

MHIC340000712024 	Comp. (ULP) No. 53 of 2024 Order below Exhibit No.: U/02 Kamlesh Ram Dhakate Vs. The Gadchiroli District Central Co-operative Bank Ltd., Gadchiroli. Through its Chief Executive Officer.
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ORDER BELOW EXH. U-02(Passed on this 12th Day of July, 2024)

- 1) This is an application for interim relief under section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 seeking stay to effect and operation of transfer order dated 27.06.2024, till decision of main complaint.
- 2) At outset, case of the complainant is that he is class-III employee working with the respondent Bank on post of Concurrent Auditor at branch Vairagad. The complainant was appointed as a Junior Manager on 07.01.2010 and got permanency on 23.07.2012. The complainant is President of Employees' Union by name- "Gadchiroli Zilla Madhyavarti Sahakari Bank Karmachari Union". The respondent bank has tried to broke said union, on several instances. It instigated Secretary of the Union to raise dispute, which resulted into filing of dispute bearing Application (ICTU) No. 01/2020. It is pending before the court. On 10.10.2022, the respondent bank transferred the complainant on the post of Concurrent Auditor at Vairagad branch instead of Jr. Manager. Since 10.10.2022, the complainant is working at Vairagad branch as Concurrent Auditor. Vide order dated 27.06.2024, the complainant is transferred without making any alternative arrangement at Vairagad branch. Impugned transfer order is made with an intention to harass the complainant. The respondent bank is trying to keep the employees as bounded labour. There are no service rules

and regulations of employees. An application was made to Assistant Commissioner of Labour, Chandrapur raising demands of union. The proceeding was canceled by the Assistant Commissioner of Labour, Chandrapur on 11.08.2023 and appeal is pending before the Government of Maharashtra. Impugned transfer order is illegal and passed only as a means of revenge. The complainant has completed only one year and six months at Vairagad branch. He was not due for transfer. His son, having age 03 years is suffering from kidney disease. He requires regular treatment at Brahmapuri. His daughter is studying in 4th standard at Armori. His mother is old aged about 75 years. If the complainant is transferred at Ashti, great prejudice will be caused to the complainant and his family. Impugned transfer order is passed with malafide intention. Number of employees are working at main branch of headquarter for more than 10 years but are not transferred till date. On these grounds, the complainant has prayed for the relief of interim relief to stay effect and operation of impugned transfer order till final decision of main complaint.

3) Application is resisted on behalf of the respondent bank through reply cum written statement Exh. C/2 and has denied all adverse allegations made against it in Toto. But it has admitted that the complainant is serving as Concurrent Auditor at Vairagad branch of the respondent bank and the respondent bank is the appointing authority of the complainant. It has also admitted passing of impugned transfer order but has denied any malafide intention in passing of impugned order. The respondent bank is coming with the case that the respondent bank for administration can transfer the employees and it has right to decide about its need and requirement and to depute proper employee at proper place to improve its business. Service of the complainant is extendable to every branch of the respondent bank. Therefore, he can

be transferred to any of its branch. Through resolution dated 31.07.2023 of Board of Directors of the respondent Bank, a policy in respect of transfer and promotion of employees was decided and sanctioned. Impugned transfer order is passed in accordance of said policy. On 06.02.2022 the complainant was transferred from Wadadha branch to Kurkheda branch. However, on request of the complainant, he was transferred to Vairagad branch, which is a place, nearest to his native place village Armori. The complainant is transferred to Ashti on administrative ground. All medical facilities are available there. The complainant cannot claim place of his choice, more particularly when there are 57 branches of the respondent bank. Impugned transfer order is passed to meet administrative exigencies of the respondent bank. Interference by court in such order is not warranted unless an exceptional case is made out by the complainant. No such exceptional case is made out by the complainant. On these grounds, the respondent bank has prayed for rejection of the application.

4) The points for determination, which arose before me for consideration are reproduced below, along with my findings thereon and respective reasoning thereto;

No	Points for determination	Findings
1)	Does the complainant make out a prima facie case?	No.
2)	Does the balance of convenience lie in favour of the complainant?	No.
3)	Would the complainant suffer irreparable loss or injury, if the interim relief, as prayed, is not granted?	No.
4)	What order?	Application is Rejected as per final order.

REASONING**5) AS TO POINTS NO. 01 TO 03: -**

Heard advocates for both the parties and perused the record.

6) Most of the facts involved in the present case are admitted.

They are enlisted as follows;

- i. The complainant is a class-III employee working with the respondent Bank on post of Concurrent Auditor at branch Vairagad.
- ii. He was appointed as a Junior Manager on 07.01.2010 and got permanency on 23.07.2012.
- iii. A dispute bearing Application (ICTU) No. 01/2020 is pending before this court.
- iv. On 10.10.2022, the respondent bank transferred the complainant on the post of Concurrent Auditor at Vairagad branch instead of Jr. Manager. Since then, he is working at Vairagad branch as Concurrent Auditor.
- v. Vide order dated 27.06.2024, the complainant is transferred from Vairagad to Ashti branch.

7) The complainant is assailing the impugned transfer order mainly on a ground that it is passed with mala fide intention to harass him on account of industrial dispute raised by employees' union before the Assistant Labour Court against the respondent bank. It is submitted on behalf of the complainant that he has completed only one and half years of service at the present posting and was transferred against the policy of the respondent bank. The complainant is further coming with the case that his son is suffering from ailment for which he requires regular medical treatment. He has old mother, living with him. His

allegations are resisted by the respondent bank mainly on a ground that impugned transfer order is passed on administrative ground, considering best interest of bank and to enhance its business. The respondent bank has relied upon following authoritative pronouncements;

(a) **Damodhar Prasad V/s R.S.R.T.C. and ors. 2001 III CLR 866**, wherein it is observed by division bench of Hon'ble Rajasthan High Court that;

“Transfer is an incident of service. The management has got every right to transfer an employee from one place to another under the same management on the same pay-scale etc. The courts have held that the order of transfer can be interfered with only if such an order has been punitive in nature. In the instant case, the only allegation made is that the junior persons should have been transferred first and thereafter the petitioners should have been considered and transferred. The Courts have held that transfer of an employee is part of conditions of service and the employees are bound to obey the orders of transfer and work in the place where they have been transferred and posted. Transferability from one establishment to another is an incident of service and that the employer is the best Judge to decide upon the utilisation and distribution of its manpower amongst various units and places. Courts and tribunals cannot also properly assess or adjudicate effectively the reasons given for transfer of employees. The decision of the employers in such cases is conclusive and that except in the rarest of rare cases, courts should not interfere with transfer orders.”

(b) **Sankari Sarkar V/s Union of India 2001 III CLR 677**, wherein it is

observed by division bench of Hon'ble Calcutta High Court that;

“In such circumstances we are of the view that the Order of transfer does not call for any interference and the same should not be stalled on the medical and educational grounds of the children and parents-in-law in as much as both free medical and educational facilities are available at Port Blair.”

(c) **A. Bharathi (Teacher) (Smt.) Vs/ A. Rama Rani (Teacher) (Smt.) and Anr. 1997 I CLR 430**, wherein it is observed by division bench of Hon'ble Andhra Pradesh High Court that;

12. We may usefully restate that employees holding transferable posts are liable to be transferred at the discretion of the employer. If an employee is aggrieved by the transfer, his only right is to make a representation to the authorities. The wide administrative power of transfer cannot be curtailed by the Courts in exercising its judicial review jurisdiction. To strike down an administrative act purporting to protect, some thing less than a legal right, would be truncating the powers of the authorities.

17. In [Varadharao's](#) case (1 supra), a passage from [Seshrao Nagorao Umap v. State of Maharashtra](#), (1985) 2 Lab.L.J. 73 was quoted, which is as under:

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best Judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient

reasons to justify such transfers, can not but be held as mala fide. A transfer is mala fide when. it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose than is to accommodate another person for undisclosed reasons."

(d) Charan Singh V/s Union of India and ors 2000 II CLR 319, wherein it is observed by Hon'ble Delhi High Court that;

6. Admittedly, the transfer is a condition of service. Petitioner belongs to C.R.P.F. which is a discipline force and if the respondents feel that due to administrative reasons petitioner should be transferred from Delhi, this Court would not interfere with such a decision."

(e) Onkar Nath Tewari V/s Chief Engineer, Minor Irrigation Deptt. U.P. and ors 1998(1) LLJ 819, wherein Hon'ble Allahabad High Court has reiterated view taken in case of **Mrs. Shilpi Rose V/s State of Bihar (1991 -II-LLJ-591)(SC)** that;

"The Court should not interfere with the transfer orders which are made in public interest and for administrative reasons unless transfer orders are made in violation of any mandatory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or other. He is liable to be transferred from one place to the other. Transfer order issued by the competent authority does not violate any of his legal rights. Even if the transfer order is, passed in violation of executive instructions or orders, Court ordinarily should not interfere with the orders, instead affected party should approach the higher authority in the departments."

8) **The Hon'ble Supreme Court in case of N.K.Singh Vs Union of**

India and others (1994) 6 SCC 98 on point of scope of judicial review in case of transfer of government servant has pleased to observe as follow :

“Assessment of worth must be left to the bona fide decision of the superiors in service and their honest assessment accepted as a part of service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infructuous of any professed nor on or principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

It has further command that,

“Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by courts should be rare.”

9) Being guided by observations of Hon’ble Supreme Court and directions of Hon’ble Bombay High Court in *Suo Motu Writ* referred above, I hereby proceed to evaluate allegations made by the complainant against the respondents.

10) Medical papers filed on record reveals that son of the complainant namely Ayush is suffering from “***Dysplastic Ectopic Kidney***”. This is an abnormality related to appearance of the kidney and

its size, shape and situation. Documentary evidence further reveals that mother of the complainant is old and his daughter is also school going girl. Transfer of an employee involving transferrable job is inevitable. Convenience of the family members and convenience of employer and his best interest has to weigh against each other, but preferential weight must go to interest of the employer, for which he has hired employee. Personal inconvenience and/or family inconvenience can not be given priority over preferences of the employer. Therefore, in my opinion, the complainant can not assail impugned transfer order on grounds of his personal inconvenience arising out of said order. Accordingly, in my opinion, personal inconvenience portrayed by the complainant can not be a ground to interfere into decision of the respondent bank to transfer the complainant.

11) Perusal of impugned transfer order reveals that through this order in all 29 employees are transferred by the Chief Executive Officer of the respondent bank on administrative ground. This order is not limited to the complainant only. There is nothing on record to suggest that impugned transfer order consisting of 29 employees is an act of malafide on part of the respondent bank. There is no resistance to impugned transfer order, except by the complainant. The complainant has not placed on record anything which can suggest that impugned transfer order is passed with malafide intention only against him, it is prejudicial to him or as an act of revenge as alleged. Considering the fact that in all 29 employees are transferred through one order, allegations of revenge and malafide intention to harass the complainant cannot be accepted.

12) It is submission on behalf of the complainant that the complainant is transferred from Vairagad branch but no employee is transferred to replace his post. This shows that respondent bank was

having intention to remove the complainant from that post even by keeping that post vacant and at cost of loss of business. This shows malafide intention of the respondent bank. These submissions are resisted on behalf of the respondent bank mainly on the grounds that, impugned transfer order is made on administrative ground and there was no malafide intention of the respondent bank as alleged.

13) Perusal of impugned transfer order reveals that through this order only one Concurrent Auditor is transferred that is the complainant from Vairagad branch to Ashti branch. He was transferred as Sub Branch Manager at Ashti Branch. There is nothing on record to show that any other Concurrent Auditor was available to be placed at Vairagad branch. Moreover, Dy. Branch Manager of Ashti Branch Ku. M.L.Dharne was transferred to loan department main branch Gadchiroli, whereby post of Ashti branch was made vacant and the complainant was transferred at that place. There can be no dispute in respect of settled position of law that employer is the best judge of its interest to decide who is the best employee at a particular post and who can be beneficial to interest of its establishment. Impugned transfer order reveals that respondent bank has chosen Ku. M.L.Dharne as suitable for loan department and the complainant as her replacement. No ground is portrayed by the complainant to depict that impugned transfer order is an act of malafide on part of the respondent bank. An act of malafide is not established by the complainant. No exceptional circumstance is established by the complainant, so as to justify interference by this court into impugned transfer order. Consequently, I am not inclined to accept submissions on behalf of the complainant in attempt to assail impugned transfer order.

14) The complainant has raised some allegations against the respondent bank in respect of an act of revenge through impugned

transfer order as a consequence of an industrial dispute raised by union before the Assistant Commissioner of Labour. Perusal of report of Assistant Commissioner of Labour dated 11.08.2023 reveals that an industrial dispute was raised by the employees' union of the respondent bank raising almost 19 demands, which could not be settled before him and the conciliation proceeding was declared as unsettled. The complainant is coming with the case that he is an office bearer of said union, who has raised industrial dispute to Assistant Commissioner of Labour. Perusal of record further reveals that an industrial dispute is referred to this court vide Application (ICTU) No. 1/2020, whereby one Munna Dhongade is claiming himself as General Secretary of the union and that the complainant has already been discharged from the post of President on 26.05.2019. Admittedly, this dispute is pending before the court and is yet to be adjudicated. In these set of facts, I do not find any substance in the submissions made on behalf of the complainant that he is the representative of trade union or he has any role in raising industrial dispute to Additional Commissioner of Labour and that it has resulted into passing of impugned transfer order. In view of these circumstances, in my opinion, the complainant has failed to prima facie establish an act of malafide or revenge on part of respondent bank. Consequently, complainant is not entitled for interim relief praying for stay to the impugned transfer order. Consequently, present application is entitled to be rejected. In these circumstances, in my opinion, prima facie case and balance of convenience does not lie in favour of complainant.

15) In view of foregoing discussion, in my opinion, non grant of temporary injunction as prayed by the complainant, would not cause any prejudice to him nor will cause any loss, much less irreparable loss to him. Accordingly, in my opinion, the complainant will not suffer any

irreparable loss in the event of non grant of interim relief, as prayed by him. In these circumstances, in my opinion, prima facie case and balance of convenience does not lie in favour of the complainant nor will he suffer irreparable loss in event of non grant of relief of as sought by him. With these reasoning, **I answer points no. 01 to 03 in negative.**

16) In view of my findings on points No.01 to 03, as prima facie case and balance of convenience does not lie in favour of the complainant and as no irreparable loss can be foreseen to him in event of non grant of relief of interim relief as sought by him in my opinion, the complainant is not entitled for the relief of interim relief as sought by him. Resultantly, present application is liable to be rejected. **Accordingly, I answer point No.04 in the Negative and** with these reasoning, **in an answer to point No.05, I pass following order;**

O R D E R

1.	Application for interim relief Exh. U/2 is rejected.
2.	Costs of the complaint in cause.

Date: 12.07.2024

(Ravikant T. Sakhare)
Member,
Industrial Court, Chandrapur.

Dictated on	:	12.07.2024
Pronounced on	:	12.07.2024
Transcribed on	:	18.07.2024
Checked and signed on	:	23.07.2024
Transcribed by	:	Shri. A.B. Panpate Stenographer

(Ravikant T. Sakhare)
Member, Industrial Court, Chandrapur.