
(2018) 05 MP CK 0183

In the Madhya Pradesh High Court

Case No : Writ Petition No... 23549 Of 2017

Amar Singh Kushwaha

APPELLANT

Vs

State Bank of India & Ors

RESPONDENT

Date of Decision : 28-05-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2018) 05 MP CK 0183

Hon'ble Judges : S.A. DHARMADHIKARI, J

Bench : Single Bench

Advocate : Deepak Chandna, Raju Sharma

Final Decision : Dismissed

Judgement

In this petition under Article 226/227 of the Constitution of India, the petitioner, who is working on the post of guard with the respondents/Bank, has

assailed the order dated 05/12/2017 (copy of the order not received by the petitioner) by which, he has been transferred from Main Branch, Bhind to

Joura, District Morena .

(2) Learned counsel for the petitioner submits that earlier, the petitioner was transferred to Gata Branch Bhind vide order dated 24/04/2015.

Aggrieved by the said order, the petitioner filed writ petition No.5727/2015 in which it was directed that no coercive action shall be taken against the

petitioner. Thereafter, under the direction of this Court, the petitioner joined at Bhind but grievance of the petitioner was that respondents are not

paying salary though he is working honestly with full dedication at Bhind. This Court vide order dated 12/05/2017 disposed of the writ petition with the

direction that petitioner shall be paid salary since the period he has joined at the SBI, Main Branch, Bhind within one week and for interregnum period

i.e. from the date of transfer till the date of joining at Bhind, the petitioner may file representation raising all his grievances, which shall be decided in

accordance with law by the competent authority.

(3) Learned counsel for the petitioner submits that despite direction, the representation has not been decided and salary outstanding has also not been

paid. Subsequently vide order dated 16/12/2017, he has been transferred from Main Branch, Bhind to Jaura, District Morena without there being any

administrative exigency. Son of the petitioner namely Puran Singh who is aged about 32 years is mentally and physically handicapped and there is no

one in his family to take care of his son. As per clause 3(i) of circular dated 19/02/2007, female employees above 54 years of age and male employees

above 55 years of age will be exempted from re-deployment outside the center where they are posted; however they may be re-deployed/transferred

at the center itself at other branch upto the age of 57 years. The case of the petitioner is squarely covered by the said circular inasmuch as he is aged

56 years as per the service record and there are four branches of the respondents/Bank at Bhind where he can be very well accommodated. It is

further submitted that as per para 2 and 3 of the circular dated 21/10/2014, a government employee who is care taker of disabled child may be

exempted from routine exercise of transfer. The petitioner has preferred representation to the respondents but the same has not been decided,

therefore, he is left with no alternative but to knock the doors of this Court for redressal of his grievances.

(4) On the other hand, learned counsel for the respondent/Bank submitted that the petitioner was posted as Customer Assistant in respondent

No.4/Main Branch Bhind. The petitioner's behavior towards the customers of the Bank was very bad. Number of complaints have been received

against the petitioner in relation to the misbehavior, abusing, threatening and even tearing of cheque. Even other banks have also made various

complaints regarding misbehavior against the petitioner. Banking business requires politeness, good behavior and decent language while dealing with its

customers. Even staff of the Branch are also afraid of him. Banking business requires confidence in the employee. Due to the aforesaid illegal

activities of the petitioner being conducive to the interest of bank, it was felt necessary by the management of the bank to transfer the petitioner

instead of taking any coercive/disciplinary action against him.

(5) It is further submitted by the learned counsel for the respondent/Bank that it is well settled in law that the transfer is an incidence of service.

Which employee is to be posted where, is a matter for the appropriate authority to decide. Until and unless the transfer is vitiated by mala fide or is

made in violation of statutory provision, the Court cannot interfere with the order of transfer. The Supreme Court while dealing with the scope of

judicial review in the matter of transfer, held that transfer is an incidence of service and normally should not be interfered with by the Court. If any

administrative guidelines regarding transfer of an employee are violated, at the best the same confers the right on the employee to approach the higher

authorities for redressal of his grievance. (See: Union of India and Others Vs. S.L. Abbas, (1993) 4 SCC 357, State Bank of India Vs. Anjan Sanyal

and others, (2001) 5 SCC 508, Public Services Tribunal Bar Association Vs. State of U.P. and another, (2003) 4 SCC 104, State of U.P. and Others

Vs. Gobardhan Lal, (2004) 1 SCC 402, R.S. Chaudhary and Others Vs. State of M.P. and Others, ILR (2007) MP 1329, Government of Andhra

Pradesh V. G. Venkata Ratnam, (2008) 9 SCC 345 and State of Haryana and Others Vs. Kashmir Singh and Another, (2010) 13 SCC 306. It is also

contended that thrust of the petitioner is violation of provision of transfer policy and the transfer is contrary to the stipulation contained in transfer

policy. The Division Bench of this Court has laid down the law in the case of R.S. Chaudhary and Others Vs. State of M.P. and Others, [ILR (2007) ,

MP 1329]. In view of the above, no credence is given to the transfer policy/guideline relied upon by the petitioner. In R.S. Chaudhary (supra), it is

held:-

“35.....To elaborate the instructions or the guidelines do not confer any enforceable right on an employee. He has no vested right to remain at one

post or the other. However, while ordering a transfer the authority must keep in mind the guidelines issued by the Government whether an order of

transfer is passed in violation of the guidelines or the executive instructions. The action of the State Government should not be mala fide or malicious

and should be tested on the anvil and touchstone of acceptable reasonableness. In view of the aforesaid pronunciation of law by the Apex Court in

several cases, which we have referred hereinabove, we are of the considered

opinion that the transfer policy formulated by the State is not enforceable as the employee does have a right and the Courts have limited jurisdiction to interfere in the order of transfer. The Court can interfere if there is violation of mandatory statutory rule or if the action of the Government is capricious, malicious, cavalier and fanciful. What would constitute these components that would depend on facts of each as the same can be neither illustratively or exhaustively stated. In fact, that is not warrantable to be stated. We proceed to hold that in case an order of transfer is assailed on the ground that there has been violation of the policy, the proper remedy is to approach the authorities by pointing out the violation and it is expected of the authorities to deal with the same keeping in mind the policy guidelines with utmost objectivity.â??

(6) In view of the aforesaid pronouncement by the Apex Court as well as this Court, the petitioner has no statutory right to remain posted at District Bhind. Admittedly, the order of transfer has neither been passed in violation of any statutory provision nor the same suffers from vice of mala fide.

(7) For the aforementioned reasons, the writ petition fails and is hereby dismissed.