
(2013) 01 PAT CK 0047
In the Patna High Court
Case No : CWJC No. 15300 of 2012

Md. Abu Muzaffar Nawaz

APPELLANT

Vs

Uttar Bihar Gramin Bank and Others

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 PLJR 626

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

Bench : Single Bench

Advocate : Shyama Pd. Mukherjee and Shanti Pratap, for the Appellant;
Prabhakar Jha and Ratna Kumar, for the Respondent

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner challenging office order vide letter dated 9.8.2012 by which the Chief Manager (HRD), Uttar Bihar Gramin Bank, Head Office-Muzaffarpur (hereinafter referred to as "the Bank" for the sake of brevity) transferred the petitioner from Garh Banaili Branch under Purnea Region to Madhubani Branch under Bettiah Region instructing the Garh Banaili Branch to relieve the petitioner forthwith to report to his new place of posting at Madhubani Branch on 16.8.2012. The petitioner also challenges the consequential order vide letter dated 14.8.2012 issued by the Branch Manager of Garh Banaili Branch of the Bank after closing office hours on 14.8.2012 to join Madhubani Branch along with his personal file, leave and salary details advising him to join Madhubani Branch at 10.30 A.M. sharp on 16.8.2012. The petitioner also seeks a direction to the respondents for restraining them from giving effect to the impugned orders dated 09.08.2012 and 14.8.2012. This writ petition was filed by the petitioner on 23.8.2012 after serving two copies thereof upon learned counsel for the respondent-Bank on 17.8.2012. This case was taken up on 27.8.2012 when learned counsel for both the parties were heard and thereafter learned counsel for the respondents sought two weeks time for filing counter affidavit. Thus this case was directed to be listed within top ten cases on 17.9.2012 and the operation of the impugned orders dated 9.8.2012 and

14.8.2012 was stayed during the pendency of the writ petition.

2. Learned counsel for the petitioner stated that he was initially appointed as Office Assistant in the Bank in the year 1985 and he joined his duty on 29.6.1985 at Kajauri Branch of the erstwhile Kosi Kshetriya Gramin Bank (now called as Uttar Bihar Gramin Bank) and during his tenure he was transferred and posted to different places under Kosi Region and lastly he was posted at Garh Banaili Branch as Office Assistant where he joined on 16.1.2008 and since then he has been discharging his duty efficiently, diligently and to the full satisfaction of his superior authorities due to which his service record is absolutely clean with no adverse entry ever recorded in his character roll during his entire service period.

3. Learned counsel for the petitioner submitted that he was Zonal Secretary of all India Gramin Bank Workers Organization and was also holding the post of General Secretary of Uttar Bihar Gramin Bank Workers Organization, Kosi Unit and in that capacity he espoused the case of employees of the Bank from time to time. The petitioner along with eight other Office Assistants of Purnea Region of the Bank filed CWJC No. 11737 of 2011 for a direction to the respondents authorities to consider their case of promotion to the Junior Management Grade Scale-I and the said writ petition was heard along with CWJC No. 10363 of 2011 and its analogous cases, which were filed by others with similar grievances. After hearing the parties this court allowed the aforesaid writ petitions vide judgment and order dated 27.3.2012. The said order was affirmed by a Division Bench of this court vide order dated 1.8.2012 and 17.7.2012 passed in L.P.A. No. 778 of 2012 and L.P.A. No. 955 of 2012 but in spite of that the foresaid judgment and order of this court has not been complied with by the respondents as yet.

4. Learned counsel for the petitioner averred that apart from the aforesaid illegalities committed by the authorities by not promoting the concerned Office Assistants, the question of fixation of salary and other similarly important matters remained pending before the authorities concerned since long and hence the petitioner being an office bearer of the employees organization filed a representation dated 17.5.2012 before the Chair-man-cum-Managing Director of the Central Bank of India as well as other high officials pointing out the omission and commission committed by the authorities of the Bank. This infuriated the Chairman of the respondent-Bank, who directed the Chief Manager, HRD to transfer the petitioner to a distant place and consequently the Chief Manager (HRD) of the Bank issued the impugned office order dated 9.8.2012 transferring the petitioner from Purnea Region to Bettiah Region, whereafter the consequential order dated 14.8.2012 was issued by the Branch Manager of Garh Banaili Branch of Purnea Region.

5. Learned counsel for the petitioner asserted that circular dated 22.05.2009 was issued by the Bank providing the transfer policy of the Officer/Employees of the Bank and in column-3 thereof it has been specifically provided that Office Assistants should be transferred after a period of five years but for administrative

reasons such employees can be transferred earlier also. But the respondents in paragraph-7 of their counter affidavit filed in this case had specifically stated that petitioner was transferred on the basis of confidential letters of the Branch Manager and the Regional Manager of the concerned Branch and the said letters/reports which are annexed as Annexure-A series to the counter affidavit clearly showed specific but baseless allegations against the petitioner and paragraphs of the said counter affidavit clearly showed that the petitioner was transferred by way of punishment as per the said allegations.

6. Learned counsel for the petitioner claimed that from the facts and circumstances of the case, it is quite apparent that the petitioner was transferred not due to any administrative exigency rather he was transferred by way of punishment without any enquiry or show-cause notice or any proceeding against the petitioner which clearly showed the scrupulous and malafide action of the management and also bias which is writ large on the face of the impugned order.

7. Learned counsel for the petitioner argued that the respondents had violated the abovementioned rule of transfer which could have been done only after five years and even if any administrative necessity was present, the transfer of petitioner should have been done in a proper manner and not in a manner in which the petitioner was transferred by way of punishment.

8. On the other hand, learned counsel for the respondents vehemently opposed the contentions of learned counsel for the petitioner and stated that circular dated 22.5.2009 issued by the Bank with respect to transfer policy specifically provided that the authorities concerned had the right to transfer any such employee considering its necessity. He also referred to clause-74 of the Government of India Notification of Uttar Bihar Gramin Bank Service Regulation 2010, which was with respect to transferability of such employee to any Branch of the Bank, hence the petitioner cannot legally challenge his transfer and posting to another Branch.

9. Learned counsel for the respondents submitted that the authority concerned had to consider the administrative necessity, the situation, suitability and exigency of transferring such employee according to the wisdom of the authority without prejudice and malafide and such employee cannot object to it as transfer is incident of service. In this connection learned counsel for the respondents relied upon three decisions of the Apex Court in case of Airports Authority of India Vs. Rajeev Ratan Pandey and Others, ; in case of State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, ; and in case of The Registrar General High Court of Judicature at Madras Vs. R. Perachi and Others, as well as two decisions of this court, in case of Upendra Prasad Mandal Vs. The Union of India and Others, and in case of Madhav Nath Tripathi & Ors. vs. Madan Bihari Srivastava & Ors., reported in 2006 (2) P.L.J.R. 161.

10. Learned counsel for the respondents claimed that the petitioner being office bearer of the employees organization, overlooked the instructions of the

authorities and disobeyed their instructions and also made pressure on them very harshly to fulfill his unjust demands. In addition to it, he made baseless allegations against the higher authorities and started character assassination of the management. Hence when the matter came in the knowledge of the authorities concerned, the higher authorities took an administrative decision to transfer the petitioner from the branch concerned and in that view of the matter the impugned orders were passed, which are legal, just and proper and require no interference.

11. Considering the averments made by learned counsel for the parties and the materials on record, it appears to be undisputed fact that the petitioner was an Office Assistant in the Bank having been transferred and posted at different places under Kosi Region and he was lastly transferred to and posted at Garh Banaili Branch of Purnea Region of the Bank on 16.1.2008 and since then he had been working in the said Branch and had absolutely clean service record without any adverse entry.

12. It is also not in dispute that the petitioner and other similar employees of the Bank filed several writ petitions in the High Court including CWJC No. 11737 of 2011 which were allowed by this court on 27.3.2012 with the following directions:--

21. In the aforesaid facts and circumstances, all the aforesaid writ petitions are hereby allowed and the respondents are directed to consider the cases of petitioners and other Office Assistants in Grade "B" scale for their promotion to the posts of Scale-I Officer in accordance with the provisions of 1998 Rules and not as per the executive instructions of the Board or the authorities of the Bank issued after commencement of the selection process without fixing any minimum qualifying marks for interview, strictly on the basis of seniority-cum-merit as defined above and they should be granted promotions and seniority from the dates their immediate juniors were granted such promotions along with all emoluments and consequential benefits.

13. Although the said order of this court was affirmed by Division Bench of this court vide orders dated 1.8.2012 and 17.7.2012 passed in L.P.A. No. 778 of 2012 and L.P.A. No. 955 of 2012 but till date no such promotion as ordered by this court has been granted by the authorities. There was also a dispute with respect to fixation of salary which was denied to the employees concerned and hence petitioner had filed CWJC No. 3613 of 2012 for the said purpose and the said writ petition is still pending before this court.

14. The above facts clearly show that various genuine grievances of the petitioner and similarly situated employees are not being redressed by the respondents-authorities who are not even obeying the specific directions of this court which forced the employees organization through its Secretary, namely the petitioner to file representation dated 17.5.2012 before the Chairman-cum-Managing Director of the Central Bank of India and the higher officials pointing

out the omission and commission committed by the authorities of the Bank.

15. From various paragraphs of the counter affidavit of the respondents, it transpires that only thereafter confidential letters/reports were produced levelling specific charges including complaint of harassment from some people of vicinity against the petitioner, disobedience of instructions, abnormal and discourteous behaviour with borrowers as well as baseless defamation of management. According to the respondents, the aforesaid matters were the reason for transferring the petitioner from the said Branch, which was nothing more than administrative exigency.

16. From the statements made by respondents in their counter affidavit and supplementary counter affidavit as well as from the arguments raised by their learned counsel, it is quite apparent that the said step of transferring the petitioner and posting him to a far off place was merely in retaliation to petitioners' approaching the High Court for promotion of Office Assistants, which were allowed by this court and were affirmed by a Division Bench of this court and also to petitioner's approaching the High Court on behalf of the Employees Organization for fixation of salary by the authorities, who had since long denied such relief to the said employees and the said writ petition is pending before this court.

17. Such transfers can be validly compared to the transfer about which the Apex Court in case of *P. Pushpakaran Vs. Coir Board and Another*, had held as follows:--

The right to transfer an employee is a power weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer.

18. In another decision, the Apex Court in case of *S. Pratap Singh Vs. The State of Punjab*, had specifically held that the Constitution enshrines and guarantees the rule of law and Article 226 is designed to ensure that each and every authority in the State, including the Government acts with bonafide and within the limits of its power and when a court is satisfied that there is an abuse and misuse of power and its jurisdiction is invoked, it is incumbent on the court to afford justice to the individuals. It is with these considerations in my mind that the facts of the case are approached.

19. The respondents' specific claim is that the impugned transfer of the petitioner was necessitated due to letters and reports received from the authorities of the Bank, which were annexed as Annexure-A series to the counter

affidavits but it is quite surprising that although they were official letters from one authority of the Bank to another, only the dates of letters/ reports were given but neither any letter number nor any docketing number nor any date of receipt of any complaint against the petitioner has been mentioned therein. Furthermore, the endorsement officers' signature and date are also conspicuous by their absence and if it was sent through registered post, R.L. number and date were to be mentioned but nothing had been shown either in the counter affidavit or in the said annexures to the counter affidavit and hence none of the system and procedure of the office is apparent from the same. Thus it is quite apparent that the said letters are merely managed by the respondents for taking such action against the petitioner.

20. So far the complaints annexed as Annexure-B and B/1 to respondents' counter affidavit are concerned, the specific claim of petitioner is that they are obtained by the Branch Manager of Garh Banaili Branch of the Bank by pressurizing two persons as they are afraid due to the act of Branch Manager, who is in the habit of harassing and humiliating the customers of the Bank, which can be ascertained by constituting a High Level Enquiry Committee by an independent agency. In this regard, petitioner's specific statement in his reply to the counter affidavit is that no work concerning loan is discharged by the petitioner as Office Assistant and he has nothing to do to provide them any kind of benefit, hence there is no question or occasion for the petitioner to ask money from the borrowers for the said reasons. This statement and petitioner's reply to the counter affidavit stand unrebutted by the respondents.

21. The said pleadings and materials clearly go to prove that the transfer of petitioner was not a simplicitor administrative transfer nor the impugned orders dated 9.8.2012 and 14.8.2012 show any such exigency or administrative reasons and hence his transfer much within five years of his posting at Garh Banaili Branch of Purnea Region is clearly against the provisions of the new transfer policy for the officers/employees of the Bank dated 22.5.2009 sent to all Branches of the Bank vide Circular No. PRS/02/2009-10/12/25.

22. Furthermore the respondents admitted in their counter affidavits that the transfer of petitioner was due to certain allegations levelled by some authorities and others raising serious charges against the petitioner and hence it is quite apparent that the impugned transfer was not merely administrative exigency or public interest or necessity of situation being incident of service, rather it was clearly by way of punishment to the petitioner, who was sent to a far off place at Madhubani Branch under Bettiah Region of the Bank by the impugned orders.

23. The case laws relied upon by learned counsel for the respondents in case of Airports Authority of India (supra); in case of State of Madhya Pradesh and Another (supra); in case of The Registrar General, High Court of Judicature at Madras (supra); in case of Upendra Prasad Mandal (supra); and in case of Madhav Nath Tripathi & Ors. (supra) are not at all attracted in the aforesaid facts and circumstances as it is completely different to the facts of those cases in

which the points were merely a simple administrative exigency, public interest and necessity of situation which is definitely an incident of service and should be according to the wisdom of the authority. But even in those cases it had been held that such transfer should be without prejudice and malafide, whereas in the instant case transfer of the petitioner was on the basis of serious allegations levelled against him, which is bound to prejudice him. Thus the transfer of petitioner was clearly punitive on the basis of serious allegations regarding which no opportunity was ever given to the petitioner to reply, hence the incidence of malafide also cannot be ruled out in the instant case.

24. Had the allegations against the petitioner received by the authorities were genuine and proper, it was a serious matter and required an enquiry with respect thereto, but in the instant case neither any enquiry was held nor any show-cause notice was given to the petitioner nor any proceeding was initiated against him and the petitioner was transferred clearly as a punitive measure, which is nothing else than a fraud of power.

25. The law is well settled that although transfer even if it appears on the face of it innocent but in fact it was affected by way of punishment has to be quashed by courts and there is ample evidence to show that the impugned order has been passed more as a punishment than for administrative necessity. This court has arrived at the aforesaid finding only after considering the various circumstances which have been brought on record in the writ petition, its counter affidavit and petitioner's reply to the counter affidavit and the said affidavits along with its annexures fortify the conclusion that the impugned order also suffers from the vice of malafide exercise of power. The impugned order clearly shows that through it the authorities sought to achieve something which they could not have otherwise achieved if an enquiry/proceeding had been initiated against the petitioner. Hence the petitioner was quite justified in seeking help of this court in his unequal contest with the respondents as a transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. In these circumstances, this court has no option but to allow this writ petition, quash the impugned orders of the respondents-authorities dated 9.8.2012 and 14.8.2012 and direct the respondents authorities not to give effect to the aforesaid impugned orders and to consider the petitioner in continuous service at Garh Banaili Branch of Purnea Region of the Bank without any break due to the impugned orders and to give all the benefits of service including salary etc. to the petitioner accordingly.