

(1996) 03 MAD CK 0124

In the Madras High Court

Case No : Writ Petition No. 10882 of 1995 and WMP No's. 17290, 19663 and 21639 of 1995

M. Balusamy

APPELLANT

Vs

The Assistant General Manager, State Bank of India and
Another

RESPONDENT

Date of Decision : 08-03-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1996) 2 LLJ 1129 : (1996) 2 MLJ 310

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : S. Ayyathurai, for the Appellant; R. Sree Krishnan, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Lakshmanan, J.—The petitioner who is an employee of the respondent bank was working as cashier in State Bank of India, Ramanathapuram branch. He was transferred to the bank's Usillampatti branch as cashier by the impugned order dated August 5, 1995. The petitioner has filed the above writ petition praying for the issuance of a writ of certio-rari calling for the records relating to the letter in No. 183 dated August 5, 1995 issued by the 2 respondent advising him that he has been transferred to the bank's Usillampatti branch. The letter dated August 5, 1995 reads as follows:

"Dear Sir,

STAFF: AWARD

INTER REGIONAL TRANSFER

It has been decided to transfer you to our USILAMPATTI Branch as cashier provided you have no relative working at that Branch.

2. You are eligible for travelling and other expenses in respect of your above transfer.

3. You will be relieved from duty as at the close of business to-day the Augusts, 1995 with instructions to report at the other Branch after availing the usual journey cum joining time.

4. We wish you good luck in your new place of posting.

Yours faithfully,

(Sd.)....

Asst GENERAL MANAGER(OFFG)

(P.MFAROOK).

2. According to Mr. S. Ayyathurai, learned counsel for the petitioner, the impugned order of transfer is bad and illegal for the following grounds:

a) the transfer is illegal, without authority of law, the order of transfer has been made by the second respondent (Asst General Manager, SBI, Ramanathapuram) who has no authority or jurisdiction to transfer the employee and that the transfer can be made only by the Asst. General Manager, Region-II, Regional Office, the first respondent herein. Since the order of transfer has not been made by the first respondent, the order of transfer is without authority and without jurisdiction and therefore, illegal and unjust.

b) the order of transfer is mala fide because, the transfer has been effected at the instance of the local leadership of the petitioner's union which is ill disposed towards him. Since the management had acted at the instance of the leadership of the union, the order of transfer is mala fide and therefore, illegal.

c) the general policy is that an employee would not be transferred within a period of 5 years. Even this policy is not strictly followed and that many employees are allowed to continue in the same place for more than 10 to 20 years. It is alleged that one cashier Muruganandam who is the branch secretary of State Bank Staff Union and who is in the good books of the local leadership at the regional level and who has completed more than 10 years has still been retained in the 2nd respondent's branch whereas the petitioner has been singled out and transferred within four years and that too, to another region.

d) the second respondent branch was granted a third Asst. Head Cashier. By virtue of seniority, the petitioner was in the hope that he might be posted as third Asst. Head Cashier. But, at the instance of Muruganandam who is the local Secretary of the Union, who wielded influence got appointed as third Asst. Head Cashier on the alleged ground that weightage of two years had to be given to him, as he is an Ex-Service man. The petitioner's protest was of no avail. Because of the transfer and of the appointment of Muruganandam who is junior to the petitioner, the petitioner's entitlement to get the special allowance for the

additional duty performance is lost.

3. The Assistant General Manager (Officiating), Ramanathapuram branch, the 2nd respondent herein, filed a detailed counter affidavit denying all the allegations contained in the affidavit filed in support of the Writ Petition by the petitioner. Mr. Sree Krishna, learned counsel for the respondents contended that the transfer now made is purely on administrative ground and there is no substance or merits in the allegation that the leadership of union wields any influence over the administration of the bank. The said allegation besides being wholly false, is highly objectionable and derogatory, and it is unbecoming of the petitioner, an employee of the Bank, to make the said regardless allegation. There is also no truth or basis in the further allegation that the union has been compelling the bank to transfer him. The decision to transfer the petitioner was taken by the first respondent who conveyed his decision to the second respondent and directed him to relieve the petitioner from the second respondent branch. Therefore, the transfer is valid. The allegation that the transfer was made at the instance of the local leadership of the union is vague. There is no violation of Article 14 of the Constitution of India, as alleged. The Writ Petition is therefore, liable to be dismissed.

4. Mr. S. Ayyathurai, learned counsel for the petitioner cited the decision reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, in support of his contention that the validity of an order passed on certain grounds must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. According to him, the transfer impugned in this Writ Petition which was made by the second respondent, the Asst. General Manager (Officiating), Rama-nathapuram Branch dated August 5, 1995 does not refer to the decision taken by the first respondent to transfer the petitioner to Usilampatti branch as cashier. There is absolutely no reference to the decision taken by the first respondent to transfer the petitioner to Usilampatti from the Ramanathapuram branch. The impugned order dated August 5, 1995 issued by the 2nd respondent only states that it has been decided to transfer the petitioner to Usilampatti branch as cashier which would only mean that the second respondent alone has decided to transfer the petitioner and not the first respondent. According to him, the second respondent has no power to transfer the petitioner to any other branch and the same can be made only by the first respondent. Therefore, the proceedings Ref.No. AGM.II No. 17531-12-234 dated August 4, 1995 issued by the first respondent cannot be looked into at all since the same was not referred to in the impugned order dated August 5, 1995. Therefore, the validity of the transfer must be judged by the reasons mentioned only in the impugned order dated August 5, 1995 and the respondent bank cannot be permitted to supplement their contention by fresh reasons in the shape of the proceedings dated August 4, 1995 of the first respondent. The proceedings dated August 4, 1995 of the first respondent was not served at all, by the respondents at any point of time earlier to the filing of the Writ Petition and the same has been furnished only at the time of hearing.

Therefore, this Court shall not look into the said proceedings dated August 4, 1995 and has to decide the matter only on the basis of the impugned order dated August 5, 1995.

5. I am unable to countenance any of the contentions of the petitioner. As rightly pointed out by Mr. Sree Krishnan, the function relating to the transfer of an employee of a bank from one of its branch to another branch is purely administrative in nature. This Court normally, will not interfere with such administrative act, unless the order of transfer is tainted with mala fide. The respondent bank has been also specifically denied in their counter that there is no substance or merit in the allegation that the local leadership of the union wields any influence in the administration of the bank. The case of the petitioner that he has applied to the second respondent orally for leave, has also been denied in the counter. According to the 2nd respondent the management of the Bank represented by the first respondent who has administrative control over the second respondent branch, took the administrative decision to transfer the petitioner to Usilampatti branch and communicated the said decision to the 2nd respondent by telephone that on August 4, 1995. The first respondent told the second respondent on the telephone that the first respondent had already forwarded to the 2nd respondent a letter advising the administration to effect the transfer of the petitioner and that the 2nd respondent should relieve the petitioner. The 2nd respondent received the said letter on August 5, 1995 at about 11.45 am and at about 12.15 pm that day, he called the petitioner and conveyed to him orally that he has been transferred to the Usilampatti branch and that he would be relieved from the branch on the close of the business on that day i.e., August 5, 1995 and that a letter to the said effect would be handed over to him within half an hour's time. It is the further case of the 2nd respondent that he prepared the letter ref No. AGM-U-12-No. 183 dated August 5, 1995 addressed to the petitioner for service to him on that day. However, coming to know of his transfer and with a view to evade the service of the relieving letter, the petitioner had left the branch well before the closing hours on August 5, 1995 and without marking the leaving time in the attendance register. The next day, i.e., on August 6, 1995, the petitioner called on the 2nd respondent at his residence and when the second respondent asked him as to why he left the branch before closing hours of the previous day and without receiving the relieving letter, the petitioner replied that he would call on him at the branch on August 7, 1995, the relieving letter dated August 5, 1995 was forward to him by registered post to his residence which was received by him on August 9, 1995. In my opinion, the decision cited by Mr. Ayyathurai reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, is not applicable to the facts and circumstances of this case. It is specifically contended in the counter affidavit that the management of the bank represented by the first respondent who has administrative control over the second respondent branch took the administrative decision to transfer the petitioner was taken transfer has been made by him and that the decision to

transfer the petitioner was taken by the first respondent who is the disciplinary and controlling authority so far as the petitioner is concerned. The first respondent has only conveyed to the 2nd respondent his decision to transfer the petitioner and directed the second respondent to relieve the petitioner from the branch in question. The second respondent did so pursuant to the letter dated August 4, 1995. There is therefore, no basis for the grievance that it was the 2nd respondent who had taken the decision to transfer the petitioner. But, admittedly the decision to transfer the petitioner was taken by the disciplinary authority, the first respondent and therefore, I am of the view that the transfer order passed by the first respondent and communicated to the second respondent is valid and binding on the petitioner and therefore, he has no right to challenge it on the ground of competency of the 2nd respondent to issue a letter / Communication/the decision of the first respondent.

6. It is true that the impugned order doesn't refer to the decision taken by the first respondent. According to Mr.S.Ayyathurai, learned counsel for the petitioner in the absence of any reference to the decision taken by the first respondent, in the impugned order, the respondent cannot be allowed to press into service the proceedings dated August 4, 1995 deciding to transfer the petitioner to Usilampatti and therefore, this court cannot permit the bank to supplement their contention by introducing the proceedings of the first respondent dated August 4, 1995 for the first time. I am unable to agree with the said contention. As already seen, the impugned order dated August 5, 1995 has reference to the decision to transfer the petitioner to Usilampatti branch as cashier. The decision referred to therein can only be referable to the decision of the first respondent who alone is the competent authority to transfer the petitioner to Usilampatti branch. This fact has been clearly and explicitly mentioned in the counter-affidavit filed by the 2nd respondent- Therefore, as contended by the counsel for the petitioner the respondent is not supplementing its contention by fresh document in the shape of proceedings dated August 4, 1995. The said document was permitted by me to be filed at the time of hearing. In the impugned order dated August 5, 1995, there is a reference to the decision to transfer which has already been taken by the first respondent. Therefore, the contention of Mr. S. Ayyathurai fails.

7. The second respondent has also denied the allegation that the transfer was made at the instance of the local leadership of the union which according to the petitioner is ill disposed towards him. The said allegation, in my opinion, is vague as it does not disclose any name or authority. The decision to transfer was purely an administrative one and made by the appropriate and competent authority after due consideration and not at the instance of the local union or anyone else. There is also no substance or truth in the allegations of arbitrariness or mala fides, made by the petitioner. There is no substance in the said contention. I therefore, reject the said contention.

8. It is also contended that there is no general transfer policy that an employee

would not be transferred within a period of 5 years. As contended by Mr. Sree Krishnan, learned counsel for the respondents, the right to transfer is a prerogative right of the management and is exercisable at a branch regardless of the duration of the services in the said branch. Referring to the arguments of Mr. S. Ayyathurai that the respondent bank has permitted several persons to continue in the same place for more than 10 to 20 years and also permitting the cashier Muruganandam who is the branch secretary of the State Bank Staff Union and who is in the good books of the local leadership at the regional level, Mr. Sree Krishnan contended that the circumstance that in some cases the management might not have transferred employees from one branch to another branch after a certain length of service at the former branch does not mean that the management of the bank cannot exercise its prerogative to transfer an employee, if it considers it expedient to do so for administrative reasons. I find merit in this contention. The first respondent took the decision that for administrative reasons, it was necessary to transfer the petitioner from Ramanathapuram to Usilampatti. Therefore, this court will not interfere with the said decision taken by the management purely on administrative reasons. This apart, the petitioner has no claim or right to be posted as third Assistant Head Cashier as alleged. The bank has also denied the allegation that Muruganantham wielded influence and got appointed as 3rd Asst. Head cashier is false and mischievous. It is also "pointed out that there was no merit in the representation or claim from the petitioner that his claims have been overlooked or that he is better qualified to get the post occupied by Muruganantham. There is no violation of Article 14 of the constitutions of India, as alleged. The transfer on question has been complete, concluded and effectual and there is no question of dislodging the same at this hour. It is also brought to my notice that another employee by name M. Kanakaraj, cashier who was transferred from Kilakkarai branch has been posted as cashier with effect from August 9, 1995 in the resultant vacancy. The petitioner has also been relieved from the branch on August 5, 1995. Therefore there is no hardship or suffering to the petitioner as a result of the transfer. Mr. Sree Krishnan, learned counsel for the respondent bank has also cited the following decisions in support of his contentions:

(1) Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, , (2) Rajendra Roy Vs. Union of India (UOI) and Another, , (3) Union of India and Others Vs. S.L. Abbas, , (4) Union of India and another Vs. N.P. Thomas, ,(5) State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, ,(6) Judgment of this court in W.P.No. 4424/95 and (7) Judgment of this Court in W.A.No 392/95.

9. In Gujarat Electricity Board v. Atmaram (supra), the Supreme Court has observed as follows:

"whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or

cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer order, he would expose himself to disciplinary action under the relevant Rules".

10. In *Rajendra Roy v. Union of India* (su-pra), the Supreme Court has held as follows:

"It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employers but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are not matters for consideration of the department. It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions."

11. In *Union of India v. S.L.Abbas* (supra), the Supreme Court has held as follows at P 627:

"Guidelines issued by Government, Transfer of Government employee and the order made without following guidelines cannot be interfered with by Court unless it is vitiated by mala fides or is made in violation of statutory provision. While ordering the transfer of Government employee, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee a legally enforceable right Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it."

12. In *Union of India v. N.P.Thomas*, (su-pra), the Supreme Court has held as follows:

" The respondent holding a transferable post has no vested right to remain in the Kerala circle itself, and cannot claim as a matter of right to be posted in such circle even on promotion. His contention that his transfer is against the policy of the Government posting husband and wife in the same place cannot be accepted. His transfer is not violative of any statute and not tainted by any malafides,"

13. In *State of MadhyaPradesh v. S.S. Kourav* (supra), the Supreme Court has

held as follows:

"The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of the administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case the Court cannot go into the expediency of posting of an officer at a particular place."

14. The order passed by this Court in W.P.No. 4424 of 1995 (rendered by Jayasimhababu,J.,) was cited by the learned counsel for the respondent bank challenged the order of transfer issued to him wherein the transfer order sets out that the decision to effect the transfer has been made by the competent authority. Jayasim-hababu.J., While dismissing the identical writ petition by another employee of the bank, held as follows:

" The mere fact that the petitioner feels that the transfer is because of union activities, and that since he is an office bearer of the union, he should not be transferred or that on the basis of resolution of the year 1985, since he had served more than five years in the city, he should not be transferred outside the city,-cannot constitute a bar against the exercise of powers of transfer vested in the employer and its exercise in accordance with the Rules governing the employees of the Bank.

The Supreme Court, in more than one decision has repeatedly held that transfer is a matter of internal administration and except on the ground of mala fides, transfer should not be normally interfered with "

15. A writ Appeal was filed against the above decision of Jayasimha Babu,J. dated March 28, 1995 in writ Appeal Np.392 of 95. The First Bench of this Court while dismissing the writ Appeal by its order dated March 20, 1995 passed the following order:

"It is not possible to interfere with the order on the ground that it has not complied with the requirements of Shastri Award. It may be pointed out that Shastri Award has not taken away the power of the management to effect transfer on administrative grounds. As far as the ground of mala fide is concerned, on examining the same learned single Judge has held against the petitioner. No ground is shown to upset that finding. Therefore, we do not see any ground to interfere with the order of transfer. Accordingly, the Writ Appeal is dismissed."

16. It is not the case of the petitioner that there is any loss of emoluments or loss of status. Therefore, the transfer is not bad on this ground as well. The Courts have held that the management is entitled to transfer any person if the transfer is necessitated by administrative reasons . It is also settled law by

catena of decisions that no employee has right to work in a particular place. It is also well settled that Courts do not undertake the supervisory control over the orders of transfer for the very simple reason that it is necessary concomitance of every service. As already pointed out, the allegations of mala fides have not been made out on the facts of this case. In my opinion, the transfer of a public servant made on administrative ground or public interest should not be interfered with, unless there are strong arid compelling grounds rendering the transfer order improper and non-justifiable.

17. In my opinion, the transfer impugned in this Writ Petition is in accordance with the regulations and therefore, no interference is called for . There is no merit in the Writ Petition and the same is liable to be dismissed and accordingly the Writ Petition is dismissed . However, there "will be no order as to costs. Consequently, WMP.Nos. 12290, 19663 & 21639/95 are also dismissed.