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X Vs. Registrar General

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Court : Supreme Court of India

Decided On : Feb-10-2022

Judge : Hon'Ble Mr. Justice L. Nageswara Rao Hon'Ble Mr. Justice B.R. Gavai

Appeal No. : W.P.(C) No.-001137 - 2018

Appellant : X

Respondent : Registrar General

Advocate for Pet/Ap. : ASTHA SHARMA __

Judgement :

REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) No.1137 OF 2018 MS. X ...PETITIONER(S) VERSUS REGISTRAR GENERAL, HIGH COURT OF MADHYA PRADESH AND ANOTHER ...RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. The petitioner has approached this Court in the instant writ petition filed under Article 32 of the Constitution of India seeking the following reliefs: a. Issue an appropriate writ, order or direction in the nature of mandamus to quash and set aside the order dated 11.01.2018 of Chief Justice of the High Court communicated

on 25.1.18 of Madhya Pradesh passed after the Full Court Meeting, rejecting the application 1 for reinstatement as violative of Articles 14, 15, 16, 21 r/w. 233, 235 & 311 of the Constitution of India and Natural Justice; b. Issue an appropriate writ, order or direction in the nature of mandamus declaring that the Petitioner's resignation from the post of Additional District Judge VIII, Gwalior dated 15.07.2014 amounts to constructive dismissal due to the employer's conduct which applies in the Statutory context where the term "Dismissal/dismissed" is used; c. Issue an appropriate writ, order or direction in the nature of mandamus directing the reinstatement of the Petitioner as an Additional District and Sessions Judge from the date of her resignation i.e. 15.07.2014, with continuity in service at S.No 134 of the list of District Judges(Selection Grade) of the Gradation List according to Clause 4 of the Madhya Pradesh Higher Judicial Services (Recruitment and Conditions of Service) Rules, 2017, back wages according to Clause 3(b) of the 2 Madhya Pradesh Higher Judicial Services (Recruitment and Conditions of Service) Rules, 2017 and all service benefits and all consequential reliefs;

2. The bare minimum facts, necessary for adjudication of the present petition are as under: The petitioner was selected in the competitive examination of Madhya Pradesh Higher Judicial Services at District Entry Level (direct recruitment from Bar) conducted in the year 2011, and stood 2nd in the said examination. On her selection, the petitioner was posted as a 2nd to 1st Additional District and Sessions Judge (hereinafter referred to as the AD & SJ) at Gwalior on 1st August 2011. On 1st October 2012, the petitioner was posted as VIIIth AD & SJ, Gwalior. In the 1st Annual Confidential Report (hereinafter referred to as the ACR) of the petitioner, assessed in January, 2013 by the then District and Sessions Judge (hereinafter referred to as the D & SJ) and approved by the then Portfolio/Administrative Judge (hereinafter referred to as Justice A) of the High Court of Madhya Pradesh at 3 Gwalior Bench (hereinafter referred to as the MP High Court), she was given C/good grading. The petitioner was assigned various additional responsibilities in the year 2013. In her 2nd ACR, assessed in the month of January, 2014 by the then D & SJ and endorsed by Justice A, the petitioner was graded B/very good.

3. It is the case of the petitioner that thereafter, she was sexually harassed by Justice A. It is further her case that due to the said sexual harassment and at the instance of Justice A, the then D & SJ addressed a complaint dated 3rd July 2014 against her to the MP High Court. It is further her case that on 7th July 2014, the Transfer Committee of the MP High Court comprising of two Judges of the MP High Court, approved the transfer of the petitioner from Gwalior to Sidhi. The said transfer order was conveyed to the petitioner on 8th July 2014. On 9th July 2014, the petitioner sent her first representation to the then Registrar General (hereinafter referred to as the RG) of the MP High Court, praying for an extension of 8 months in Gwalior so that her daughter (studying in Class 12th) completes her academic session. The 4 same came to be rejected on 11th July 2014. The petitioner, who was unaware about the rejection of her first representation, sent her second representation on 11th July 2014, seeking alternative posting to 4 cities namely Sehore, Raisen, Dewas or Ujjain so that her daughter could continue with her education, which also came to be rejected on 14th July 2014.

4. The petitioner tendered her resignation on 15th July 2014, which was accepted by the Government of Madhya Pradesh, Law and Legislative Affairs Department on 17th July 2014. The petitioner was informed about the acceptance of her resignation on 18th July 2014.

5. The petitioner thereafter on 1st August 2014 sent a representation to Honble the President of India, the Chief Justice of India, with a copy to Chief Justice of MP High Court, with the following prayer: (i) Appropriate action be taken, after factfinding; 5 (ii) Reconsider circumstances under which petitioner was coerced & exerted duress upon, until the only option she had was to resign; (iii) Institute an appropriate mechanism for redressal of grievances like the above, of subordinate services judicial officers.

6. Between 1st August 2014 and 18th December 2014, certain events took place with regard to the Inquiry into the alleged conduct of Justice A, which culminated in the judgment passed by this Court in the case of Additional District and Sessions Judge X. v. Registrar General, High Court of Madhya Pradesh and Others1. The said events are duly recorded in the said judgment and therefore, it is not

necessary to refer to them in detail.

7. In pursuance to the aforesaid judgment of this Court, the Chief Justice of India sought a preliminary inquiry report from the then Chief Justice of the Karnataka High Court and on receipt thereof, constituted an InHouse Committee 1 (2015) 4 SCC916 headed by the then Chief Justice of Allahabad High Court. The said InHouse Committee submitted its report on 2nd July 2015. In the meantime, a Notice of Motion for the removal of Justice A was moved by 58 Members of Parliament in the Rajya Sabha. The said Motion was admitted by the Chairman, Rajya Sabha, the then Honble VicePresident of India on 25th March 2015. Accordingly, a Judges Inquiry Committee (hereinafter referred to as the JIC) came to be constituted under Section 3 of the Judges (Inquiry) Act, 1968 (hereinafter referred to as the said Act) comprising of a sitting Judge of this Court, the then Chief Justice of the Karnataka High Court and a Senior Advocate of this Court. Subsequently, in place of the Judge of this Court, who was the Presiding Officer of JIC, another Judge of this Court was made part of the JIC as the Presiding Officer. The JIC submitted its report on 15th December 2017, which was tabled before the Rajya Sabha, and the Rajya Sabha cleared Justice A of all charges.

8. However, the JIC found that the transfer of the petitioner was irregular and it was further found that in the 7 circumstances prevailing then, the transfer of the petitioner to Sidhi had become unbearable for her to continue in service, resulting in her resignation. The JIC, therefore, expressed its opinion that in the interest of justice, the petitioner should be reinstated in service, in case she intends to rejoin the service. The JIC clarified that it was not within the purview of the Reference made to them.

9. Pursuant to the recommendation of the JIC, the petitioner addressed a representation to the then Chief Justice of MP High Court on 21st December 2017 for her re instatement in service. On 25th January 2018, the MP High Court through its RG communicated the rejection of the petitioners representation by a Full Court in its meeting held on 11th January 2018. The petitioner thereafter filed the present petition for the reliefs which have already been reproduced hereinabove.

10. During the pendency of this petition, this Court passed an order on 13th February 2019, requesting the MP High Court for reconsideration of the issue of reinstatement of the 8 petitioner in service. The Full Court of the MP High Court rejected the said representation in its meeting held on 15th February 2019. The Bench of this Court, which had passed the order dated 13th February 2019, vide order dated 21st February 2019, expressed that the said Bench should not deal with the matter on merits and directed the matter to be placed before another Bench. It appears that thereafter again suggestions were made by this Court to the parties to amicably settle the matter. It appears that at one point of time, this Court also suggested that the respondent No.1 should reconsider the issue of petitioners reinstatement in service and that after reinstatement, she could be sent on deputation outside the State or she could be adjusted in some other State. It is the case of the petitioner that though the said suggestion was acceptable to her, the MP High Court reiterated its stand. In this background, the matter has come up before us.

11. At the outset, it is to be noted that, counsel for the petitioner clarified that the petitioner is not pressing the present matter on the ground of sexual harassment by 9 Justice A, but is limiting her submissions with regard to the transfer order being illegal and mala fide, and the consequent resignation amounting to constructive dismissal. We have therefore refrained ourselves from making any reference to the allegations of sexual harassment made in the petition. We have also refrained ourselves from mentioning the name of Justice A or any of the Judges of the MP High Court, who on the administrative side, had some role to play in the matter, so also the Members of the District Judiciary, who were directly or indirectly involved in the present case.

12. We have heard Ms. Indira Jaising, the learned Senior Counsel appearing on behalf of the petitioner and Mr. Tushar Mehta, the learned Solicitor General of India appearing on behalf of the respondents.

13. Smt. Indira Jaising submitted that the MP High Court was bound by the Transfer Guidelines/Policy of the High Court of Madhya Pradesh incorporated on 12th January 2012 (hereinafter referred to as the Transfer Policy). She submitted

that as per the Transfer Policy, the annual 10 transfers normally take place by 15th of March every year and the Judicial Officers transferred are given time to join up to 1st of April so as to coincide with the academic session in schools. It is submitted that as per the Transfer Policy, the normal tenure of a Judicial Officer at a particular posting is of 3 years, and a period of 6 months or more is to be treated as a full year. Accordingly, the petitioner could have been transferred in March 2014 as she had already completed more than 2 years and 6 months till then. It is submitted that however, the petitioner was transferred midterm on 7th July 2014. It is submitted that the midterm transfer as provided under Clause 22 of the Transfer Policy can be made on the limited grounds mentioned therein. Smt. Jaising submitted that none of the grounds as mentioned in Clause 22 of the Transfer Policy were available in the case of the petitioner.

14. Smt. Jaising further submitted that as per the Transfer Policy if a daughter of a Judicial Officer is studying at the place of his/her current posting and is in the final year of the Board Examination or University Examination and the 11 Educational Institution where the daughter is studying, does not have hostel facility for girls, the said Judicial Officer is permitted to stay over the prescribed period. She further submitted that the transfer of the petitioner was also violative of Clause 16 of the Transfer Policy inasmuch as a Judicial Officer is required to first go from Category A city to B city, from B to C, from C to D and from D to A. However, the petitioner was directly transferred from Category A city to C city. The learned Senior Counsel submitted that the JIC, in its report, had clearly found the petitioners transfer to be contrary to the Transfer Policy.

15. Smt. Jaising further submitted that from the record, it is clear that the petitioners transfer was not made on administrative grounds, but on the grounds of the complaint made by the then D & SJ, Gwalior. It is submitted that the JIC had also found that the transfer of the petitioner was made on the basis of the complaint made by the then D & SJ, Gwalior. It is submitted that the JIC had further found from the evidence of the then Judge, MP High Court, who was a Member of the Transfer Committee that, the transfer 12 was made solely on the basis of the complaint made by the then D & SJ, Gwalior.

16. Smt. Jaising further submitted that from the evidence of the then Judge on the Transfer Committee recorded by the JIC, it was clear that the representations of the petitioner were also not considered by the Transfer Committee in the right earnest.

17. Smt. Jaising submitted that the petitioners resignation was an outcome of the circumstances, in which she had no other option but to tender her resignation and as such, was not a resignation in law but a forced resignation, which amounts to constructive discharge. She relies on the following judgments of the Court of Appeal of United Kingdom in support of this proposition: Western Excavating (E.C.C) Ltd. v. Sharp2; Lewis v. Motorworld Garage3 2 1978 I.C.R. 22 3 1985 WL31106 13 She further relied on the following judgments of the US Court of Appeals, Third Circuit to assert the point of hostile work environment and institutional failure: Goss v. Exxon4; Pennsylvania State Police v. Nancy Drew Suders5 18. Smt. Jaising submitted that Article 11 of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to which India is a signatory, provides that a woman should be able to work and discharge family duties at the same time. She submitted that the petitioners transfer was at such a place, where she could not have been able to simultaneously discharge her duties as a Judicial Officer and her duties towards the family. As such, the said transfer order was in violation of Article 11 of CEDAW.

19. Smt. Jaising further submitted that the Full Court of the MP High Court has failed to give justice to the petitioner inasmuch as her grievance was not considered. She submitted that immediately after the petitioner had tendered 4 747 F2d 885 5 542 US12914 her resignation, she had made a representation within a fortnight i.e. on 1st August 2014 to Honble the President of India as well as the Chief Justice of India, with a copy to the Chief Justice of the MP High Court for reconsidering the entire issue. She further submitted that, as suggested by this Court, the petitioner is foregoing her claims towards back wages and is only interested in serving the august institution of Judiciary. She therefore prayed that the petition be allowed and the petitioner be reinstated in service with continuity.

20. Per contra, Shri Tushar Mehta, the learned Solicitor General appearing on behalf of the respondents submitted that the allegations made by the petitioner with regard to sexual harassment are found to be not established by the JIC. He submitted that the said findings were recorded as back as on 15th December 2017, which were not challenged, and in any case, cannot be questioned or assailed in ancillary proceedings like the present one. 15

21. Shri Mehta further submitted that though, the findings of the JIC with regard to transfer of the petitioner being irregular, are beyond the scope of its Terms of Reference, at best, the transfer could be construed to be irregular. He submitted that assuming that the transfer order of the petitioner was irregular and even mala fide, the same having not been challenged at the relevant point of time, the validity thereof cannot be challenged in the present proceedings. He submitted that the concept of coercion resulting into resignation is a concept, which is developed in the western countries with regard to labour jurisprudence, and that in any case, such reliefs can be granted only when such a fact is duly established by leading evidence.

22. The learned Solicitor General submitted that the only contention of the petitioner with regard to coercion is that she had to resign on account of midterm transfer order. He submitted that a transfer is an incidence of service. He submitted that a midterm transfer cannot be said to be coercion so as to force a person to resign from the service. 16 He submitted that for establishing a case of coercion, it will be necessary for a person to establish, by leading cogent evidence, that not only unbearable pressure was built but such a pressure was intended not just to trouble an employee or to victimize an employee but to ensure that the employee quits the job. He submitted that neither such circumstances are pleaded nor asserted by the petitioner. In any case, he submitted that in the proceedings under Article 32 of the Constitution of India, it will not be possible to arrive at such a finding.

23. Shri Mehta submitted that in any case, such a plea would not be available to a Judicial Officer, who is discharging the sovereign function of dispensing justice. He submitted that the Judicial Officers are trained to be independent, fearless,

nonimpulsive and to act in accordance with law and as such, the concept which applies to a workman cannot be applied to a Judicial Officer. He further submitted that the allegations made by the petitioner with regard to sexual harassment were made only after she resigned from the service. 17

24. Shri Mehta submitted that any decision in the present proceedings will have farreaching effects in the future. He submitted that if a mere circumstance of midterm transfer coupled with inconvenient family circumstances is considered by this Court to be coercion to resign from service, it will open the floodgates of litigations. It is submitted that if such a view is taken by this Court, all similarly situated Judicial Officers would come up with such a plea, inasmuch as every Judicial Officer is bound to have some or the other inconvenient family problems. He submitted that if such a view is taken, it will have far reaching effects on the administration of the District Judiciary.

25. Shri Mehta submitted that the Full Court of the MP High Court has taken a unanimous decision on more than one occasion to reject the petitioners representation regarding reinstatement in service. He submitted that the observations made by the JIC with regard to the re instatement of the petitioner were beyond the scope of its 18 Terms of Reference and as such, the Full Court of the MP High Court has rightly rejected the representation of the petitioner. He submitted that if a unanimous decision taken by the Full Court of the MP High Court is interfered with by this Court, it will not only stigmatize the individuals manning the institution but the entire institution.

26. Shri Mehta submitted that the submissions, which he is making are not on the instructions of the MP High Court, but are being made by him as an Officer of the Court. He submitted that what is sought to be urged by the petitioner is that the whole of the MP High Court as an Institution connived together and ensured to create such circumstances, that she had no other option but to tender her resignation. He submitted that if the petitioners contention is accepted, it will have catastrophic effects.

27. Shri Mehta submitted that the scope of judicial review by this Court of a decision of the Full Court of a High Court, is very limited. He submitted that this

Court cannot sit in an appeal over the decision of the Full Court of a High Court. 19 An interference would be permitted only in the rarest of rare cases. He relies on the following judgments of this Court in support of this proposition: Syed T.A. Naqshbandi and Others v. State of Jammu & Kashmir and Others6; Registrar General, High Court of Patna v. Pandey Gajendra Prasad and Others7; Rajendra Singh Verma (Dead) Through LRs and Others v. Lieutenant Governor (NCT of Delhi) and Others8 28. He therefore prays for dismissal of the petition.

29. Before we consider the rival submissions, we clarify that we are not examining the correctness or otherwise of the decisions of the Full Court of the MP High Court dated 11th January 2018 and 15th February 2019. We are conscious of the fact that the scope of judicial review of a decision of the Full Court of a High Court is extremely narrow and we cannot sit in an appeal over the decision of the Full Court of 6 (2003) 9 SCC5927 (2012) 6 SCC3578 (2011) 10 SCC120 a High Court. There could be various factors and reasons which could have weighed with the Full Court of the MP High Court while rejecting the representation made by the petitioner in its resolutions dated 11th January 2018 and 15th February 2019. We have full respect for the authority of the Full Court of the MP High Court to arrive at such a decision.

30. We therefore clarify that we are restricting the scope of enquiry in the present matter only to examine the following issues, on the basis of the factual scenario as has come on record in the present matter: (i) As to whether the order transferring the petitioner from Gwalior to Sidhi dated 8th July 2014 is legal; (ii) As to whether the orders of the MP High Court dated 11th July 2014 and 14th July 2014, rejecting the petitioners representations dated 9th July 2014 and 11th July 2014 respectively, were legal; and (iii) As to whether the resignation of the petitioner dated 15th July 2014 can be considered to be voluntary or the one which has been forced due to circumstances. 21

31. Though, the issue directly involved in the present petition is only the issue No.(iii), we find that it will be necessary to consider issue Nos. (i) and (ii) inasmuch as our findings on the said issues will have a direct bearing on the finding on issue No.(iii).

32. We further clarify that we are examining the present matter purely considering it as a lis between an employee and an employer, without in any way being influenced by the fact that one of the parties to the lis is the MP High Court on the administrative side, and the other one a Judicial Officer. We are of the considered view that the legal principles, which would govern the dispute between an employer who is a State and an employee, will have to be equally applied in the present case, irrespective of the fact that one of the parties is a High Court and the other one is a Judicial Officer.

33. Though, arguments have been advanced before us with regard to constructive discharge and the reliance is placed on the judgments of Courts in United Kingdom and United States, we do not find it necessary to go into that issue. We 22 are of the considered view that the law as enunciated by this Court with regard to scope of judicial review of a State action, would squarely cover the issue.

34. With this note, we proceed to examine the facts in the present matter.

35. No doubt that the JIC, in its Report dated 15th December 2017, has come to a clear finding that the transfer of the petitioner was in contravention of the Transfer Policy laid down by the MP High Court and as such, was irregular. The JIC has also come to a finding that the representations made by the petitioner were not appropriately considered by the MP High Court. The JIC further came to a finding that Justice A had interfered with the transfer of the petitioner and also had a role to play in the rejection of her representations. The JIC has also come to a finding that the basis of the petitioners transfer was the complaint dated 3rd July 2014, made by the then D & SJ, Gwalior. The JIC further found that though, it was the stand of the MP High Court that the transfer of the petitioner was on 23 administrative grounds in view of the provisions of Clause 22 of the Transfer Policy, the same was not established. The JIC has further come to a finding that the circumstances became unbearable for the petitioner, resulting in her resignation from service.

36. However, it is sought to be urged vehemently on behalf of the respondents that the aforesaid findings of the JIC were beyond the scope of Terms of Reference made to it. Per contra, it is strenuously argued by Smt. Jaising that the aforesaid

observations are very much within the scope of the Terms of Reference made to the JIC. Without going into that controversy, we find it apposite to reexamine the issue, independent of the findings of the JIC.

37. It is not in dispute that the Transfer Policy has been incorporated by the MP High Court on 12th January 2012. The Preamble of the said Transfer Policy states that an attempt will be made to effect the transfer and posting of Judicial Officers in the State of Madhya Pradesh in accordance with the said Guidelines and Policy, and that the 24 same is not enforceable in law. However, it states that notwithstanding anything contained in the said Policy, the interest of the Judicial System and Establishment in the State are paramount consideration for transfers and postings. The salient features of the said Transfer Policy are as under: (i) In accordance with Clause 3 of the Transfer Policy, the places available for posting are divided into 4 Categories mentioned as A, B, C and D, which are mentioned in AnnexureA; (ii) In accordance with Clause 4 of the Transfer Policy, the annual transfer of Judicial Officers shall be effected normally by the 15th of March every year and that the Judicial Officers shall be given time for joining up to the first day of April of the relevant year so as to coincide with the academic session; 25 (iii) In accordance with Clause 5 of the Transfer Policy, the normal approximate tenure of posting at a place shall be three years; (iv) In accordance with Clause 7 of the Transfer Policy, for computing the tenure of posting of an Officer posted at a particular place, the period of 6 months or above shall be rounded off and treated as full year; (v) Clause 9 of the Transfer Policy carves out the exceptions in cases where an extension of tenure can be granted. Subclause (a) of Clause 9 specifies a ground, that such an extension would be available if a daughter (not son) of the Judicial Officer is studying at the place of his current posting, and is in the Final Year of a Board Examination or University Examination, and the educational Institution where such daughter is studying, does not have hostel facility for girls. It further provides that the said criteria are for the 26 Officers seeking overstay in Category A places. It further clarifies that insofar as Category B, C or D places are concerned, the said facility would be available irrespective of the ward being a son or a daughter and further provides that the availability of hostel facility will not be essential. It further provides that the request on the said ground can be considered only if the facts with regard to education of the daughter and nonavailability of

hostel facility in the Institution are certified by the District Judge concerned, after proper verification, and further that the District Judge as well as the Portfolio Judge have no objection to the overstay of the Officer. Subclause (b) of Clause 9 deals with the cases where overstay is sought on the ground of illness of a Judicial Officer, his spouse or children or aged parents. Subclause (c) of Clause 9 is a residuary clause, which enables such exceptions on substantial reasons, which in the 27 opinion of the District Judge, the Portfolio Judge or the Chief Justice, are justified; Clause 9 of the Transfer Policy further provides that if any Judicial Officer submits such a representation covered by subclause (a), (b) or (c), to his District Judge for being forwarded to the Registrar General, it will be obligatory for the District Judge to send the representation along with his comments within one week of its receipt after the necessary verifications. The Registry thereafter is required to place the matter before the concerned Portfolio Judge within a week of the last date of the receipt of the representation, and the Portfolio Judge is required to return the file with his comments/opinion within a week thereafter; (vi) Clause 10 of the Transfer Policy provides that all such Judicial Officers who are seeking their extension, shall also simultaneously forward 28 minimum three and maximum five options regarding the place of the permissible category or lower category, where they would like to be posted in case the representation is not allowed; (vii) Clause 13 of the Transfer Policy provides that extension of a posting after the tenure period would be granted only in exceptional circumstances. The said Clause 13 further provides that the decision regarding extension will be taken by the Chief Justice, or on his behalf, by a Committee of two Judges nominated by the Chief Justice, within three weeks of the last date of receipt of representations mentioned above; (viii) Clause 14 of the Transfer Policy provides that the Judicial Officer, who is on deputation or holding an excadre post, would be required to come back to the parent department after completing a maximum period of three years on such posting. It further provides that no extension on deputation 29 shall be granted after a period of three years. However, the power of Chief Justice to grant extension of one year in exceptional circumstances is reserved; (ix) In accordance with Clause 16 of the Transfer Policy, a transfer takes place normally from Category A to B, from B to C, from C to D and from D to A or lower Category places; (x) In accordance with Clause 17 of the Transfer Policy, the Registrar

General shall, by 15th of February each year, prepare a list of Officers, who will be completing their tenure/posting. It further provides that the Judicial Officers whose request for overstay has been allowed will be excluded from that list and the Officers whose request for premature transfer has been allowed, will be added to that list. The said Clause also requires to prepare a chart mentioning therein the details as required under the said Clause. The purpose 30 appears to be, to ensure an equitable distribution of judicial work for Officers all over the State; (xi) Clause 18 of the Transfer Policy provides that an attempt should be made to post the husband and wife at the same place, if both are working as Judicial Officers in the State of Madhya Pradesh. It further provides that, if that is not possible, an attempt should be made to post them at nearby places; (xii) Clause 19 of the Transfer Policy provides that whenever a close relative of a Judicial Officer is suffering from a serious ailment, he shall be granted preference by posting in a place where or near which proper treatment facilities for these ailments are available; (xiii) Clause 20 of the Transfer Policy provides that Judicial Officers, who are suffering from any physical disability, which is certified to be more than 40% by the appropriate Medical Board, would 31 be granted preference in the matter of their posting to such place where they are not required to travel frequently; (xiv) Clause 21 of the Transfer Policy requires that Judicial Officers, who have undergone posting for a period of two years or more in outlying Courts or in D Category places, will be given preference in the transfer of their posting at District Headquarters only; (xv) Clause 22 of the Transfer Policy provides that a Judicial Officer may be transferred even before completion of the prescribed tenure or in midterm in case his performance is found to be below the norms prescribed or if grounds exist for initiating inquiry against him. It further provides that he may also be transferred before completing the prescribed tenure in public interest or in the interest of administration if so decided by the High Court; 32 (xvi) In accordance with Clause 23 of the Transfer Policy, a Judicial Officer, who has a year or less to retire as on first day of April, is entitled to posting of his choice at a place, where or near which, he proposes to settle after his retirement; (xvii) Clause 24 of the Transfer Policy which could be construed as a residuary clause reserves the power of the Chief Justice to issue general or particular directions which are not specifically covered by the Policy. It further provides that in case of any doubt with

regard to Policy or its implementation, the clarification issued by the Chief Justice will be treated as part of the Policy; (xviii) Clause 25 of the Transfer Policy provides that no representation against transfers ordered by the High Court will normally be entertained except on a serious ground, which did not exist on the date of the issuance of the order of transfer; 33 (xix) Clause 26 of the Transfer Policy which is a non obstante clause provides that notwithstanding anything contained therein, the Chief Justice or on his behalf, a Committee of two senior Judges nominated by the Chief Justice, will have overriding powers to pass any order regarding the transfer or posting of any Judicial Officer at any time; (xx) Clause 28 of the Transfer Policy enables the Chief Justice to delegate his powers to any other Judge/Officer or Committee of Judges/Officers for implementation of the Policy/Guidelines.

38. It could thus be seen that the Transfer Policy incorporated by the MP High Court has provided in detail, the procedure that is required to be followed with regard to effecting the transfer of the Judicial Officers, their tenure at a particular posting, the circumstances in which the case should be considered for permitting the Judicial Officers to 34 stay beyond the prescribed period and the manner in which the representation is to be considered etc.

39. No doubt that the said Transfer Policy is only a set of Guidelines for internal administration of the District Judiciary issued by the MP High Court. However, while exercising its functions on the administrative side, the MP High Court would also be a State within the meaning of Article 12 of the Constitution of India. We may gainfully refer to the following observations made by this Court in the case of Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries9: 8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of nonarbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decisionmaking process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question

arises, it is to be determined not according to the 9 (1993) 1 SCC7135 claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

9. In Council of Civil Service Unions v. Minister for the Civil Service [1985 AC374: (1984) 3 All ER935(HL)]. the House of Lords indicated the extent to which the legitimate expectation interfaces with exercise of discretionary power. The impugned action was upheld as reasonable, made on due consideration of all relevant factors including the legitimate expectation of the applicant, wherein the considerations of national security were found to outweigh that which otherwise would have been the reasonable expectation of the applicant. Lord Scarman pointed out that the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subjectmatter. Again in Preston, in re [1985 AC835: (1985) 2 All ER327 it was stated by Lord Scarman that the principle of fairness has an important place in the law of judicial review and unfairness in the purported exercise of a power can be such that it is an abuse or excess of power. These decisions of the House of Lords give a similar indication of the significance of the doctrine of legitimate expectation. Shri A.K. Sen referred to Shanti Vijay and Co. v. Princess Fatima Fouzia [(1979) 4 SCC602: (1980) 1 SCR459 which 36 holds that court should interfere where discretionary power is not exercised reasonably and in good faith.

40. It could thus be seen that this Court has held that mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right. It is further held that the failure to consider and give due weight to it may render the decision arbitrary. It has been held that the requirement of due consideration of a legitimate expectation forms part of the principle of nonarbitrariness, which is a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decisionmaking process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question

of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh, what would otherwise have been the legitimate expectation of the 37 claimant. It has been held that a bona fide decision of the public authority reached in this manner would satisfy the requirement of nonarbitrariness and withstand judicial scrutiny. It has been held that the principle of fairness has an important place in the law of judicial review and that unfairness in the purported exercise of power can be such that it is abuse or excess of power. The court should interfere where discretionary power is not exercised reasonably and in good faith.

41. It could thus be seen that though the Transfer Policy may not be enforceable in law, but when the Transfer Policy has been framed by the MP High Court for administration of the District Judiciary, every Judicial Officer will have a legitimate expectation that such a Policy should be given due weightage, when the cases of Judicial Officers for transfer are being considered.

42. In this background, we will examine the undisputed facts. Undisputedly, in the chart which was prepared by the 38 then RG for ensuring the general transfers, which were to be effected in the month of March 2014, the petitioners name did not figure.

43. It is further clear that in the agenda prepared for consideration of midterm transfers to be effected in the month of July 2014, again the petitioners name did not appear. It can further be seen from the depositions of the then Judge of the MP High Court, who was a Member of the Transfer Committee and that of the then RG of the MP High Court before the JIC, that the basis for the transfer of the petitioner was the complaint dated 3rd July 2014, addressed by the then D & SJ, Gwalior. It is to be noted that within days, the decision regarding transferring the petitioner to Sidhi, which is about 507 kms. away from Gwalior, was taken by the Transfer Committee on 7th July 2014, and was approved by the Competent Authority on the very same day. The said transfer order was conveyed to the petitioner on the next day that is on 8th July 2014. 39

44. The petitioner, on coming to know about her transfer order, made a representation on the very next day i.e., on 9th July 2014. In the said representation, the petitioner had categorically stated that her elder daughter was a brilliant child, studying in Class 12th and was preparing for her Board and Competitive Exams at FIITJEE Coaching Centre, Gwalior. She further stated that her husband, due to compelling circumstances and for looking after his aged parents, had to stay in Delhi and practically, she had to play the role of both a father and a mother for her daughters and had to draw a balance between her profession and dependent children. She further made a request to the Competent Authority to allow her to stay in Gwalior till her daughter completes her Class 12th examination. The said representation was rejected within two days i.e. on 11th July 2014. The then RG made an endorsement to the following effect: Honble the transfer Committee in its meeting held on 7.7.2014 has recommended transfer of Smt. Madan from Gwalior to Sidhi on administrative 40 ground, after considering the request of D&S Judge, Gwalior with regard to her conduct and behavior. It is gathered that adequate educational facilities including CBSE School are available at Sidhi. Therefore, the matter is submitted for kind consideration and order. The then Judge of the Transfer Committee of the MP High Court made the following endorsement on the same day: The representation may be rejected as it does not call for any consideration.

45. After rejection of her first representation, the petitioner made another representation to the respondent No.1 on 11th July 2014, through the then D & SJ, Gwalior. In the said representation, she had requested for her transfer either to Sehore, Raisen, Dewas or Ujjain so that her daughter could continue with her education. The then RG, on 14th July 2014, placed the said representation of the petitioner before the Transfer Committee with the following endorsement:

41. Kind attention is invited to another representation (dated 11th July, 2014) submitted by Ms. X, 8th A.D.J., Gwalior regarding her transfer from Gwalior to Sidhi, almost on identical grounds pertaining to education of her daughters. The Committee has already considered the representation dated 9th July, 2014 of Ms. X and has been pleased to reject the same. The matter is submitted again for kind consideration and orders in view of the repeat representation dated 11th July,

2014. The then Judge of the Transfer Committee of the MP High Court made the following endorsement on the same day: In view of the order already passed on the representation no further reconsideration is to be made.

46. It could thus be seen that the transfer of the petitioner was effected midterm though she could have very well been transferred in general transfers, to be effected in MarchApril, 2014. Even in the agenda of the midterm transfers, which were to be effected on various grounds, petitioners name was not included. It was only after the then D & SJ, Gwalior 42 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 9th July 2014, specifically pointing out therein that her daughter was studying in Class 12th 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. 43

47. Undisputedly, neither the procedure as prescribed under Clause 9 of the Transfer Policy of obtaining the comments from the District Judge and the Portfolio Judge were complied with, nor the Transfer Committee considered the provisions of Clause 9(a) of the Transfer Policy.

48. When subclause (a) of Clause 9 of the Transfer Policy provided, that the case of a Judicial Officer for an extension should be considered if such Judicial Officers daughter (not son) was to appear for the final year of Board Examination or University Examination, and when such educational Institution where such daughter is studying, does not have hostel facility for girls, the petitioner had a legitimate expectation that the MP High Court would consider her request in

accordance therewith. Not only that, such a concession of extension would have been available only if the District Judge certified that there is no hostel facility available in such educational Institution. It also further required the comments to be obtained by the RG from the District Judge and the Portfolio Judge of the MP High Court. 44 From the perusal of the Transfer Policy, it is clear that total 3 weeks period is provided between the date of the receipt of the representation and the decision thereon. However, in the present case, within two days from the submission of the representation, the Transfer Committee rejected the same without considering subclause (a) of Clause 9 of the Transfer Policy. It is a different matter that inviting comments from the District Judge would have been just a formality, inasmuch as the transfer was effected on his complaint itself.

49. The matter does not end here. On rejection of her first representation, the petitioner addressed her second representation, requesting that she be posted at any of the four cities mentioned in the said representation so that her daughter could continue with her education. However, the then RG made an endorsement that the said representation is on similar ground as mentioned in the earlier representation dated 9th July 2014, which has already been rejected. The Transfer Committee endorsed that in view of the order already passed in the earlier representation dated 45 9th July 2014, no further reconsideration is to be made. Both the representations of the petitioner are made with different requests. Whereas the first representation requests for her retention at Gwalior for a period of 8 months so that her daughter could continue with her education at Gwalior; in the second representation, she had requested to be posted at either of the 4 places, where her daughter could continue with her education. However, the second representation was rejected on the ground that the earlier representation made on similar ground also stands rejected.

50. 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 nonapplication of mind by the 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 46 manner and accepted by the then Judge on the Transfer Committee in a mechanical manner.

51. The transfer is sought to be justified in view of Clause 22 of the Transfer Policy. One of the grounds on which the transfer could be made in midterm, is that the performance of such Judicial Officer is found to be below the norms prescribed. The same is admittedly not available in the present case. The petitioners performance in the assessment made by the then D & SJ, Gwalior on 15th January 2014 for the assessment year 2013, has been found to be very good. That leaves us with the second ground available under Clause 22 of the Transfer Policy, that a transfer can be made if the grounds exist for initiating an inquiry against such a Judicial Officer. The same is also not the case here.

52. It is sought to be urged that the transfer of the petitioner was made in the public interest or in the interest of the administration inasmuch as there was a requirement of an Additional Judge at Sidhi. The then Judge on the 47 Transfer Committee has specifically admitted in his deposition before the JIC that at the relevant point of time, the pendency at the 4 places which were mentioned by the petitioner in her second representation, was much higher than at Sidhi. He has further admitted that though the posts were vacant at the said 4 places, there was no vacancy at Sidhi. As per the Transfer Policy, a Judicial Officer is required to be transferred from Category A city to Category B city, from B to C, from C to D and from D to A. However, in the case of the petitioner, the petitioner was directly transferred from Gwalior, which is Category A city to Sidhi, which is Category C city. The 4 cities which have been mentioned by the petitioner in her second representation are B Category cities. Coupled with the admission that the transfer of the petitioner was effected on the basis of the complaint made by the then D & SJ, Gwalior, it is difficult to accept the contention on behalf of the MP High Court that the transfer of the petitioner was made in the public interest or in the interest of the administration. 48

53. The learned Solicitor General argued that vide the impugned transfer order dated 8th July 2014, as many as 26 Judicial Officers were transferred and not just the petitioner. The perusal of the said transfer order would reveal that in many

cases, the Judicial Officers who were either on deputation or excadre posts, have been brought in main stream. It is also found that many of the Judicial Officers covered by the said transfer order were posted at the same place inasmuch as from the posting on deputation, they have been brought in the main stream. In any case, it is not pointed out as to whether the said Judicial Officers were also facing the same difficulty, as was being faced by the petitioner. It is also not brought on record as to whether those Judicial Officers had made any representation and their representations were rejected in an identical manner.

54. At this juncture, we may refer to the following observations made by this Court in the case of Kumari 49 Shrilekha Vidyarthi and Others v. State of U.P. and Others10: 33. No doubt, it is true, as indicated by us earlier, that there is a presumption of validity of the State action and the burden is on the person who alleges violation of Article 14 to prove the assertion. However, where no plausible reason or principle is indicated nor is it discernible and the impugned State action, therefore, appears to be ex facie arbitrary, the initial burden to prove the arbitrariness is discharged 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 scope of judicial review is limited as indicated in Dwarkadas Marfatia case [(1989) 3 SCC293 to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases. It is not for the courts to recast the policy or to substitute it with another which is considered to be more appropriate, once 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. As indicated by Diplock, L.J., in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER935 the power of judicial review is limited to the grounds of illegality, irrationality and procedural impropriety. In the case 10 (1991) 1 SCC21250 of arbitrariness, the defect of irrationality is obvious.

55. 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 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 51 act which was done, was fair and reasonable in the facts and circumstances of the case.

56. We have no hesitation in holding that the petitioner has established that her transfer order was in contravention of the Transfer Policy and that the rejection of her two representations, in addition of being contrary to the Transfer Policy, were also arbitrary. As such, the petitioner has discharged her burden and the onus is shifted on the respondent No.1 to show that the petitioners transfer order was fair and reasonable in the facts and circumstances of the case. We find that the respondent No.1 has utterly failed to discharge its burden. On the contrary, the admissions made before the JIC by the then Judge on the Transfer Committee clearly show that the transfer was made solely on the basis of the complaint made by the then D & SJ, Gwalior without verifying the veracity thereof. Not only this, but it is evident that the then Judge had not looked into the annexures attached with the representation, which included the fee receipts etc. of the petitioners daughter. 52

57. We may gainfully refer to the following observations made by this Court in the case of Kalabharati Advertising v. Hemant Vimalnath Narichania and Others11: 25. The State is under 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. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means 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, which intent is manifested by its injurious acts. (Vide ADM, Jabalpur v. Shivakant Shukla [(1976) 2 SCC521: AIR 1976 SC1207 , S.R. Venkataraman v. Union of India [(1979) 2 SCC491:

1979. SCC (L&S) 216 : AIR 1979 SC49 , State of A.P. v. Goverdhanlal Pitti [(2003) 4 SCC739: AIR 2003 SC1941 , BPL Ltd. v. S.P. Gururaja [(2003) 8 SCC567 and W.B. SEB v. Dilip Kumar Ray [(2007) 14 SCC568: (2009) 1 SCC (L&S) 860]. .) 26. Passing an order for an unauthorised purpose constitutes malice in law. (Vide Punjab SEB Ltd. v. Zora Singh [(2005) 6 SCC776 and Union of 11 (2010) 9 SCC43753 India v. V. Ramakrishnan [(2005) 8 SCC394:

2005. SCC (L&S) 1150]..) It is trite that the State is under the obligation to act 58. 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. No doubt that it is strenuously argued on behalf of the 59. petitioner that the transfer order is mala fide and issued at the instance of Justice A, we do not find it necessary to go into that aspect of the matter. 54 It will also be relevant to refer to the following 60. observations made by this Court in the case of Somesh Tiwari v. Union of India and Others12: 16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds -one malice in fact and

the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

61. This Court has held that normally an order of transfer, which is an incident of service should not be interfered with, unless it is found that the same is mala fide. It has been held that mala fide is of two kinds - one malice in fact and the second malice in law. When an order is not based on any factor germane for passing an order of transfer and 12 (2009) 2 SCC59255 based on an irrelevant ground, such an order would not be sustainable in law.

62. At the cost of repetition, we may say that though it is the case of the respondent No.1 that the transfer order of the petitioner dated 8th July 2014, was on the ground of administrative exigencies, the material placed on record and particularly, the depositions of the then Judge on the Transfer Committee and the then RG, would clearly show that it was on the basis of the complaint made by the then D & SJ, Gwalior. It is a different aspect that the JIC had come to a specific finding of fact, that the evidence on record clearly shows that Justice A had a role to play in the transfer of the petitioner and the rejection of her two representations. We are therefore of the considered view that the transfer order dated 8th July 2014, would squarely be covered by malice in law inasmuch as it was passed without taking into consideration the Guidelines provided in the Transfer Policy but on the basis of unverified allegations made in the complaint made by the then D & SJ, Gwalior. 56

63. That leaves us with the next issue as to whether the orders of the Transfer Committee dated 11th July 2014 and 14th July 2014, rejecting the petitioners representations dated 9th July 2014 and 11th July 2014, were valid in law or not.

64. It could be seen that as per Clause 9 of the Transfer Policy, the petitioner is entitled to make a representation to the MP High Court for retaining her at the same posting, and for posting at alternate places of her choice in view of Clause 10 of the Transfer Policy. When the Transfer Policy provides for making a representation, the petitioner had a legitimate expectation that the said representation would be considered in accordance with it. Consideration of representation is not a formality. We are not saying for a moment that prior to rejection of the petitioners representations, she should have been heard or that the reasons ought to have been communicated for such rejection. However, the least that is expected is that the representation is considered in the right earnest. When the Transfer Policy provides for a ground on which the representation is to be made, then the least that is 57 expected is that the matter should be considered in reference to the provisions made in the Transfer Policy. In her first representation, the petitioner had specifically contended that she should be retained at Gwalior on the ground of her daughters education. There was a legitimate expectation that the respondent No.1 ought to have considered as to whether her case fits in Clause 9(a) of the Transfer Policy. The petitioner was entitled for consideration of her case on the ground that her daughter was to appear in the final year of Board Examination. The petitioner had specifically stated that her daughter was also undergoing FIITJEE coaching. She had further clearly stated that after her daughter completes the academic year, she was willing to abide by the transfer order. However, in the noting of the then RG, it was mentioned that it is gathered that adequate educational facilities including CBSE School are available at Sidhi. It is further stated that the Transfer Committee, in its meeting held on 7th July 2014, had recommended the transfer of the petitioner on administrative grounds after considering the request of the then D & SJ, Gwalior with regard to conduct 58 and behaviour of the petitioner. On the said proposal, the then Judge on the Transfer Committee had directed the representation of the petitioner to be rejected. As such, it could be seen that the respondent No.1 had not at all taken into consideration as to whether the petitioners case was required to be considered under Clause 9(a) of the Transfer Policy or not.

65. Insofar as the second representation dated 11th July 2014 is concerned, the petitioner had specifically stated that since her daughter was preparing for Board

and Competitive Exams and also taking FIITJEE coaching, she may be transferred to such places as Sehore, Raisen, Dewas or Ujjain, where her daughter could continue with her education. It could thus be seen that, whereas in the first representation, the petitioner had sought retention at Gwalior, in the second representation, she had requested for posting at any of the 4 places as aforesaid. However, the then RG made an endorsement on the file on 14th July 2014 to the effect that the said representation was made almost on identical grounds as were made in the first 59 representation, which was already rejected on 11th July 2014. The then Judge on the Transfer Committee made an endorsement that in view of the order dated 11th July 2014 already passed in the earlier representation, no further reconsideration is to be made. It can thus be seen that though the second representation of the petitioner dated 11th July 2014 is with a request to post her at any of the 4 alternate places, the noting that the representation on identical grounds had already been rejected, is factually incorrect. Whereas the first representation of the petitioner was for retention at Gwalior, the second one was for a posting at alternate place, where her daughter could continue with her education. In view of Clause 10 of the Transfer Policy, the petitioner had a legitimate expectation of being considered for an alternate posting, in case her prayer for retention was not to be considered.

66. It could thus be seen that the respondent No.1 has failed to take into consideration the factors, which were required to be considered, while deciding the representation of the petitioner and had taken into consideration the factors 60 which were not relevant. The then Judge on the Transfer Committee, in his deposition before the JIC, had clearly admitted that he had not gone into the annexures, which were attached with the representation of the petitioner. Non consideration of the relevant material and consideration of the extraneous material would come into the realm of irrationality. An action which is arbitrary, irrational and unreasonable would be hit by Article 14 of the Constitution of India. We, therefore, find that the rejection of the representations of the petitioner dated 9th July 2014 and 11th July 2014, would also not stand the scrutiny of law.

67. That leaves us with the next issue as to whether the petitioners resignation dated 15th July 2014, could be considered as a voluntarily one.

68. The resignation of the petitioner reads thus: It is most respectfully submitted that I am unable to continue my services as Additional District and Sessions Judge. As I have been transferred to Sidhi, in the mid academic session of my daughters studying in Class III and Class XII, it affected mostly the crucial stage of career of my class XII daughter. Therefore I am left with no option but to resign from my post. 61 I hereby resign from the post of Additional District and Sessions Judge and I am ready to submit my salary as per rules and clear all my dues, if any. I humbly request your kind self to please accept my resignation and relieve me with immediate affect and oblige.

69. It is sought to be urged on behalf of the respondent No.1, that the said resignation is voluntary, acted upon by the authority and thus, there was severance of relationship between the employer and employee.

70. The learned Solicitor General submitted that it was an impulsive decision to resign only on account of midterm transfer. He submitted that, to hold that a midterm transfer would amount to coercion resulting into resignation, would be catastrophic. He further submitted that such a plea would not be available to a Judicial Officer, who is discharging the sovereign function of dispensing justice and who is trained to be independent, fearless, nonimpulsive and to act in accordance with law. 62

71. No doubt, that a Judicial Officer while discharging his/her duties, is expected to be independent, fearless, impassionate and nonimpulsive. But a Judicial Officer is also a human being. A Judicial Officer is also a parent. He/she could be a father or a mother. The question would be, whether a Judicial Officer, while taking a decision in his/her personal matter as a human being, in his/her capacity of a father or mother, would be required to be guided by the same yardsticks.

72. For considering as to whether the resignation in the present matter could be construed as voluntary or not, the resignation cannot be considered in isolation, but all the attendant circumstances will have to be taken into consideration.

73. Let us consider the facts from the perspective of the petitioner.

74. Insofar as the career of the petitioner is concerned, till 8th July 2014, there were no issues. She was posted at Gwalior as AD & SJ on 1st August 2011. On 15th January 2013, she was assessed for the period from 3rd May 2012 to 63 31st December 2012 by the then D & SJ, Gwalior, who assessed her grading as good, which was approved by the then Portfolio/Administrative Judge of the MP High Court. Between December 2013 and June 2014, the petitioner was entrusted with various additional responsibilities. On 15th January 2014, she was assessed for the period from 8th April 2013 to 31st December 2013 by the then D & SJ, Gwalior, who assessed her grading as very good. The same was also endorsed by the then Portfolio/Administrative Judge of the MP High Court. It is to be noted that the then D & SJ, Gwalior, who had assessed the petitioners performance for the assessment year 2012 was a different one than the one who had assessed her performance for the assessment year 2013.

75. On the personal front, both the petitioners daughters were taking education at Gwalior. One of them was in Class 3rd and the other one was studying in Class 12th and was also undergoing FIITJEE coaching. Since her husband was required to be in Delhi on account of professional and personal commitments and also that he had to look after his 64 aged parents, the petitioner had to draw a balance between her duties as a Judicial Officer and as a mother.

76. Till 8th July 2014, everything was smooth but on the said date, came the transfer order transferring her to Sidhi, which was at a far away distance of 507 Kms. from Gwalior. Taking shelter under Clause 9(a) of the Transfer Policy, the petitioner made a representation to the MP High Court on the very next day, requesting the respondent No.1 that she be retained at Gwalior, at least till her daughter completes her Class 12th education, but the same was rejected within a short period of two days. She made her second representation on 11th July 2014, requesting the respondent No.1 to give her alternate posting at any of the 4 cities mentioned therein, where her daughter could continue with her education. All the 4 cities were Category B cities. In normal circumstances, a Judicial Officer, who is in Category A city, is required to be transferred to Category B city. However, to her utter shock, the same was also rejected within three days. 65

77. One cannot imagine the trauma which the petitioner must have faced during this short period of time. She was also not aware that she was being transferred on the ground of the complaint made by the then D & SJ, Gwalior, who himself appears to have joined at Gwalior sometime in 2014, after the then D & SJ, Gwalior, who had assessed the petitioner for the year 2013, was transferred. She had come to know about the complaint at a much later point of time. In her first representation dated 9th July 2014, the petitioner elaborated in detail, her precarious situation inasmuch as she was required to be both a mother and father to her children and draw a balance between her professional duties and duties towards her daughters. She stated that on receipt of her transfer order, her elder daughter had become meek with fear and anxiety, as she faced an emotional trauma and a bleak prospect. The petitioner stated that at the cost of her career, she could not disturb the right of her daughter to decent education and curb her prospects for an inspirational life. The petitioner only appealed that in order to avoid the emotional trauma and to support her daughter to complete 66 her Class 12th, she should be continued at Gwalior for a short period. She also assured that after her daughter completes Class 12th, she would move on to whichever posting allocated to her. However, the same was rejected within two days i.e. on 11th July 2014, without following the procedure prescribed under the Transfer Policy.

78. The petitioner made another representation on the very same day i.e. 11th July 2014, requesting for an alternate posting either to Sehore, Raisen, Dewas or Ujjain. She reiterated the traumatic situation through which her daughter was undergoing. She reiterated that at the cost of her career, she could not disturb the right of her daughter to decent education. However, the same was again rejected on 14th July 2014, within a period of four days.

79. The petitioner was a Judicial Officer and a mother too. The Judicial Officer in her must have been battling with the mother in her. On one hand, was her career as a Judicial Officer; on the other hand, was the possibility of her daughters educational prospects and career coming into jeopardy, if she shifted to the place of posting at Sidhi. A67possibility of her mind engrossed with a feeling, that she was subjected to injustice by the very Institution of Judiciary, cannot be ruled away. What was she asking for?. A retention at Gwalior for a period of 8 months till

her daughter completes her Class 12th. In the alternative, posting at any of the 4 cities, which were admittedly in Category B, where her daughter could have better education facilities, and where the vacancies existed.

80. Denial of her legitimate expectation could have led to desperation, exasperation and frustration. The frustration of the petitioner is evident from the language used by her in her resignation letter. She stated that as she had been transferred to Sidhi in the midacademic session of her daughters Class 12th, it had mostly affected the crucial stage of career of her daughter. She stated that therefore, she was left with no other option but to resign from her post. It appears that in a gruesome battle between a mother and a Judicial Officer, the Judicial Officer lost the battle to the mother. 68

81. Reaction of a person to a particular situation would depend from person to person. No two individuals can be expected to respond identically to a same situation. It is quite possible that some other person in the petitioners place, would have chosen to pursue ones own career without bothering about the daughters education and prospects of good career.

82. On the very next day of submission of resignation, the MP High Court forwarded her resignation with the recommendation to accept the same and thereafter, immediately on the very next day, the respondent No.2 accepted the same.

83. It will be apposite to refer to the following observations of this Court in the case of Dr. Prabha Atri v. State of U.P. and Others13: 7. The only question that mainly requires to be considered is as to whether the letter dated 91 1999 could be construed to mean or amounted to a letter of resignation or merely an expression of her intention to resign, if her claims in respect of the 13 (2003) 1 SCC70169 alleged lapse are not viewed favourably. Rule 9 of the Hospital Service Rules provided for resignation or abandonment of service by an employee. It is stated therein that a permanent employee is required to give three months' notice of resignation in writing to the appointing authority or three months' salary in lieu of notice and that he/she may be required to serve the period for such notice. In case of noncompliance with the above, the employee concerned is not only liable to pay

an amount equal to three months' salary but such amount shall be realizable from the dues, if any, of the employee lying with the hospital. In Words and Phrases (Permanent Edn.) Vol. 37, at p. 476, it is found stated that: To constitute a resignation, it must be unconditional and with an intent to operate as such. There must be an intention to relinquish a portion of the term of office accompanied by an act of relinquishment. It is to give back, to give up in a formal manner, an office. At p. 474 of the very same book, it is found stated: Statements by club's President and corresponding Secretary that they would resign, if constant bickering among members did not cease, constituted merely threatened offers, not tenders, of their resignations. It is also stated therein that A resignation of a public office to be effective must be made with an intention of relinquishing the office accompanied by an act of relinquishment. In the ordinary dictionary sense, the word resignation was considered to mean the spontaneous relinquishment of one's own right, as conveyed by 70 the maxim: Resignatio est juris proprii spontanea refutatio (Black's Law Dictionary, 6th Edn.). In Corpus Juris Secundum, Vol. 77, p. 311, it is found stated: It has been said that resignation is a term of legal art, having legal connotations which describe certain legal results. It is characteristically, the voluntary surrender of a position by the one resigning, made freely and not under duress and the word is defined generally as meaning the act of resigning or giving up, as a claim, possession or position.

8. In P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC141:

1984. SCC (L&S) 214]. this Court had an occasion to consider the nature and character of a letter written by one of the petitioners in that case who after stating in the letter that he has been all along patiently waiting for the redressal of his grievance, yet justice has not been done to him and as such, after showing so much patience in the matter, I am sorry to decide that I should resign from the membership of the Faculty in protest against such a treatment and against the discrimination and victimization shown to me by the Head of the Division in the allotment of students of 1968 and 1969 batches and departmental candidates. (SCC p. 172, para

34) 71 In that context, this Court observed that the callous and heartless attitude of the Academic Council in seizing an opportunity to get rid of him by treating the said letter to be a letter of resignation when really he was all along making representations seeking justice to him and out of exasperation the said person wrote that letter stating that the only honourable course left open to him was to resign rather than suffer (SCC p. 173, para 34). In Moti Ram v. Param Dev [(1993) 2 SCC725 this Court observed as hereunder: (SCC pp. 73536, para

16) 16. As pointed out by this Court, resignation means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. (See: Union of India v. Gopal Chandra Misra [(1978) 2 SCC301:

1978. SCC (L&S) 303]. .) If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent 72 authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.

9. In traversing the contention on behalf of the appellant that the letter in question dated 911999 could not be construed as a letter of resignation, on behalf of the respondent hospital authorities it is strenuously contended that such a letter coming from the appellant in the teeth of suspension order and proposed domestic enquiry expressing a desire to tender resignation and that too with immediate effect, cannot but be a resignation outright and 73 simpliciter to avoid facing disciplinary proceedings and that, therefore, the competent authority acted well within its rights in treating it to be a resignation and accepting the same forthwith and as a consequence thereof, directing further not to proceed with the domestic enquiry already ordered. Finally, it has been submitted that if this Court is pleased to interfere in the matter the right of the hospital authorities to pursue the disciplinary action already initiated from the stage at which it stood on the date of acceptance of the resignation should not be jeopardized and liberty may be granted in this regard.

10. We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the materials and principles, noticed supra. This is not a case where it is required to consider as to whether the relinquishment envisaged under the rules and conditions of service is unilateral or bilateral in character but whether the letter dated 911999 could be treated or held to be a letter of resignation or relinquishment of the office, so as to sever her services once and for all. The letter cannot be construed, in our view, to convey any spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a resignation, it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramachandra Iyer [(1984) 2 SCC141:

1984. SCC (L&S) 214]. it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a 74 resignation, actual and simple. The appellant had put in about two decades of service in the hospital, that she was placed under suspension and exposed to disciplinary proceedings and proposed domestic enquiry and she had certain benefits flowing to her benefit, if she resigns but yet the letter dated 91 1999 does

not seek for any of those things to be settled or the disciplinary proceedings being scrapped as a sequel to her socalled resignation. The words with immediate effect in the said letter could not be given undue importance dehors the context, tenor of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was written. That the management of the hospital took up such action forthwith, as a result of acceptance of the resignation is not of much significance in ascertaining the true or real intention of the letter written by the appellant on 911999. Consequently, it appears to be reasonable to view that as in the case reported in P.K. Ramachandra Iyer [(1984) 2 SCC141:

1984. SCC (L&S) 214]. the respondents have seized an opportunity to get rid of the appellant the moment they got the letter dated 91 1999, without due or proper consideration of the matter in a right perspective or understanding of the contents thereof. The High Court also seems to have completely lost sight of these vital aspects in rejecting the writ petition.

84. The facts in the above case are somewhat similar to the present case. The present case is also not a case where it is required to consider as to whether the relinquishment 75 envisaged under the Rules and Conditions of Service, is unilateral or bilateral in character. In the present case also, the words with immediate effect in the resignation letter could not be given undue importance, dehors the context, tenor of language used therein, indicating the circumstances in which it was written. The resignation letter in the present case, as has already been discussed hereinabove, appears to be on account of exasperation and frustration actuated by a thought, that injustice was being meted out to her by the very Institution of Judiciary.

85. We further find that the breakneck speed at which the events have taken place in the present matter, gives rise to a suspicion, that there is something more than which meets the eye. On 3rd July 2014, the then D & SJ, Gwalior, who appears to have joined the service a short while ago, addressed a complaint to the then RG. The said D & SJ, Gwalior, in his deposition before the JIC, has clearly admitted that the instances mentioned in the complaint, were not within his personal knowledge, but were on the basis of the complaints made to him by other Judicial

76 Officers. He further admitted that the complaints were with regard to the period, which was before his joining as D & SJ, Gwalior. He further admitted that there were no written complaints by the Judicial Officers and that he had proceeded to write the complaint on the basis of their oral complaints. Within days of the said complaint being made, on 7th July 2014, the Transfer Committee decided to transfer the petitioner from Gwalior to Sidhi. The transfer order was issued on 8th July 2014. The petitioner made a representation on the very next day i.e. 9th July 2014, and the same was rejected within two days i.e. 11th July 2014. On 11th July 2014, the petitioner made another representation. However, that also did not find favour with respondent No.1 and was rejected on 14th July 2014, on the ground that the earlier representation on identical grounds was already rejected. It is to be noted that 12th July 2014 was a second Saturday, 13th July 2014 was a Sunday and on the very next working day i.e. 14th July 2014, her second representation was rejected. On 15th July 2014, the petitioner tendered her resignation. On the next day i.e. 16th July 77 2014, the MP High Court with the recommendation for acceptance of the same, forwarded it to respondent No.2. On the very next day i.e. 17th July 2014, respondent No.2 accepted the same.

86. It will not be out of place to mention that in some High Courts, a practice is followed, that whenever a Judicial Officer having good track record tenders his/her resignation, an attempt is made by the Senior Judges of the High Court to counsel and persuade him/her to withdraw the resignation. Valuable time and money is spent on training of a Judicial Officer. Losing a good Judicial Officer without counselling him/her and without giving him/her an opportunity to introspect and rethink, will not be in the interest of either the Judicial Officer or the Judiciary. We find that it will be in the interest of judiciary that such a practice is followed by all the High Courts.

87. We are therefore of the considered view that in the peculiar facts and circumstances of the case, the petitioners resignation dated 15th July 2014, could not be construed to be voluntary. In any case, immediately in a fortnight, on 1st 78 August 2014, the petitioner had made a representation to Honble the President of India as well as the Chief Justice of India, with a copy to the Chief Justice of the MP High Court for reconsideration of the circumstances under which, she was left

with no option but to resign. Though, it may not be possible to observe that the petitioner was forced to resign, however, the circumstances enumerated hereinabove, would clearly reveal that they were such, that out of frustration, the petitioner was left with no other alternative.

88. It is contended on behalf of the MP High Court that the petitioner, who was on probation, had voluntarily tendered her resignation, which was accepted and as such, led to an irrevocable severance of relationship of the employer and employee. In this regard, it is to be noted that the petitioner was initially appointed on probation for a period of two years on 1st August 2011. Her probation was completed on 1st August 2013. Admittedly, there has been no order extending the period of probation of the petitioner from 1st August 2013 onwards. On the contrary, she was assigned with various additional duties in the year 2013. Not only this, but her 79 assessment for the assessment year 2013, during which, she would be deemed to be confirmed, was very good. We therefore find that the said contention is nothing but an afterthought.

89. Insofar as the contention with regard to delay is concerned, we find no merit in the said contention also. Immediately after the petitioner resigned on 15th July 2014, she made a representation to Honble the President of India as well as the Chief Justice of India, with a copy to the Chief Justice of the MP High Court, requesting to reconsider the circumstances in which she was left with no option but to resign. The petitioner thereafter had also pursued a writ petition before this Court. Thereafter, she had participated in the proceedings before the JIC and after the JIC expressed its opinion, that it would be in the interest of justice that she should be reinstated in service, she made a representation to the MP High Court, for reinstatement in service. After the said representation was rejected, she has immediately approached this Court in the present matter. We therefore 80 find that the petitioner cannot be denied the reliefs on the so called grounds of delay and laches.

90. That leaves us with the last submission of the learned Solicitor General, that if we hold the resignation in the present case to be actuated by coercion, it will have far reaching implications and will open floodgates to the similarly situated Judicial

Officers. Another submission made is that, if a decision of the Full Court of the MP High Court is interfered with, it will stigmatize the entire Institution and have catastrophic effects.

91. We find the said submissions to be totally uncalled for. At the outset, we have clarified that we are only examining the correctness and otherwise of the order of transfer, the rejection of the representations and the question as to whether the resignation in the facts of the present case, could be construed to be voluntary or not. We have not at all gone into the question, regarding the correctness or otherwise of the decisions of the Full Court of the MP High Court with regard to the rejection of the petitioners representation. As already discussed hereinabove, there 81 might be reasons and factors which might have weighed with the Full Court of the MP High Court for taking such a decision. At the cost of repetition, we reiterate that we have full respect for the authority of the Full Court to arrive at such a decision. As such, there is no question of stigmatizing the Full Court of the MP High Court. It is a different matter, that if the suggestions made by this Court on more than one occasion would have been accepted, the exercise of examining the factual scenario, could have been avoided. In any case, we have restricted our inquiry only to the facts, which we found necessary to decide the present case. We have refrained ourselves from going into the details of the findings of the JIC, so as to protect the dignity of all concerned. We have refrained ourselves from mentioning a single name in our judgment.

92. In that view of the matter, the contention of the learned Solicitor General with regard to stigmatizing the MP High Court is without substance.

93. Insofar as the contention, that if this Court holds the resignation in the present case to be coercive, it will have far 82 reaching effects on the administration of judiciary is concerned, the same is also without substance. It will be apposite to refer to the following observations made by this Court in the case of Union of India and Others v. Dhanwanti Devi and Others14: 9. .. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio

decidendi. According to the wellsettled theory of precedents, every decision contains three basic postulates-(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found 14 (1996) 6 SCC4483 It could thus be seen that this Court has held that a decision is an authority only for what it actually decides. Every judgment must be read as applicable to the particular facts, proved or assumed to be proved. The generality of the expressions found there, is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.

94. This Court in the case of The Regional Manager and Another v. Pawan Kumar Dubey15 has succinctly observed thus: 7. ..Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. The ratio decidendi is a rule deducible from the application of law to the facts and circumstances of a case and not some conclusion based upon facts which may appear 15 (1976) 3 SCC33484 to be similar. It has been held that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

95. As has already been discussed hereinabove, we may reiterate that we have decided the present matter only on the basis of the peculiar facts and circumstances, as are found in the present matter. We do hope, that in future, similar facts would never arise for consideration, at least in a lis between a High Court and a Judicial Officer. However, we may remind ourselves of the dictum that law is supreme and no one is above law. It would be apt to reproduce the words of Thomas Fuller, which have been quoted by Lord Denning, Be ye never so high, the law is above you.

96. Before we part with the judgment, we find it our duty to place on record our appreciation for the valuable assistance rendered by Smt. Indira Jaising, learned Senior Counsel and Shri Tushar Mehta, learned Solicitor General of India.

97. In the result, the writ petition is partly allowed in the following terms:

85. (i) We hold and declare that the petitioners resignation from the post of Additional District & Sessions Judge, Gwalior dated 15th July 2014, cannot be construed to be voluntary and as such, the order dated 17th July 2014, passed by the respondent No.2, thereby accepting the resignation of the petitioner, is quashed and set aside; and (ii) The respondents are directed to reinstate the petitioner forthwith as an Additional District & Sessions Judge. Though the petitioner would not be entitled to back wages, she would be entitled for continuity in service with all consequential benefits with effect from 15th July 2014.

98. No order as to cost. Pending application(s), if any, shall stand disposed of in the above terms. .....J.

[L. NAGESWARA RAO]. .....J.

[B.R. GAVAI]. NEW DELHI; FEBRUARY10 2022. 86

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