(1998) 07 MP CK 0058

In the Madhya Pradesh High Court

Case No : L.P.A. No. 54 of 1998 (J)

Rakesh Khatri APPELLANT

Vs

Damoh-Panna-Sagar Khetriya Gramin Bank RESPONDENT

Date of Decision : 10-07-1998

Acts Referred:
Constitution of India, 1950 — Article 14, 16, 226

Citation : (1999) 1 MPJR 26

Hon'ble Judges : S.K. Dubey, J;R.P. Gupta, J

Bench : Division Bench

Advocate : U. Awasthy and Mr. M. Khan, for the Appellant; V.S. Shroti with Mr. Manish Chawra, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Gupta, J.

The only question involved in this L.P.A. is whether he transfer order of the appellant by the respondent/bank from Bandakpur branch to Chandora branch as Asstt. Manager is mala fide or motivated order, punitive in nature and therefore, liable to be struck down.

The appellant is feeling aggrieved by order dated 9.2.98 of single bench of this Court whereby his writ petition No. 45/98 was dismissed with observations that the order 22.12.97 of his transfer from Bandakpur to Chandora, by the respondents, was purely an administrative matter. No counsel was present before the single bench on behalf of the petitioner at that time when the matter was fixed for hearing.

The admitted facts are that the petitioner has been working as officer of the respondent/bank since 9.4.84. He was an under trainee for first 2 years and thereafter he was posted as officer or branch manager at various branches of the bank as under-

(a) during 1984 to 1986 at various branches as under trainee,

(b) 1986 to 1989 as branch manager, Naogeon,

(c) 20.4.89 to 6.5.93 as branch manager at Kundalpur about 25 Kms. away from Damoh,

(d) 27.5.93 to 2.2.96 as branch manager at Lohati about 28 Kms. from Damoh,

(e) 9.2.96 to 24.10.96 as branch manager at Agasod,

(f) 24.10.96 to 22.12.97 as officer at Bandakpurfor about 6 months and as branch manager for rest of the period.

(g) 22.12.97 order of transfer from Bandakpur to Chandora as branch manager (not complied with by the petitioner) and present W.P. is filed to challenge it.

The petitioner''s contention is that the transfer order is malafide on the part of the management and prejudicial to him as he was transferred to Bandakpur vide order of 16.10.96 on his representation that there was heart problem of his mother and there was problem of studies of his 3 school going kids. He had requested for transfer to one of the branches near Damoh. He is president of a registered trade union i.e. Gramin Bank Adhikari Sangthan, Damoh. Respondent No. 2/Chairman of the bank was displeased with him due to his legitimate trade union activities. A malafide chargesheet dated 6.12.96 was served on him regarding minor procedural irregularities. He challenged the inquiry proceedings in a civil suit, as necessary safeguard and principles of natural justice were not followed in the same. The suit is pending before the civil judge Class II, Damoh. It is urged that in these circumstances the respondent no. 2 exercised his powers malafide to transfer him to Chandora although his normal tenure of 3 years has not been completed. His representation dated 30.12.97 was dismissed. His performance at Bandakpur was excellent. So, he sought directions that he be not relieved from Bandakpur.

The contentions in the return of the respondents were that he has been transferred on administrative exigencies. He was not transferred often earlier but he has worked around Damoh at various places for about 7-8 years and when he was transferred to Agasod he became a truant and would be absent from his duty when checked. He got relieved himself without any order from the bank and made an application to the bank that due to his personal health and other family circumstances he be posted near around Damoh. Bandakpur was a place of choice given by him. No other details were given. The bank took a lenient view in spite of his delinquency at Agasod and posted him at Bandakpur. It is urged that at Bandakpur while acting as branch manager, complaints have been received against him that he is running a ''benami business'' of agricultural equipments and pump sets at Damoh in the name of Krishi Sewa Kendra'' and he granted loans to only those purchasers who purchased from Krishi Sewa Kendra. So he is mis-utilizing rather abusing his position. A complaint to this effect was lodged by ''Punjab Krishi Udyog'' Damoh on 25.11.97.

As regards the allegations of charges against him by the petitioner in the petition, it was asserted that he committed various financial irregularities while acting as branch manager at Luhari and Agasod. He assaulted Shri Gyanarjan Pandey, the presenting officer in the inquiry proceedings, and complaints were made against him by that officer and even F.I.R. was recorded on 24.9.97. One J.D. Tiwari, manager from the headquarters of bank from Damoh inspected the branch of the petitioner and audited the accounts, the petitioner got defamatory matters published against him and got transmitted to him threats of dire consequences. All this was done at the irrigation of the petitioner by others. Shri Tiwari made a report to police on 17.5.97. These assertions of the replies, in the return, were made in answer to assertions of the petitioner in the petition that cooked up charges were framed against him and illegal inquiry was started. It was urged, that, to protect the interests of the bank, it was essential that the petitioner does not work at Bandakpur and be transferred to some other place. So he was transferred to Chandori. It is also urged that it is mandatory that a branch manager works at remote rural areas also. The allegations that he was transferred to Bandakpur on his representation was denied, as already noticed. So the assertion is that the transfer was an administrative exigency and to protect the interests of the institution.

The petitioner had not filed any rejoinder to this return during the period allowed and failed to put in his appearance on the date fixed for hearing and hence the impugned order was passed by the single bench.

The contention of the learned counsel for the appellant is that on the face of the return the transfer is punitive in nature and therefore will be called malafide as the inquiry into charges have not been completed and no charges for subsequent delinquencies have been framed or inquired.

After hearing the learned counsel for the parties, we find the following salient features in this case -

(i) there, is no allegation of any personal animosity against the Chairman of bank by the petitioner,

(ii) The allegation that it is a case of frequent transfer is not borne out from admitted facts. The placement as under trainee at various branches would not be called transfers but only an essential process of training to acquaint the officers with the working of various branches.

(iii) The petitioner had remained at 3 branches only during the period of his 10 years of service after the first posting and he was around Damoh during last 8 years,

(iv) When he was posted to Agasod he became restless. His allegations that he sought transfer due to ''illness of his mother and education of children'' is not borne out by the letter Ex-R-13. The reason which he gave was his ''personal health and family problems''. He was adjusted at Bandakpur.

(v) The inquiry against him does not pertain to Bandakpur but to alleged financial irregularities at Lohari and Agasod. The charges were being inquired into and he filed a civil suit. The management could not be expected to give no reply to the assertions regarding charges raised in the writ petition. In their Return, they were expected to reply about his conduct. So by the very contents of this reply it cannot be inferred that the transfer order is punitive.

(vi) The management has received complaints that the petitioner is indulging in benami business at Damoh in which he is interested in the sale of agricultural equipments and pump sets from his shop. Thus, there is serious apprehension of financial loss to the bank due to his activities. He denied that it is his shop and further urges that names of ''other managers having interest in the shop'' is also disclosed in the complaint but no action against them has been taken; so action against him should also not be taken or, should be held discriminatory.

(vii) There are allegations of his having committed assault and defamatory acts against those joining inquiry, at any time, against him.

From amongst the above features, the last but one regarding apprehension, on the basis of complaint against, him that he is indulging in business Benami, for which he grants loans from Bank, is a very serious matter for the bank as a financial institution. According to the return, he was found absent from his office when checked by the management and he has been seen at Damoh when he was expected to be at his branch, at Bandakpur. The management may not have definite evidence of his interest in the alleged shop, but there is a complaint with the management about it and it had been placed on record along with the return. There is no allegation that the Chairman is such an enemy of him that he would get such a false complaint stage-managed. No allegation is made as to when animosity between him and Chairman started and why. No instances of the same are pleaded. So the reasonable apprehension of the bank that (sic) continuance at Bandakpur would be detrimental to the financial interests of the bank, cannot be questioned by this court in the present proceedings. These are administrative matters for the bank to decide.

The writ court''s jurisdiction certainly extends to finding out if there is a punitive action involved in the transfer and if it is malafide or against statutory principles. In the present case no violation of any statutory principles is alleged. The grounds of malafides are hardly made out in the allegations in the petition. They are sought to be inferred from the Return. In reply to assertion of fact by petitioner in the writ petition, that a charge sheet had been served on the petitioner about his previous conduct, and inquiry was made, some facts regarding nature of these allegations have been disclosed in the return. Can we say that the reason of transfer is restricted to those allegations in the charge sheet ? The respondents have clearly stated that to protect the financial interests of the bank it was essential that the petitioner be transferred. Will the High Court, in exercise of its writ jurisdiction and in the process of inquiry into malafides, say that the inferences taken by the bank on the basis of complaints should not be taken by them or that they should act only after they have suffered actual loss by the acts of the petitioner who is apprehended to have a financial interests in a shop to whose customers he grants loans from the bank. If the management fails to take steps as may be available to them to protect the financial position of the bank, it would be serious omission on their part.

The writ court will not say why an employee was transferred before expiry of 3 years, if administrative exigencies so require. The writ court will not substitute itself for the employer in taking this decision. In the return, for this transfer, a number of circumstances are disclosed some of which show inquiries, pertaining to indiscipline, pending against the transferee, and others showing Administrative exigencies. The High Court will not say that discretion of transfer shall not be exercised by the employer before the inquiry into charges is completed, even if other circumstances also arise. That is never the intention of law. ''Commission of indiscipline'' or, ''offence'' is not a "Mantra" or ''magical formula by use of which even Administrative exigencies must be given a go-bye or the employer becomes disentitled to protect its financial interests.

This is not a case where the petitioner has been reduced in rank. He does not have any inherent or legal rights to remain posted at one place. The rules of natural justice and rule against the hostile discrimination and mala fide action, require that he should not be victimized for any animosity between him and the controlling managing authority. Personal animosity would result in such a situation. This is not the case here. The allegations of illness of mother or education of children were never raised in the application for seeking transfer to Bandakpur where the petitioner was accommodated. The fact that the petitioner was accommodated, indicates absence of malafide on the part of the management. The allegation that the petitioner was indulging in union activities of union of some of the officers of bank is totally unsupported by any material on record. It is denied by the respondents. No details have been given, in the petition or affidavit, of any activity of the petitioner as a member or officer of the union, for which the management might have taken affront against him. No such document is on record. This court cannot accept that, as an established fact. The allegation of management that there is, in fact, another recognized trade union of officers, has not been challenged by the petitioner.

In these circumstances we find that the necessity of protection of financial interest of the bank was in the mind of the management and rightly so, in transferring the petitioner. That ground stands out above all others. Mere apprehension of the same is sufficient for the management to act. The reports were of November, 97 and the impugned order of transfer was passed in December, 1997. This court does not see any mala fide in the same.

When we consider the above aspects, we do not find that a case of prejudice or injustice to the petitioner is made out. The allegations regarding mother''s illness or children''s education were not made out in the application for seeking transfer to this branch. So, such allegations in the writ petition will not be considered as valid grounds of projective to the petitioner, by this court. No petitioner can be entitled to equitable reliefs of writ, unless he makes out a strong case of injustice on the basis of administrative action of the respondents, beyond the pale of natural justice. For this reason also the petitioner will not be entitled to relief claimed by him.

The most celebrated authority regarding law of transfer and effect of mala fide on it, was given by the Apex Court in the case of E.P. Royappa Vs. State of Tamil Nadu and Another, . In that case a member of Indian Administrative Service, in the cadre of State of Tamilnadu, confirmed in the selection grade, was posted as officiating Chief Secretary to that Govt., on 13.11.69. On 7.4.71 he was appointed Dy. Chairman of the State Planning Commission which was a post created temporary for a period of one year in the grade of Chief Secretary. Soon thereafter, he was appointed and transferred as officer on special duty and his junior was appointed as Chief Secretary of the State and was confirmed on that post. The petitioner challenged this posting and transfer from the pus; of Chief Secretary to the new posts on the ground that the new posts were not equal in status to the post of the Chief Secretary and the order was result of mala fide of the Chief Minister. On examination of facts regarding duties of Chief Secretary and Dy. Chairman of the State Planning Commission and officer on special duty it was found that the post of Dy. Chairman was equivalent to that of Chief Secretary while about the post of officer on special duty it could not be said that it was equivalent in status to the post of Chief Secretary or that it was not so. There was no clear evidence about it. So it was found that the case of discrimination was not properly established. It was also found that although the posting and transfer of the petitioner to the post of officer on special duty, was in contravention of the rules, the relief of writ was not granted on the ground that it did not involve infringement of fundamental rights for which alone Article 32 of the Constitution could be invoked.

The Supreme Court, on the basis of material brought on record by the petitioner and the Chief Minister of Tamilnadu by affidavit, observed as under-

We must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegation of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of high order of credibility...........The court would therefore be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. If such a judicial perspective, in evaluating charges of unworthy conduct against ministers and other high authorities, is not maintained, functioning effectively would become difficult in democracy.

The Court observed regarding principles of law applicable, in para 85 of the report as under-

Articles 14 and 16 (constitution of India) strike out at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice; in fact that latter comprehends the former. Both are inhibited by Arts. 14 and 16.

It is important to note that the Supreme Court was never faced with a case of simple transfer from one place to another on the same rank, but was considering the question whether the demotion was involved in the new posting and transfer, resulting in violation of Article 14 and 16 of the Constitution and further whether in the particular posting any malafide action of the Chief Minister was involved. On discussion of facts, the Supreme Court found absence of mala fides. Thus no other help can be taken from this judgment except that as a principle, the courts can look into any State-action to find out if there is any arbitrariness or mala fides involved so that Articles 14 and 16 of Constitution are violated. The burden remains on the petitioner.

Learned counsel for the petitioner relied upon the case of S.V. Singh v. U.O.I. (Calcutta) (1988 (2) S.L.R. 545) by a single bench of Calcutta High Court. The single bench had observed in this case that in exercise of writ jurisdiction under Article 226 of the Constitution in the light of Article 16 of the Constitution of India, the High Court is competent to investigate as to whether the order of transfer is tainted with malice or motive or whether it is for administrative exigencies. The Bench had further observed that the writ court can even crack the shell to see for itself as regards the factual aspect as to whether there was in fact any malice or mala fide move, on the disclosure of documents by the parties. The court observed that the surrounding circumstances ought also to be taken, in order to ascribe such a motive. Chain of events taken together will have to be looked into. The court observed that power of transfer should not be exercised as an alternative to disciplinary proceedings or the order of suspension. It was recognised that transfer is an incident of service of any employee but the same should not be used as a weapon to punish the employee.

It is apparent from a reading of the report that the case has been decided in its own facts and circumstances. The court noticed that the chain of events and circumstances in every case are the material fact. In the case before us, as we have discussed in detail, there was ample cause for the bank to act for the protection of its own financial interests apart from any other delinquent conduct of the petitioner. So, the order of transfer was in self-protection of the institution.

The Supreme Court observed in another case of N.K. Singh v. Union of India

(1994 (5) S.L.R. 153 S.C.) regarding judicial review of transfer orders of a public servant, that by judicial scrutiny of transfer order the courts can interfere only if order is vitiated by mala fides or there is infraction of any professed norm or principle governing the transfer. In any other case, the matter must be left to the department heads in the public interest. It was observed that there are no judicially manageable standards for scrutinising the transfers. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny.

In another pronouncement in the case of ''Union of India v. Ganesh Das Singh'' cited at 1995 (7) S.L.R. S.C, 143, the Apex Court observed that plea of mala fides against the transfer order, without indicating any specific individual against whom mala fides was alleged and without indicating any specific act of malice, there being nothing to show that superiors were annoyed of trade union activities, must fail, as nothing was established to show that transfer order was liable to judicial review on this ground.

Still in another case cited at 1993 (1) S.L.R. (S.C.) 347; Shankaranarayan v. State of Karnataka, the Supreme Court observed that inference of malafides can only be based on factual matrix. It was a case where Chief Secretary of Karnataka was transferred to another post declared equal to the post of Chief Secretary. The allegation was that the transfer was due to difference of opinion between the petitioner and the CM. It was held that no inference can be drawn that the transfer was not due to administrative exigencies.

In 1979 (2) S.L.R. (S.C) 58, K.B. Shukla v. Union of India, the Apex Court observed that opinion of the Govt. as to the existence of exigencies about transfer of an employee was to be based on subjective satisfaction of the Govt. and the court will not interfere with the same in the absence of proof of mala fides or violation of statutory rules which the employee must establish.

The principles which emerge from these pronouncements of the Apex Court may be summarised as under-

(a) Transfer is a necessary concomitant of service and a transfer order cannot be called per se prejudicial to an employee.

(b) The State actions including transfer orders cannot be permitted to be punitive and at the same time based on malice of controlling officers towards the subject. If they are, the prejudicially affected person can seek judicial review of them in appropriate court.

(c) Transfer orders should not violate statutory principles.

(d) There is initial presumption in favour of existence of administrative exigency, in case of transfer orders passed by State Functionaries. The burden of proof lies heavy on the employee/petitioner to show violation of statutory principles or that the order is punitive and result of malafies or malice of controlling officer to harm the employee,

(e) Facts suggesting malafide must be specifically pleaded and material brought on record.

After clearing the above hurdles, the petitioner will be entitled to equitable relief only if he shows prejudice and injustice to him, as a result of impugned order, if mala fide or infraction of statutory principles is establish -which is the general rule regarding grant of relief in exercise of writ jurisdiction.

The ''practice'' that normally an Asstt. Manager of bank would remain at a particular posting for a period of 3 years, is not an inviolate statutory principle. The exigency of service can always demand transfer in the interest of the bank. The respondents in this case acted on such consideration. It is not the law that if certain charges are being inquired against the particular employee, he cannot be transferred during the pendency of that inquiry, even if there has arisen administrative exigencies for the protection of financial interest of a particular institution or even if a serious apprehension of the same has arisen. The burden of proving mala fides was on the petitioner. We are unable to infer malafides against the respondents. As already discussed, there appears to be justification for transfer, although the court does not look for justification but has to restrict itself to see if there is malafide or arbitrariness involved or there is violation of statutory principle. Apart from this, the petitioner has failed to show any inherent injustice to him in the transfer order and this court will not grant him equitable relief on mere technical grounds, without showing injustice. A transfer is not per se an unjust action of the employer. No special prejudice is made out to the petitioner.

For the above reasons we are of the view that this L.P.A. must fail. The short order of the single Bench is in no manner infirm. The appeal is dismissed with no order as to costs.

