

(2013) 01 PAT CK 0006
In the Patna High Court
Case No : CWJC No. 22766 of 2012

Lalit Kumar Prasad Singh

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Citation : (2013) 4 PLJR 43

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Binod Kumar Kanth and A. Srivastava, for the Appellant; Tarakant Jha, R. Ahasan, S.D. Sanjay, A. Chaturvedi and Anil Kumar, for the Respondent

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner for the following reliefs:--

(i) Issuance of a direction, order or writ including writ in the nature of certiorari quashing the order dated 30.11.2012 issued by the Deputy General Manager & Circle Development Officer, Human Resources Department of State Bank of India at its Local Head Office in Patna, by which the petitioner has been transferred to the North Eastern Circle of the Bank in the most arbitrary and illegal manner without assigning any reasons for issuing the said order of transfer of the petitioner much less indicating the administrative exigency warranting issuance of the said transfer order notwithstanding the fact that vide an office order dated 29.10.2012 issued by the Bank the petitioner had recently been transferred as Assistant General Manager, RASMECC, Dhanbad;

(ii) Issuance of a direction, order or writ including writ in the nature of mandamus commanding the concerned respondent authorities under the Bank to refrain from giving effect to the directions contained under the aforesaid letter dated 30.11.2012, by which the petitioner has been transferred to the North Eastern Circle of the Bank in the most arbitrary and illegal manner;

(iii) Any other relief that the petitioner may be found to be entitled to in the facts

and circumstances of the present case.

The claim of the petitioner is that he initially joined the service of the State Bank of India (hereinafter referred to as "the Bank" for the sake of brevity) as Clerk-cum-Cashier on 2.4.1979 after completion of all the formalities. On the basis of his performance in service, the petitioner was granted promotions to the higher scales from time to time and finally he was promoted to the Senior Management Grade (S.M.G.) Scale-V in the service of the Bank with effect from 1.11.2002.

2. Learned counsel for the petitioner averred that he is an active member of the State Bank of India Officers' Association, Patna Circle, which is the only recognized Officers' Association within the State of Bihar and Jharkhand and as such from time to time the petitioner has also held important offices of the said Association and has made considerable contribution towards the welfare and securing interests of the officers of the Bank.

3. Learned counsel for the petitioner asserted that the views of the Chairman of the Bank were published in different newspapers with respect to keeping the branches of the Bank open on all the seven days in a week, whereafter the All India State Bank Officers' Federation decided to stage a protest on 28.8.2012 against the said views and in their meeting, the petitioner in the capacity of being General Secretary of State Bank of India Officers' Association (Patna Circle) addressed the officers of the Bank at the local Head Office of the Bank in Patna protesting against the said decision of the Chairman of the Bank, which was contrary to the demand of All India State Bank Officers' Federation of five days' Banking.

4. Learned counsel for the petitioner stated that thereafter in retaliation the Management of the Bank took drastic action against the participants of the said agitation and issued charge-sheets against 28 persons, namely, Presidents and General Secretaries of all the 14 Circles of the Bank, including the petitioner of the instant case as well as the petitioner of C.W.J.C. No. 22441 of 2012 Ed.-- Reported in Anirudh Akhauri Vs. State Bank of India and Others, and they were transferred to another place within the same Circle (Patna Circle) and subsequently were transferred out of the Circle to the North Eastern Circle.

5. Learned counsel for the petitioner stated that apart from the aforesaid minor differences, the facts of this case and the grounds taken therein are exactly the same as were taken by other person, namely, Anirudh Akhauri, who was on the same post and was exactly similarly situated, in C.W.J.C. No. 22441 of 2012 Ed.-- Reported in Anirudh Akhauri Vs. State Bank of India and Others, . Learned counsel for the respondents also admitted that the facts and grounds of the instant case are exactly similar to the facts and grounds of the aforesaid writ petition bearing C.W.J.C. No. 22441 of 2012 Ed.--Reported in Anirudh Akhauri Vs. State Bank of India and Others, and hence their reply to the petitioner's claim is also the same.

6. However, when this writ petition was being finally heard, the arguments in

C.W.J.C. No. 22441 of 2012 Ed.--Reported in Anirudh Akhauri Vs. State Bank of India and Others, had been concluded much earlier and the order was reserved therein. But now the said writ petition bearing C.W.J.C. No. 22441 of 2012 Ed.--Reported in Anirudh Akhauri Vs. State Bank of India and Others, has been decided and hence this case is also being decided exactly in similar manner.

7. The claim of the petitioner is four fold; firstly that he was transferred twice within a period of 31 days; secondly that he was transferred to another Circle although a proceeding at that time was pending against him in Patna Circle; thirdly that he was transferred as punishment due to mala fide of the respondents even before the completion of the proceeding and fourthly that the allegation levelled against the petitioner was absolutely frivolous and misconceived on the face of it.

8. So far the first point raised by learned counsel for the petitioner is concerned, his transfer vide order dated 29.10.2012 passed by the local Head Office at Patna Circle was from Patna to Dhanbad i.e. within Patna Circle, where he had remained for 33 years, whereas, his subsequent transfer vide order dated 30.11.2012 was passed from the Central Office of the Bank communicated by the Human Resources Department and it was for his transfer to another Circle, namely, North Eastern Circle at Gauhati. In the said circumstances, merely on the ground that he was transferred from one place to another within a period of 31 days, such transfer cannot be held to be bad or illegal, specially when the petitioner has failed to produce any provision of law to the contrary.

9. So far the second point raised by learned counsel for the petitioner is concerned, he has failed to show any difficulty in attending to the proceeding at Patna while posted in North Eastern Circle, specially when the Management of the Bank will have to take care of his traveling and leave for the said purpose. In this regard also, no provision of law has been cited, which provided that an employee has to remain at the same place, where the proceeding had been initiated. Hence this point raised by learned counsel for the petitioner also fails.

10. So far the third point raised by learned counsel for the petitioner is concerned, from a bare perusal of the impugned order, it is quite apparent that the petitioner had not been transferred from Dhanbad (Patna Circle) to Gauhati (North Eastern Circle) by way of punishment as along with him several persons had also been transferred to Gauhati (North Eastern Circle), where there was dearth of Officers of Senior Management Grade Scale-V. Furthermore, there was no compulsion for the authorities to allow the petitioner to continue at Dhanbad. There may be some minor irregularities in passing the order of transfer and sending it to the petitioner while he was on sanctioned leave, but that would not affect the order of transfer, which appears to be necessary at the relevant stage.

11. So far the fourth point raised by learned counsel for the petitioner is concerned, he has relied upon two decisions i.e. in case of The Management of the Syndicate Bank Ltd. Vs. The Workmen, as well as in case of P.

Pushpakaran Vs. Coir Board and Another, . In the first decision, it has been held by the Apex Court that the Management of the Bank is in the best position to judge how to distribute its employees between different Branches and hence the Tribunals/Courts should be very careful in interfering with such managerial functions. However, only when there is some mala fide or ulterior purpose, the Tribunals/Courts may interfere. Similarly, in the second decision, the Kerala High Court had held that the right to transfer an employee is a powerful weapon in the hands of the employer, which is some time more dangerous than other punishment and hence if transfers are effected by way of punishment, they are to be quashed by the Courts.

12. In the instant case, the local authorities might have some grievances against the activities of the petitioner, but the order of transfer of the petitioner from Patna Circle to North Eastern Circle was not by the local Head Office of Patna Circle, rather it was by the Central Office of the State Bank of India and there is no material to show that the Central Office of the State Bank of India was biased or had mala fide intentions against the petitioner. Hence the said case laws are not applicable to the facts of this case.

13. Learned counsel for the petitioner had also relied upon Clause 95 of Chapter 17 of the Treatise of Samaraditya Pal on Law Relating to Public Service, but the said clause does not at all help the case of the petitioner as relying upon settled principles of law it has been noted therein that there was no bar in transferring a senior employee while retaining a junior and only when other things being equal, the transfer of a senior while retaining the junior would be an unreasonable exercise of power both on account of administrative and personal logic; administrative, because the senior might already have undergone transfers and personal, because the senior was likely to have more personal family problems than the junior. But in the instant case the petitioner had never undergone any transfer from one Circle to another earlier, rather he had remained in Patna Circle for about three decades and furthermore the petitioner had failed to show any family problems. Thus, the petitioner does not come within the exception provided therein.

14. On the other hand, the Apex Court in case of Registrar General, High Court of Judicature at The Registrar General High Court of Judicature at Madras Vs. R. Perachi and Others, had held that in a matter of transfer, the scope of judicial review is limited and the High Court would not interfere with the order of transfer lightly. Similarly, the Apex Court in its three decisions i.e. in case of Mohd. Masood Ahmad Vs. State of U.P. and Others, , in case of Union of India (UOI) and Others Vs. Muralidhara Menon and Another, and in case of State of U.P. and Others Vs. Gobardhan Lal, has specifically reiterated the legal position that the transfer is an incident of service and, therefore, judicial interference should be in very rare cases. This case clearly does not come within such exceptions of rare cases. Considering the aforesaid facts and circumstances of this case, this Court does not find any reason to interfere with the impugned order of the authorities

concerned and, accordingly, this writ petition is dismissed, with a direction to the petitioner to immediately report to the Deputy General Manager & C.D.O., Local Head Office of North Eastern Circle of the Bank at Gauhati; if he has not yet done so due to the pendency of this case.