Bank of India

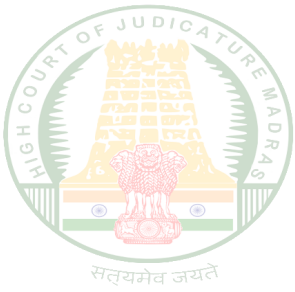
Rep. By its Chief General Manager

Human Resources Department

Central Office

No.239, Vidhan Bhawan Marg,

Nariman Point, Mumbai – 400 021.



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3. Government of India

Rep. By its Secretary

Dept. of Financial Services

Jeevan Deep, Parliament Street,

New Delhi – 110 001.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records pertaining to transfer policy circulated in staff circulars bearing No.7794 dated 01.10.2022 read with No.8019 dated 30.06.2023 read with No.8546 dated 24.02.2025 issued by the 2nd respondent in so far as it enables transfers of female officers on account of longer tenure in a Zone, quash the same and consequently direct the 1st and 2nd respondents to provide for transfer of female officers at a place close to their spouse / family as mandated by the Government of India, Ministry of Finance, Department of Financial Services, letter dated 08.08.2014 ad repatriate the female officers who were transferred vide transfer policy circulated in staff circulars bearing No.7794 dated 01.10.2022 read with No.8019 dated 30.06.2023 by permitting them to exercise option to return to hometown or any other nearby place.

(Prayer amended as per order dated 06.03.2025 in WMP No.7817 of 2025 in W.P.No.28838 of 2024)

For Petitioner : Ms.R.Vaigai
Senior Counsel
for Ms.Anna Mathew

For Respondents 1&2 : Mr.Srinath Sridevan
Senior Counsel for
Mr.Edward James

For Respondent 3 : Mr.K.Srinivasamurthy
(SPC)

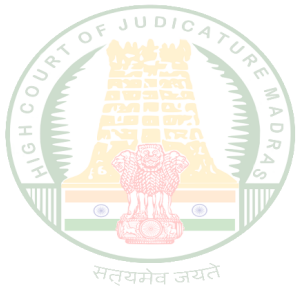


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ORDER

The writ petition had been initially filed in the nature of a Certiorarified Mandamus seeking records relating to a transfer policy circulated in staff circulars bearing No.7794, dated 01.10.2022, and No.8019, dated 30.06.2023, issued by the second respondent, Union Bank of India, represented by its Chief General Manager and to quash both the circulars. The circulars had been issued with respect to transfer of lady officers, who are said to have held their posts for a long tenure time period in a particular zone.

2.The first petitioner, All India Union Bank Officer Staff Association and the second petitioner, who is also an officer employed under the Union Bank of India seek that this Court must direct the first and second respondents to provide for transfer of lady officers to a place close to their spouse or family as mandated by a communication dated 08.08.2014 of the Government of India, Ministry of Finance, Department of Financial Services. An amendment was made to the relief sought in W.M.P. No.7817 of 2025 which was ordered on 06.03.2025, wherein, quite apart from the staff circular Nos.7794 & 8019, a restraint was also



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sought against circular No.8546, dated 24.02.2025, again issued by the second respondent, Chief General Manager, Union Bank of India.

3.In the affidavit filed in support of the writ petition, it had been contended that the Government of India, Ministry of Finance, had issued instructions on 08.08.2014, relating to transfer of lady officers in Public Sector Banks with the object to minimize the hardships they faced and therefore, it had been stated that to the extent possible, the lady officers must be accommodated or transferred to a place where their husbands are stationed or in close proximity to that particular place and if they are unmarried, to a place where their parents or any other dependent or person to whom they are dependent, or to any place which is in proximity to that particular place. In effect, the object of that particular communication dated 08.08.2014 was to ensure that a healthy balance was maintained by every lady officer between her duties to her family and her duties to her place of work. It had been further contended that the Public Sector Banks had been further advised to frame a transfer policy on those lines.



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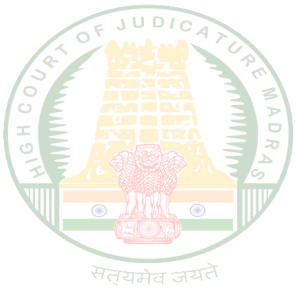
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4.The respondent herein, Union Bank of India is also a Public Sector Bank. Therefore, it was expected that they adhere to the guidelines issued by the Government of India. It was also contended that lady officers should be treated as a special class while taking a decision to transfer them. The petitioners further placed reliance on the reply of the Ministry of Finance on 19.07.2022 and again on 01.08.2023, where again, it had been reiterated that the Government is aware of the hardships faced by lady officers if they are subjected to transfers to places which are very far away from where their families are normally situated or residing.

5.It had been stated that however the respondents have resorted to transfer officers from one zone to another zone, which would necessitate cutting across States and transferring lady officers to an alien atmosphere where there would be insecurity both at the place of stay and at the office place.

6.Further reliance had been made on the report of the Committee for the Empowerment of Women relating to Working Conditions of Women in Public Sector Banks of the 16th Lok Sabha,

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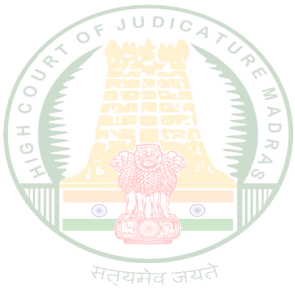


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more specifically, the guidelines relating to transfer of lady officers in Public Sector Banks from one zone to another zone and recommending that every Public Sector Banks should put a Special Cell to deal with the cases of women, who had forgone their promotion with intention to be retained in particular zone. It had been pointed that after foregoing promotion, if they were to be still transferred, it would put them to much hardship and they would have to reconcile themselves to not having availed promotion but still being subjected to transfer. This would affect their mental health.

7. During the course of hearing, the learned Senior Counsel for the petitioners with much fairness stating that individual cases of transfer are not questioned in this writ petition, but the policy had been challenged. However, individual instances had been pointed out, wherein, lady officers suffered much difficulties by themselves or by their close family members owing to being transferred across the country with no possibility of their representations being heard by the respondents and even if heard, being rejected. It is also contended that there are instances when before a decision can be taken to join the



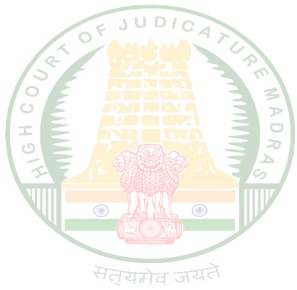
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transferee post or request is made for extension of time to join, disciplinary proceedings have also been initiated and it has been contended though not specifically stated, that it was an arm twisting method resorted by the respondents while putting in place their transfer policy, particularly, on whom they termed as having served for a long tenure in a particular place.

8.The circulars, which had been impugned in the writ petition had been issued by the respondents and that portion of those circulars relating to transfer of lady officers had been subjected to test during the course of hearing before this Court.

9.The first circular is circular No.7794, dated 01.10.2022, which provides for a transfer policy of officers upto MMGS – III staff and it had been provided that while acceding to request transfers, and in the event of non availability of vacancies in a zone, officers who had completed three years of service in a particular scale outside the zone of promotion will be transferred back to their parent zone. It had been contended that this particular clause will have a rippling effect, since on transfer back there will be an equal number of officers, who will be



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transferred out again and therefore, it is contended that there is no consistency in the policy and at some point or other, a transfer is effected, which would directly affect the peace of every lady officer. It had also been provided in the same circular that a long tenure is termed as somebody, who is working in the same place for nine years and they would be, in a descending order taken into consideration and transferred out of the zone. A small leverage was given so far as the age of the officer is concerned and it had been stated that lady officers, who are aged 52 years or more would not be moved out of the zone.

10. In the affidavit filed, it had been contended that on the basis of the circular introduced on 01.10.2022, several lady officers had been transferred from one zone to another zone in violation of clause 8.5 of the transfer policy. That particular clause relates to what could be commonly called the relieving procedure, wherein, it had been stated that normally a period of 20 days is given to join the transferee post, but however, in reality, not more than 07 days had been given while passing such orders transferring lady officers from one zone to another zone overlooking their choices, rejecting representations and disregarding



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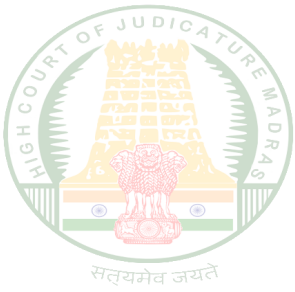
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personal difficulties expressed. It had also been stated that the respondents had further aggravated the situation by issuing a letter on 17.05.2023 that non reporting within the stipulated time to the transferee post would be considered as unauthorized absence and disciplinary proceedings would be initiated, immediately. This had led to several representations being given by those, who were affected and also by the first petitioner Association.

11.A writ petition had also been earlier filed in W.P.No.6346 of 2024 seeking a direction to dispose of the representations given. A Mandamus was also issued accordingly. But, relief had not been granted to those who had so represented.

12.It had been further contended in the writ petition that the transfer exercise of the year 2023-2024 was justified on the ground that the respondents had to necessarily fill the vacant posts at various branches and the only way they could do is by transfer. But what had been left out from consideration were the difficulties which individual officers suffered owing to such orders of transfer.

13.Thereafter, the second circular, which was impugned in

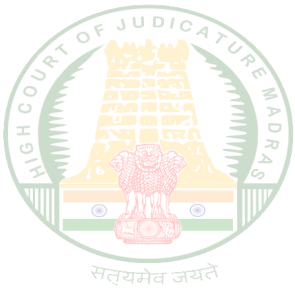


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the writ petition, namely, circular No.8019, was issued on 30.06.2023, again as a transfer policy for officers upto MMGS – III for the year 2024 - 2025. It was held to be valid till 31.03.2025 and would be extended for a further period of three months. But, it is however complained by the petitioners that even this circular did not take into its ambit, the guidelines of the Government of India, dated 08.08.2014, which specifically addressed the difficulties, which lady officers would be subjected to if they are transferred and more particularly, the direction given to ensure that lady officers are posted to a place where their spouses are working or in a place in close proximity to the places where the spouses are working and if they are unmarried, to a place where their parents or any other dependent are residing or working or any place which is in a close proximity to such place.

14.In circular No.8019, dated 30.06.2023, it had been provided that those who had completed service tenure of nine years or more, in an officer cadre in a particular post, would be transferred out of the zone and would be placed in another zone for a minimum period of three years. This effectively brought in a mandate that anybody working



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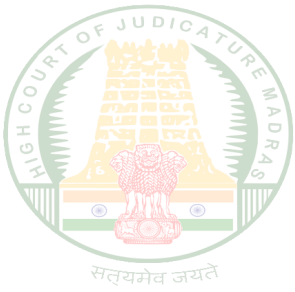
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for nine years in a particular zone, would certainly be transferred out of the zone atleast for a minimum of three years. It had been further contended that lady officers, who had completed the age of 52 years, would not be moved out of the zone.

15.These two circulars had been questioned in the writ petition and it had been very strongly argued during the course of hearing that they violated the fundamental principles to protect every lady officer by providing her a congenial atmosphere in the work place, which provides security and ensures that she is able to balance her family and office and discharge her duties in both places. It had been further stated that this transfer policy also affected those who had never opted for promotion in the hope that they would continue to serve within the zone. Such officers and lady officers had also been transferred out of the zone.

16.As pointed out, specific instances had been given of officers who had suffered physically and also mentally owing to the orders of the transfer.

17.Pending the writ petition, an amendment had been brought into further question a staff circular No.8546, which had been



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issued on 24.02.2025 and which again contained an identical clause in Paragraph No.5.4 to again effect transfers on account of long tenure in a particular zone. It had been contended that when the issue is pending consideration before this Court, it was extremely inappropriate on the part of the respondents to introduce a further circular on 24.02.2025 on the same lines as the earlier circulars, which have been impugned, namely, circular Nos.8019 & 7794.

18.It had been contended by the writ petitioners that transfers were to a distance of about 500 to 1,000 Kilometers from the original place of work and was not based on any justifiable reasons. It was just an arbitrary act of transfer from place A to place B, without any consideration as to whether they would directly affect the individual and whether any steps were taken to assuage the difficulties of the individual. It had been further stated that transfers were directly in violation of the circulars of the Government of India and regulations. It was alleged that this pointed out to a systemic discrimination on account of gender at the work place and it affected the rights of every lady officer and it resulted in displacement of a lady officer from her family permanently, from a



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place of secure environment and affected her mental health quite apart from the physical strain and difficulties she was put to. It was contended that the respondents should have been a little more considerate of the difficulties which lady officers face owing to such irrational orders of transfer and the threats held out that if the officer does not join the transferee post within a stipulated time, disciplinary proceedings would be initiated leading to fear of losing the very job which provided financial security and an essence of an independence to the lady. In effect, the respondents are alleged to have disregarded the mental peace of the women officers and had only considered extracting work from every employee without any consideration of protection given under Article 15 (3) of the Constitution of India to women in general and have violated their own duty and responsibility as stipulated under Article 42 of the Constitution of India. It was under those circumstances that the writ petition has been filed questioning the circulars bringing to light specific orders by which several women had suffered and had silently borne the agony of being parted from their family and forced to live and reside and work in an alien atmosphere in unsecure surroundings.

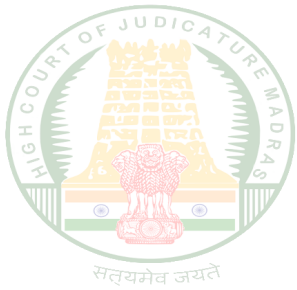
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19. When the writ petition came up for admission, a learned Single Judge of this Court had held that the petitioners had made out a *prima facie* case and therefore, granted injunction for a period of four weeks. It was also stated that those lady employees, who had already been transferred to far off places and had given representations, such representations must be re-examined and reported to the Court. This order was passed on 04.10.2024. This particular order had been extended time and again. Thereafter, as stated, staff circular No.8546, had been issued on 24.02.2025, which necessitated the petitioners to file W.M.P. No.7817 of 2025 to also seek an order of Certiorari to quash that particular circular. Permission to amend the relief was granted and the affidavit was suitably amended incorporating that particular relief. On 06.03.2025, this Court had stated that this circular/ staff circular No.8546 should be put on hold and the respondents may await further orders of this Court with reference to every women employee before implementing the circulars. Thereafter, this order was clarified on 19.03.2025, that the circular shall be put on hold only with reference to women employees who have completed nine years of service tenure in a particular zone. It

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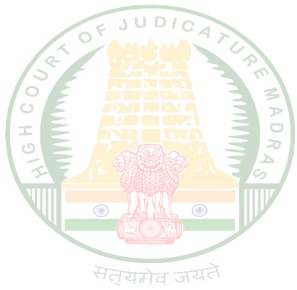


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was also complained that disciplinary proceedings had been initiated if an officer had not joined the transferee post and it had been observed that if any disciplinary proceedings had been initiated, they would be subjected to judicial review. But however, the learned Senior Counsel for the respondents made a statement across the bar that disciplinary proceedings had not been initiated according to instructions given to him. The respondents had filed an application in W.M.P. No.37070 of 2024 to vacate the order of interim injunction granted initially on 04.10.2024.

20.In the affidavit filed in support of the said writ miscellaneous petition, it had been contended that the respondents had introduced these circulars to carry out transfer process for the financial years 2023 – 2024 & 2024 – 2025, particularly, with respect to those officers, who were in a particular zone for a period, which could be termed as long tenure term, namely, nine years or more. It was stated that they were to be transferred on the basis of the availability of man power and vacancies in other zones. It was stated that such transfers were effected to balance the work force across the zones to meet the business needs of the Bank. It had been further stated that there were



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some exemptions granted from the transfer policy, which could be availed by the employees. The exemptions came with a rider that requests would be considered depending on the gravity, genuineness and the circumstances and to protect differently abled officers or officers having differently abled family members and also to protect officers whose parents, spouses or children or any other dependent required medical assistance or officer who requires medical assistance on account of serious illnesses which had been listed out.

21.Exemptions would also be granted to those officers, whose spouses suffered death within a period of past two years. Exemptions would also be granted to lady officers who were in the family way. Such exemption would only be for three years, which included nine months pregnancy period. Exemptions would also be considered for officers with two children who are less than two years but would be considered only till the children attain the age of two years and not more than that.

22.It had also been stated that a portal had been opened called Union Parivar for those who are due for transfer for having served



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in a particular zone for nine years or more to give their preferences for any zone or to state exemptions, if any. It had been pointed out that this particular portal was opened in the best interest of the officers to allocate zones in the order of preference. But however, again, it had been stated that notwithstanding the preference given, the Management retained a discretion to grant or not to grant such request for a particular zone.

23.In effect, a preference could be given, but there was no guarantee that it would be actually accepted or examined or even looked into by the respondents. They still retained the right to transfer the officers to a zone, where the management is of the opinion, the officer should be transferred. The statistics relating to the number of officers, who had been transferred had also been given.

24.In the affidavit, it had been further stated that the respondent bank is very much concerned with the welfare of lady officers and therefore, had ensured that the representations given are addressed to the extent possible. But however, it had also been stated that transfer is an administrative policy and the petitioners cannot question the transfer policy of the respondents.



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25.The locus of the first petitioner to represent the officers in general had also been questioned by the respondents. As a matter of fact, the locus of the first petitioner to maintain the writ petition itself had also been questioned. At any rate, it had been stated that since transfer is an administrative act, which right the respondents retain and intend to retain, the Court cannot step into that particular jurisdiction and direct how the policy of the respondents must work out. It had been stated that the policy is in conformity with the rules and guidelines keeping in mind, the best interest of the respondents. It had been stated that liberty should be given to the respondents to put into effect the transfer policy and there cannot be any curbs laid down by the Court for implementing such policy.

26.During the course of hearing, a string of affidavits, counter affidavits and reply affidavits had been filed by the parties. It would only be appropriate that reference is made to them.

27.The petitioners had filed an additional affidavit bringing to the notice of the Court specific instances of officers, who had been



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transferred and the sufferings which they had to undergo owing to such orders of transfers. It had also been stated that the transfers had been effected in the middle of the academic year. It had been stated that some of the serious issues raised by the lady officers were pregnancy, children of tender age, miscarriage, death of children, birth of children with special illnesses, parents or dependents suffering from mental disability, mental health issues of children, critical illness of parents and or other dependents, serious health complications of the officers themselves, transfers affecting studies of the children and posting being so far away that commutation back to home place being extremely difficult owing to bad connectivity either through air or by road.

28.It had been contended that orders of transfer prevented lady officers being a mother, being a wife, being a daughter or being a primary care taker and they had to take a choice and it was a very hard choice between family and career. They also had to take leave, which directly affected their responsibilities to the office and had also affected their mental health. They also had to go on leave on loss of pay. Many of them had forgone their promotions and therefore, there was no further



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impetus in service and the sense of security was shattered by the orders of transfer.

29.In the additional affidavit filed, further reference was made to yet another letter of the Government of India, Ministry of Finance Department, Financial Services, dated 26.11.2024, wherein again, Public Sector Banks were advised to incorporate safeguards and address the physical and mental health difficulties faced by women, who are transferred from one zone to another zone. Guidelines were also given in this regard and parameters to be examined before any indiscriminate order of transfer is passed had also been issued.

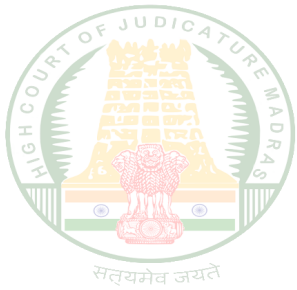
30.It had been further stated that a learned Single Judge, by an order dated 04.10.2024, had directed that the representations given should be considered and must be reported back to this Court. The respondents had issued an answer through electronic mail, for which, no reply could be given and the reply was also not served on the officers. It was thus contended that giving representations was an exercise of futility and the respondents had never re-considered any order of transfer.

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31.The respondents had also filed an affidavit independent of the application to vacate the interim injunction granted and in the affidavit, a specific issue raised in the further affidavit of the petitioners had been addressed. It had been stated that it would be irresponsible and be of great disservice to the women of our country, who strive for equal treatment alongside male counter parts, if a view that a woman should never be transferred is taken. It was also stated that in the opinion of the deponent of the counter affidavit, women do not wish to be tokenised or treated as weaker beings, who survive on the protection by men.

32.It had been further stated that the CVC/Central Vigilance Commission guidelines mandates transfer in certain cases and that transfers are a must. It had been stated that the respondents do not pick or choose the persons to be transferred. The orders were objective. It had been further stated that the Bank had formulated and uploaded the transfer policy, which of course had been impugned in the writ petition. It had been further again reiterated that the officers, who had completed service tenure of nine years and more, would be transferred to a place outside the zone. In effect, in the further affidavit, the same averments as

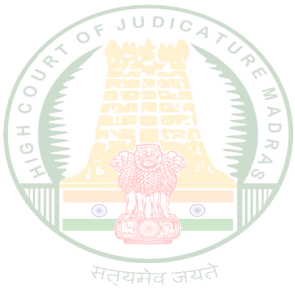


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stated in the affidavit filed in support of the petition to vacate the order of interim injunction were again reiterated.

33.A rejoinder had been filed by the petitioners. It had been stated that in the writ petition, individual orders of transfer had not been questioned, but the policy of the respondents to transfer lady officers without any consideration for the difficulties they face had been pointed out. It had been stated that though the policy was termed as being gender neutral, it was, in effect, an indirect discrimination against women officers. It had been stated that women who suffer from serious physical and physiological difficulties have been transferred without regard to their physical condition. It had been further stated that representations had been replied by an autogenerated Email with general rejections and to which, a reply cannot also be issued and it was thus reiterated that the respondents have shown scant regard for the difficulties which women officers faced, and there is no commitment to address those difficulties.

34.During the course of arguments, it had been contended by the learned Senior Counsel for the respondents that the first petitioner Association had taken undue advantage of the interim order granted and



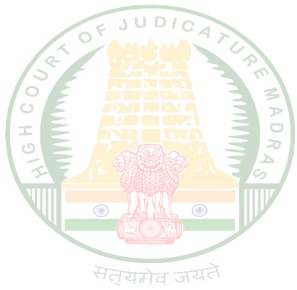
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had publicized the said order and had invited representations from staff and officers, who would like to send representations against orders of transfer. It had been contended by the learned Senior Counsel for the respondents that the first petitioner was indirectly taking advantage of the filing of the writ petition and that the Court was used as a platform to generate membership of the first petitioner Association. The learned Senior Counsel for the petitioners objected to that contention and stated that the order had been publicized as many women who kept silent against orders of transfer were sensitized that they could raise representations against such transfer orders.

35.Let me not delve into that particular issue but only record that the petitioners had filed their affidavit explaining their stand in this regard.

36.Arguments in length were advanced by Ms.R.Vaigai, learned Senior Counsel on behalf of the petitioners, Mr.Srinath Sridevan, learned Senior Counsel on behalf of the first and second respondents and Mr.K.Srinivasamurthy, learned Senior Panel Counsel for the third respondent.



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37. Even before advertizing to the arguments of the learned Senior Counsels, it must be pointed out that Mr.K.Srinivasamurthy, learned Senior Panel Counsel for the third respondent had affirmed that the Central Government had infact issued guidelines and policy relating to transfer of women employees by Public Sector Banks and had placed a word of caution against irrational transfer orders, which would directly affect the security of the officers and had directed the Public Sector Banks to formulate a policy in accordance with the guidelines issued. The learned Senior Panel Counsel stated that though the first and second respondents had formulated a policy, they had also introduced a new term/ long tenure transfer policy, which was not found in the Central Government guidelines.

38. There is one further aspect which has to be addressed by the Court with respect to the complaint made by the learned Senior Counsel for the first and second respondents that officers and staff, who had served in a particular post for a long tenure are required to be shifted owing to the guidelines of the CVC and also owing to administrative grounds. It has to be stated that an employee cannot by himself or herself

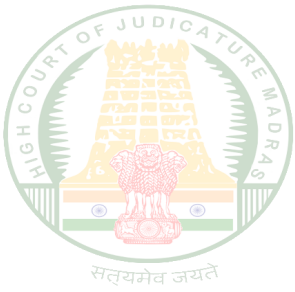


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retain a post for a period of nine years. A duty is equally cast on the employer to ensure that within a reasonable period of time, the employer ensures that the staff or officer is transferred to another place. If the first and second respondents complain that an employee had clinged on, as the learned Senior Counsel for the first and second respondents stated as “limpets” to a post, the blame equally lies on the employer for having permitted such a situation to happen. They cannot turn around and place the blame solely on the employee when an order of transfer can be passed only by the first and second respondents. They therefore cannot blame an employee for being in a post for a period of nine years or more. They should have been more vigilant in the initial stage itself.

39.Be that as it may, Ms.R.Vaigai, learned Senior Counsel on behalf of the petitioners in her arguments contended that the transfer policy of the first and second respondents of those who had been working in a particular branch or zone for more than nine years, which could be termed as long tenure was brought into effect on and from 2022. The learned Senior Counsel contended that this policy had affected women officers as they had to choose between their family and career.



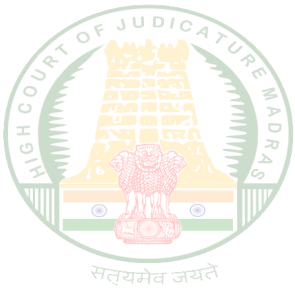
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She argued that officers suffered orders of transfer from one zone to another zone, which cut across States and the places of transfer were more than 1000 kilometers away. Officers who were transferred to alien places in an unsecure atmosphere, had to leave their family and relatives behind and had to fend for themselves. For a woman, taking a choice between family and work is a difficult choice.

40.The learned Senior Counsel clarified that the writ petition was not filed to quash individual orders of transfer, but only to highlight the harshness of the transfer orders. The ground reality had to be addressed by the respondents. There was no extended family support and the impact of the policy had to be examined by the respondents. It was pointed out that a woman faces complicated health issues and transferring them from one place to another disregarding their protestations could be termed as a patriarchal attitude of the respondents. No consideration was shown to women employees or to women in general.

41.The learned Senior Counsel questioned the statement of the respondents that women do not wish to be tokenised and stated that

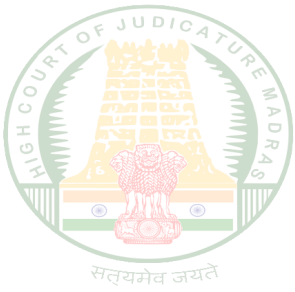


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such was not the intention of the petitioners but the petitioners have a duty and responsibility to ensure that women are provided with a safe and secure work place and that they are not put to difficulties by orders of transfer.

42.The learned Senior Counsel further argued that the policies were in direct violation of Article 15 (3) of the Constitution of India. She argued that gender equality would indicate substantial equality and removal of barriers. She contended that indirectly the respondents encouraged a patriarchal society and there was a dichotomy in the approach of the respondents. The learned Senior Counsel pointed out the guidelines of the Government of India in their circulars, wherein, they had placed certain guidelines for the transfer policy and had called upon the Public Sector Banks to adhere to such guidelines. It was contended that there was no fairness in the policies introduced by the respondents. The learned Senior Counsel stated that the respondents could not brush away the guidelines of the Government of India as being only an advisory and did not restrict the discretion on the part of the respondents. The learned Senior Counsel further stated that though the

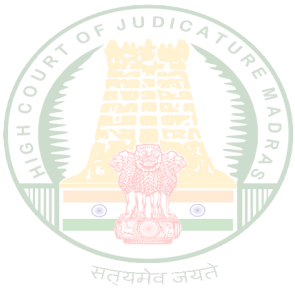


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transfer policy appears gender neutral, it was in effect an indirect discrimination against women employee.

43. With respect to the charge that the first petitioner could not maintain the writ petition, the learned Senior Counsel was quite dismissive of that contention in her arguments and pointed out that the first petitioner was a registered Trade Union and an Union had every right to address discrimination meted out to its members. She stated that the first petitioner had a duty to point out the discriminations in the transfer policy in general and in specific instances also and more importantly, when representations were raised, the refusal to address the representations by the respondents and even if addressed, replied by way of an Email, which was generated without any possibility of a reply and which did not contain any reason for rejection of the representations.

44. It had been further contended by the learned Senior Counsel that the writ petitioners has protested by impressing upon the respondents to bring about a more effective, more friendly and a fair policy of transfer, which would take into consideration, the difficulties faced by their own employees. It was pointed out that the officers and

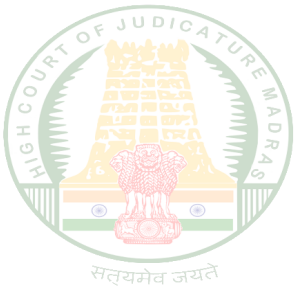


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staff of the respondents are the face of the respondents. The customers gain confidence only on interactions with the staff and officers. Business develops in direct proportion to the attitude of the officers and staff. They work overtime for the benefit of the Bank. Their salaries are fixed and therefore, by working over time they are not going to get any additional payment, but the additional efforts they put in to generate customers and to impress the customers to come over to the respondent Bank in comparison with other Public Sector Banks works only to the advantage of the respondents and therefore, the contribution made by the officers and staff should be appreciated by the respondents.

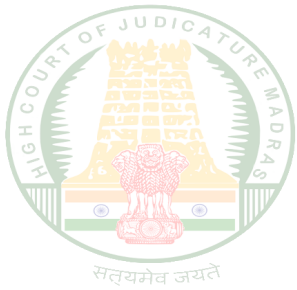
45.The learned Senior Counsel argued that having a hostile attitude against the officers and staff, particularly, against the women employees, who have no defence to put up, cannot be appreciated and should be condemned by the Court. Some leverage should be given to address the difficulties of women employees by the respondents. They can never hide behind orders by stating that they are administrative orders and cannot be questioned and are policy matters and should not be questioned. The learned Senior Counsel stated that the petitioners have a



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duty to point out the arbitrariness in the actions of the respondents and stated that in effect, the writ petition is actually a cry for justice.

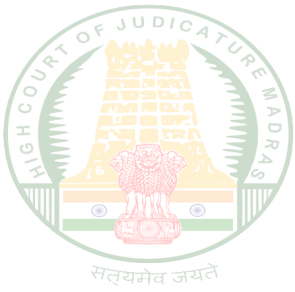
46.Mr.Srinath Sridevan, learned Senior Counsel for the first and second respondents had his limitations. He pointed out that he cannot be called upon to justify orders of transfer of individual officers. He could only justify the policy as a whole. Learned Senior Counsel pointed out that the policy is transparent, uniform and had been consistently applied to all officers, men or women. He pointed out that those who were in a particular branch or a zone for a period of nine years will themselves appreciate if they were transferred from that particular zone. He also pointed out the nature of the work discharged in a Bank. Handling money matters requires transfers to be effected in periodical intervals. It is part of the conditions of services accepted by the officers and staff. It is not punitive in nature. It is only to further the business of the first and second respondents. Transfer has to be effected to balance the work force and ensure that work is equally divided across zones and there is equal burden on every officer and every staff.



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47.Learned Senior Counsel also pointed out that for every officer or staff, who remained in the same post for nine years and more, there will be several other officers and staff, who would want to come over to that particular zone but were not able to, owing to the continuous occupation of that post by a particular officer or staff. The learned Senior Counsel pointed out that rotation of the place of work is an administrative act and had to be resorted to maintain not only the integrity of the Bank, but also to ensure that staff do not get too familiarized with any customer or with any particular branch and thereby, invite charges against them. They should not fall prey or be misled to commit any act, which would invite further disciplinary proceedings against them.

48.The learned Senior Counsel pointed out the nature of the policy. He pointed out that representations could be given and the representations would be certainly addressed. He then pointed out that there are certain exemptions and if an employee falls within the exemptions, he or she will never be transferred. He further pointed out that a specific portal had been opened up, where a choice of zone is given



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and that particular choice is accommodated to the extent possible. He then pointed out that even if the choice is not accommodated, the staff or officer can file an appeal and a Committee examines the appeal. He then pointed out that there is also a Grievance Redressal Mechanism put in place, which would further examine the grievances of the officers and staff. The learned Senior Counsel therefore pointed out that the Bank had reached out to the extent possible to address the grievances/difficulties faced by the employees, who are subjected to and who had been visited with orders of the transfer.

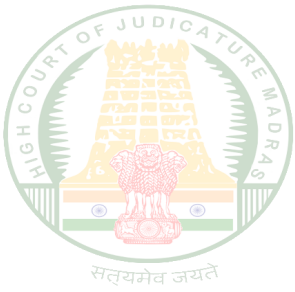
49.He pointed out that no orders of transfer was punitive in nature and unless the petitioners point out malafide in such orders, they could never be interfered with by the Court. The learned Senior counsel stated that the policies are in conformity with the guidelines issued by the Central Government and that the Bank has every right to formulate a transfer policy. It was insisted that various steps have been put in to ensure that the grievances are addressed.



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50.Learned Senior Counsel stated that many officers had actually benefited by their grievances being addressed by the Bank. The learned Senior Counsel stated that the policy has a catch on every aspect. He gave the details about the number of applications which had been forwarded seeking reconsideration of the orders of transfer and the number of such applications which had been favourably considered and which had been rejected and pointed out that they were on equal measures.

51.He pointed out that even after the interim order, several applications had been reviewed by the Committee. The learned Senior Counsel stated that the Bank also has a policy to transfer to places where spouses are working or residing and transfer to places where the dependents are residing. It was thus argued that four separate safeguards had been provided, namely, general exemptions and then what he called the Parivar module for representations and an appeal against non consideration of a request and a Grievance Redressal Mechanism. The learned Senior Counsel stated that as far as possible, the guidelines of the



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Central Government had been adhered to and individual requests have been addressed. The learned Senior Counsel pointed out that there were instances when officers, who had been transferred were unwilling to join duty and the only manner in which discipline could be enforced was to initiate disciplinary proceedings in manner known to law and after following due process. It was therefore contended that the Court cannot sit as an authority to oversee the policies of the first and second respondents and that the transfer policy could not be questioned by the Court unless malafide is alleged. He further pointed out that there were actually no pleadings to show that the tenure of nine years, which had been determined as long term is irrational. It had been contended by the learned Senior Counsel that the petitioners have engaged themselves in a legal battle for the survival of the first petitioner and to further the interest of the first petitioner rather than the interest of those who were transferred to another zone or from one place to another. The learned Senior Counsel was insistent on his stand that the writ petition should be dismissed.



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52. Even before proceeding further to discuss the issues raised by the learned Senior Counsels, it would only be appropriate to set out the precedents cited on the issues raised.

53. The learned Senior Counsel for the first and second respondents was very emphatic in his submission that the transfer policy cannot be assailed before the Court and that the scope of judicial review was extremely limited and could be resorted to unless it is made out that the policy is *malafide* or made in violation of statutory provisions. It had also been argued that not following the guidelines or instructions, could not be sufficient to quash the policy as being *malafide*.

54. In this connection, reference was made to a judgment of the Hon'ble Supreme Court reported in **(1993) 4 SCC 357 [Union of India and Others Vs. S.L. Abbas]** with specific reference to paragraph nos. 6 and 7 which are as follows:

“6. 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



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another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that 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 set-back 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.

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."



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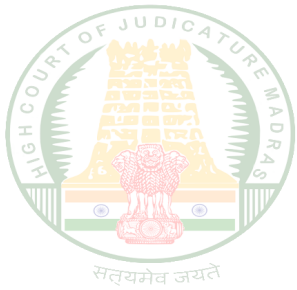
55. Further, reference was also made to a judgment of the Hon'ble Supreme Court reported in **(2007) 8 SCC 150 [Mohd. Masood Ahmad Vs. State of U.P. and Others]** with specific reference to paragraph nos.4 and 7, which are as follows:

“4. The petitioner-appellant, who was an Executive Officer, Nagar Palika Parishad Muzaffarnagar, had in his writ petition challenged his transfer by the State Government by order dated 21.6.2005 as Executive Officer, Nagar Palika Parishad Mawana, District Meerut. Since the petitioner was on a transferable post, in our opinion, the High Court has rightly dismissed the writ petition since transfer is an exigency of service and is an administrative decision. Interference by the Courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions, transfer is an exigency of service vide B.Varadha Rao vs. State of Karnataka AIR 1986 SC 1955, Shilpi Bose vs. State of Bihar AIR 1991 SC 532, Union of India vs. N.P. Thomas AIR 1993 SC 1605, Union of India vs. S.L. Abbas AIR 1993 SC 2444, etc.

5. ...

6. ...

7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in Rajendra Rao vs. Union of India (1993) 1 SCC 148; (AIR 1939 SC 1236), National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan (2001) 8 SCC 574; (AIR 2001 SC 3309), State Bank of India vs. Anjan Sanyal (2001) 5



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SCC 508; (AIR 2001 SC 1748). Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh vs. State of U.P. (1997) 3 ESC 1668; (1998) All LJ 70) and Onkarnath Tiwari vs. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866; (1998 All LJ 245), has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders. ”

56.The learned Senior Counsel further placed reliance on a judgment of the Hon'ble Supreme Court reported in **(2004) 11 SCC 402 [State of U.P. And Others Vs. Gobardhan Lal and Others]** with specific reference to paragraph no.7 which reads as follows:

“7.It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. 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 contra, in the law governing or conditions of service. Unless the order of transfer is shown to



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be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even 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 redress 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. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

57.In effect, the arguments advanced on behalf of the respondents rested on the contention that transfer is a matter of policy, and any decision taken pursuant to such policy would not be amenable to judicial review unless it is shown to be vitiated by *mala fide*. Further, individual officers to whom separate orders of transfer had been issued



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alone, could point out *malafide* and the first petitioner – Association or Trade Union cannot maintain allegations of *malafide* of individual orders of transfer. The learned Senior Counsel contended that those who have been directly affected by orders of transfer have not approached the Court and simultaneously pointed out instances, where those who have actually approached the Court had actually suffered an order of dismissal.

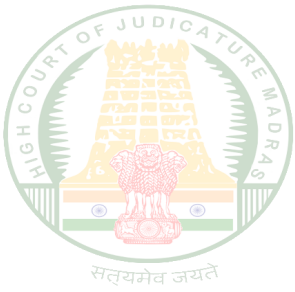
58.It had been further pointed out on the side of the first and second respondents that the policy as prevalent today provided for transparency at all stages. General exemptions have been put in place and if individuals fall within the exemptions, they could seek that they should not be visited by an order of transfer. They can also indicate their place of convenience or zone where they would like to be transferred and even if that place is not considered, they could file an appeal before the Appellate Authority and even if the Appellate Authority does not favourably consider the appeal, they could still address the same to the Grievances Redressal Cell. It is thus contended that the first and second respondents have put in place a mechanism through which individual



grievances can be addressed and are addressed.

59.I am conscious of the fact that I have moved to examine the case of the respondents without first addressing the case as projected by the petitioners. This had been done to keep in mind the path through which the Court could traverse while addressing the issues raised by the petitioners. It is, of course limited, as the Court cannot substitute itself for those who govern the first and second respondents. However, the learned Senior Counsel for the petitioners had substantially widened the parameters to be considered.

60.The learned Senior Counsel for the petitioners argued that the policy of the respondents directly affected the right of a woman to live with independence and to exercise her choice to be with her family and also to discharge her official duties. She has a right to claim not to be separated from either. It is the responsibility of the respondents to provide her with an atmosphere where she discharges duties and responsibilities, in a secure atmosphere, without a shadow behind her or a threat that she would be displaced to her disadvantage, putting at risk, her relations with either her spouse or her family or her parents or



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dependents. It had been pointed out that the tenure based transfer policy, particularly affected women and overlooked the difficulties which women would face both physically, mentally and physiologically. Further, the threat that if a woman does not join the transferee post within the stipulated time, disciplinary action would be initiated, caused further mental harassment to the woman officer.

61.The learned Senior Counsel for the petitioners further pointed out the view of the Hon'ble Supreme Court while examining the general disabilities and discriminations which women in India face and in this connection made specific reference to the observations of the Hon'ble Supreme Court in **(2016) 4 SCC 179 [Richa Mishra Vs. State of Chhattisgarh and Others]** and placed reliance on paragraph nos.25, 26, 27 and 28 which are as follows:

“25.Women in this world, and particularly in India, face various kinds of gender disabilities and discriminations. It is notwithstanding the fact that under the Constitution of India, women enjoy a unique status of equality with men. In reality, however, they have yet to go a long way to achieve this Constitutional status. It is now realised that real empowerment would be achieved by women, which would lead to their well-being facilitating enjoyment of rights



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guaranteed to them, only if there is an economic empowerment of women as well. Till sometime back, the focus was to achieve better treatment for women and for this reason, the concentration was mainly on the well-being of women. Now the focus is shifted to economic empowerment. Such objectives have gradually evolved or broadened to include the active role of women when it comes to development as well. No longer the passive recipients of welfare-enhancing help, women are increasingly seen, by men as well as women as active agents of change: the dynamic promoters of social transformation that can alter the lives of both women and men.

26.It is now realised that there is a bidirectional relationship between economic development and women's empowerment defined as improving the ability of women to access the constituents of development- in particular health, education, earning opportunities, rights, and political participation. This bidirectional relationship is explained by Prof. Amartya Sen by propounding a theory that in one direction, development alone can play a major role in driving down an equality between men and women; in another direction, continuing discrimination against women can hinder development. In this scenario, empowerment can accelerate development. From whichever direction the issue is looked into, it provides justification for giving economic empowerment to women. It is, for this purpose, there is much emphasis on women empowerment (as it leads to economic development) by United Nations World Bank and other such



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27. Interestingly, the 2012 World Development Report (World Bank 2011) adopts a much more nuanced message. While it emphasizes the “business case” for women empowerment, it mainly takes it as given that the equality between women and men is a desirable goal in itself, and policies should aim to achieve that goal. Poverty and lack of opportunity breed inequality between men and women, so that when economic development reduces poverty, the condition of women improves on two counts: first, when poverty is reduced, the condition of everyone, including women, improves, and second, gender inequality declines as poverty declines, so the condition of women improves more than that of men with development.

28. Economic development, however, is not enough to bring about complete equality between men and women. Policy action is still necessary to achieve equality between genders. Such policy action would be unambiguously justified if empowerment of women also stimulates further development, starting a virtuous cycle. Empowerment of women, thus, is perceived as equipping them to be economically independent, self-reliant, with positive esteem to enable them to face any situation and they should be able to participate in the development activities.”

62. Learned Senior Counsel placed very strong reliance on a judgment of the Hon'ble Supreme Court reported in **(2021) 15 SCC 125**



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Others] more particularly, to the concept of indirect discrimination.

Specific reference had been made to paragraph no.51 of the said judgment, which reads as follows:

“51. Indirect discrimination has also been recognized by the High Courts in India. For instance, in the matters of public sector employment, the Delhi High Court in Inspector (Mahila) Ravina v. Union of India and in Madhu v. Northern Railways, has upheld challenges to conditions of employment, which though appear to be neutral, have an adverse effect on one section of the society. Bhat, J., while analyzing the principles of indirect discrimination in Madhu, held:

“20. This Court itself has recognised that actions taken on a seemingly innocent ground can in fact have discriminatory effects due to the structural inequalities that exist between classes. When the CRPF denied promotion to an officer on the ground that she did not take the requisite course to secure promotion, because she was pregnant, the Delhi High Court struck down the action as discriminatory. Such actions would inherently affect women more than men. The Court in Ravina v. Union of India stated: (SCC OnLine Del para 12)

12..... A seemingly “neutral” reason such as inability of the



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employee, or unwillingness, if not probed closely, would act in a discriminatory manner, directly impacting her service rights. That is exactly what has happened here: though CRPF asserts that seniority benefit at par with the petitioner's colleagues and batchmates (who were able to clear course No. 85) cannot be given to her because she did not attend that course, in truth, her “unwillingness” stemmed from her inability due to her pregnancy.’ ”

63.In the very same judgment, the observations of the Hon'ble Supreme Court relating to systemic discrimination had also been pointed out by the learned Senior Counsel and in this connection, reference was made to the observations in paragraph nos.75, 76 and 77 which are as follows:

“F.7.Systemic Discrimination as antithetical to Substantive Equality

75.As noted in the analysis above, the emphasis on intent alone as the key to unlocking discrimination has resulted in several practices, under the veneer of objectivity and “equal” application to all persons, to fall through the



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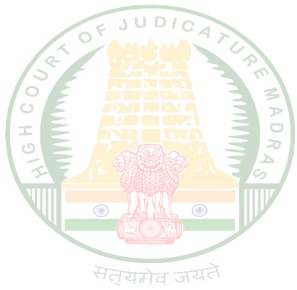


cracks of our equality jurisprudence. Indirect discrimination as a tool of jurisprudential analysis, can result in the redressal of several inequities by probing provisions, criteria or practice that have a disproportionate and adverse impact on members of groups who belong to groups that are constitutionally protected from discrimination under Article 15(1). However, it needs to be emphasized that a strict emphasis on using only one of the two tools (between direct and indirect discrimination) to establish and redress discrimination may often result in patterns and structures of discrimination remaining unaddressed.

76.In order to conceptualize substantive equality, it would be apposite to conduct a systemic analysis of discrimination that combines tools of direct and indirect discrimination. In the words of Professor Marie Mercat-Bruns:

“Systemic discrimination posits the need to conceptualize discrimination in terms of workplace dynamics rather than solely in existing terms of an identifiable actor’s isolated state of mind, a victim’s perception of his or her own work environment, or the job-relatedness of a neutral employment practice with adverse consequences. Systemic discrimination derives from how organizations, as structures discriminate.”

77.A particular discriminatory practice or provision might often be insufficient to expose the entire gamut of



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discrimination that a particular structure may perpetuate. Exclusive reliance on tools of direct or indirect discrimination may also not effectively account for patterns arising out of multiple axes of discrimination. Therefore, a systemic view of discrimination, in perceiving discriminatory disadvantage as a continuum, would account for not just unjust action but also inaction. Structures, in the form of organizations or otherwise, would be probed for the systems or cultures they produce that influence day-to-day interaction and decision-making. The duty of constitutional courts, when confronted with such a scheme of things, would not just be to strike down the discriminatory practices and compensate for the harm hitherto arising out of them; but also structure adequate reliefs and remedies that facilitate social re-distribution by providing for positive entitlements that aim to negate the scope of future harm.”

64.The further observation in paragraph no.116 was also referred to.

“116.We must recognize here that the structures of our society have been created by males and for males. As a result, certain structures that may seem to be the “norm” and may appear to be harmless, are a reflection of the insidious patriarchal system. At the time of Independence, our Constitution sought to achieve a transformation in our society by envisaging equal opportunity in public employment and gender equality. Since then, we have continuously endeavored



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to achieve the guarantee of equality enshrined in our Constitution. A facially equal application of laws to unequal parties is a farce, when the law is structured to cater to a male standpoint. Presently, adjustments, both in thought and letter, are necessary to rebuild the structures of an equal society. These adjustments and amendments however, are not concessions being granted to a set of persons, but instead are the wrongs being remedied to obliterate years of suppression of opportunities which should have been granted to women. It is not enough to proudly state that women officers are allowed to serve the nation in the Armed Forces, when the true picture of their service conditions tells a different story. A superficial sense of equality is not in the true spirit of the Constitution and attempts to make equality only symbolic.”

65.The learned Senior Counsel also referred to a judgment of the Hon'ble Supreme Court reported in **(2022) 12 SCC 1 [SK. Nausad Rahaman and Others Vs. Union of India and Others]** wherein reference was made to **Nitisha's case** referred *supra*. Paragraph no.51 of the judgment is as follows:

“51.This Court has spoken about the systemic discrimination on account of gender at the workplace which encapsulates the patriarchal construction that permeates all



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aspects of a woman's being from the outset, including reproduction, sexuality and private choices, within an unjust structure. The OMs which have been issued by DoPT from time to time recognized that in providing equality and equal opportunity to women in the workplace of the State, it becomes necessary for the Government to adopt policies through which it produces substantive equality of opportunity as distinct from a formal equality for women in the workplace. Women are subject to a patriarchal mindset that regards them as primary caregivers and homemakers and thus, they are burdened with an unequal share of family responsibilities. Measures to ensure substantive equality for women factor in not only those disadvantages which operate to restrict access to the workplace but equally those which continue to operate once a woman has gained access to the workplace. The impact of gender in producing unequal outcomes continues to operate beyond the point of access. The true aim of achieving substantive equality must be fulfilled by the State in recognizing the persistent patterns of discrimination against women once they are in the work place. The DoPT OMs dated 3-4-1986, 23-8-2004, 8-7-2009 and 30-9-2009 recognised the impact of underlying social structures which bear upon the lives of women in the work place and produce disparate outcomes coupled with or even without an intent to discriminate. The provision which has been made for spousal posting is in that sense fundamentally grounded on the need to adopt special provisions for women which are recognized by Article 15(3) of the Constitution. The manner in which a



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special provision should be adopted by the State is a policy choice which has to be exercised after balancing out constitutional values and the needs of the administration. But there can be no manner of doubt that the State, both in its role as a model employer as well as an institution which is subject to constitutional norms, must bear in mind the fundamental right to substantive equality when it crafts the policy even for its own employees.”

66.The learned Senior Counsel further placed reliance on a judgment of the Hon'ble Supreme Court reported in **(2022) 14 SCC 187 [Ms X Vs. Registrar General, High Court of Madhya Pradesh and Another]** wherein the argument of the learned Senior Counsel therein was pointed out in paragraph no.18. The concept of legitimate expectation was also examined with respect to the policy of transfer and the Hon'ble Supreme Court had held as follows in paragraph nos.48 and 53 which are as follows:

“48.It could thus be seen that the transfer of the petitioner was effected mid – term though she could have very well been transferred in general transfers, to be effected in March-April, 2014. Even in the agenda of the mid-term transfers, which were to be effected on various grounds,



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petitioner's name was not included. It was only after the then D & SJ, Gwalior addressed a complaint to the then RG, seeking her transfer out of Gwalior, the matter was placed immediately before the Transfer Committee within days and the Transfer Committee approved the transfer of the petitioner. Immediately after the receipt of the transfer order, the petitioner made a representation on 9-7-2014, specifically pointing out therein that her daughter was studying in Class 12 th and also undergoing FIITJEE coaching. The said representation was rejected within two days. The petitioner had a legitimate expectation of her representation being considered specifically in view of Clause 9(a) of the Transfer Policy. The Transfer Policy provides that on such representation being made, the RG shall obtain the comments of the District Judge within a week and on receiving his comments after necessary verifications, it was required that the matter should be placed before the concerned Portfolio Judge within a week, who was required to return the file within a period of one week thereafter, with his comments/opinion.

53.The petitioner had a legitimate expectation in view of Clause 10 of the Transfer Policy to have her case considered for posting at any of the 4 places in the event her request for retention at the then present posting was not considered and as such, she made the second representation. We are at pains to say that the rejection of the second representation depicts total non-application of mind by the



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then RG as well as the then Judge of the Transfer Committee of the MP High Court. The proposal of the then RG was made in a casual manner and accepted by the then Judge on the Transfer Committee in a mechanical manner.”

67. With respect to the presumption of validity of a State action and if the initial burden to prove arbitrariness is discharged, then the onus shifts to the State to justify the action as fair and reasonable, the learned Senior Counsel placed reliance on paragraph no.58, which is as follows:

“58. It could thus be seen that this Court has held that there is a presumption of validity of the State action and the burden is on the person who alleges violation of Article 14 of the Constitution of India to prove the assertion. It has been further held that where no plausible reason or principle is indicated nor is it discernible and the impugned State action appears to be arbitrary, the initial burden to prove the arbitrariness is discharged, thereby shifting onus on the State to justify its action as fair and reasonable. If the State is unable to produce material to justify its action as fair and reasonable, the burden on the person alleging arbitrariness must be held to be discharged. The limited scope of judicial review is only to satisfy that the State action is not vitiated by the vice of arbitrariness and no more. It is equally settled that it is not for the courts to recast the policy or to substitute it with another



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which is considered to be more appropriate. It has been held that the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case.”

68.Reference was also made to the observation in paragraph no.61, wherein it had been observed about the obligation of the State to act fairly, without ill will or malafide either on facts or on law. Paragraph no.61 is as follows:

“61.It is trite that the State is under the obligation to act fairly without ill will or malice — in fact or in law. “Legal malice” or “malice in law” means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Where malice is attributed to the State, it can never be a case of malice or spite on the part of the State. It would mean exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others.”

69.The learned Senior Counsel placed further reliance on the expectation by a woman to be free from discrimination and to have equal protection of the law during pregnancy and maternity, as observed by the



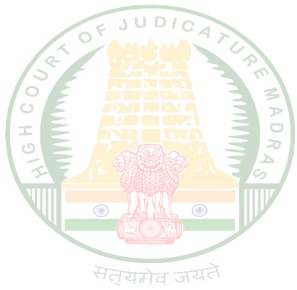
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Hon'ble Supreme Court in the judgment reported in **2025 SCC OnLine**

SC 459 [Sarita Choudhary Vs. High Court of Madhya Pradesh].

Paragraph no.17.4, which comes under paragraph no.17, which speaks about the **Women Workforce : Women in the Indian Judiciary**, reads as follows:

“17.4.The freedom from discrimination or equal protection of the laws during pregnancy and maternity of a woman are precious rights for women workforce. If pregnancy results in the birth of a child, it brings not only joy to the parents of the child but also a sense of fulfilment to the young mother. On the other hand, a pregnancy miscarriage has deep physical, mental and psychological aftereffects on a woman. Miscarriage is generally defined as a loss of pregnancy before viability. Psychological consequences include increase in the risk of anxiety, depression, post-traumatic stress disorder, sometimes leading to suicides. Recurrent miscarriage leads to obstetrics complications and long-term health problems. Although there is varying amount of physical aftereffects including backache and abdominal pain involved in miscarriages, the psychological and social effects may be more severe and long lasting. A miscarriage affects a person’s identity, leading to disappointments and challenges to motherhood identity and role, stigma and isolation, amongst other aspects. A number of risk factors predisposing women to experience significant psychological



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distress following miscarriage have also been identified. There could be psychiatric illness and a previous pregnancy loss could lead to increase in chances of severe psychological distress.”

70.I have carefully considered the arguments advanced and perused the materials available on record.

71.This writ petition has been filed by the All India Union Bank Officer Staff Association questioning three transfer policies three separate Circulars of the first and second respondents. All the three Circulars relate to transfer of officers and staff whom the said respondents considered to have held on to their posts in one particular zone, for a long period or a long tenure of nine years and more.

72.An employee however cannot remain in a post for nine years unless a request to be retained had been examined and the employee had been retained in the same post whenever general transfers had been effected. Therefore, laying a blame on a particular staff or officer in remaining in that particular post for a long period has to be rejected, since a duty was cast also on the first and second respondents to ensure that when requests for retention had been granted earlier, a



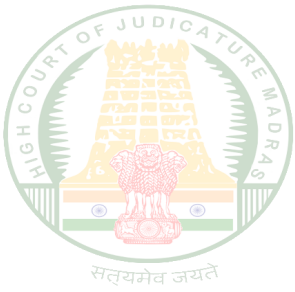
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reasonable and legitimate expectation is placed on the employee that those reasons can always be considered to the advantage of the employee, whenever any further general order of transfer is effected.

73.In the instance case, the petitioner questions the policy to transfer those who had served for a period of nine years or more, from one zone to another zone. Instances had been cited by the petitioners of lady officers who had been transferred across States.

74.The learned Senior Counsel for the first and second respondents had stated that examination of individual orders may not be appropriate unless malafide is alleged. But it is the individual instances which form the basis for questioning the transfer policy.

75.It is the grievance of individuals which had forced the petitioners to challenge and seek the policy to be struck down by this Court or to atleast interfere and modify the same. Therefore, individual instances cannot be divorced from the broader policy as a whole. The Court is not questioning or seeking to set aside any individual transfer but rather pointing them out to show arbitrariness and irrationality in the policy and thereby, stressing the necessity to call upon the first and



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second respondents to revisit the policy of transfer. Therefore, examination of individual cases is not adhered to canvas the case of that particular individual and seek that particular transfer should be interfered with, but only as an illustration of the difficulties faced by officers, who had been visited with orders of transfer and whose representations had not been addressed by the respondents.

76.Let me just state at random one or two such instances. It has been pointed out by the learned Senior Counsel for the first and second respondents that individual challenges by individual officers had suffered orders of dismissal. But still, the fact that the officers had suffered great physical, mental and physiological hardship cannot be either denied or disputed unless it is claimed by the respondents that those difficulties pleaded are false to the knowledge of the individual officers. They may not be grounds to interfere with the order of transfer. But they are certainly illustrations to point out the general difficulties faced, if an order of transfer is passed.

77.Even before proceeding to examine individual cases, it would only be appropriate to examine the guidelines of the Union of



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India, Ministry of Finance, Department of Financial Services. By a communication dated 26.11.2024 to the Public Sector or Nationalized Banks, it had been stated that the Department had observed an increase in trend in complaints / grievances relating to transfer policies of the Public Sector Banks and therefore, had directed putting in place a sustainable policy which would address the grievances and would not complicate the existing hardships faced by women employees. The following advice had been given in the said communication:

“This Department had accorded managerial autonomy to the Public Sector Banks (PSBs) in matters related to Human Resources (HR) and has been communicating broad guidelines, from time to time, regarding HR reforms including relevant instructions of the Department of Personnel & Training for incorporation in their respective 'Transfer Policy'.

2.This Department has observed an increasing trend in the complaints / grievances received with regard to the 'Transfer Policy' and its implementation by the PSBs'. Such complaints / grievances are received through various forums and from various dignitaries.

3.In view of the above, the 'Transfer Policy' of the banks have been reviewed and with an aim to promote greater transparency, and to ensure formulation of a uniform and non-



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discretionary 'Transfer Policy', PSBs are advised as below:

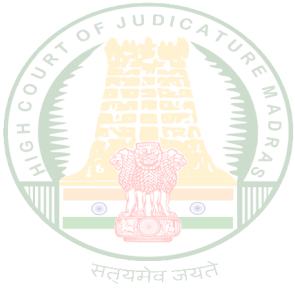
a. Various administrative layers in the Bank such as Region / Zone / Circle / FGMO etc., be clearly and uniformly defined. Similarly, minimum and maximum tenure at each layer be also clearly defined.

b. 'Transfer timelines' be clearly defined and strictly adhered to. Transfer exercises may be completed before June, every year. Mid-year transfers may be avoided as far as possible except in case of promotions and administrative exigencies.

c. Transfer exercise be made transparent with annual publication of seniority list and the existing / expected vacancies at different locations / scales. Rotational transfers should be on seniority basis and exceptions, if any, should be properly recorded / documented.

d. Banks to automate the transfer process and to develop an online platform for the same with the facilities of giving location preference options to its employees in case of transfers. The online portal may also include the Bank's transfer policy, guidelines and related circulars, scale wise seniority list, details of vacancies scale wise / location wise, and other relevant details in order to bring efficiency and transparency in transfer process.

e. Banks to accommodate officers up to Scale – III in the respective linguistic region in order to ensure seamless customer service to the extent possible, considering various



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factors including availability of vacancies, administrative exigencies etc.

f.Banks to designate certain regions as 'Difficult areas'. The employees posted there be given preference for transfer after completion of their tenure.

g.In addition to the available grounds of transfer, the grounds of marriage / spouse / medical / maternity / child care / far away postings also be suitably incorporated.

h.In case of spouse working in Central / State Governments, an endeavour to post them in the same place / region or nearby place / region be made.

i.Women employees be transferred as far as possible to nearby places / stations / regions. In case of posting to a far-away / remote locations, their safety be given due importance and availability of basic amenities be ensure.

j.Grievances received from employees citing violation of transfer policies be dealt in a considerate manner and suitably responded after detailed deliberations and by duly recording the reasons thereof.

k.With respect to appeals received on transfers from the employees, a committee be set up to look into the issue and dispose the appeals within 15 days.

l.With regard to 'Transfer protection' to office bearers of Associations / Unions, clear definition of position, tenure and applicability be incorporated and strictly adhered. Transfer protection may not be made available to an office bearer on promotion.

4.All PSBs are requested to incorporate the above



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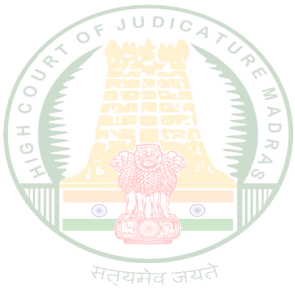


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advises suitably in their respective 'Transfer Policy' with the approval of their Boards and take immediate action for its implementation and compliance from FY 2025-26. PSBs are also advised to send a copy of the policy, so modified, to this Department, at the earliest."

78.A whole series of instances have been given on behalf of the petitioners. For instance, a lady, Stuti Kalura had sought transfer back to Dehradun having been transferred to Mumbai. She had stated that separation from her family had been distressing and had impacted her ability to perform duty. It has to be seen that the Bank is also the sufferer and not just the individual. It is for that reason, the first and second respondents must address individual cases to refine their policy as a whole.

79.A further instance can be given of a lady called Priyanka Govind Mohite who claimed that she had been transferred to Khammam from Pune and citing a request to be transferred back by stating that the transferee place is 1000 kms., away from the place of her house and she was undergoing fertility treatment at the place where she was earlier residing and had been suggested surgery and IVF treatment. Owing to the long distance and separation from her husband that is just simply not



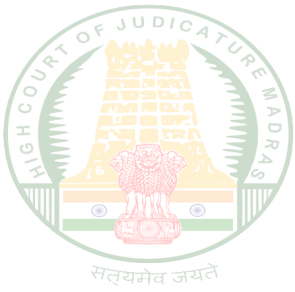
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possible. She had stated that she had given up career progression owing to her family circumstances and that this transfer had directly affected her.

80.A further case could be stated of Barkha Wadhwa who had been transferred to Bengaluru from Delhi. She claimed that her son suffers from Type – I Diabetes and Celiac disease which are both life threatening conditions. He is in Class XI which is a critical time for his education. She was not able to join in Bengaluru and therefore, has been on leave on loss of pay since the date of transfer.

81.A final instance out of several could be given of Kalyani Bhagwat Shendge who had been transferred to Hyderabad from Pune. She stated that she has severe abdominal pain and has been enduring the medical condition for the past few years and it requires bed rest. She has a four years old girl child and is unable to take care of her daughter. Her husband is working about 700 kms away. Her mother is aged about 65 years. After the order of transfer, she has been on medical leave from July 2024 onwards.

82.All these four individuals would be inviting disciplinary



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proceedings and I fervently hope that the first and second respondents do not initiate that step. But these are the difficulties faced by just four random ladies picked up by Court and not cited across the Bar. The instances have been given in a typed-set and chosen at random. A reading is extremely dismaying.

83.The respondents have a duty to re-examine their transfer policy. It is not for the Court to decide specific measures, but it is certainly within the respondents' responsibility to consider taking steps such as widening the grounds of exemptions from transfers. Permitting individuals to indicate their preferred zone of posting, permitting filing an appeal if the place is not considered, and subsequently permitting approaching the Grievance Redressal Cell are insufficient.

84.I wonder why the respondents could not put in place a system where at the end of six years, they place a red signal that the order retaining the officer for a further period of three years would be the final retention. If the officer is put on notice at the end of the sixth year, then, some adjustments within the family could be made.



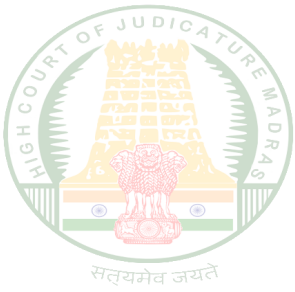
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85.I wonder why the respondents could not implement counseling before effecting the transfer. Counseling could involve consultations with mental health professionals, as well as assessments by a medical team, to address individual grievances and ensure the well-being of the affected employees.

86.I wonder why the respondents could not put in place a system where individual officers are transferred within the zone and not necessarily out of a zone, even after they worked for nine years in a particular place. I fail to see the rational behind transferring an officer from one corner of the country to another, particularly given the diverse linguistic and cultural differences across States, which can pose significant challenges.

87.I wonder why the respondents could not provide for a longer time to join the place of transfer and only after this extended period, held out that disciplinary proceedings would be initiated, if the employee fails to report to the transferee post.

88.It is on record in the affidavit that, although the transfer

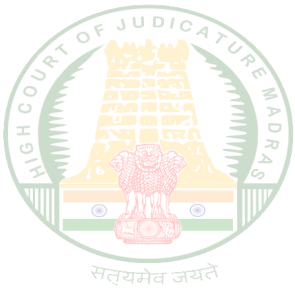


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policy generally provides a joining time of twenty days, the order for transferring an employee with a long tenure stipulates only seven days. Furthermore, it has been explicitly stated that disciplinary proceedings must be initiated if the employee fails to join within this seven-day period. I am unable to understand the rationale behind this approach. Instead of imposing undue pressure, they could have considered providing a more reasonable timeline for women officers, and atleast retain the joining time of twenty days. These are measures that the respondents could implement if they were to apply their minds and recognize that the employees alone actually and ultimately contribute to furthering the business of the Bank. It is the quality of service provided which encourages customers to recommend the Bank to other customers. It is not just the services provided by the Bank that matters, but also the manner in which those services are presented and marketed, which are also equally important.

89. Although the Court cannot dictate the specific nature of a transfer policy, it is evident from the illustrations provided by the petitioners that the current policy has failed. It has not addressed the



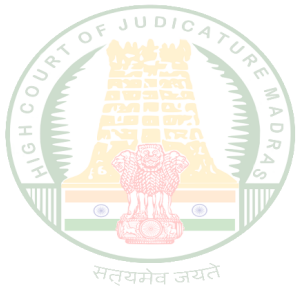
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grievances of the affected individuals, nor has it considered the impact on their family members. In fact, the representations submitted indicate that the employees' work performance has also been negatively affected. Fostering an environment of discontent among officers and staff in any workplace is not conducive to a healthy working atmosphere. The respondents must seriously examine this issue.

90.Although it can be argued that the guidelines issued by the Union of India are directory in nature and not mandatory, it stipulates an obligation of the first and second respondents to implement a policy that is in conformity with the guidelines of the Union of India. It is evident that the policy disproportionately affects women, who suffer under the order of transfer. A woman is tied to her family, to her children, to her parents, and to the security of her place of work. She cannot be expected to be moved around frequently without significant hardship. The irregularities in the policy must be understood, and need to be properly addressed.

91.There had been a direct violation of Articles 14 and 15(3) of the Constitution of India. Although Article 42 of the Constitution of



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India is often viewed as a directive principle and is not generally enforceable, it nonetheless puts in place a duty to ensure just and favorable working conditions for women, particularly with respect to maternity protection. Article 14 of the Constitution of India is as follows:

“14. Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Article 15(3) of the Constitution of India is as follows:

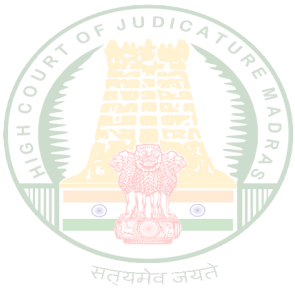
“15.Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (1) ...

(3)Nothing in this article shall prevent the State from making any special provision for women and children.”

Article 42 of the Constitution of India is as follows:

“42.Provision for just and humane conditions of work and maternity relief. - The State shall make provision for securing just and humane conditions of work and for maternity relief.”

92.It must also be pointed out that transfers which disregard family, health, or safety concerns are unjust and could violate Article 21, which protects human dignity. Transfers cannot be carried out in a



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mechanical or burdensome manner. There must be a balance between administrative requirements and the personal safety, family responsibilities and well-being of the employee.

93. There is yet another angle to the entire issue. In a judgment which is often not quoted but, reported in **(1979) 1 MLJ 221 V.Natarajan Vs. Principal District Judge**, the issue was not about transfer. The issue was about the family of the petitioner therein whose validity of appointment as a Copyist in the District Munsif's Court at Tirumangalam was challenged. His services had been confirmed and had been regularized. But however, the statutory rules were not followed and then he was discharged. To a little extent, the principles applied by the learned Single Judge of this Court would be quite instructive. In those circumstances, the learned Single Judge had examined whether the doctrine of estoppel could be applied against the State in Governmental public or sovereign capacity. Arguments were advanced on behalf of the State that it could not be applied. As a matter of fact, reliance was placed on the judgment reported in **(1973) II LLJ 409 SC [Ramanatha Vs. State of Kerala]** wherein the Hon'ble Supreme Court had observed that

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as a general rule, the doctrine of estoppel will not be applied against a State in its Governmental public or sovereign capacity. But, in **V.Natarajan**, (referred supra), a learned Single Judge of this Court (G.Ramanujam, J.) stated that an exception to the general rule is to prevent manifest injustice or fraud. It had therefore been held by the learned Judge that though the doctrine of estoppel cannot be applied against any State, it can be used in exceptional circumstances, where the conduct of the authorities is remiss or negligent in their obligation of the rules and had caused considerable hardship and injustice to the person who is seriously affected by such negligent conduct. The words of the learned Single Judge are as follows:

“11.The learned Government Pleader however contends that there can be no estoppel against a statute, that the statutory rules having prescribed a specific educational qualification for a particular post that cannot be overlooked by the appointing authority, and that the Court cannot compel any authority to sustain an appointment which is admittedly contrary to the rules. The learned Government Pleader cites the decision in Ramanatha v. State of Kerala MANU/SC/0048/1973 : (1973) II LLJ 409 SC wherein the Supreme Court has observed that as a general rule the



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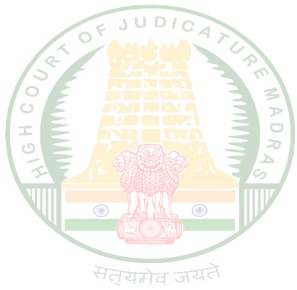


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doctrine of estoppel will not be applied against the State in its governmental public or sovereign capacity and submits that therefore the plea of equitable estoppel cannot be used in the circumstances of this case. But, the same decision has also laid down that an exception to that general rule however arises where it is necessary to prevent fraud or manifest injustice. Thus though the normal rule is that the doctrine of estoppel will not be applied against the State in its governmental functions, it can be used in exceptional circumstances where the conduct of the authorities in being remiss or negligent in the application of the rules has caused considerable hardship and injustice to the person who is seriously affected by such negligent conduct. ...

Emphasis supplied

94.While applying that principle to the first and second respondents in this case, even though they have a transfer policy, it cannot be argued that issues cannot be raised against the policy, if it results in causing considerable hardship and injustice to the person who is seriously affected, the policy can certainly be called in question. It cannot be interfered by the Court in entirety but certainly a direction could be given to revisit the said policy and put in place additional safeguards apart from the safeguards which had been projected by the learned Senior Counsel for the respondents.



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95.This Court under Article 226 is within its jurisdiction to put forth the following safeguards, to prevent indirect discrimination of woman working under the first and second respondents and to promote equality.

(i)The first and second respondents must consider establishing a Counseling Centre to support employees who have completed six years of continuous service in a particular station, informing them of the potential for a transfer upon the completion of nine years.

(ii)The first and second respondents must consider establishing a Medical Team at each zone to ensure that proper care is provided at any location to which employees are transferred. This would address not only physical and physiological concerns but also mental health, ensuring that no place is considered insecure for a woman and that help is at hand.

(iii)The first and second respondents must also encourage home visits during the period when women officers are transferred out of their normal place of residence and grant that particular permission at



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acceptable intervals.

(iv) The first and second respondents must grant a minimum of twenty (20) days period as joining time and as a policy give up its directive to initiate disciplinary proceedings, if an employee does not join within that particular period of twenty (20) days unless non joining is deliberate.

(v) The first and second respondents must establish an effective Grievance Redressal Cell, ensuring that the majority of members are women. This Cell should be responsible for examining individual grievances and making genuine efforts to address them, including facilitating transfers within the same zone whenever deemed necessary. The said respondents certainly would not suffer by an officer being transferred within a zone but they would gain much loyalty if that particular policy is adhered to.

(vi) The first and second respondents must ensure that any policy they introduce is in conformity with the guidelines issued by the Central Government, as outlined in its directive dated 08.08.2014 and subsequently reiterated on 26.11.2024.



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(vii) Among the officers who could be exempted from transfer, the first and second respondents may also consider including those whose children are at a crucial stage in their educational career.

(viii) The first and second respondents may engage in direct discussions with those affected by the transfer, ensuring that similar grievances are not raised by any other officer, and that these grievances are properly addressed.

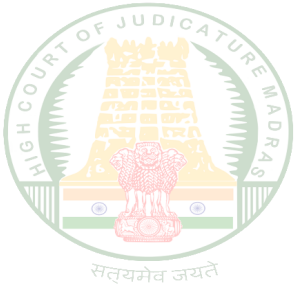
96. The transfer policy requires to be revisited and grievances will necessarily have to be addressed and redressed by the first and second respondents. I am deeply conscious that though the writ petition is for a Certiorarified Mandamus, to strike down the circulars, this Court has only issued directions and had retained the circulars. The Court has its limitations and cannot step into the shoes of the first and second respondents to dictate their transfer policy. However, the reality of the situation must be understood, as it may work to the disadvantage of the said respondents by fall in standard of application to work ethics. A balance must be struck, and in this context, addressing individual grievances will facilitate the first and second respondents to achieve the



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right balance.

97. Since the petitioners have come to Court with specific instances of woman having expressed their difficulties over orders of transfer suffered by them, I would place a request on the first and second respondents to withdraw any disciplinary proceedings initiated against them for non-joining of the place of transfer and also re-examine and revisit the timeline for joining with an open mind and address requests for re-transfer, if not to a specific place, but within a particular zone, within a reasonable distance of their normal place of residence or normal place of residence of their family or normal place of the educational institution of their children or normal place of hospital where any treatment is undertaken. It is just a humane approach to be adopted by the first and second respondents and I am confident that they would take this particular step. I would also urge the learned Senior Counsel for the first and second respondents to urge the said respondents to take steps to protect them from any allegation of systemic or even indirect discrimination against women employees and ensure compliance with the principles of gender equality as enunciated by the Constitution.



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98.In the result:

(i)The writ petition stands disposed of with the above observations and directions.

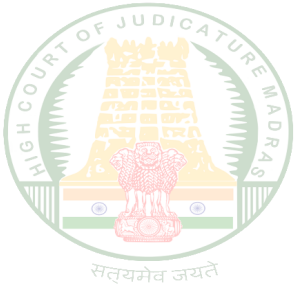
(ii)WMP No.37070 of 2024 is allowed. The interim order granted is vacated, but with a direction to the first and second respondents to comply with the directions issued.

(iii)No costs.

(iv)Consequently, connected miscellaneous petitions are closed.

28.04.2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
sli/TK

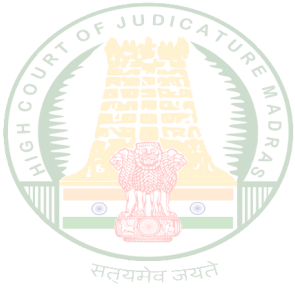


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To

- 1.The Managing Director and Chief Executive Officer
Union Bank of India
Central Office
No.239, Vidhan Bhawan Marg,
Nariman Point, Mumbai – 400 021.
- 2.The Chief General Manager
Union Bank of India
Human Resources Department
Central Office
No.239, Vidhan Bhawan Marg,
Nariman Point, Mumbai – 400 021.
- 3.The Secretary
Government of India
Department of Financial Services
Jeevan Deep, Parliament Street,
New Delhi – 110 001.



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C.V.KARTHIKEYAN, J.

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28.04.2025

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