

(2009) 10 CAL CK 0014

In the Calcutta High Court

Case No : C.W.J.O.S.W.P. No. 1679 of 2008 With C.C. No. 26 of 2009

Gautam Sengupta

APPELLANT

Vs

Punjab and Sind Bank and Others

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Citation : (2010) 126 FLR 730

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Tapas Banerjee and K. Dey, for the Appellant; J. Kar and Somya Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Talukdar, J.—Assailing the order of transfer dated September 19, 2008, the petitioner approached this Court with an application under Article 226 of the Constitution.

Grievances of the petitioner, as ventilated, may briefly be stated as follows:

The petitioner was appointed as a clerk in Punjab and Sind Bank on May 7, 1973. There had been no complaint whatsoever during his protracted service career. Petitioner is now posted as Special Assistant (Clerical Grade) viz. R.C.C, Kolkata Branch. He joined in the said post about three years back. He is the General Secretary of All India Punjab & Sind Bank Staff Organization, President of Bengal Provincial Bank Employees' Association. There are 26 public sector banks of which respondent-bank is one. The wage pattern of employees of all such banks are revised periodically by Bipartite Settlement. First such settlement was signed on October 19, 1966. In view of certain controversies relating to revision of wage etc. the Union decided to go on strike on April 2, 2008. The Regional Labour Commissioner (Central) called on all the parties to a conciliation proceeding on March 27, 2008. In such view of the matter, the strike scheduled to be held on April 2, 2008 was postponed.

2. The authorities, however, took a harsh attitude and started harassing the petitioner for no fault on his part. The bank started a policy of promoting the clerks to officers. The said policy of mass promotions was initiated without following the norms as prescribed by the relevant rules. It was creating much problem as it gave rise to abnormal vacancies in the clerical grade, which again hampered the smooth functioning of the bank. In West Bengal 80 clerical staff were promoted to officer grade. Voice of protest was raised and representation was submitted in this regard.

3. The authorities out of vengeance served the petitioner with a purported charge-sheet dated May 30, 2008, which was received by him on June 6, 2008. There were frivolous and baseless allegations against him. This was done in order to put him under pressure. The facts complained of allegedly took place during 1995-2005. The petitioner was not served with the copy of the annexures and as such, he could not submit reply. By letter dated June 10, 2008, he requested the bank respondent to supply the referred records/documents. The bank authority did not respond to the same. The petitioner, thus, could not submit his reply to the said charge-sheet dated May 30, 2008. The charge-sheet is stale, mala fide and without any basis. The respondent authority by letter dated June 24, 2008, in response to repeated requests and representations, supplied some annexures of the purported charge sheet, which were not authenticated nor properly marked. Even then the respondent authorities did not supply the entire materials as required for responding to the charge-sheet. The respondent Nos. 2 and 4, in order to put further pressure upon The petitioner, issued another charge sheet alleging, inter alia, that The petitioner is guilty of taking part in trade union activities. Union gave a call for strike on September 23, 2008. The respondents to terrorize the employees issued illegal order of transfer dated September 19, 2008 on The petitioner. Petitioner and also the Union lodged written petition to the respondents. Respondent No. 3, however, did not allow The petitioner to join office.

4. The petitioner being the General Secretary of a registered and recognized trade union has every legal right to participate in trade union activity. The respondent authorities particularly respondent Nos. 2 and 4 in colourable exercise of power and to vindicate their grudge against The petitioner issued such order of transfer. This was done in defiance of the settled norms and in order to restrain The petitioner from taking part in trade union activity. Such order of transfer had been issued mala fide. It had been issued by respondent No. 4, who had no authority to issue such order. Petitioner was sought to be released from his present posting even without making over of charge and without taking recourse to the usual procedure for release upon transfer. The Union by letter dated September 8, 2008 protested against such illegal act.

5. In absence of any proper response on the part of the respondent authorities, the union gave a call for strike on September 23, 2008 on three issues:

(1) Illegal charge-sheet notices issued to the petitioner,

(2) Of not giving mandate for wage revision,

(3) Recruitment of workmen cadre against mass promotion and stoppage of repressive measures against employees and violation of settlements by the bank. On September 19, 2008 a reconciliation proceeding was held by the R.LC. (C).

6. The Rules prescribed that the rotational transfer of employees can be made only after every six years. The petitioner in the present case has been sought to be shifted after three years and this was in violation of the statutory rules.

7. For all such reasons, The petitioner filed his application under Article 226 of the Constitution praying for direction upon the respondents for not giving effect or further effect to the purported order of transfer dated September 19, 2008.

8. Respondents contested the case by filing Affidavit in Opposition wherein all the material allegations made by the writ petitioner had been denied. Respondents claimed that in absence of any mala fide or infringement of any right or fundamental right, the claim of the writ petitioner cannot be entertained. Respondents categorically mentioned that the petitioner had been relieved from R.C.C., Kolkata Branch of the bank and by order dated September 19, 2008, he had been posted to the Lindsay Street Branch of the bank. While specifically denying the allegations of arbitrariness on the part of the respondent authorities the respondent stated that the person promoted from the rank of the rank of officer having higher duties and responsibilities and of course, better remuneration, opted and gladly accepted promotion and there was no dispute or unrest over the same. The petitioner is the office-bearer of the Union since 1985. He never complained of any vengeance on the part of the bank authorities for having raised protest during his tenure as office-bearer. Charge-sheet dated May 30, 2008 was issued to the petitioner on various acts of financial irregularities allegedly committed by the petitioner. The writ petitioner being the office bearer of a trade union cannot claim immunity from disciplinary proceeding, which is not permissible in law. No case of mala fide or victimization could be made by the petitioner. Such order of transfer was not issued to camouflage any personal grudge of the respondent No. 2. Like all other cases of normal transfer, the Zonal Manager gave the note approval in the matter of transfer of the petitioner and the Chief Manager communicated such order to the petitioner. The petitioner by the impugned order of transfer had just been shifted from one branch to another, which is at a distance of about 1.5 k.m.

9. Dismissal of the writ application has, thus, been sought for.

The writ petitioner by filing the Supplementary Affidavit alleged that the respondents purportedly created vacancy to accommodate the petitioner at Lindsay Street Branch on September 19, 2008 and transferred Mr. Sukanta Chakraborty, a clerk of Lindsay Street Branch to Alipore Branch.

10. It is well-settled that ordinarily an order of transfer of an employee from one place to another does not deserve to be interfered with in response to an

application under Article 226 of the Constitution. Transfer is an incident service and it is sometime essential in order to ensure smooth functioning of the organization. It reduces the scope of growth of vested interest. It also helps to ensure an equitable share of the plus and the minus of service career. This does not mean that this Court has no power whatsoever to interfere with an order of transfer. Such interference may sometime be essentially required in order to protect an employee against the unjust and cruel action on the part of the authorities. Gone are the days where laws grind the poor and the rich men rule the law. Thus, a Writ Court can very well interfere when it is satisfied that a particular order of transfer suffers from mala fide or it is made in violation of any statutory rule.

11. Learned Counsel for the petitioner referred to the Sastry Award in support of his contention that the impugned order of transfer is against the said award; which has been modified by subsequent award and bipartite settlement followed by all the banks. Such award indicates that except in a very special case whenever the transfer of any of the office bearers of the registered bank employees' union i.e., President, Vice-President and Secretary is contemplated at least five clear working days' notice should be put up on the notice boards of the bank. The said notice is sine qua non in view of the right of representation. Learned Counsel for the petitioner submitted that the impugned order of transfer is in total derogation of para 535 of the Sastry Award.

12. Referring to the decision of the learned Single Bench of this Court in the case between S.V. Singh v. Union of India and others (1992) CWN 276, it was submitted by learned Counsel for the petitioner that if the order of transfer is tainted with malice, the Writ Court would be perfectly justified in interfering with the same. This Court is required to investigate as to whether an order of transfer can be said to be an order for administrative exigencies.

13. Similar view was taken by the learned Single Bench in the case between Nikhil Chandra Dey and others v. Steel Authority of India Limited and others (1992) CWN 730.

14. Attention of the Court was invited to the Apex Court decision in the case between Tejshree Ghag Vs. Prakash Parashuram Patil and Others etc. etc., . The Apex Court in the facts and circumstances of the said case observed that the orders of transfer were passed by the authority in purported exercise of its executive power. Executive power can be exercised only in terms of the extant rules. Where executive order results in civil consequences, principles of natural justice are required to be complied with prior thereto.

15. In the case between Raghavendra Mathur Vs. Allahabad Bank and Others, , it was held that "there cannot be any dispute that banks are entitled to transfer its staff on the exigencies of the service from one particular branch to another and the management is in the best position to judge how to transfer its staff between different branches, but it has to be seen whether the impugned order of transfer

is in conformity with the policy regarding transfer which has been agreed upon by the parties and which has subject to the Sastry Award."

16. On behalf of the petitioner, reference was also made to the decision of the Apex Court in the case between Sarvesh Kumar Awasthi v. U.P. Jal Nigam and others (2003) 11 SCC 740. The Apex Court held that transfer of officers is required to be effected on the basis of set norms or guidelines without allowing any political interference in regard thereto.

17. In the case between Dr Ramesh Chandra Tyagi Vs. Union of India (UOI) and Others, , the Apex Court held that an order of transfer, if contrary to rules, is nonest in the eye of law.

The relevant portion of paragraph 535 of Sastry Award is reproduced as follows:

Para 535 of Sastry Award.

535.(1) Every registered bank employees" union, from time-to-time, shall furnish the bank with the names of the President, Vice-President and the Secretaries of the Union-

(2) Except in very special cases, whenever the transfer of any of the above mentioned officer bearers is contemplated, at least five clear working days, notice should be put up on the notice boards of the bank of such contemplated action;

(3) Any representations, written or oral, made- by the union shall be considered by the bank;

(4) If any order of transfer is ultimately made, a record shall be made by the bank of such representations and the bank"s reasons for regarding them as inadequate; and

(5) The decision shall be communicated to the union as well as to the employee concerned.

According to learned Counsel for the petitioner, by shifting the writ Petitioner from one branch to another and by releasing him therewith, there had been clear violation of such para 535 of Sastry Award.

In response to this, learned Counsel for the respondent-bank submitted that transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fide. In this context, reference was made to the decision of the Apex Court in the case between Union of India and Others Vs. H.N. Kirtania, .

18. In the case between Ms. Shilpi Bose and others v. State of Bihar and others, 1995 (71) FLR 1011. it was held that the Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule

or on the ground of mala fide

19. In fact, the Apex Court in the said case further observed that even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department.

20. On behalf of the respondent-bank reference was made to the decision of the Apex Court in the case between State of U.P. and another v. Siya Ram and another 2004 (102) FLR : 2004 (21) AIC 954 (SC), in support of the contention that transfer order unless shown to be mala fide or in violation of statutory provisions are not open to interference by Court in exercise of its power of judicial review.

21. Learned Counsel for the respondent-bank sought to derive further support and strength from another decision of the Apex Court in the case between State of U.P. and Others Vs. Gobardhan Lal, . It had been clearly observed that transfer is prerogative of the authorities concerned and Court should not normally interfere therewith, except when (i) transfer order shown to be vitiated by main fide, or (ii) in violation of any statutory provision, or (iii) having been passed by an authority not competent to pass such an order.

22. After due consideration of all relevant facts and circumstances and the materials available on record, I find it extremely difficult, if not impossible, to brush aside the assertion made on behalf of the respondent-bank that the paragraph 535 of the Sastry Award cannot be said to be mandatory and/ moreover, it does not lead to any enforceable right, more so, in view of bipartite settlement.

23. There is no dispute that the writ petitioner is leader of the bank employees and in view of his occupying responsible posts in the various unions of the employees, he has a major constructive role to play in the smooth functioning of the bank. The days of "tooth for a tooth and eye for an eye" approach are gone. Today, we are living in a society which essentially believes that one must not negotiate out of fear but he must not fear to negotiate. Now it is the time for more and more adjustment in order to ensure co-existence and to guard against co-extinction.

24. On behalf of the petitioner it had been alleged that out of vengeance the respondent authority initiated a disciplinary proceeding against the writ petitioner. The same being not a subject-matter of the present writ application, I do not think any discussion in that regard is at all called for.

25. In my considered opinion: there can be no rational justification for raising any grievance over such an order of transfer. Fortunately, there is no scope for such rigidity in functional life. The agony arising out of an order of transfer to a place at a distance of 1.5 k.m. can at best reflect arrogance and intolerance of an employee. There cannot be any reason whatsoever for entertaining such

grievance the Petitioner having miserably failed to establish that the impugned order of transfer suffers from any malice or that it is in violation of any statutory rules, I find no scope for any interference.

26. It appears that alleging violation of this Court's Order dated October 16 2008, an application being C.C No. 26/2009 was filed. The applicant/writ petitioner claimed therein that the respondent authority clearly violated the said order of this Court. It appears by order dated October 16, 2008 while directing the respondent bank to file Affidavit-in-Opposition, this Court directed the parties to maintain status quo as regards the posting of the petitioner for a specific period. From the materials available on record and in view of the claim that the order of transfer was given effect prior thereto, it cannot be said that there had been any conscious violation or defiance of this Court's order. As such, the said application being C.C. No. 26/2009 stands disposed. Accordingly, the writ application being W.P. No. 1679/2008 fails and be dismissed.

27. There is no order as to costs. Interim order, if any, stands vacated.

28. Xerox certified copy of the judgment and order be supplied to the parties, if applied for, as expeditiously as possible.

S.P. TALUKDAR, J. 29. Later:

30. Immediately after passing of the said judgment and order, prayer is made on behalf of the writ petitioner for stay of operation of the same. It is opposed by the learned Counsel for the respondents. After due consideration, the judgment and order dated October 30, 2009 be stayed for a period of two weeks from this date.

31. Urgent xerox certified copy of this judgment and order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.