
(2012) 02 GAU CK 0076
In the Gauhati High Court
Case No : Writ Petition (C) NO. 60 of 2012

Sri Ratan Bhattacharjee

APPELLANT

Vs

Tripura State Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:

Citation : (2012) 02 GAU CK 0076

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.B. Saha

1. Heard Mr. B. N. Majumder, learned counsel appearing for the petitioner as well as Mr. P. K. Pal, learned counsel appearing for the respondents-Bank. As agreed to by the learned counsel for the parties, the instant writ petition is taken up for final disposal at the motion stage itself.

2. The facts, need to be discussed for disposal of this writ petition, are as follows :-

The petitioner was appointed on 22.06.1992 as a Substaff under the respondent No. 1, Tripura State Co-operative Bank Ltd., and was posted at Teliamura Branch. While he was working at Teliamura Branch, he was transferred to Agartala Head Office of the respondent-Bank in the year 1994 and thereafter in the year 1999 he was transferred to Agartala Branch and also Lake Chowmohani Branch. While he was working at Lake Chowmohani Branch again he was transferred to Bikramnagar Branch in 2004 and from where he was transferred to Melaghar Branch in the year 2006 and then again transferred to Battala Branch in the year 2007. Since 2007, the petitioner has been working at Battala Branch till the impugned order of transfer was issued on 06.07.2010 by the respondent No. 2, the General Manager, Tripura State Co-operative Bank Ltd., Agartala, transferring the petitioner from Battala Branch to Khumlung Branch of the respondent-Bank.

Against the aforesaid transfer order, the petitioner made a representation on 15.07.2010, wherein he had stated that his wife had been suffering from severe ailments and often required to take proper check up and treatment. It was also stated in the representation that though he has three sons, they are living separately with their wives and children and, thus, transfer order, as impugned, is required to be stayed and/or modified to save his family. The respondent No. 2 though had received the said representation of the petitioner as stated supra, but the same was not disposed of at an early date. Being aggrieved by the action of the respondents, the petitioner approached this Court by filing a writ petition bearing No. W.P.(C) 89 of 2011. This Court after hearing the parties disposed of the writ petition on 01.03.2011 with a direction to the respondent No. 2, the General Manager, Tripura State Co-operative Bank Ltd, to consider the representation of the petitioner within a period of 10 days from the date of receipt of the order of the Court and the respondent No. 2 was also directed to communicate the result of the representation of the petitioner after giving him a personal hearing as he is a poor paid employee. In the said order, this Court also suspended the impugned transfer order till disposal of the representation.

Upon receipt of the order of this Court dated 01.03.2011, the petitioner was asked by the respondent No. 2 to appear before him for personal hearing so that his representation could be disposed of and, accordingly, the petitioner appeared on 18.03.2011 and he was heard by the authority. Upon hearing the petitioner and also considering the contents narrated by him in his representation, the petitioner was given three months' time to arrange for better treatment of his wife and then join at Khumlung Branch after three months.

3. In between the period of filing of the writ petition and disposal of the writ petition, another sub-staff, namely, Ms. Madhabi Roy, had joined in the Battala Branch in terms of the order of transfer and the petitioner was advised to join at Durga Chowmohani Branch of the respondent-Bank and perform his duty as sub-staff for three months. When the petitioner was working as sub-staff in Durga Chowmohani Branch, on 18.01.2012, vide Annexure-P/6 to the writ petition, the respondent No. 2, General Manager, Tripura State Co-operative Bank Ltd. requested the Branch Manager of Durga Chowmohani Branch of the respondent-Bank to release the petitioner from the said Branch so that he can join at Khumlung Branch where he was initially transferred, as the Khumlung Branch is suffering due to shortage of sub-staff, copy of which was also served to the petitioner. On receipt of the aforesaid order dated 18.01.2012, the petitioner filed another representation to the respondent No. 2, General Manager, Tripura State Co-operative Bank Ltd., Agartala for cancelling the order dated 18.01.2012 on the ground that his wife is suffering from ailments and is almost bed ridden. As the said representation has not been disposed of, the petitioner approached this Court by filing the instant writ petition with a prayer for quashing the impugned transfer order dated 06.07.2010 and the release order passed subsequent thereto.

4. By way of filing the affidavit-in-opposition, the respondents-Bank denied the allegations made by the petitioner in his petition. In their affidavit-in-opposition, the respondents- Bank stated that the petitioner was informed in time that he was allowed to work at Durga Chowmohani Branch for three months so that he could go for better treatment of his wife. It is also stated in the affidavit that due to shortage of sub-staff at Khumlung Branch, the respondent No. 2, the General Manager of the Bank, directed the Branch Manager of Durga Chowmuhani Branch to release the petitioner immediately so that he could join at Khumlung Branch and on the basis of direction of the respondent No. 2, the Branch Manager, Durga Chowmuhani released the petitioner on 20.01.2012.

5. On seeing the release order, the petitioner left the Bank and till date he did not attend the office. As the petitioner did not receive the release order, the respondents-Bank had no other option except to send the same to the petitioner by registered post and, accordingly, the release order was sent to the petitioner by registered post to his residential address, but the same was returned back with a postal remark "addressee left and returned to sender".

6. Mr. Nandi Majumder, learned counsel appearing for the petitioner while urging for the relief sought for would contend that the petitioner is a poor paid employee and, therefore, the respondents-Bank ought to have considered the hardship of the petitioner while releasing him from Durga Chowmuhani Branch. He further submits that even after issuance of the release order, the petitioner made a representation on 21.01.2012, but the said representation has not yet disposed of by the respondent No. 2. The learned counsel further submits that the order of transfer issued by the respondents-Bank is not for public interest but for collateral purpose.

7. Mr. Pal, learned counsel appearing for the respondents-Bank while resisting the submission of Mr. Nandi Majumder, would contend that the respondents-Bank on considering the fact that the petitioner's wife was ill allowed him to stay at Agartala for about a year though initially he was permitted to work at Durga Chowmuhani Branch for a period of three months. He further submits that the impugned order of transfer was not issued by the authority violating any statutory rules or with mala fide intention; rather the same was issued for the interest of administration. Learned counsel further submits that hardship of an employee cannot be a ground for keeping him in any particular place of his choice.

8. In the instant case, the petitioner mainly challenged the impugned transfer order only on the ground of hardship, i.e., ailment of his wife. Learned counsel further submits that how and in what manner the service of an employee will be used is with the employer and not with the Court. The Court can only interfere with an order of transfer when the same is issued not for public interest, but for co-lateral purpose. By this time it is settled by the Apex Court that it is not the duty of the Court to decide where and how the employer will utilize the services of its employees, rather the employer is the best judge to decide who should be

transferred where and how. In the instant case, the employer-Bank taking over all consideration allowed the petitioner to stay at Agartala near about a year and thereafter issued the release order. Learned counsel further submits that though the petitioner prayed for quashing the release order but the same has not been annexed with the instant writ petition. He finally contended that Khumlung is 20 km away from Agartala and sufficient communication facilities are available from Agartala and daily many employees of other departments are attending their offices at Khumlung from Agartala. Therefore, it would not be proper for the Court to quash the valid transfer order issued by the authority only on the ground of hardship when the Khumlung Branch of the respondents-Bank is suffering from shortage of staff.

9. This Court has given anxious thought to the submissions of the learned counsel for the parties and also considering the fact that on earlier occasion the petitioner had filed one writ petition challenging the same transfer order. This court also considers the fact that from 05.07.2010 to 20.01.2012, i.e., the date of issuing the impugned release order, the petitioner was allowed to stay at Agartala. Therefore, it cannot be said that the respondents-Bank did not consider the hardship of the petitioner. Transfer is an incident of service. Thus, an employee is supposed to comply a valid transfer order. It is the admitted position that Khumlung Branch is within 20 km away from Agartala and normally a large number of employees are attending their offices daily at Khumlung from Agartala. Thus, it cannot be said that the respondent-Bank by way of issuing impugned transfer order created any hardship for the petitioner and his family. In the writ petition though the petitioner made an allegation regarding mala fide but failed to substantiate the said allegation and, thus, it would not be proper for this Court to interfere with the impugned transfer order and the subsequent release order.

10. In view of the above, the instant writ petition is dismissed being devoid of merit. However, dismissal of the writ petition would not be a bar for the authority to consider the prayer of the petitioner made in his representation (Annexure-P/7 to the writ petition).

No order as to costs.