
(1990) 04 CAL CK 0042
In the Calcutta High Court
Case No : Matter No. 265 of 1990

Dr. Ashoke Kumar Roy

APPELLANT

Vs

United Bank of India and Others

RESPONDENT

Date of Decision : 20-04-1990

Acts Referred:

Regional Rural Banks Act, 1976 — Section 11(1)

Citation : (1991) 1 CALLT 130

Hon'ble Judges : Monoranjan Mallick, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Monoranjan Mallick, J.—The writ petitioner who is working as Assistant General Manager (Computerisation), United Bank of India, Head Office, has moved this Court against the posting order No. 236/89 dated 14th December 1989 being Annexure "E" to the writ petition and the order being Annexure "G" dated 17.1.1990 by which he has been released from the Computerisation Department of the Head Office as at the close of business of 17th January, 1990 to take up the assignment as Chairman of the Gour Gramin Bank.

2. The petitioner has made representation against the posting/transfer order but the same has been turned down by the respondents. In this writ petition he challenges the impugned order firstly on the ground that the decision to send the petitioner on deputation to Gour Gramin Bank as Chairman amounts to demotion because he is an officer of Scale No. V and only the Scale III officer is to hold the post of Chairman of Gour Gramin Bank. Secondly, the order of posting/transfer is illegal in as much as he was sent on deputation to Gour Gramin Bank but before sending the petitioner on deputation to Gour Gramin Bank, no option and/of consent was taken from the petitioner for such deputation which according to the petitioner is in complete violation of the provision of the Circular dated 7.4.1982, thirdly, the petitioner has represented his case against the said posting/transfer order on the ground of his physical inconvenience to accept the post as he had

fracture in his leg in 1987 and he has been advised by the doctor to restrict his movement and it is not possible to undertake extensive tour which he has to do as Chairman of the Gour Gramin Bank. Fourthly, it is also contended that there are other 22 Scale V officers and the petitioner holding 11th position has been picked up arbitrarily and without any sound basis and the action of the Respondent is therefore arbitrary, discriminatory and liable to be set aside.

3. The Respondents in their affidavit-in-opposition have contested all the above contentions of the writ petitioner. It is submitted that the Gour Gramin Bank having more than 177 branches has to be manned by an officer of Scale V in view of the Central Government directive issued in 1987 and the petitioner is not going to be demoted in his rank and he has been posted in the Gour Gramin Bank on taking the approval of the National Bank for Agriculture and Rural Development (hereinafter called the NABARD), that regard being had to the petitioner's quality, performance and experience in Rural Banking, the respondent has selected him bonafide and that the impugned order is neither arbitrary nor discriminatory. It is also disputed that the petitioner will have to undertake to constant tour and it is submitted that the petitioner being the Chairman of the Gour Gramin Bank will be in a position to look his own business and it will be within his discretion either to make the tour himself or to direct the other officers to do the job for him. It is also submitted that the petitioner has been sent on deputation for a period of three years and over and above his pay and allowances he would get the deputation allowance at the rate of 15% of his pay and therefore he will be getting more financial benefit on being deputed to Gour Gramin Bank. It is further submitted that in 1982 the Respondent Bank called for some option for deputation to the Gramin Banks sponsored by the United Bank of India but since then that system has been discontinued and several officers of the bank as is mentioned in the list as annexure "B" to the affidavit-in-opposition which shows that the officers of the bank have been posted as Chairman of the different Regional Rural Banks without seeking option.

4. In the affidavit-in-reply, all these contentions have been refuted by the petitioner and the additional grounds have been taken against the impugned posting/transfer. It is submitted that u/s 11(1) of the Regional Rural Banks Act 1976, the Chairman of the Rural Bank has to be appointed by the sponsored bank, that in the instant case by the purported order of posting No. 336/89 the petitioner has been sought to be transferred as Chairman of Gour Gramin Bank but such transfer cannot be made in as much as the transfer cannot be treated as an appointment and the Respondents cannot post a person as Chairman of the Regional Rural Bank without making such appointment. It is also contended that by issuing the order of transfer, the respondents are seeking to change his condition of service because the respondents cannot issue any order of transfer to the petitioner who is an officer of United Bank of India to Gour Gramin Bank which according to the Regional Rural Banks Act 1976 shall be a body corporate with a perpetual seal and is a separate entity from the United Bank of India under whom the petitioner is employed as an officer in Scale V.

5. It is necessary to take up the first point which is the petitioner has raised in the affidavit-in-reply. There is no doubt that a Regional Rural Bank established under the Regional Rural Banks Act 1976 is a separate entity and there is no doubt that the respondent United Bank of India is the sponsor bank of the Gour Gramin Bank, a Regional Rural Bank. The above Act clearly shows that the sponsor bank has the duty to provide such managerial and financial assistance to such Regional Rural Bank during the first five years of functioning as may be mutually agreed upon by the sponsor bank and the Regional Rural Bank vide Section 3(3) of the Act. But the Central Government has got the power to extend such period. It is clear from the documents disclosed that the United Bank of India, the sponsor bank is continuing to provide such managerial and financial assistance to Gour Gramin Bank. Section 11 as amended by the Regional Rural Bank (Amendment) Act 1987 has given the power to the sponsor bank to appoint the Chairman of the Regional Rural Bank. Section 11 clearly shows that the sponsor bank may appoint one of its officers as Chairman and for that purpose the approval of NABARD is required to be taken. In this particular case, the approval of the NABARD to appoint the petitioner as Chairman of Gour Gramin Bank has been duly obtained as is gathered from the annexure "C" to the affidavit-in-opposition. After getting such approval, the posting order has been issued. It is submitted on behalf of the petitioner that the petitioner has to be appointed u/s 11(1) and the posting/transfer order is invalid as an appointment.

6. Mr. Aninda Mitra, learned counsel appearing for the respondents has submitted that the petitioner being an officer of the bank, the appointment u/s 11 has been made by issuing him the posting order which tantamounts to an appointment u/s 11(1) of the Regional Rural Banks Act 1976 and that the court has to look into not the form but the substance of the order. It is also submitted that if the petitioner were appointed straightway without issuing him the posting order which means that he has been sent on deputation as Chairman of Gour Gramin Bank, the petitioner's service condition would have been affected because straightway appointment order u/s 11(1) of the Act would have the effect of severing the connection of the petitioner from the bank and, the petitioner being an officer of the Bank, the Respondent is exercising its power of appointment u/s 11(1) of the Act by way of posting order so that after the deputation period is over the petitioner can rejoin under the respondents and continue to work under them.

7. It is also submitted that in previous occasion also an officer of the Bank while posted on deputation to any Gramin Bank as Chairman were posted by issuing such posting order and when the respondent bank is the authority to appoint the Chairman of Gour Gramin Bank as the sponsor bank and when on the authority of Section 11, the respondents have the power to appoint any of its officers to any Gramin Bank as Chairman on taking the approval of NABARD and when that approval has been taken in case of the petitioner, then it is. virtually an appointment order u/s 11(1) and in case of appointment of any person other than an officer of the bank straightway appointment order would have to be

issued but the petitioner being an officer of the bank such a course has been adopted in order to protect the interest of the officer of the bank.

8. On carefully considering the provisions, of Section 11 of the Act and on perusing the impugned posting order and on considering the documents annexure with the affidavit-in-opposition, I am of the view that there is strong force in the above submission of Mr. Mitra. In order to appoint the petitioner as Chairman of Gour Gramin Bank, the approval has been taken from NABARD by United Bank of India and NABARD has approved his appointment for a period of three years. In that view the appointment of the officer of the bank as Chairman of Gour Gramin Bank by the competent authority of the sponsored bank has been made by issuing the posting order. The petitioner in his writ petition also treats the same order to be a posting order on deputation. The Court shall look into the substance of the order and not its form. It is an appointment order for a period of three years on deputation and the petitioner being an officer of the bank such appointment order has been issued by way of a posting order and on expiry of the deputation period the petitioner shall return back, to his parent bank. Therefore, there does not appear to be any illegality by the Respondent by appointing the petitioner as Chairman of Gour Gramin Bank u/s 11(1) of the Act by issuing the posting order Annexure "S"

9. The petitioner also submits that his condition of service is being violated by issuing the posting order to Gour Gramin Bank which is a separate legal entity and he cannot be posted there without his option or consent.

10. The petitioner has been appointed as an officer of the United Bank of India by the letter dated 24th February 1970/February 20, 1970 (vide annexure A) under the terms and conditions of his employment Clause 12 he is to work in any of the offices of the Bank. The Respondents, have failed to produce anything to show that the petitioner had the obligation to work in any Gramin Bank sponsored by the Bank under the terms of his employment. It is true that the United Bank of India being the sponsor Bank of Gour Gramin Bank, a Regional Rural Bank, has the obligation to provide managerial assistance to the said Bank u/s 11(1) of the Act and it can appoint any officer of the Bank as Chairman of a Gramin Bank with the approval of the NABARD. In the case of the petitioner the approval of the NABARD had been taken. But if the petitioner had no obligation to serve in any Gramin Bank under the terms and conditions of his employment under the United Bank of India and when Gour Gramin Bank is a separate legal entity under the Act, then before sending the petitioner to the Gour Gramin Bank, the Bank has to obtain his consent or option.

11. It is pointed out by the learned Advocate for the Respondents that in 1982 when the circular dated 5th April 1982 (Annexure H) was issued the bank took option of officers before deputing to the Gramin Bank in different capacities but the Bank has since then discontinued such practice and has been posting officers to the said Regional Rural Banks sponsored by it without taking such option and in Annexure "B" to the affidavit-in-opposition has submitted a list of officers from

whom no option was taken before posting them to the Gramin Banks as Chairman. Even if the same be true that does not confer upon the Bank legal authority to post an officer of the Bank against his consent on deputation as Chairman of the Gramin Bank. When the officers of the Bank posted as Chairman of the Gramin Banks accepted the posting as it offered better service conditions as they were entitled to 15% of pay as deputation allowance they did not refuse even if no option was taken from them, That does not mean that when an officer from whom no option was taken, on being posted, refuses to join as Chairman of the Gramin Bank on the ground of his personal inconvenience the Bank would force him to join the post of Chairman of the Gramin Bank. If under the terms of the contract of employment the petitioner had such obligation to serve under any Gramin Bank sponsored by United Bank of India then the Respondent could have forced him to be so posted. But admittedly the petitioner has no such obligation. Therefore only if the petitioner opted to be so posted or consented to such posting the Bank could post him as Chairman of Gramin Bank lawfully. If the said posting were forced upon him that would violate the terms of employment of petitioner.

12. There is. no doubt that in 1982 Bank has issued a Circular annexed in the writ petition asking the different categories of officers to exercise their option to be posted in the Gramin Banks etc. sponsored by it. In that circular it was indicated that if sufficient number of officers did not opt the Bank would deploy them to such posts without taking such option. But that is an administrative circular which does not have any legal validity. If the posting of the officers of the Bank to Gramin Banks sponsored by the Bank were made part of the conditions of employment by amending the Service Rules of the Bank officers in accordance with the law, then and then only the Bank can force any officer to accept a posting in any Gramin Bank.

13. The fact that several officers have accepted such posting in the Gramin Bank would indicate that officers complied with the orders of the Bank finding the said posting to be more financially advantageous to them. May be they are actuated with the spirit of the public service because it will subserve great public interest and bolster up the rural economy if the Gramin Bank are administered well. But if a particular officer like the petitioner makes representation pointing out his personal and physical difficulties as the ground for not accepting the posting it would have been better if the Bank did not insisted on his joining to the post when legally he could not be forced to join as Chairman of Gour Gramin Bank as he was not appointed on the condition to serve in any Gramin Bank sponsored by the Bank.

14. In that view of the matter, when without obtaining option from the petitioner or without his consent he cannot be posted as Chairman of Gramin Bank even though the United Bank can post an officer of the Bank as Chairman of the Gramin Bank u/s 11(1) of the Regional Rural Banks Act, 1976 on taking approval of the NABARD yet if the concerned officer did not consent to such posting the

Respondents cannot force him to join to that post when he is not willing to accept that post.

15. However, on considering the fact that the Central Government has in 1987 indicated that Bank should post a Scale V officer as Chairman of the Gramin Bank having more than one hundred branches such posting would not have effect of demoting the petitioner. His pay and allowances would have been protected and over and above he would have got deputation allowance of 15% of pay and a bungalow and a car if he joined as Chairman of Gour Gramin Bank. It is true that United Bank of India (Officers) Service Regulation of the Bank Officers have in Regulation 25 (V) made provision of deputation allowance for the Bank Officers on being deputed outside the Bank.

16. But that does not mean that the Bank is competent to post an officer outside the Bank on deputation without his consent. If the Officer consents to such deputation then he will be entitled to such deputation allowance. But that is a matter of option of the officer.

17. In the result the writ petition is allowed. The posting order No. 230/89 (Annexure D) and the release order being Annexure "G" to the writ petition are hereby quashed.

18. All interim orders are vacated.

There is no order as to costs.

All parties to act on a signed copy of the operative portion of the judgment upon usual undertaking.