

(1998) 07 AHC CK 0088

In the Allahabad High Court

Case No : C.M.W.P. No. 13087 of 1998 and C.M.W.P. No. 41695 of 1997

Anurag Tripathi

APPELLANT

Vs

Bank of Baroda and others

RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1999) 1 AWC 799 : (1998) 3 UPLBEC 1765

Hon'ble Judges : S.H.A. Raza, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Anup Tripathi In Person, for the Appellant; V.B. Singh, for the Respondent

Final Decision : Disposed Of

Judgement

S.H.A. Raza and Bhagwan Din, JJ.—How a trivial matter can be dragged on unnecessarily before the Court? This case is an example of such an attitude. Mr. Anurag Tripathi who is petitioner before this Court is an employee of the Nainital Bank who is at present posted at Lohaghat Pithoragarh has knocked the door of this Court earlier by filing a Civil Misc. Writ Petition bearing No. 41695 of 1997 seeking the direction that he may be transferred to the plains on the ground of his ailment, as it was advised by the Doctors that his stay in the hills would jeopardise his health. After hearing learned counsel for the parties, this Court directed the respondents to consider and pass appropriate orders on the representation of the petitioner vide order dated 4.6.1997 within a period of three weeks of this order together with a copy of representation and communicate the same to the petitioner. As there was some delay in disposing of the representation, contempt proceedings were Initiated by the petitioner against the Bank authorities. Later on representation was decided wherein the Bank authorities rejected the medical certificate and stated that the petitioner was hale and hearty to discharge his duties in the hills.

2. Being aggrieved against the said order, the petitioner again filed present writ

petition. The petitioner has enclosed the medical certificate issued by the Chief Medical Superintendent. District Hospital. Haldwani, Nainital. This certificate shows that the petitioner was undergoing treatment and has been suffering from hyper-tension and Angina. The Chief Medical Superintendent was of the view that the diseases which the petitioner suffered, were liable to be aggravated in the Hill Areas. As the said certificate did not evoke positive response from the side of the respondents, the petitioner offered himself to be examined by some Cardiology Specialist in Sanjay Gandhi Post Graduate Institute of Medical Science. Lucknow, and requested the authorities to be present at the time of his examination. On 27.7.1998, the petitioner was examined by Dr. P. K. Goel, Associate Professor of Cardiology Department, Sanjay Gandhi Post Graduate of Medical Science, Lucknow, who reported that the petitioner was suffering from Cardiac Angina and he required certain test, the expenditure of which would amount to Rs. 1,15,000. There is a controversy regarding the medical examination. The contention of the respondents' side appears to be is that Mr. Anurag Tripathi avoided the presence of the Officers of the Bank at the time of his medical examination. This contention is belied by the letter dated May 18, 1998 issued by the Nainital Bank with regard to his request that some of the officials of the Bank may be present at the time of his examination at Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow. In reply to the said letter, petitioner was informed that matter in question was sub-judice before High Court at Allahabad. Learned counsel for the respondents Sri V. B. Singh, urged that the petitioner at the cost of the Bank may be examined at Escort, New Delhi or at All India Institute of Medical Science and if the Cardiologist of those Hospitals would report that the petitioner suffers from such ailment. Bank shall have no objection to post him in plains. Sanjay Gandhi Post Graduate Institute of Medical Science. Lucknow. Is one of the premier Institute of this country which has reported about the serious ailment of the petitioner and the Cardiologist of that Institute advised certain test which would Incur an expenditure of Rs. 1,15,000. We cannot even presume that the Chief Medical Superintendent of Pithoragarh as well as Associate Professor of Department of Cardiology. Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow would Issue false certificate.

3. Hence it will be a futile exercise for further examination of the petitioner. Non-presence of the Bank Officials at the time of the examination of the petitioner at Sanjay Gandhi Post Graduate Institute is not such a factor which may raise a doubt or suspicion about the genuineness of such a medical examination. Right to life has been safeguarded under Article 21 of the Constitution of India. Medical aid/treatment is inherent to the life and has been held to be fundamental right under the Constitution. The only desire of the petitioner is that he may be posted somewhere in the plains. Doctors have reported that his health condition may aggravate if he remains posted at Hills. It is matter of common knowledge that at a particular height, the extent of Oxygen is less. The persons who suffer from hyper-tension or cardiac diseases cannot face the climate of Hills particularly

when the height of Pithoragarh is 1,645 metre from the sea level. The posting of a person of such a place who suffers from cardiac disease may jeopardise his health.

4. We are of the view that the authorities of the Bank ought to have taken a humanitarian, sympathetic and magnanimous attitude towards the petitioner, but their stand appears to be rigid, may be for the reason that petitioner has dared to take recourse to law by filing writ petitions and contempt petition. Such an action on the part of the petitioner might have antagonised the High Officers of the Bank. But the Bank authorities should have not cared about the same as every citizen has got a right to approach the Court and whenever he comes before this Court and for the reason the authorities should not take an attitude which cannot be justified.

5. As the question involved in the present case is too trivial to drag on unnecessarily before this Court, hence after hearing the petitioner, who has appeared in person before this Court as well as learned counsel Sri V. B. Singh who has represented the Bank, we dispose of this writ petition with a direction to the respondents to transfer the petitioner to any branch of the Bank in any District of the plains within a month from today. They will also consider the request of the petitioner for the payment of his arrears of salary and pass appropriate order in accordance with law. In case petitioner approaches the Bank authorities by filing a representation regarding payment of salary, that would be considered and decided by the authorities concerned expeditiously say within a period of six weeks from the date of presentation of such representation.