

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 1236 of 2020
(Arising out of SLP(C) No 1867 of 2020)

Union of India & Anr

.... Appellant(s)

Versus

Deepak Niranjan Nath Pandit

....Respondent(s)

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 Leave granted.

2 The respondent, who is an Assistant Commissioner of Customs, GST and Central Excise was transferred from Mumbai to Bhubaneswar on 5 September 2019. Challenging the order of transfer, the respondent moved the Central Administrative Tribunal¹ in OA No 627 of 2019. By an order dated 17 September 2019, the CAT granted an *ad interim* stay of the order of transfer. Eventually, after the OA was heard, it was dismissed by the CAT by an order dated 5 November 2019. Aggrieved by the order of the CAT, the respondent moved the High Court of Judicature at Bombay. On 11 November 2019, at the production stage, the High Court continued the *ad interim* order. By the impugned judgment and order of the High Court

1“CAT”

dated 2 December 2019, the Writ Petition² under Article 226 of the Constitution was admitted and by way of an interim order, the *ad interim* direction granted on 11 November 2019 was continued. The Union of India is in appeal.

3 The services of the respondent are transferable. The order of transfer was issued by the Government of India in the Ministry of Finance (Central Board of Indirect Taxes and Customs) on 5 September 2019. By the order, five officials were transferred from their respective places of posting. The respondent has, however, chosen to contest the order of transfer and as a result of the *ad interim* order of the CAT and the interim order of the High Court has not joined at the place of posting. In the meantime, the respondent has been suspended.

4 The High Court, in interfering with the order of transfer, has relied on two circumstances. Firstly, the High Court has noted that as a result of the stay on the order of transfer, the headquarters of the respondent will remain at Mumbai and even if he is to be suspended, his headquarters will continue to remain at Mumbai. The second reason, which has weighed with the High Court, is that the spouse of the respondent suffers from a cardiac ailment and is obtaining medical treatment in Mumbai. In our view, neither of these reasons can furnish a valid justification for the High Court to take recourse to its extraordinary jurisdiction under Article 226 of the Constitution in passing an order of injunction of this nature. Significantly, the High Court has not even found a *prima facie* case to the effect that the order of transfer was either *mala fide* or in breach of law. The High Court

could not have dictated to the employer as to where the respondent should be posted during the period of suspension. Individual hardships are matters for the Union of India, as an employer, to take a dispassionate view. However, we are categorically of the view that the impugned order of the High Court interfering with the order of transfer was in excess of jurisdiction and an improper exercise of judicial power. We are constrained to observe that the impugned order has been passed in breach of the settled principles and precedents which have consistently been enunciated and followed by this Court. The manner in which judicial power has been exercised by the High Court to stall a lawful order of transfer is disquieting. We express our disapproval.

5 Mr Manan Kumar Mishra, learned Senior Counsel urged that during the course of an earlier hearing, the Union government expressed its readiness to post the respondent at three alternative places instead of Bhubaneswhar and hence the order of transfer may be modified. We decline to allow this jurisdiction to be utilized in terrorem to compel the Union government to post the respondent to a place which he may prefer. There is no lawful reason for the respondent to cling on to a posting at Mumbai. He cannot claim a posting as of right to a place of his choice.

6 We accordingly allow the appeal and set aside the interim order of the High Court dated 2 December 2019 staying the transfer. The interim order passed by the High Court shall accordingly stand vacated. Conditional on the respondent reporting at Bhubaneshwar within a period of one week from today, he will be at liberty to make a representation to the Union of

India in regard to his transfer. We make it clear that we are not making any observations in this regard.

7 There shall be no order as to costs.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Indu Malhotra]

New Delhi;
February 07, 2020