
(2002) 05 CAL CK 0023

In the Calcutta High Court

Case No : Writ Petition No. 4997 (W) of 2002

Howrah District Central Co-operative Bank Limited
Employees' Union

APPELLANT

Vs

Howrah District Central Co-operative Bank Limited and
Others

RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(1)

Citation : (2002) 95 FLR 569 : (2002) 3 LLJ 760

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Amaresh Ch. Chakraborti and Ekramul Bari, for the Appellant; Subrata Bose, Bobinda Chowdhury, S. Bose and Nabanita Pal for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This writ petition is made basically challenging the order of transfer issued, vide memo dated January 16/17, 2002, being annexure P-11 to the writ petition and also from altering the service conditions of the workmen/members of the petitioner, i.e., union, during the pendency of the conciliation proceeding before respondent No. 3. A further order is sought for declaring the impugned promotions as transfers made during the pendency of the conciliation proceedings are void ab initio.

2. This writ petition has been filed on April 10, 2002, after a period of about three months from such order. It further appears to this Court from a communication dated February 19, 2002, under annexure P-13 to the writ petition that the Deputy Labour Commissioner, Howrah, has written to the concerned co-operative bank requesting them not to take any action that might stand in the way of maintaining a cordial atmosphere which is needed in resolving the dispute amicably. Thereafter, he called upon them in the office for a

separate discussion on March 4, 2002. Even from March 4, 2002, till the date of filing of the writ petition on April 10, 2002, no explanation is given.

3. This writ petition has been invoked since the employer is a co-operative bank and, according to the petitioner, the matter has to be heard by the writ Court having a jurisdiction of co-operative matters. According to me, the restriction u/s 95 of the West Bengal Co-operative Societies Act, 1983, says that any dispute can be referred to the Registrar excepting the dispute relating to disciplinary action taken by the co-operative societies against the paid employees of the co-operative societies or the terms and conditions of service of the paid employees of the co-operative societies. Therefore, from a plain reading of Section 95 it appears that the Registrar of Cooperative Societies is capable of hearing either by himself or by his subordinates any dispute in the nature of civil litigation prescribed therein. But he or his subordinates are debarred from taking any matter relating to disciplinary action or terms and conditions of the service. Therefore, when a conciliation proceeding is already pending before the Deputy Labour Commissioner, I do not find any reason to interfere with the same.

4. On the merits, as per Rule 108 of the Co-operative Societies Rules, 1973, and Clause 11, Appendix to Chapter VI, every employee shall be liable to be transferred from one post to another and/or from one station to another in the interest of the business of co-operative societies. Therefore, transfer is a service condition which normally does not require the Court's interference. Two conditions are prevailing in this issue. Firstly, whether it is a regular transfer? Secondly, whether it is a disciplinary action or change of condition of service during the pendency of the conciliation proceeding ? It is alleged by the petitioner that it is a change of condition of service by way of disciplinary action during the pendency of the conciliation proceeding. In such case Section 33(1) (a) of the Industrial Disputes Act, 1947, protects the interest of the sufferer/s. Therefore, I do not find any reason to interfere with the same. If it is not a dispute in connection with any disciplinary action or change of condition of service as aforesaid then the employees are bound by the same being service condition. In that view of the matter they have no other alternative but to follow the direction of the employer and even thereafter they have their claim, they can easily take this matter before the Registrar or his authorised officer But the writ petitioner cannot be allowed to invoke the writ jurisdiction of the Court.

5. A single Bench judgment of the Andhra Pradesh High Court in *Eid Parry Staffs' Association and Others Vs. Deputy Commissioner of Labour-I, Madras*, is cited herein to establish that Section 33(1)(a) of the Industrial Disputes Act, 1947, creates a mandatory obligation upon the employer not to alter the condition of service of the workmen when a dispute pending before the conciliation officer and other authorities specified in the Section to the prejudice of the workmen and any such alteration would be penal and if such alteration proposed or is likely to take place, the writ Court would be justified in issuing a writ of mandamus commending the employer to abide by the said statutory mandatory obligation.

However, from the said judgment, I find an observation that since the conciliation proceeding is said to be pending in view of Section 20 of the Act and the conciliation officer has submitted a failure report to the Government the writ was refused to be issued. Therefore, without going to the further fact it can be safely said that this case is standing on a much better footing of refusal of writ. The matter is yet to be decided either way before the conciliation officer.

6. Learned senior counsel appearing for the respondents contended before this Court that transfer is a part and parcel of the service condition which has been issued in January, 2002, when one has joined and another has taken leave. Such condition of transfer has been incorporated in the appointment letters being the statutory obligation as per Rule 108 of the said Rules as above. Thus, there is no question of change of condition of service. He has cited a judgment in Reserve Bank of India, Bombay Vs. C.T. Dighe and Others, , wherein the Supreme Court said that the promotion is not an alteration of service u/s 33(1)(a) of the said Act.

7. I have taken note of all the submissions made by the parties. According to me, the writ petition should fail for the following reasons:

(a) Delay in making this writ petition in April, 2002, when the transfer was given effect on January 16/17, 2002, is fatal for this writ petition;

(b) The conciliation proceeding before the appropriate Deputy Labour Commissioner is pending and if at all there is a change of service condition and when in fact, the matter has been taken note by such authority the passing of any order by the writ Court will be interference of such process;

(c) If the transfer is a condition of service and if according to the petitioner there is no dispute as to the disciplinary proceeding or change of terms and conditions of service then the Registrar is not debarred from invoking his jurisdiction.

8. Thus, I find there is no merit of sustainability in this writ petition particularly for the above issues amongst the others. Hence, the writ petition stands dismissed. There will be no order as to costs. However, this order will not prevent any of the parties from taking any steps before any authority.

9. Let urgent xerox certified copy of this order, if applied for, be given to the learned counsel for the parties within a period of a fortnight from the date of putting the requisites.

10. Let affidavit-of-service filed in Court today be kept with the record.