
(2010) 11 OHC CK 0063
In the Orissa High Court
Case No : Writ Petition (C) No. 12771 of 2010

Kartika Chandra Ray

APPELLANT

Vs

Neelachal Gramya Bank and Others

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Citation : (2011) 112 CLT 95 : (2011) 129 FLR 625 : (2011) 1 ILR (Ori) 70 : (2011) LLR 706 : (2011) 1 OLR 909

Hon'ble Judges : S.K. Mishra, J; Pradip Mohanty, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Mishra, J.—Petitioner in this case assails his successive transfer order which was passed by the opposite parties within a span of few days. The Petitioner is working as a Messenger in Neelachal Gramya Bank (opposite party No. 1) and was posted as Kharavela Nagar Branch. He is a Senior Messenger in the said Branch and therefore getting Daftary allowance of Rs. 1,000/-per month.

2. It is pleaded by the Petitioner that because of the litigation between the Union and the Bank, opposite party No. 2 has become vindictive and KARTIKA CHANDRA RAY v. NEELACHAL GRAMYA BANK [S.K.MISHRA J.] started to disturb the poor Messengers and in consequence thereof the Petitioner was transferred from Kharavela Nagar Branch to Pahala Branch vide order dated 6.7.2010. However, opposite party No. 2 with the malafide intention to accommodate his flatterers modified the said order vide order dated 23.7.2010 and transferred the Petitioner to Bhubaneswar Branch, Unit-IV where a Messenger has already been posted and thereby the Petitioner will be denied the Daftary allowance of Rs. 1,000/-per month.

3. Terming the order passed by opposite party No. 2 as malafide and arbitrary, the Petitioner further claims that there is no transfer policy in spite of RRB guidelines to formulate proper placement. The opposite parties are therefore

using transfer of employees as per their sweet will. The Petitioner further claims that the transfer order passed by opposite party No. 2 is also without jurisdiction. The Controlling Authority is the Chief General Manager, Regional Office, Pipili. Hence, the order passed by the General Manager, Neelachal Gramya Bank, Head Office at Kokila Residency is without jurisdiction. The Petitioner also pleads that as per the Thorat Committee Resolution, the Controlling Officer-in-charge will be the authority for transfer. It is further pleaded that besides the above, the Petitioner is a Class-IV employee to whom normally transfer rules should not apply. However, the Petitioner is ready to join at Pahal Branch which will not mean any pecuniary loss to him. On such pleadings, the Petitioner prayed that the order of transfer under Annexure-2 be quashed and the opposite parties be directed to post him at Pahal Branch as per the order under Annexure-1.

4. The opposite parties have filed their counter affidavit wherein they deny that there was no malafide intention on their part in transferring the Petitioner. They contend that transfer is an incidence of service and falls within the domain of discretion of the management and hence the Bank is not bound to place the Petitioner at the branch of his choice. The averment of the Petitioner that he will sustain huge financial loss because of his posting is also denied by the opposite parties. The opposite parties further plead that the Thorat Committee recommendations are merely the guidelines and such guidelines are not mandatory and cannot be allowed to override the administrative exigencies.

5. It is true that transfer is an incidence of service and all cases of transfer should not be interfered with by the Court under the Writ jurisdiction. However, whenever any transfer is ordered which effects the service conditions/financial entitlement of the Petitioner then the Court may consider to interfere with the same. Indian Law Reports, Cuttack Series [2011]

6. The Petitioner, undisputedly, shall suffer a loss @ Rs. 1,000/-per month as he will be denied the Daftry allowance in the Kharavela Nagar Branch, Unit-IV, Bhubaneswar, which he would be entitled to in the Pahala Branch. Secondly, it is seen that the Petitioner was once transferred on 6.7.2010 and after lapse of only three weeks Anr. transfer order was passed on 23.7.2010. Learned Counsel for the opposite parties contend that it is passed in administrative exigencies. However, the counter affidavit filed by the opposite parties do not reflect what were the exigencies and on which the transfer was effected. Learned Counsel for the opposite parties produced the records and argued that the Bhubaneswar Branch is the Main Branch of the Bank and functions as Nodal Clearing Office. The Branch Manager of the Bhubaneswar Branch has telephonically requested to post Anr. experienced sub staff as he cannot manage the Branch with single Messenger. However, this fact was not pleaded by the opposite parties in their counter affidavit, counter affidavit to the Misc. Case as well as in the Additional Affidavit. Since the nature of exigency has not been pleaded, it appears to be an afterthought.

7. Thus, keeping in view the financial loss to the Petitioner and absence of any

proper administrative reasons to transfer the Petitioner after 21 days of his first transfer, this Court is of the opinion that the transfer order passed by opposite party No. 2 requires interference. Therefore, this Court quash the transfer order under Annexure-2 and direct the opposite parties to give effect to the transfer order under Annexure-1. The writ petition is allowed. No costs.