(1996) 02 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 26147, 26289 and 26757 of 1995

Smt. S. Jayanthi Bhandary and Others — APPELLANT

Vs

Syndicate Bank and Others — RESPONDENT

Date of Decision : 16-02-1996

Acts Referred:

Citation : (1996) 2 ALT 537

Hon'ble Judges : Y. Bhaskar Rao, J;D.H. Nasir, J

Bench : Division Bench

Advocate : Vedula Venkataramana, for the Appellant; K. Srinivasa Murthy, for A. Krishnam Raju, for the Respondent

Final Decision : Dismissed

Judgement

Y. Bhaskar Rao, J.—This batch of writ petitions is filed by the employees of the Syndicate Bank, most of them are women employees, for a Mandamus declaring the order and decision of the 1st respondent contained in the letter of the 4th respondent dated 8-11-1995 purporting to reject the representations of the petitioners issued by the 3rd respondent, as arbitrary and illegal and for a consequential direction to set aside the orders of transfer directed against the petitioners based on the circular of the zonal office, Andhra Pradesh, contained in Circular No. 35/95, dated 23-5-1995 and also for a declaration that the transfer policy contained in the said circular is ultra vires the powers of the Zonal Office being contrary to the transfer policy of the Head Office contained in Circular No. 88/91 dated 25-3-1991 and consequently for a further direction to the respondents to continue the petitioners in the respective branches in which they were working prior to the impugned orders of transfer and to allow all service benefits to the petitioners including arrears of salary.

2. The facts of the case that led to the filing of this batch of writ petitions are that the petitioners earlier challenging the order of transfer dated 1-6-1995 filed a batch of writ petitions, which were allowed by a learned single Judge. Against the judgment of the learned single judge allowing the batch of writ petitions and

setting aside the orders of transfer the respondents-Bank preferred W.A. No. 943 of 1995 and batch, wherein a Division Bench of this Court on 5-9-1995, while modifying the orders of the learned single Judge directed the petitioners to make separate and independent representations against the impugned orders of transfer and also directed the 1st respondent herein to give an individual consideration to the representations and to pass a speaking order thereon. The Division Bench also made observations with regard to the fairness that is expected to be maintained by the respondent-bank while passing orders on the representations assailing the validity of the orders of transfer. The petitioners are being continued at their respective branches of the bank till to-day, as the orders of the transfer dated 1-6-1995 are not given effect to in view of the orders of this Court.

3. As per the directions of the Division Bench the petitioners submitted their respective individual representations to the first respondent assailing the orders of transfer and seeking retention in the respective branches of the Bank. The 1st respondent considered the representations of the petitioners and rejected them by order dated 8-11-1995.

4. It is the case of the petitioners that either the original orders of transfer dated 1-6-1995 or the orders of the 1st respondent dated 8-11-1995 do not contemplate substitution of one employee by another and therefore there is no contingency of another clerical employee substituting the petitioners pursuant to the impugned order dated 8-11-1995. According to the petitioners, despite the orders of transfer issued on 1-6-1995 they have been discharging their duties in the same branches of the bank in which they were working prior to the issue of orders of transfer till to-day. The petitioners, apprehending that the respondents may create disturbance and prevent them from continuing in the branches of the bank from which they are transferred, filed the present writ petitions.

5. The petitioners, are the clerical staff and continuing as such in the bank. The Head Office of the respondent-bank has been formulating the service conditions of the employees which are to be uniformly applicable to all the employees irrespective of their place of posting. The relevant circular No. 88/91, dated 25-3-1991 has been issued by the Head Office relating to the subject of transfer of the clerical employees, which provides the transfer policy of the respondent-Bank. As per the transfer policy of the respondent-Bank the clerical category has been divided into two categories of employees viz., redeployment transfer and general rotation transfer. The relevant Circular No. 88/91, dated 25-3-1991 reads as follows:

(A) Redeployment Transfer:

(i) While identifying workmen staff other than the sub-staff for posting to deficit pockets, junior most in service would be transferred.

(ii) For the above purpose, place (Urban Agglomeration/Municipal Corporation/ Village Panchayat/Mandal Panchayat, as the case may be is taken as a Unit.

(iii) The following categories of staff, however, are exempted from such redeployment transfer:-

(a) Lady Staff: (b) staff members who have crossed the age of 50 years, (c) Those appointed on compassionate grounds, (d) Physically handicapped employees...... (e) Those who have come to the place on request transfer....

(B) General /RotationTransfer:-

(i) Each workman is liable for transfer after completion of five years in a Branch/ place.

(ii) Ordinarily such rotation/general transfer will be outside the place, but within a radius of 25 Kms. if there are branches/offices within that radius. If there are no branches /offices within the radius of 25 Kms., the transfer will be to any of the branches/offices within the District.

6. According to the transfer policy of the respondent-bank applicable to the clerical category, lady employees of the bank are totally exempted from redeployment transfer. At any rate redeployment transfers are to be effected on the basis of seniority in service. In other words, if a clerical employee is to be subjected to redeployment transfer for accommodation in a deficit pocket from a surplus branch, the junior most in the surplus branch should be exposed to transfer and a senior employee should continue to have the privilege of being undisturbed till all the juniors are subjected to redeployment transfers. As the lady employees, according to the circular of the respondent-Bank, are totally exempted from the purview of redeployment transfers, they are entitled to an absolute privilege and protection from being subjected to such transfers. In so far as other category of transfers i.e., general/rotation transfers are concerned, the employees will have to be retained within a radius of 25 Kms., if there is a branch available within the distance or within the District. According to the petitioners, even in effecting a general/rotation transfer the respondent-bank is not empowered to transfer a clerical employee outside the District.

7. The transfer policy of the respondent-Bank contained in Circular No. 88/91 dated 25-3-1991 is subsisting and is being followed at several Zones. The redeployment transfer of the clerical employees is also subject-matter of circular No. 128/91, dated 21-5-1991, wherein the respondent-Bank provided that while identifying workmen staff other than sub-staff for posting to deficit pockets, junior most in service in the District would be transferred. This circular has reinforced the transfer policy of the respondent-Bank contained in the earlier circular No. 88/91. Again in circular No. 228/94, dated 29-9-1994 the respondent-Bank provided that the issue regarding general/rotational transfers may be decided at a Zonal level with reference to the position prevailing in each State. It is clear from this circular that the respondent-Bank has provided for an uniform policy in the matter of transfer of clerical employees when such a transfer is in the nature of redeployment transfer. If the transfer is to be effected as a general/rotational transfer, the power to effect such transfer is delegated to

the Zonal Office in each State. Therefore the transfer policy provided for by the respondent-Bank regarding redeployment transfers cannot be altered by the Zonal Office and the delegated power of the Zonal Office will enable it to effect general / rotational transfers which again should be in conformity with the principles laid down in the transfer policy of the Head Office contained in Circular No. 88/91 dated 25-3-1991.

8. The Zonal Office in Circular No. 35/95, dated 23-5-1995 has provided certain norms in respect of transfer of clerical employees. According to this circular the rotational transfer of the clerical employees in the Districts of Nellore, Ongole, Cuddapah, Anantapur, Warangal, Nizamabad, Medak, Ranga Reddy, Nalgonda, Karimnagar and Kurnool is provided within the District after completion of five years in a branch. It also exempts the lady employees from such rotational transfers. The Zonal Office in the same circular dated 23-5-1995 has provided a different set of policy under the caption "Rotational Transfer of workmen in branches of twin cities, Chittoor District, Vijayawada Division (except branch in Nalgonda District). This second set of policy under the impugned circular, while reiterating the transfer policy under the redeployment scheme, denied the exemption made available to the lady employees in the first set of transfer policy relating to Nellore and other Districts. The case of the petitioners is that when the Zonal Office issued the impugned circular dated 23-5-1995 referring the Head Office circular No. 88 /91, dated 25-3-1991, wherein lady employees were provided exemption from transfer, denial of such exemption under the impugned circular dated 23-5-1995 is arbitrary, illegal and unsustainable. Further it is the case of the petitioners that the 1st respondent has passed the impugned order dated 8-11-1995 on the representations made by them without taking into consideration the spirit of the Division Bench judgment of the Hon''ble High Court dated 5-9-1995, and rejected their claim by confirming the Circular No. 35/1995 dated 23-5-1995 subjecting the petitioners to transfer to various places/ branches. As against this the present writ petitions are filed.

9. The respondent-Bank filed its counter, inter alia, stating that the transfer of an employee is an incidence of service of the employees of the Bank who are liable to be transferred to any branch as per the transfer policy of the Bank, that it is provided in the Sastry Award that the workmen-employees other than subordinate staff can be transferred to any branch within the State or in the linguistic area. It is further stated that the redeployment rotational transfer is an ongoing process in the bank in order to correct the imbalances in the staffing pattern in various districts of the State and also to give benefit to the deployed persons to be put-back or re-transferred to the parent districts after three years. It is also stated that as per the norms of transfers in 1995, the employees earlier transferred to deficit pockets in 1991 are to be re-transferred back to their parent districts and in their place employees are to be transferred from surplus pockets on rotation. This is a condition precedent and as per the norms of transfer in 1995, for every three years the employees will be transferred from surplus pockets to deficit pockets and they are to be retransferred back on

completion of three years term. According to the respondent-Bank, this process of ''Redeployment transfers'' are renamed as ''Rotational Transfers''. According to this system, every employee in the surplus areas of twin cities, Chittoor District and all districts in Vijayawada Division (except Nalgonda District), when his turn comes, has to work outside his parent district for a period of three years, during which period his seniority and emoluments are fully protected by the respondent-Bank. The respondent-Bank averred that even if it is conceded that transfer causes some suffering to the employees, every employee should share the suffering when his or her turn comes as per rotation for a specific period of three years instead of subjecting some other employees to suffer continuously for many years.

10. With regard to the exemption given to the lady employees as per circular No. 88/91 dated 25-3-1991 issued by the Head Office of the Bank, the respondent bank submitted that the provisions of the earlier circular dated 25-3-1991 have undergone changes with the express authorisation given by Head Office to Zonal Offices to formulate policies relevant to each State and such fresh transfer policy in respect of Rotational Transfers has been evolved vide Zonal Office Circular No. 35/95, dated 23-5-1995. Therefore the exemption given to lady employees from Rotational Transfers in the Redeployment Policy, 1991 was withdrawn by the Head Office by its circular dated 4-4-1994 and when it was challenged by the employees of the bank, the transfer policy of the Bank was upheld by the Karnataka High Court by its order dated 6-6-1995. The respondent-bank also submitted that the norms and the purpose of General Transfers are different from that of Rotational Transfers, that the memorandum of understanding signed by the majority union of the Bank, as circulated vide Circular dated 23-5-1995, is only applicable and the guidelines on General Transfers contained in Circular No. 88/91, dated 25-3-1991 have no application or relevance to the Rotational Transfers effected in 1995.

11. The learned Counsel for the petitioners contends that the provisions under Para 536 of Chapter XXVIII of the award of the All India Industrial Tribunal (Bank Disputes), Bombay on the Industrial Disputes between certain Banking Companies and their workmen, have been violated by the respondent-bank in respect of transfer of employees. On the other hand, the learned standing Counsel Mr. K. Srinivasa Murthy, submits that all the petitioners are members of the ''Syndicate Bank Employees'' Union, the majority union of workmen which has signed the memorandum of understanding with the management on ''Transfer Policy Norms'' that the said understanding is not a settlement under the provisions of Industrial Disputes Act; that the matter of transfer policy has not been covered as a service condition and that the respondent-bank has not violated the provisions of the Sastry Award in respect of the transfer of employees of the Bank. Para-536 of Chapter XXVIII of the Sastry Award reads as follows:

"We direct that in general the policy should be to limit the transfers to the minimum consistent with banking needs and efficiency. So far as members of the subordinate establishment are concerned there should be no transfers ordinarily and if there are any transfers at all they should not be beyond the language area of the persons so transferred. We further direct that even in the case of workmen not belonging to the subordinate staff, as far as possible there should be no transfer outside the State or the language areas in which an employee has been serving, except of course, with his consent".

As seen from the above provision in the Sastry Award the respondent-bank has not violated the transfer policy. The petitioners are transferred to branches of the bank within the same State of Andhra Pradesh. Nowhere in the award restrictions have been placed on transfers except to the extent of Award Staff as far as possible and moreover it was limited to the States in which they are working or in the language area. It should also be borne in mind that the award does not impose a complete bar on the right of the management for transferring the employees and it was also open to the management, under special circumstances, to transfer employees outside the State also.

12. In the case on hand all the petitioner-employees have been transferred within the State. They have not been transferred to any place outside the State. It is to be seen that employee transferred has put in service of less than 17 years in the same area or district.

13. The learned Counsel for the petitioners contended that as per the guidelines issued in Cr.No. 88/91, dt. 25-3-1991 with regard to the transfer policy of the respondent-Bank, the lady staff are exempted from redeployment transfer and therefore the present redeployment Rotational transfer of lady staff is contrary to the guidelines issued by the bank. It is also submitted by the learned Counsel for the petitioners that even under circular No. 35/95, dated 23-5-1995 the Zonal Office of the respondent-Bank issued guidelines exempting from rotational transfer of lady staff members and therefore the present rotational transfer of lady staff is not in consonance with the guidelines issued by both the Head Office or the Zonal Office of the respondent-bank.

14. It is to be seen that earlier the Head Office of the respondent-Bank has issued circular No. 88/91, dated 25-3-1991 in respect of general transfers of the employees and also exempting the lady staff members from transfers. However, later in Circular No. 80/94, dated 4-4-1994 the Head Office has withdrawn the exemption given to lady staff members from Rotational transfers in respect of Karnataka State. When the same was challenged before the Karnataka High Court, the transfer policy of the respondent-Bank was upheld. Thereafter the Head Office of the Bank, having come to an understanding with the majority union of the Bank at the all India level, authorised the respective Zonal Offices of the Bank to decide the matter of General and Rotational transfers at Zonal level vide Circular No. 228 /94, dated 29-9-1994. Therefore keeping in view the Circular dt. 29-9-1994 issued by the Head Office and authorising the Zonal Offices of the Bank in respect of General and Rotational Transfers at State level,

the Zonal Management of the respondent-Bank had entered into a memorandum of understanding with the majority Union of the A.P. State Unit of Syndicate Bank Employees'' Union with regard to the transfer policy and issued Circular No. 35/95 dated 23-5-1995. The transfer policy, as far as Rotational Transfers is concerned, is not against the transfer norms agreed to by both the parties as per the Zonal Office Circular dated 23-5-1995. It is also to be seen that the provisions in circular dated 23-5-1995 are in addition to the norms laid down in the Head Office Circular Nos. 97/86 and 88/91 on General Transfers and that the norms and the purpose of General Transfers are different from those in respect of Rotational Transfers. Therefore it is not open to the petitioners to challenge the Rotational Transfers made as per the norms mentioned in Circular dated 23-5-1995 issued by the Zonal Office of the Bank. Further Circular No. 88/91 dated 25-3-1991, which was issued by the Head Office of the Bank giving guidelines on General Transfers, has no relevance to the Rotational Transfers, effected in 1995 as per circular No. 35/95, dated 23-5-1995. Therefore it cannot be said that the impugned orders of transfer dated 1-6-1995 are arbitrary, illegal and without jurisdiction.

15. It is clear from the guidelines issued in Circular No. 35/95 dated 23-5-1995 that the branches where extra staff is working were identified for redeployment transfer. Where extra staff is there, they are identified on a district-wise basis and a seniority list of the employees working in that district is made out and thereafter the redeployment is made. The seniority and the emoluments of the employees who are transferred under Rotational Transfers is fully protected and all the employees working in branches in the surplus area are considered for transfer as per norms and as per seniority irrespective of either their class or sex. The employees are transferred from one branch to other branch for good and sufficient reasons and on account of administrative exigencies and taking note of the vacancies that are available in the deficit pockets.

16. The learned Counsel for the petitioners contends that the impugned transfers are not in accordance with the directives of the Sastry Award and therefore the transfers made are illegal and violative of the norms of the Award.

17. Sri K. Srinivasa Murthy, learned Counsel appearing for the respondent-bank referring to the relevant provisions of the Sastry Award on this aspect, relied upon a decision of the Supreme Court in Canara Banking Corporation Ltd. Vs. U. Vittal, wherein it was held as follows:

"We have found above that the right of the Bank to distribute its workmen not belonging to the subordinate staff to the best advantage, eventhough this may involve transfers outside the State or the language area in which a particular workman had been serving, was left unimpaired by the Sastri Award, except that such transfers have to be avoided, if they can be avoided without sacrificing the interests of the Bank. The management of the Bank is in the best position to judge how to distribute its man power and whether a particular transfer can be avoided or not. It is not possible for industrial tribunals to have before them all the materials which are relevant for this purpose and even if these could be made available, the tribunals are by no means suited for making decisions in matters of this nature. That is why it would ordinarily be proper for industrial adjudication to accept as correct any submission by the management of the bank that an impugned transfer has been made only because it was found unavoidable. The one exception to this statement is where there is reason to believe that the management of the Bank resorted to the transfer mala fide, by way of victimisation, unfair labour practice or some other ulterior motive, not connected with the business interests of the Bank".

18. With regard to the contention that the lady staff members of the Bank are exempted from the transfers as per the guidelines issued by the respondent-Bank, the learned Standing Counsel appearing for the respondent submits that the transfer of male or lady staff members of the bank is only for the convenience and for the purpose of conducting of smooth running of the business and therefore the lady staff members of the bank cannot claim to be retained where they are as of right. He further submits that transfer is an incidence of service and it is also mentioned in the appointment order that the petitioners can be transferred to any place in the country and there is no vested right for any employee to remain in a particular place. The transfer of an employee is purely a managerial function, and the employee cannot claim it as of right. To substantiate this submission the learned Counsel appearing for the respondent-Bank relied upon a decision of the Supreme Court in Union of India and Others Vs. S.L. Abbas, which reads thus:

"....the guidelines regarding transfer do not confer any legally enforceable right on an employee and even if the guidelines are not followed, the Courts can not interfere. Who should be posted where, is a matter for the employer to decide".

In the same case the Supreme Court further held as follows:

"No doubt the guideline requires the two spouses to be posted at one place as far as possible, but that does not enable any spouse to claim such a posting as a right, if the departmental authorities do not consider it feasible".

19. In view of the aforesaid discussion we find that unless the decision of the respondent-Bank in transferring the petitioners is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the Courts lack the necessary expertise for personnel management of all Government departments. This must, in our opinion, be left, in public interest, to the departmental heads subject to the limited judicial scrutiny as stated supra. There is no doubt that the banks are entitled to decide the question of transfer of employees on a consideration of the necessities of banking business. Which employee has to be transferred to a particular branch and how the employees are to be distributed between the different branches are within the exclusive jurisdiction of the management. It

may be observed that this Court cannot go into the question of the relative hardships being undergone by the transferee employees in view of the impugned transfers. It would be for the management of the Bank to consider the facts of a given case and mitigate the real hardships, if any, in the interest of good and efficient administration.

20. In the result, finding no merits, the writ petitions are dismissed, but, in the circumstances, without costs.

