



2025:DHC:964-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 1901/2025, CM APPLs. 8998/2025, 8999/2025 &
9000/2025

CHIEF SECRETARY GOVT OF
WEST BENGAL

.....Petitioner

Through: Ms. Madhumita Bhattacharjee,
Ms. Srita Choudhury, Mr. Anant and Ms.
Yoowank, Advs.

versus

VAIBHAV BANGAR & ORS.

.....Respondents

Through: Mr. Saaket Jain, Ms. Shivangi
Anand, Dr. Manoj Gorkela and Ms. Tanisha,
Advs. for R-1

Ms. Manisha Agarwal Narain, CGSC with
Ms. Laavanya Kaushik, GP with Mr.
Chandan, Adv. for UOI/R-2 & R-3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

14.02.2025

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C. HARI SHANKAR, J.

1. Respondent 1 belongs to the 2021 batch of the Indian Police Service¹. He was allocated the West Bengal cadre.
2. On 26 December 2023, Respondent 1 married one Neetu, who

¹ "IPS" hereinafter



belongs to Varanasi, Uttar Pradesh², and is an IPS Officer of the 2020 batch, allocated to the UP cadre.

3. Respondent 1 represented to the State of UP and the State of West Bengal for permission to transfer him from the West Bengal to the UP cadre so that he could be with his wife. The request was made in terms of the inter cadre transfer policy laid down by the Department of Personnel and Training in OM dated 8 November 2004 which provides, *inter alia*, thus:

“Inter-cadre transfer shall be permitted for members of All India Service officers on marriage to another member of an All India Service, where the officer or officers concerned have sought a change.”

4. The Government of UP stated that it had no objection to the transfer of Respondent 1 from the West Bengal cadre to the UP cadre.

5. However, the Government of West Bengal rejected the request by a communication dated 7 March 2024, which read thus:

“From: Senior Deputy Secretary
to the Government of West Bengal

To: The Under Secretary to the Govt. of India,
Ministry of Home Affairs, Room No.220,
North Block, New Delhi-110001

Kind Attn.: Shri Anjan Sarkar, Under Secretary to the Government of India

Sub: Inter-cadre transfer of Shri Vaibhav Bangar, IPS (WB:2021) from West Bengal to Uttar Pradesh on the ground of his marriage with Ms. Neetu, IPS (UP:2020) – reg:

² UP hereinafter



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Ref: Your Letter No.1- 11014/02/2024 - IPS IV dated 18.01.2024

Sir,

With reference to above, I am directed to inform you that the Government of West Bengal is not agreeable to the inter - cadre transfer of Shri Vaibhav Bangar, IPS (WB:2021) from West Bengal to Uttar Pradesh on the grounds of his marriage with Ms. Neetu, IPS (UP:2020).

In this connection, I am further directed to inform you that this Government has no objection if Ms. Neetu, IPS (UP:2020) joins West Bengal Cadre from, Uttar Pradesh Cadre on inter - cadre transfer, on the, same grounds.

Yours faithfully,

Sd

Senior Deputy Secretary
to the Government of West Bengal.”

6. Aggrieved thereby, Respondent 1 approached the Central Administrative Tribunal³ by way of OA 1409/2024.

7. The Tribunal took note of Rule 5(2) of the IPS (Cadre) Rules, 1954, which read thus:

“5(2) The Central Government may, with the concurrence of the state Governments concerned transfer a cadre officer from one cadre to another cadre.”

8. Before the Tribunal, Respondent 1 placed reliance on DoP&T OM dated 11 November 2022, of which the relevant paras may be reproduced thus:

“a. Inter-cadre transfer shall be permitted for members of All India Service officers on marriage to another member of an

³ “the Tribunal” hereinafter



All India Service, where the officer or officers concerned have sought a change. Inter-cadre transfer shall also be permitted on grounds of extreme hardship in the rarest of cases.”

- b. Inter-cadre transfer shall not be permitted to the home State of the officer.
- c. In cases of inter-cadre transfer on grounds of marriage, efforts should be made in the first instance to ensure that the cadre of one officer accepts his or her spouse.
- d. Only in instances where both States have refused to accept the other spouse, the officers will be considered for transfer by the Government of India to a third cadre subject to the consent of the Cadres concerned for such transfer.

9. Having heard the parties, the Tribunal allowed Respondent 1’s OA. It relied, for the said purpose, on the judgment of the Supreme Court in *SK Nausad Rahaman v UOI*⁴, as well as the judgments of this Court in *Bhavna Gupta v UOI*⁵, *Loganayagi Divya V. v UOI*⁶, *State of West Bengal v Raj Karan Nayyar*⁷, *Govt. of West Bengal v Arsh Verma*⁸, *Renu Sogan v UOI*⁹ and *Amritpal Kaur v UOI*¹⁰.

10. Aggrieved thereby, the State of West Bengal has moved this Court by means of the present writ petition under Article 226 of the Constitution of India.

11. We have heard Ms. Madhumita Bhattacharjee for the petitioner and Mr. Saaket Jain, learned Counsel for Respondent 1.

⁴ (2022) 12 SCC 1

⁵ 2020 SCC OnLine Del 2071

⁶ 2020 SCC OnLine Del 811

⁷ Judgment dated 1 November 2018 in WP (C) 11966/2019

⁸ MANU/DE/1390/2022

⁹ MANU/CA/0570/2022

¹⁰ MANU/CA/0805/2023



12. Insofar as the law is concerned, we can do no better than refer to the various judicial authorities on which the Tribunal itself has placed reliance.

13. *Sk. Nausad Rahman*

13.1 The appellants in *Sk. Nausad Rahman* were Inspectors of Customs and Central Excise. The applicable Rules stipulated that each Commissionerate of Customs and Central Excise would have its own separate cadre. Prior to 20 September 2018, inter cadre transfers¹¹ between Commissionerates was permissible. On 20 September 2018, however, the Central Board of Indirect Taxes & Customs¹², as the cadre controlling authority, issued a Circular providing that, as the earlier applicable Recruitment Rules¹³ had been substituted in 2016, and as the 2016 RRs did not contain any provision for ICT, applications for ICT could not be considered post enforcement of the 2016 RRs, save on extreme compassionate grounds, on loan basis, keeping in view administrative requirements of the transferor and transferee Commissionerates, for a maximum of three years, extendable by two years.

13.2 The appellants challenged the validity of the Circular dated 20 September 2018 before the Tribunal, which upheld the challenge. The High Court, however reversed the decision of the Tribunal. The

¹¹ ICTs

¹² CBIC

¹³ "RRs" hereinafter



appellants approached the Supreme Court.

13.3 The Supreme Court examined, in detail, instructions which had been issued from time to time by the Department of Personnel & Training¹⁴ with respect to “spouse transfers” and “spouse postings”, in the following paragraphs from the report:

“10. The following executive instructions have been issued by the DoPT regarding ICTs:

10.1. On 3-4-1986, an OM was issued by DoPT. The subject of the OM was: “Posting of husband and wife at the same station”. The OM dealt with the posting of employees of the Central Government and underscored that within administrative constraints, it was the policy of the Government that spouses should be posted at the same station as far as possible. Para 2 of the circular indicated its rationale in the following terms:

“2. The Government of India have given the utmost importance to the enhancement of women's status in all sectors and all walks of life. Strategies and policies are being formulated and implemented by different Ministries of the Central Government to achieve this end. It is also considered necessary to have a policy which can enable women employed under the Government and the public sector and undertaking to discharge their responsibilities as wife/mother on the one hand and productions workers on the other, more effectively. It is the policy of the Government that as far as possible and within the constraints of administrative feasibility, the husband and wife should be posted at the same station to enable them to lead a normal family life and to ensure the education and welfare of their children.”

10.2. Para 4 of the circular envisaged various situations, depending upon the service to which spouses may belong and illustrated the following eventualities:

“4. The classes of cases that may arise, and the guidelines for dealing with each class of case, are given below:

¹⁴ “DOPT”



(i) Where the spouse belong to the same all-India Service or two of the all-India Service, namely, IAS, IPSA and Indian Forest Services (Group-A).

(ii) Where one spouse belongs to one of the all-India Service and the other spouse belongs to one of the Central Services:

The cadre controlling authority of the Central Service may post the officer to the station or if there is no post in that station to the State where the other spouse belonging to the all-India Service is posted.

(iii) Where the spouse belong to the same Central Service: The cadre controlling authority may post the spouses to the same station.

(iv) Where the spouse belongs to one Central Service and the other spouse belongs to another Central Service:

The spouse with the longer service at a station may apply to the appropriate cadre controlling authority and the said authority may post the said officer to the station, or if there is no post in that station to the State where the other spouse belonging to the other Central Service is posted.

(v) Where one spouse belongs to an all-India Service and the other spouse belongs to a public sector:

The spouse employed under the public sector undertaking may apply to the competent authority and said authority may post the said officer to the station, or if there is no post under the PSU in that station, to the State where the other spouse is posted.

(vi) Where one spouse belongs to a Central Service and other spouse belongs to PSU:



The spouse employed under the PSU may apply to the competent authority and the said authority may post the officer to the station, to the State where the other spouse is posted. If, however, the request cannot be granted because the PSU has no post in the said station/State, then the spouse belonging to the Central Services may apply to the appropriate cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station, to the state where the spouse employed under PSU is posted.

(vii) Where one spouse is employed under the Central Government and the other spouse is employed under the State Government:

The spouse employed under the Central Government may apply to the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted.”

While recognising that the above illustrations would not cover every case, the OM envisaged that each case not covered by the guidelines would be considered bearing in mind the underlying object of ensuring that spouses are, as far as possible and within the constraints of administrative convenience, posted at the same station.

10.4. An OM was issued on 12-6-1997 which dealt with the “posting of husband and wife at the same station” after the report of the Fifth Central Pay Commission. The OM reiterated the guidelines contained in the earlier OM dated 3-4-1986 for deciding requests for posting of spouses at the same station and envisaged that it should be ensured that such posting is invariably done until the children attain the age of 10 years if a vacancy exists in the organisation at the same station and no administrative problem arises as a consequence.

10.5. By an OM dated 23-8-2004, it was noted that the instructions contained in the OMs dated 3-4-1986 and 12-6-1997 were not being followed in letter and spirit by the Ministries and Departments even in the absence of administrative constraints. Accordingly, the OM sought to impress upon all Ministries/Departments “that the guidelines laid down in the



aforesaid office memorandum are strictly followed while deciding the request for posting of husband and wife at the same station”. The OM further stated that “the policy of the Government has been to give utmost importance to the enhancement of women's status in all sectors and all walks of life”.

10.6. On 8-7-2009, an OM was issued indicating that the Union Government had taken several steps towards “advancement, development and empowerment of women”, while being conscious of the fact that “women employees play a positive role in their families as well as at their workplace”. The annexure to the OM summarised the policies which have been formulated by the Union Government towards achieving this objective and among them was a provision for posting of spouses at the same station. In that context, the annexure stated:

“Posting of husband & wife at the same station.—The Government of India has issued detailed instructions to its offices to ensure the posting of the husband and wife at the same station so as to enable them to lead a normal family life and to ensure the education and welfare of their children (OM No. 28034/2/27-Estt-A dated 3-4-1986 and 12-6-1997).

To facilitate posting of couples in the same station, it has been approved that in case of a woman officer whose husband is posted under the Government of India, the ‘cooling off’ period may be valued up to six months so that she may get a posting at the station where her husband is posted.”

10.7. By an OM dated 30-9-2009, the earlier guidelines were consolidated and it was stipulated that when both spouses are in the Central Government or work in the same Department and if posts are available, they must invariably be posted together. Para 5 of the OM stated that:

“5. Complaints are sometimes received that even if posts are available in the station of posting of the spouse, the administrative authorities do not accommodate the employees citing administrative reasons. In all such cases, the cadre controlling authority should strive to post the employee at the station of the spouse and in case of inability to do so, specific reasons, therefor, may be communicated to the employee.” ”



13.4 The following passages, from the analysis of the issue by the Supreme Court, are enlightening:

“51. This Court has spoken about the systemic discrimination on account of gender at the workplace which encapsulates the patriarchal construction that permeates all aspects of a woman's being from the outset, including reproduction, sexuality and private choices, within an unjust structure. The OMs which have been issued by DoPT from time to time recognised that in providing equality and equal opportunity to women in the workplace of the State, it becomes necessary for the Government to adopt policies through which it produces substantive equality of opportunity as distinct from a formal equality for women in the workplace. Women are subject to a patriarchal mindset that regards them as primary caregivers and homemakers and thus, they are burdened with an unequal share of family responsibilities. Measures to ensure substantive equality for women factor in not only those disadvantages which operate to restrict access to the workplace but equally those which continue to operate once a woman has gained access to the workplace. The impact of gender in producing unequal outcomes continues to operate beyond the point of access. The true aim of achieving substantive equality must be fulfilled by the State in recognising the persistent patterns of discrimination against women once they are in the workplace. The DoPT OMs dated 3-4-1986, 23-8-2004, 8-7-2009 and 30-9-2009 recognised the impact of underlying social structures which bear upon the lives of women in the workplace and produce disparate outcomes coupled with or even without an intent to discriminate. The provision which has been made for spousal posting is in that sense fundamentally grounded on the need to adopt special provisions for women which are recognised by Article 15(3) of the Constitution. The manner in which a special provision should be adopted by the State is a policy choice which has to be exercised after balancing out constitutional values and the needs of the administration. But there can be no manner of doubt that the State, both in its role as a model employer as well as an institution which is subject to constitutional norms, must bear in mind the fundamental right to substantive equality when it crafts the policy even for its own employees.

53. The State's interference in the rights of privacy, dignity, and family life of persons must be proportional. This Court



in *Akshay N Patel v RBI*¹⁵, held that the framing of policy must meet an integrated proportionality analysis which answers whether the measure is:

- (i) in furtherance of a legitimate aim;
- (ii) suitable for achieving the aim;
- (iii) necessary for achieving the aim; and
- (iv) adequately balanced with the rights of the individual.

54. The State in the present case has been guided by two objectives : first, the potential for abuse of ICTs and second, the distortion which is caused in service leading to plethora of litigation. The State while formulating a policy for its own employees *has to give due consideration to the importance of protecting family life as an element of the dignity of the person and a postulate of privacy*. How a particular policy should be modulated to take into account *the necessities of maintaining family life* may be left at the threshold to be determined by the State. In crafting its policy however the State cannot be heard to say that it will be oblivious to basic constitutional values, *including the preservation of family life which is an incident of Article 21*.

55. The Circular dated 20-9-2018 has taken into account, what it describes “exceptional circumstances” such as “extreme compassionate grounds”. Leaving these categories undefined, the circular allows for individual cases to be determined on their merits on a case-by-case basis, while prescribing that transfers on a “loan basis” may be allowed subject to administrative requirements with a tenure of three years, extendable by a further period of two years. While proscribing ICTs which envisage absorption into a cadre of a person from a distinct cadre, the circular permits a transfer for a stipulated period on a loan basis. Whether such a provision should be suitably enhanced to specifically include cases involving:

- (i) postings of spouses;
- (ii) disabled persons; or
- (iii) compassionate transfers,

is a matter which should be considered at a policy level by the Board.

56. In considering whether any modification of the policy is necessary, they must bear in mind the need for a proportional relationship between the objects of the policy and the means which are adopted to implement it. The policy above all has to fulfil the test of legitimacy, suitability, necessity and of balancing the values

¹⁵ (2022) 3 SCC 694



which underlie a decision-making process informed by constitutional values. Hence while we uphold the judgment of the Division Bench of the Kerala High Court, we leave it open to the respondents to revisit the policy to accommodate posting of spouses, the needs of the disabled and compassionate grounds. Such an exercise has to be left within the domain of the executive, ensuring in the process that constitutional values which underlie Articles 14, 15 and 16 and Article 21 of the Constitution are duly protected. The appeals shall be disposed of in the above terms. Pending application(s), if any, stand disposed of.”

14. *Arsh Verma*

14.1 The facts of this case mirror those of the present, to the extent that they may be directly imported, merely changing the names of the *dramatis personae*. *In this case, too, the reluctant respondent, was the Government of West Bengal.* Arsh Verma¹⁶, like the present respondent, was an IPS officer of the West Bengal cadre, who married an IPS officer of the Haryana cadre and, on that ground, sought ICT to Haryana. *As in this case, the Government of Haryana had no objection to conceding Arsh’s request, but the Government of West Bengal demurred.* Arsh approached the Tribunal, which disposed of his OA with a direction to the Government of West Bengal to reconsider Arsh’s request. The Government of West Bengal challenged the decision before this Court.

14.2 As in the present case, the Government of West Bengal cited acute shortage of IPS officers in West Bengal as the justification not to allow Arsh’s request for ICT.

¹⁶ “Arsh” hereinafter



14.3 Relying, *inter alia*, on *Sk. Nausad Rahaman*, the Division Bench of this Court in *Arsh* observed and held thus, while dismissing the writ petition, further directing the West Bengal Government to relieve Arsh:

“9. It may be noted here that in the present case, the petitioner had already obtained a No Objection Certificate vide letter dated 20.08.2019 whereby the State of Haryana conveyed its agreement for the transfer of the Respondent no. 1 to the Haryana cadre where his wife is posted as an IPS Officer. However, despite repeated requests, his representation has been turned down and a No Objection Certificate has not been granted by the State of West Bengal.

10. *Keeping in view, the mandate of law as discussed above, the right to a healthy family life, to start a family and the right to parenthood have to be respected while balancing the careers and duties of the officers concerned. Time and tide wait for none. Child-bearing age for the young couple should not be irretrievably prejudiced by the non-grant of a relieving order for the officers to start their family. Compassion is expected from the State.*

11. *The urgency of the present case is of starting a family at present, which cannot wait indefinitely depending upon the decision of the concerned authorities.*

12. The present writ petition along with the application is dismissed and the State of West Bengal is directed to relieve the respondent no. 1 within a period of three weeks from the date of receipt of a copy of this order. In the event of the respondent no. 1 not being relieved within the aforesaid stipulated period, he shall be deemed to have been relieved by the virtue of this order.”

(Emphasis supplied)

15. *Lakshmi Bhavya Tanneeru v UOI*¹⁷

15.1 This is yet another ICT case, with eerily similar facts, in which the Government of West Bengal played spoil sport. This was a

¹⁷ 2021 SCC OnLine Del 4994



petition by the wife.

15.2 Here, again, the petitioner Lakshmi Bhavya Tanneeru¹⁸, who was an IAS officer of the West Bengal cadre, and had married an IAS officer of the Tamil Nadu cadre, sought ICT to Tamil Nadu. The Government of Tamil Nadu had no objection. The Government of West Bengal, on the ground that it was facing acute shortage of officers, expressed its inability to grant consent to the request for ICT. As in the present case, the West Bengal Government agreed, however, to ICT of Lakshmi's husband to West Bengal.

15.3 Lakshmi approached the Tribunal, which directed the West Bengal Government to reconsider her request. Lakshmi again represented to the West Bengal Government, which did not respond. She, thereupon, moved this Court.

15.4 The following paragraphs from the judgment of this Court speak for themselves:

“34. The State of West Bengal has declined the petitioner's request for issuance of no objection consistently on the ground of shortage of officers, both before and after the Coronavirus Pandemic afflicted the residents of the country, even though, in many cases, no objection was granted. The pandemic is put forth as reason only to support its primary ground for refusal to grant no objection, which is, shortage of officers.

37. Apart from trotting out a vague reason that there is a shortage of officers, nothing has been placed on record, which would persuade us to accept the State of West Bengal's stand that

¹⁸ “Lakshmi” hereinafter



because of shortage of officers, the petitioner's request for inter-cadre transfer could not be entertained.

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

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

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

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

45. That being said, this broad proposition has to be understood in the context of provisions of Rule 5(2) of the 1954 Cadre Rules and the OM dated 30-9-2009, which carried forward the object and purpose of permitting inter-cadre transfer qua members of AIS on the ground of marriage.

46. The petitioner's assertion that denial of her request for inter-cadre transfer has resulted in an infraction of her right to family life; in our opinion, has much weight. The fact that such rights are recognised as part of human rights, clearly emerges,



upon a perusal of Article 8¹⁹ of the European Convention on Human Rights (hereafter referred to as “Convention”). A plain reading of Article 8(1) of the Convention discloses that every individual has the right to insist that the State respects her/his private and family life, home and correspondence.

47. In this context, it would be useful to advert to the observations made by the House of Lords in *Huang v Secy. of State for the Home Deptt.*²⁰. This was a case, where a Chinese citizen's application seeking permission to remain in the United Kingdom, where other members of her family were residing, was declined by the Secretary of State. The House of Lords, while rendering its decision, made the following observations:

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

(emphasis is ours)

48. These observations, in a sense, explain the scope of the expression “family life”. *We have no doubt that the right to meaningful family life, which allows a person to live a fulfilling life and helps in retaining her/his physical, psychological and emotional integrity would find a place in the four corners of*

¹⁹ 8. **Right to respect for private and family life.** –

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

²⁰ (2007) 2 AC 167



*Article 21 of the Constitution of India [See **Suchita Srivastava v. Chandigarh Admn.**²¹]. Therefore, when the State unreasonably denies a request of an employee (in this case, the petitioner) seeking inter-cadre transfer, it impinges upon such person's right to demand respect for her/his family life.*

Conclusion

54. Thus, for the foregoing reasons, we are inclined to allow the prayers made in the writ petition.

55. Accordingly, the order dated 2-2-2021, passed by the Tribunal, is set aside.

56. Furthermore, the order dated 2-8-2021, passed by the State of West Bengal, is also set aside.

57. The State of West Bengal will issue a no-objection directive qua the petitioner to enable effectuation of her request for inter-cadre transfer within two weeks from the date of receipt of a copy of this judgment.

58. Respondent 1 will act on the said no objection, and accordingly, effect inter-cadre transfer of the petitioner from the State of West Bengal to the State of Tamil Nadu. Since Ms Raju, counsel for Respondent 1, has conveyed to us that Respondent 1 supports the request made by the petitioner for inter-cadre transfer, it is expected to act with due alacrity in the matter.

59. The costs will follow the result.”

15.5 We thought it necessary to reproduce the operative portion of the judgment as well, to underscore the urgency accorded by this Court to the issue. The Court did not deem it appropriate, in the circumstances, to relegate Lakshmi to the Tribunal though, strictly speaking, she should have approached the Tribunal instead of this Court. Significantly, the Court also awarded costs.

²¹ (2009) 9 SCC 1



16. *Amritpal Kaur*

16.1 Here, again, it was the Government of West Bengal which compelled the litigation.

16.2 Here, the wife, who was a West Bengal cadre IPS officer, sought ICT to Odisha to be with her husband, an IPS officer of the Odisha cadre. Predictably, Odisha agreed; West Bengal did not. Again, predictably, the reason adduced was shortage of officers. The Tribunal allowed the wife's OA, against which West Bengal petitioned this Court.

16.3 Following its earlier decisions, as also the judgment of the Supreme Court in *Sk. Nausad Rahaman*, this Court dismissed the writ petition.

16.4 Interestingly, towards the conclusion of the order, the Court has noted the submission of West Bengal that the Ministry of Home Affairs had, in the interregnum, allowed ICT of the wife from West Bengal to Odisha, on spouse grounds, and that she only required a relieving order. The same situation, as would become clear presently, applies here.

17. *Sagar*

17.1 We have, here, yet another instance of the Government of West Bengal rejecting the ICT request.



17.2 One need only change the names. The respondent before this Court, who was the successful applicant before the Tribunal, was the husband, a West Bengal IPS cadre officer. His wife belonged to the Rajasthan cadre. The husband wanted ICD to Rajasthan. Rajasthan agreed; West Bengal did not. Again, the same ground was urged, of officer shortage.

17.3 Following its earlier judgments, this Court dismissed the writ petition.

18. It is not necessary to multiply authorities. The legal position is sufficiently clear. Refusal of a prayer for ICT, on spouse grounds, has to be allowed except in emergent circumstances. The right to family life is a sanctified human right all over the world, and has to be accorded primacy. Shortage of officers, decidedly, is not sufficient as a sole ground to deny the request.

19. That said, we also believe that in an extraordinary case, it is impossible to accede to the request for transfer as for example a situation in which one of the spouses may be engaged in some governmental activity of prime importance which could be irretrievably prejudiced if transfer were allowed, a request for inter cadre transfer may on justifiable grounds be rejected. Even there, once the urgency subsides, the request should be granted.

20. As in all other cases, Ms. Bhattacharjee, learned Counsel for the



petitioner, submitted that the reason for rejecting Respondent 1's request for transfer was that there was a shortage of officers in West Bengal. We find that no such reason is to be found in the order rejecting the respondent's prayer for transfer. Even otherwise, this ground has, by now, clearly overstayed its welcome.

21. We feel compelled to enter a passing observation. The operative portion of this judgment was dictated in Court. Later, when we sat down to pen the complete judgment, *it became startlingly apparent that, in every case, the State of West Bengal has refused the prayer for ICT on the very same ground, of shortage of officers. The ground has been rejected in all the above cited cases, and there may be many more for all we know. Litigation is not fun and games. Nor can the precious time of Court be wasted by blowing the same bugle over and over again. At some point of time, the tune begins to jar.*

22. *We, therefore, express our frank unhappiness at the fact that the Government of West Bengal, having failed to convince this Court, on multiple occasions, that the plea of shortage of officers would suffice to justify rejecting the request for ICT, is seeking to re-argue the issue yet again. We deprecate this.*

23. We would have been inclined to award costs in such circumstances, but refrain from doing so only because, when we dictated the order in court, we had not done so. This, we hope, would not embolden the Government of West Bengal to again re-argue an issue which has been so decidedly rejected by this Court on so many



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occasions, including the present.

24. Ms. Bhattacharjee pointed out for correct interpretation of Rule 5(2) of the IPS (Cadre) Rules, 1954 is pending before the Supreme Court. We have taken the submission on record.

25. As it happened in *Sagar*, we have been told, towards conclusion of dictation in Court, that the MHA has issued an order transferring the respondent to UP, and that the West Bengal government has also only to issue a relieving order. We direct it to do so, within 2 weeks from today.

26. The writ petition is accordingly dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 14, 2025/aky

[Click here to check corrigendum, if any](#)