
(2008) 03 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24523 of 2007

Bakarupanda Padmavathi

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Citation : (2008) 3 ALD 503 : (2008) 3 ALT 29 : (2008) 3 ALT 213 : (2008) 118 FLR 752 : (2008) 3 LLJ 463

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K. Sarvabhuma Rao, for the Appellant; S. Surya Prakash Rao, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner joined the service of the Bank of India, in the year 1982. At present, she is working as a Computer Operator. Up to August 2006, she was working in the SSI Branch of Visakhapatnam, and thereafter, she was transferred to the Overseas branch, in the same city. The 1st respondent transferred her to Samalkot Branch in East Godavari District, vide orders dated 5.11.2007. Consequential orders were passed by the 2nd respondent on 8.11.2007. The petitioner challenges the same.

2. The petitioner contends that she is a chronic patient of severe spondylitis, vertigo and other gynecological ailments, for the past 10 years, and that she is taking treatment at Visakhapatnam from various specialists. She submits that her transfer to the Overseas Branch was at her request, and her sudden transfer to a far off place is not justified, either on facts, or in law. She pleads that ever since the present Senior Manager has taken charge in the Overseas Branch, she is subjected to harassment and hardship, and at his instance, she is transferred to a distant place. Not being aware of the order passed by the 1st respondent on 5.11.2007, she raised objection as to the competence of the 2nd respondent, in passing the order dated 8.11.2007. She raised several grounds, while objecting

the order of transfer.

3. The 2nd respondent filed a counter affidavit, denying the allegations of the petitioner. He stated that the conduct of the petitioner at the Overseas branch was objectionable, and she was disturbing the conducive atmosphere. He referred to the various acts and omissions, on the part of the petitioner, and denied all the allegations made against him.

4. The 1st respondent filed an independent counter affidavit, stating that the transfer is on administrative grounds, and that the disciplinary proceedings are contemplated against the petitioner.

5. Sri K. Sarvabhuma Rao, learned Counsel for the petitioner, submits that though the order of transfer that emanated from the 1st respondent, does not make any reference to any acts of misconduct and does not indicate that the transfer is on administrative grounds, the consequential order passed by the 2nd respondent adds many things to it. He contends that the ill-health of the petitioner and that the fact that her husband is working at Visakhapatnam, ought to have been taken into account by the respondents, before ordering transfer, particularly when the posting to the Overseas branch was, at the request of the petitioner.

6. Sri S. Surya Prakash Rao, learned Counsel for the respondents, on the other hand, submits that the transfer is on administrative grounds, and continuance of the petitioner, at the Overseas branch, is resulting in disturbance to the conducive atmosphere. He submits that the petitioner is resorting to acts of misconduct, and causing harassment to the employees of the bank, as well as the customers.

7. The circumstances, under which the court can interfere with an order of transfer, are very limited. The prerogative of an employer to transfer, or post its employees, at a suitable place, depending on the convenience, is always recognized. Recognizing the hardship that is caused to the employees, on account of transfer to long distances, or the dislocation of the study of the children of the employees, the employers themselves framed regulations and guidelines, to bring about objectivity and fairness, in the matter of transfers. Such guidelines do exist in the 1st respondent bank also. Further, an employer is conferred with the prerogative of transferring its employees, in derogation of the relevant guidelines, in case it is warranted on administrative grounds. In such cases, a statement is to be contained to that effect.

8. The order of transfer of the petitioner passed by the 1st respondent, reads asunder:

It has been decided to transfer Smt. B. Padmavathi to our Samalkot Branch. Please relieve her immediately with instructions to report to Samalkot Branch.

Please forward to the transferee Branch her leave/Salary/Service Record, declaration regarding Staff Benevolent Fund Scheme (in original) as per Branch

Circular No. 87/183 dated 20.1.1993 and particulars of disciplinary action against the employee, if any.

Please advise us immediately after relieving Mrs. Padmavathi to Samalkot Branch.

This order does not state that the transfer was effected on administrative grounds, and that it is a transfer, pure and simple. In the process of implementing this order, the 2nd respondent addressed letter, dated 8.11.2007, to the following effect:

It has been decided by our Zonal Office to transfer you to Samalkot Branch.

You were on sick leave from 24.10.2007 to 27.10.2007, enclosing Dr. G. Venkateswara Rao, M.D (Gen) medical certificate dt. 28.10.2007, stating the reason as "IBS" (Irritable Bowl Syndrome). You are expected to report to duty on 7.11.2007 but you have not joined the duty on 7.11.2007. Please give your explanation for the same.

As per Zonal office instructions, we hereby relieve you from our branch today i.e. 8.11.2007 with instructions to report to our Branch Manager, Samalkot branch on 10.11.2007. You may route all your correspondence through our Samalkot branch.

9. Along with the counter affidavit, the 2nd respondent enclosed copies of certain proceedings and communications. In the letter dated 12.11.2007, addressed to the Branch Manager, Samalkot, the 2nd respondent stated as under:

3. Today at the opening hours of business, she (petitioner) again came to the branch and asked us to allow her to work here. We have refused the same and told her that she stands relieved from our branch as per VOS: DVR: 142, dt. 8.11.2007. She has asked us to accept the leave letter for extension of sick leave from 7.11.2007 to 8.11.2007, for which we put our remarks on the application itself stating that since you are already transferred to our Samalkot branch vide Lr. No. 142, dt. 8.11.2007, you may submit the same to the branch Manager, Samalkot branch.

If one compares the letters dated 8.11.2007 and 12.11.2007, addressed by the 2nd respondent, a clear contradiction is evident. On the one hand, he treated that the petitioner ceases to be an employee in their branch, with effect from 8.11.2007, and on the other hand, sought an explanation, for the previous day's absence. Viewed in isolation, this may not appear to be an important aspect. However, the views expressed by the 2nd respondent, vis-a-vis the functioning of the petitioner in his branch, in his letter dated 22.10.2007 addressed to the 1st respondent, would naturally disclose that he had a totally negative opinion about the petitioner and he wanted her transfer, at any cost. The expression used by him against the petitioner, does not befit that of a senior official of the bank. It is not as if an erring employee had to be tolerated by an institution. If there are any specific instances of misconduct, they can certainly be enquired into, in a dispassionate manner, and if it emerges that the employee had resorted to acts

of misconduct, necessary disciplinary action must entail. Subjecting an employee to harassment of one kind or the other, would not add to the credibility of the institution.

10. From the tone and tenor of the counter affidavit filed by the 1st respondent, one can gather that he was totally guided by the report submitted by the 2nd respondent. The fact that the petitioner is a woman employee, with certain medical problems, and that her husband is employed in the same bank in Visakhapatnam, do not appear to have been taken into account. The facts and circumstances of the case clearly disclose that the transfer of the petitioner is punitive in nature. If the respondents are of the view that it is not at all possible to continue the petitioner in the Overseas branch, posting in another branch in the same town, or in the branch, where the husband of the petitioner is working, ought to have been examined. In the name of making an ordinary transfer, the respondents have made several allegations. The petitioner also ought to have maintained some restraint, in the matter of protesting against any decisions affecting her. The whole episode is not in good taste.

11. For the foregoing reasons, the writ petition is allowed, and the order of transfer is set aside. It is, however, left open to the 1st respondent to examine the matter afresh, and ensure that if the transfer of the petitioner becomes inevitable, she is posted to any branch, in or around Visakhapatnam. There shall be no order as to costs.