
(2015) 07 KL CK 0060

In the High Court Of Kerala

Case No : Writ Petition (C). No. 19118 of 2015 (L)

M.P. Mayadevi and Others

APPELLANT

Vs

Canara Bank and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 21, 8
Banking Regulation Act, 1949 — Section 35A, 5
Constitution of India, 1950 — Article 226

Citation : (2015) 4 KHC 874 : (2015) LabIC 3811

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : K. Paul Kuriakose and T.K. Hassan, for the Appellant; P. Gopinath Menon, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anil K. Narendran, J.—The 1st petitioner is working as Senior Manager at the Kodungallur Branch of the 1st respondent Bank. Similarly, the 2nd petitioner is working as Manager at the Chavakkad Branch of the said Bank. By Ext. P2 proceedings of the 3rd respondent dated 20.6.2015, the 1st petitioner is ordered to be transferred to Mysore SME Branch of the said Bank. Similarly, by Ext. P3 proceedings of the 3rd respondent dated 20.6.2015, the 2nd petitioner is ordered to be transferred to Gudugalele Branch of the said Bank, under Mysore Circle. It is aggrieved by Exts.P2 and P3 orders of transfer, the petitioners are before this Court in this writ petition, seeking a writ of certiorari to quash the said orders of transfer, and seeking a writ of mandamus commanding respondents 1 and 3 to either retain them at their present stations or to transfer them to a branch or office of the Bank near to the places where their families are presently residing. The petitioners have also sought for a writ of mandamus commanding the 1st respondent Bank to evolve a comprehensive transfer policy or norms in respect of the transfer of its female employees, including Managers

and Senior Managers, in the light of Ext. P1 Government of India directives, within a stipulated time frame.

2. According to the petitioners, the Government of India have issued Ext. P1 letter dated 8.8.2014 addressed to the Chairman of all Public Sector Banks, advising them to frame a policy on transfer of female employees, in order to minimise their hardship. In Ext. P1 it was decided, among other things, to accommodate, as far as possible, placement/transfer of married female employee, on her request, at a place where her husband is stationed or as near as possible to that place or vice versa, in order to avoid a genuine hardship or a feeling of insecurity, when placed/transferred away from her husband. Now, by Exhibits P2 and P3, the petitioners are under orders of transfer to branches at Mysore, which is more than 400kms. away from their respective hometown.

3. The 1st petitioner would contend that, she has only 5 1/2 years to retire. Her mother aged 86 years is ailing and there is no one else to look after her. Her husband aged 61 years is sick and he is not in a position to take care of the affairs of her aged mother. Further, the 1st petitioner herself is suffering from various ailments and it is difficult for her to undertake long journeys. She has also produced Ext. P4 medical certificate in order to show the nature of ailment of her mother.

4. The 2nd petitioner would contend that, she has only less than 6 years to retire. Her mother aged 83 years requires regular and constant attention, as she is suffering from all sorts of physical weakness. Her husband had undergone bypass surgery and he requires regular care and protection. Further, the 2nd petitioner herself is suffering from various ailments and it is difficult for her to undertake long journeys. She has also produced Ext. P5 medical certificate in order to show the nature of ailment of her husband.

5. On coming to know about the proposal for transfer, the 1st petitioner submitted Ext. P6 representation dated 17.6.2015 before the 3rd respondent. Similarly, the 2nd petitioner submitted Ext. P7 representation dated 18.6.2015 before the said respondent. In Exts.P6 and P7 representations, the petitioners prayed for a sympathetic consideration of their case. According to the petitioners, the 1st respondent Bank issued individual transfer orders, which form part of the general transfer for the year 2015, with the oblique motive of suppressing the details of the employees who were given undue privileges. Ext. P8 is a list of 10 officers, including the petitioners herein, who have been transferred under "Inter-circle transfers-2015-outward". Though the petitioners have submitted Exts.P6 and P7 representations, the 3rd respondent issued Ext. P2 and P3 orders of transfer, without considering those representations in the proper perspective and in the light of the directives contained in Ext. P1 Government of India letter dated 8.8.2014. Therefore, the petitioners would contend that, Exts.P2 and P3 orders of transfer are contrary to the directives contained in Ext. P1 Government of India letter and also in contravention of the provisions under the Banking (Companies Acquisition and Transfer of Undertakings) Act, 1970 and the Banking

Regulation Act, 1949. The petitioners would contend further that, the order of transfer issued before framing a policy on transfer of female employees, as directed in Ext. P1 Government of India letter, is illegal and vitiated by extraneous considerations and imbued with malafides. Moreover, the petitioners are entitled for a sympathetic consideration of their case, in view of the facts disclosed in Exts.P6 and P7 representations, taking note of the directives contained in Ext. P1 Government of India letter.

6. On 26.6.2015, this writ petition was admitted on file and an interim order of stay of Exts.P2 and P3 orders of transfer was granted for a period of 2 weeks and the Standing Counsel for the 1st respondent Bank was directed to file a statement/counter affidavit.

7. A statement has been filed on behalf of respondents 1, 3, 4 and 5 contending, inter alia, that Ext. P1 Government of India letter does not in any manner lay down any policy which prohibits transfer of female employees. Further, the petitioners who entered the service of the Bank on 30.12.1982 and 11.6.1984 respectively, have not been transferred out of Kerala during their career. While determining the names of persons to be transferred, a circle-wise list of employees who had the longest service within the State/Circle was prepared, in which the petitioners are Sl. Nos. 1 and 3 and therefore, they were liable to be transferred out. Further, the petitioners, who are working as Senior Manager and Manager respectively, have all India transfer liability as per the transfer policy of the 1st respondent Bank. According to the respondents, the petitioners were transferred since their services are required at Mysore Circle. Moreover, the persons who are being transferred to Kerala in the place of the petitioners are also female employees belonging to Kerala, who have been working outside the State for a considerable period. Smt. C.S. Vijayalakshmi (Senior Manager) and Smt. Ushakumari C.K. (Manager) are the employees who are being transferred from Mysore Circle, in the place of the petitioners. The personal difficulties pointed out by the petitioners are applicable to all employees and cannot be a ground to challenge the order of transfer. Further, there is no allegation of malafides, etc., in the writ petition warranting any interference with the orders of transfer, under Article 226 of the Constitution of India.

8. The petitioners have filed a reply statement, reiterating the contentions in the writ petition, and stating further that, they have been working at various places along the length and breadth of Kerala during their career and they have accepted all those transfers without raising any objections. The details of the places where they had already worked are stated in paragraphs 5 and 6 of the reply affidavit. According to the petitioners, the stand taken by 1st respondent Bank that, a circle-wise list of the employees who had the longest service within the State/Circle was prepared in which the petitioners are Sl. Nos. 1 and 3, is not on the basis of a fair and reasonable parameter, since the petitioners had worked at places like Thiruvananthapuram, Kasaragod, Kannur, etc, which border the Circle. Further, the averment that, Smt. C.S. Vijayalakshmi and Smt. Ushakumari

C.K. are the persons who are being transferred from Mysore Circle, in the place of the petitioners, is not fully correct since those persons have been transferred to some other branches and are not posted in the positions held by the petitioners. Moreover, no persons have been transferred and posted in the place of the petitioners. Therefore, it is evident that, malafides looms large in the matter of the transfer of the petitioners to the Mysore Circle, justifying interference of this Court under Article 226 of the Constitution of India.

9. Heard arguments of the learned counsel for the petitioner, the learned Standing Counsel for respondents 1, 3, 4 and 5 and also the learned Assistant Solicitor General of India for the 2nd respondent.

10. By Exts.P2 and P3 orders of transfer issued by the 3rd respondent, the petitioners are ordered to be transferred to SME Sulabh Branch and Gudugalele Branch, respectively of the 1st respondent Bank, under Mysore Circle. The petitioners are challenging Exts.P2 and P3 orders of transfer, mainly on the ground that those orders are against the directives contained in Ext. P1 Government of India letter dated 8.8.2014, by which all Public Sector Banks were directed to frame guidelines in the matter of transfer of their female employees. The pleadings and documents on record make it explicitly clear that, the petitioners who entered service of the Bank on 30.12.1982 and 11.6.1984 respectively, and promoted to the cadre of officer in the year 1999 and 2006 respectively, were never transferred out of Kerala during their entire career. The specific stand taken by the 1st respondent Bank in its statement is that, while determining the name of persons to be transferred, a circle-wise list of employees who had longer service within the State/Circle was prepared and the petitioners are at Sl. Nos. 1 and 3 in the said list. In paragraph 7 of the reply statement, the petitioners have not denied the fact that they are at Sl. Nos. 1 and 3 in the aforesaid list. Their only contention is that, the claim made by the 1st respondent Bank that, a circle-wise list of employees who had the longest service within the State/Circle was prepared, in which they are Sl. Nos. 1 and 3, is not on the basis of a fair and reasonable parameter. Referring to Ext. P8 list of persons transferred under the category "Inter-circle transfers-2015-outward", the learned Standing Counsel for the Bank would submit that, one P. Sujatha Menon, who is Sl. No. 7 in Ext. P8 list, is Sl. No. 2 in the circle-wise list of employees who had the longest service within the State/Circle, and she had already joined Mysore Circle.

11. The specific stand taken by the 1st respondent Bank is that, the petitioners are transferred to branches under Mysore Circle since their services are required there. Further, Smt. C.S. Vijayalakshmi (Senior Manager) and Smt. Ushakumari C.K.(Manager), persons who have been transferred to Kerala in the place of the petitioners are also female employees belonging to Kerala, who have been working outside the State for a considerable period. The personal difficulties pointed out by the petitioners are applicable to all employees and cannot be a ground to challenge the order of transfer. As can be seen from Para.10 of the

reply statement, the petitioners have not denied the specific stand taken by the 1st respondent Bank in its statement that, Smt. C.S. Vijayalakshmi and Smt. Ushakumari C.K. are persons who have been working outside the State of Kerala for a considerable period. Their only contention is that, the aforesaid employees have been transferred to some other branches and not posted in the positions held by them. As rightly contended by the learned Standing Counsel for the 1st respondent Bank, in the Writ Petition there is no specific allegation of malafides against Exts.P2 and P3 orders of transfer issued by the 3rd respondent. The learned counsel for the petitioners would point out that, in Ground (iii) of the Writ Petition, the petitioners have contended that, "the orders of transfer are vitiated by extraneous consideration and imbued with malafides".

12. In *State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others*, AIR 1995 SC 1056 : (1995) 70 FLR 1060 : (1995) 2 JT 498 : (1995) LabIC 1574 : (1995) 2 LLJ 849 : (1995) 1 SCALE 511 : (1995) 3 SCC 270 : (1995) 1 SCR 482 : (1995) 2 SLJ 109 : (1995) 1 UJ 617 , the Apex Court has held that, the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or extraneous considerations without any factual background foundation. The aforesaid judgment of the Apex Court was followed in *Gopinathan M. and another v. State of Kerala and others* (2014 (4) KLT 285), by a Division Bench of this Court (in which I was a party) by holding as follows;

"It is trite law that transfer is an incident of service and an employee working on a transferable post cannot claim, as a matter of right, that he should be retained in a particular post or at a particular place. It is the choice of the employer to determine how long the service of an employee is required in a particular post or at a particular place. The order of transfer does not affect any legal rights of the employee and the Court or Tribunal cannot interfere with an order of transfer or posting, which is made in public interest or on administrative exigency. However, if the power of transfer is abused or the transfer is not made in public interest, but for collateral purposes and with oblique motive, the order would stand vitiated, warranting interference of the Court or Tribunal."

13. In the case on hand, the petitioner have no specific case in the Writ Petition that, Ext. P2 and P3 orders of transfer are vitiated by malafides. They have also no case that, the said orders are passed on extraneous considerations or issued without any factual foundation. They have not disputed the specific stand taken by the 1st respondent Bank in its statement that, the petitioners who are working as Senior Manager and Manager respectively have all India transfer liability as per the transfer policy of the Bank. They have also no specific case that, their services are not required at the respective branches under Mysore Circle. The petitioners, who are admittedly working on a transferable post with all India transfer liability, cannot claim as a matter of right that, they should be retained in a particular station or State. It is the choice of the 1st respondent

Bank to determine how long the services of an employee is required in a particular place. Further, an order of transfer is an incident of service and it does not affect any legal rights of an employee. In the absence of a specific case in the Writ Petition that, the power of transfer is abused by issuing Exts.P2 and P3 orders of transfer, or that the orders of transfer are not made in public interest, but for collateral purposes or with oblique motives, the petitioners cannot succeed in their challenge against the said orders of transfer, merely on the ground of the personal inconvenience stated in their representations, which are also reproduced in Paras.7 and 8 of the Writ Petition.

14. It is trite law that, an order of transfer cannot be interfered with in a proceedings under Article 226 of the Constitution of India, in the absence of any specific allegation of malafides or at least a prima facie proof of vitiating circumstances influencing that order of transfer. It is far too late in the day to assert that, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can interfere with an order of transfer of an employee as if it is sitting in appeal over such an order issued by the employer. The scope of judicial review in this area is very limited. Unless malafides or oblique motives are specifically pleaded or can necessarily be inferred from the proof of facts, this Court cannot interfere with an order of transfer of an employee. Therefore, a mere assertion in the Writ Petition that, the orders of transfer are "vitiating by extraneous considerations and imbued with malafides", cannot therefore sound in realms of malafides or extraneous considerations or oblique motives. The concept being basically different, this Court cannot even draw an inference that the order of transfer issued by the employer is vitiated by malafides or on extraneous considerations or with oblique motives, unless it is specifically pleaded in the Writ Petition with reliable materials, which are sufficient to draw an inference of any vitiating circumstances influencing such an order of transfer.

15. A scrutiny of the pleadings in the Writ Petition disclose that, the petitioners have not made any categorical assertion of malafides or extraneous considerations vitiating Exts.P2 and P3 orders of transfer issued by the 3rd respondent. In the Writ Petition, they have also not made any categorical assertion of any personal bias or malice in fact or in law as vitiating the aforesaid orders of transfer issued by the 3rd respondent, except to the limited extent of stating in the reply statement that, the circle-wise list of the employees who had the longest service within the State/Circle prepared by the 1st respondent Bank, in which the petitioners are Sl. Nos. 1 and 3, is not prepared on the basis of a fair and reasonable parameter. In the reply statement, the petitioners have also stated that, many of the officers belonging to State of Karnataka are allowed to continue in and around the Head Office and other Administrative Offices of the Bank and if those officers are properly deployed at various branches on the basis of a proper and transparent transfer policy, there would not be any necessity for transferring any personnel from outside circle to Mysore Circle. These assertions made in the reply statement filed by the petitioners, by itself, are not at all sufficient to draw an inference of any vitiating circumstances influencing Exts.P2

and P3 orders of transfer.

16. Relying on Ext. P1 Government of India letter, the petitioners would contend that Exts.P2 and P3 orders of transfer are in violation of the directives contained therein, in as much as, the orders of transfer are issued even before framing a transfer policy of female employees in terms of the directives contained in the aforesaid letter. The learned counsel for the petitioners would also rely on Section 8 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 in order to contend that, the 1st respondent Bank is bound by the directives of the Central Government in Ext. P1. Section 8 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 reads thus;

"8. Corresponding new banks to be guided by the directions of the Central Government:--

Every corresponding new bank shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give."

17. The Apex Court had occasion to consider an identical provision under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, namely Section 8 of that Act, in Andhra Bank Vs. Andhra Bank Officers and Another, AIR 2008 SC 2936 : (2008) 3 CLT 263 : (2008) 7 JT 331 : (2008) 8 SCALE 614 : (2008) 7 SCC 203 : (2008) 2 SCC(L&S) 403 : (2008) 2 UJ 748 : (2008) AIRSCW 4932 and held that Section 8 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 provides for issuance of directions by the Central Government with regard to matters of policy involving public interest which are bound to be followed by the new banks in discharge of its functions. The functions of the bank are regulated not only by the said Act but also by the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934. But, the Apex Court held that, a regulation framed for the purpose of laying down the terms and conditions of service of the employees of the bank do not necessarily involve any policy decision involving public interest. In view of the dictum laid down above, the contention raised by the learned counsel for the petitioners, relying on Section 8 of the aforesaid Act can only be rejected.

18. Relying on the judgment of the Apex Court in Sardar Associates and Others Vs. Punjab and Sind Bank and Others, AIR 2010 SC 218 : (2009) 4 CompLJ 35 : (2009) 10 JT 410 : (2009) 8 SCC 257 : (2009) 12 SCR 803 , the learned counsel for the petitioners would contend that, the 1st respondent Bank being a Public Sector Bank is bound by the guidelines contained in Ext. P1 Government of India letter regarding transfer of female employees. The judgment of the Apex Court in Sardar Associates" case (supra) was in the context of Section 21 of the Banking Regulation Act, 1949 which empowers the Reserve Bank of India to determine the policy in relation to advances to be followed by the Banking Companies, and also Section 35A of the said Act, which empowers the Reserve Bank to give

directions to the Banking Companies. Para.15 of the judgment reads thus;

"15. A bare perusal of Section 21 would clearly show that Reserve Bank of India is entitled to formulate the policies which the banking companies are bound to follow. Subsection (3) of Section 21 of the 1949 Act clearly mandates that every banking company shall be bound to comply with the directions given to it in terms thereof. Section 35A of the 1949 Act, which was inserted by the Banking Companies (Amendment) Act, 1956, empowers the Reserve Bank to issue directions inter alia in the interest of banking policy."

19. Sub-section (ca) of Section 5 of the Banking Regulation Act, defines "banking policy" to mean any policy which is specified from time to time by the Reserve Bank in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, the volume of deposits and other resources of the Bank and the need for equitable allocation and the efficient use of these deposits and resources. Therefore, the conditions of service of the employees of a Banking Company, including any norms or guidelines for transfer of such employees, would not come within the sweep of "banking policy" as defined under Subsection (ca) of Section 5 of the Act. In such circumstances, the argument advanced by the learned Counsel for the petitioners, relying on the judgment of the Apex Court in *Sardar Associates's* case (*supra*) can only be rejected.

20. The realm of judicial intervention in an order of transfer of an employee, even if there are guidelines governing such transfer, gets confined to a scrutiny as to whether there is any vitiating elements of malafides, malice, substantial legal and factual perversity or arbitrariness, recognisable on the touch stones of the fundamental rights, as enshrined in the Constitution, to visit the executive decision of the employer. In *Santhosh K. and Rajan. V Vs. The Chief Engineer (H.R.M.), Kerala State Electricity Board*, (2013) 4 KHC 624 : (2013) 4 KLJ 504 : (2013) 4 KLT 696 a Division Bench of this Court, in the context of the transfer guidelines of employees issued by the KSEB, has held as follows;

"It is salutary that the contents of both the aforesaid KSEB orders cannot be treated as either statutory, or amounting to conditions of service. They are essentially guidelines, relating to transfers of employees of KSEB. The realm of judicial intervention in such matters gets confined to a scrutiny as to whether there is any vitiating element of mala fides, malice, substantial legal and factual perversity or arbitrariness, recognisable on the touch stones of the Fundamental Rights, as enshrined in the Constitution, to visit the executive decision of the KSEB as the employer."

21. Therefore, the contention of the learned counsel for the petitioners that, the orders of transfer issued even before framing a guideline or a transfer policy of female employees of the Bank, in terms of the directives contained in Ext. P1 Government of India letter, is vitiated and warrants an interference of this Court under Article 226 of the Constitution of India can only be repelled. Moreover, in

Ext. P1 Government of India letter there is no prohibition in transferring a married female employee away from the place where her husband is stationed, but it only provides to accommodate, as far as possible, the placement/transfer of a married female employee, on her request, at a place where her husband is stationed or as near as possible to that place or vice versa. Admittedly, the petitioners, who are in the officer cadre of the Bank with all India transfer liability, were never transferred out of Kerala during their entire career. Therefore, they cannot claim any immunity from transfer merely relying on Ext. P1 Government of India letter, especially when the persons who are being transferred to Kerala in their place are also female employees belonging to Kerala, who have been working outside the State for a considerable period.

22. As I have already noticed, a scrutiny of the pleadings in the Writ Petition disclose that, the petitioners have not made any categorical assertion of malafides or extraneous considerations vitiating Exts.P2 and P3 orders of transfer issued by the 3rd respondent. Admittedly, the petitioners are holding posts with all India transfer liability. It is the choice of the employer to determine how long the service of an employee is required in a particular place. Since transfer is an incident of service, an employee working on a transferable post cannot claim, as a matter of right, that he should be retained in a particular post or at a particular place. The mere fact that, the two female employees transferred from Mysore Circle have been posted to some other branches under Kerala Circle and not posted in the positions held by the petitioners is not at all sufficient to draw an inference that there is no administrative exigency in transferring the petitioners to the branches of the 1st respondent Bank under Mysore Circle. When there is total dearth of materials to show that Exts.P2 and P3 orders of transfer are vitiated due to absence of administrative exigency, the challenge made in this Writ Petition against the said orders of transfer can only be repelled.

23. In such circumstances, I find absolutely no ground to interfere with Exts.P2 and P3 orders of transfer. In the result, the Writ Petition fails and the same is dismissed.

No order as to costs.