

(2021) 07 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 7828 Of 2021 (S-TR)

Santhosh Kumar S

APPELLANT

Vs

Managing Director & Others

RESPONDENT

Date of Decision : 20-07-2021

Acts Referred:

Citation : (2021) 07 KAR CK 0024

Hon'ble Judges : M. Nagaprasanna, J

Bench : Single Bench

Advocate : P.A. Kulkarni, R.V.Subramaya Naik, T. Suryanarayana

Final Decision : Allowed

Judgement

M. Nagaprasanna, J

1. The petitioner calls in question orders dated 12-03-2021 bearing No.BNM No.14122/04.14.02 (Emp.No.60046)/2020-21 and 03-04-2021 bearing

No.BNM 97/(M)04.14.02/21- 22, which transfer the petitioner who is an employee of Bharatiya Reserve Bank Note Mudran (P.) Limited from

Mysore to Salboni Unit in West Bengal.

2. Brief facts leading to the filing of the present writ petition, as borne out from records, are as follows:-

The petitioner is an employee of the respondents - Bharatiya Reserve Bank Note Mudran (P.) Limited having entered its service on 25-07-1996, as

Assistant Manager. Immediately on his appointment, the petitioner was posted to Salboni Unit, West Bengal and on 05-11-2001, was promoted as

Deputy Manager and transferred to Mysore. On his further promotion as Manager on 04-06-2014, he was again transferred and posted to Salboni

Unit, during which period the petitioner developed the dreaded disease/cancer,

applied leave and underwent surgery at the Amala Institute of Medical Sciences in Thrissur, Kerala, after which the petitioner represented for a posting at Mysore. This was acceded to and the petitioner was posted to the respondents' office at Mysore.

3. It appears that in the month of February, 2016, the petitioner suffered metastasis - Development Secondary Tumor Cells and the cancer that the petitioner had suffered in the year 2014 recurred and the petitioner claims to be in continuous treatment at a hospital which deals with patients of cancer.

4. Owing to his problem, the petitioner was transferred from Mysore to Corporate Office at Bangalore. This according to the learned counsel for the petitioner was on several representations of the petitioner and the respondents were knowing fully well that the petitioner is taking treatment at HCG, which was available at Bangalore as well. The order of transfer dated 31-01-2019, reads as follows:-

Please refer to your letter dated January 17, 2019 requesting to stay your transfer to Salboni and expressing your convenience for availability of specialized treatment at Mysore/Bengaluru.

In view of the difficulties expressed by you, it has been decided that you should be transferred to Bharatiya Reserve Bank Note Mudran (P) Limited,

Corporate Office, Bengaluru instead of Salboni in your existing capacity on a long term basis. Accordingly, you will be relieved from this office as at

the close of business on April 30, 2019 with instructions to report to General Manager (CFO & CS), Bharatiya Reserve Bank Note Mudran Pvt. Ltd.,

Corporate Office, Bengaluru, after availing of minimum journey period and usual joining time.

In case you wish to avail the joining time at a later date, you are advised to take prior permission of the Company. You will be eligible for usual

transfer benefits on account of this transfer, as per the rules of the Company in vogue.

Your representations, if any on this subject should be submitted to this office latest by March 05, 2019, failing which no further representation will be entertained in this regard.

(emphasis added) Pursuant to the said order of transfer, the petitioner requested to keep the said order of transfer in abeyance up to 30-04-2020, as

the elder daughter of the petitioner was studying in 2nd PUC in Mysore and the academic year would come to an end on 30-04-2020. This request of

the petitioner dated 08-02-2019, reads as follows:-

Sub: An earnest request for extension of date of reporting at New Centre of Posting on account of Transfer.

Ref: Letter of Transfer - BNM No.16335/04-14-02 (Emp.No.60046)/2018-2019 dated 31-01-2019.

At the outset, I express my sincere gratitude to the Management for considering sympathetically, the difficulties I am encountering with my health

issues and thereby appropriately decided to transfer me to a centre which has facilities for continuance of my treatment for the prevailing illness. I am

beholden and indebted to the Company and the Management.

I whole heartedly accept the transfer to the Corporate Office, Bengaluru wherein for the time being, I place my humble request to kindly defer my

relieving from BRBNMPL, Mysore to a later date due to the reasons explained below:

My elder daughter, Kum. Shradha S.Nair, is a student of SVEI PU College, Mysore, who is entering into 2nd PUC course (PCMB) for the academic

year 2019-2020. I fear that displacing her from Mysore to Bangalore at this crucial juncture would affect her academics which may probably cause an

adverse consequence in her future course of studies. Further, she is also undergoing Medical Entrance Coaching in the Aakash Institute at Mysore

along with her Pre- University Course.

In view of the above facts, I kindly request that my relieving from BRBNMPL, Mysore may please be deferred to 30-04-2020 to facilitate my

daughter to complete her 2nd PUC in SVEI PU College, Mysore and also for her preparation for professional course in the Aakash Institute, Mysore.

This would also help to shift my family along with me which also would obliquely help me getting their timely care for maintaining my health.

Acceding to the request of the petitioner, the transfer of the petitioner to Bangalore made on 22-03-2019, was kept in abeyance upto 30-04-2020. The

order further directs that the earlier order of transfer from Mysore to Bangalore would remain unchanged. The order dated 22-03-2019, keeping the

said order in abeyance reads as follows:

Please refer to your letter dated February 8, 2019 requesting for retaining you at

Mysuru Office till April 30, 2020.

2. We advise that your request has been carefully examined by Corporate Office and it has been decided to retain you in this office till April 30, 2020.

Accordingly, you would be relieved from this office as at the close of business on April 30, 2020 with instructions to report to General Manager (CFO

& CS), Bharatiya Reserve Bank Note Mudran Private Limited, Corporate Office, Bengaluru, after availing of minimum journey period. The other

contents of our letter BNM No.16335/04.14.02 (Emp. No.60046) /2018-19 dated January 31, 2019 remain unchanged.

(emphasis added) The petitioner communicated to the competent authority that in terms of the earlier communication he was ready and willing to join

at Bangalore as the order earlier depicted that every other contents of the transfer order dated 31-01-2019, would remain unchanged.

This representation of the petitioner was replied by the competent authority that the Corporate Office has undertaken a review and it has decided to

relieve you from the office at Mysore on 16-10-2020, to join Corporate Office at Bangalore. The communication dated 11-08-2020, reads as follows:-

Please refer to our letter BNM No.19353/04.14.02 (Emp. No.60046)/2018- 19 dated March 22, 2019 advising you about your transfer to Corporate

Office, Bengaluru in your existing capacity on a long term basis and our e-mail correspondence dated March 20, 2020 regarding your transfer being

kept in abeyance.

In this connection, we advise that the matter has been reviewed by Corporate Office and it has since been decided to relieve you from this office on

October 16, 2020 with instructions to report to General Manager In-Charge, Bharatiya Reserve Bank Note Mudran Private Limited, Corporate Office,

Bengaluru, after availing of minimum journey period and usual joining time.

All other contents of the above letter BNM No.19353/ 04.14.02 (Emp.No.60046)/2018-19 dated March 22, 2019 remains unchanged.

(emphasis added) A further communication is made on 26-08-2020, deciding to keep the earlier order of transfer on hold and observing that it would

be reviewed in the annual general transfers in 2021. Therefore, despite all the correspondences extracted hereinabove, the petitioner continued to

work at Mysore on the say of the respondent itself. The review of the case of the petitioner at the time of general transfer resulted in the impugned

order.

5. The impugned order transfers the petitioner from Mysore to Salboni Unit, Kolkata. To this, the petitioner gave a detailed representation on 15-03-

2021, narrating entire circumstances of the respondents themselves accepting the request of the petitioner in transferring him to Bangalore. All along,

the petitioner was given to understand that he would be transferred to Bangalore. He also encloses medical certificate for the treatment that he is

undergoing at Mysuru and the case summary is also given by the competent doctor, which is dated 15-03-2021.

6. In the afore-narrated facts, what falls for consideration of this Court is, whether in the peculiar facts, the petitioner could be transferred from

Mysore to Salboni Unit in West Bengal?

7. The right of the employer to transfer the employee cannot be seen to be questioned by the petitioner, as the transfer is an incidence of service, but

if the transfer sometimes results in extreme hardship, which the employer requires to consider.

8. The afore-narrated facts and correspondences being not in dispute, every time the petitioner was sought to be transferred, the respondents have

been generous enough to retain him at Mysore and even transferred to Bangalore, as was communicated earlier. It is not once but twice, the

respondents did accede to the request of the petitioner for posting him at Bangalore. When a communication in particular also directed that the

petitioner should be relieved on 16-10-2020 and to report at the Corporate Office at Bangalore but the respondents - Bank did a volte-face by

transferring the petitioner from Mysore to Salboni (West Bengal).

9. There can be no quarrel about the legal principles qua transfer as contended by Shri R.V.Subramanya Naik, learned senior counsel appearing for

the respondents. Right to transfer except in certain circumstances cannot be interfered with by the constitutional Courts, unless it is in violation of any

fixed norms, guidelines, statutory rules or is vitiated by malice in law or malice in fact. None of these circumstances exist at the case at hand. It is not

pleaded by the petitioner that the transfer suffers from any of the vices indicated hereinabove.

10. The submission of Shri P.A.Kulkarni, learned counsel appearing for the petitioner is that owing to the medical problem that the petitioner is facing,

the respondents should consider his case and post him at Bangalore in the least. It is germane to notice the case summary given by the hospital dated

15-03-2021, where the petitioner is taking treatment, which reads as follows:-

This is to certify that Mr. Santhosh Kumar, Sethumadhavan, male aged 48 years, is a patient diagnosed with Adenocarcinoma of Colon (Colon

Cancer) with Stage IIA (pT3NO) and underwent surgery of ""Left Hemi - Colectomy"" on 17th October, 2014 at Amala Institute of Medical Sciences,

Trissur, Kerala. He was referred to HCG, BHIO, Mysore for his post-surgery treatment by the said Hospital at Trissur.

During the course of his treatment at Mysore, he was again diagnosed with Adenocarcinoma (recurrence of cancer) and underwent a second surgery

of Total Colectomy (removal of colon) at Bharath Hospital and Institute of Oncology, Mysore, 2016.

This is to certify that Mr. Santhosh Kumar, Sethumadhavan, who is holding UHID NO.38287 is under my care at HCG -Bharath Hospital and

Institute of Oncology, Mysore for the disease of Recurrent Ca. Left Colon. He is advised to undergo continuous follow up and surveillance at regular

intervals at the facilities best provided by a Medical Oncologist / Surgical Oncologist in a Cancer Care Centre. In case of any new developments, he

needs prompt intervention by a Medical Oncologist.

(emphasis added) The petitioner has admittedly undergone two surgeries for cancer and is now a Carcinoma patient and would without doubt needs

constant treatment by a hospital dealing with oncology as continuous follow up at regular interval would be needed.

11. Though the learned senior counsel appearing for the respondents has submitted at paragraph 21 of the statement of objections, that 24x7

ambulance services are available at Salboni, a private hospital is available within 22 Kms. from Salboni and all facilities for treatment of cancer is also

available, the same would not take away the effect of communications made in favour of the petitioner, earlier to the impugned orders.

12. It is to be noticed that the respondents themselves have on two occasions directed that the petitioner would be posted to Bangalore owing to his

problem. Notwithstanding this, the respondents do a volte-face and passes the impugned order. It would be harsh, in the peculiar facts of this case to

drive the petitioner, a cancer survivor from Mysuru to Salboni (West Bengal).

13. It cannot be lost sight of the fact that once a cancer patient is always a patient of cancer, is the general medical jargon. Therefore, in the peculiar

facts of this case, I deem it appropriate to direct the respondents/Bank to reconsider the case of the petitioner and retain its decision to post the

petitioner to Bangalore as was decided by the respondents in its communications, on 22-03-2019, 30-04-2020, 11-08-2020, by posting him to Bangalore

or retaining him at the place he is presently working.

14. For the aforesaid reasons, I pass the following:

ORDER

(a) The writ petition is allowed.

The impugned orders dated 12-03-2021 bearing No.BNM No.14122/04.14.02 (Emp.No.60046)/2020 - 21 and 03-04-2021 bearing No.BNM

97/(M)04.14.02/2021- 22, are quashed.

(c) The matter is remitted back to the hands of the respondents/Bank to reconsider the case of the petitioner in the light of the observations made in

the course of this order and pass appropriate orders in accordance with law.

(d) Petitioner would be entitled to all the consequential benefits that would flow from the quashing of the impugned orders.

Ordered accordingly.