

(2012) 07 DEL CK 0125
In the Delhi High Court
Case No : LPA 537 of 2012

State Bank of India and Another

APPELLANT

Vs

Himanshu Kapur

RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Citation : (2013) 202 DLT 285

Hon'ble Judges : Siddharth Mridul, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Vikas Singh, Sr with Mr. Sanjay Kapur, for the Appellant; V.K. Rao, Sr Advocate with Ms Ekta Kalraa Sikri, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This Letters Patent Appeal is directed against an interim order passed by a learned Single Judge of this Court in CM No. 8979/2012 in WP(C) No. 4327/2012. Normally, we would not like to interfere with any interim orders passed by a learned Single Judge of this court while issuing notice in the main matter. However, the circumstances warrant our interference in this case. This would be clear from what is indicated below.

2. On 01.02.2012 the appellant took a decision to transfer the respondent from New Delhi to Lohaghat in Uttarakhand as Branch Manager. It is material to point out that the transfer order was not just in the case of the respondent but there were 36 other transfers by virtue of the same order dated 01.02.2012. The order also indicated that all the transferred officials are to be relieved by 11.02.2012 by making internal arrangements. On 10.02.2012 the respondent was relieved from New Delhi with instructions to join at Lohaghat Branch in Uttarakhand. According to the appellant, the respondent did not join at Lohaghat. But, according to the respondent he reported for duty at Lohaghat on 09.05.2012.

4. The learned counsel for the respondent drew our attention to the "certificate" dated 09.05.2012 issued by the officiating Branch Manager which was to the following effect:-

To whom it may concern

This is certify that Shri Himanshu Kapur, MMG S III PF No. 2586150 reported at Lohaghat Branch on 09.05.2012.

4. But, the learned counsel appearing on behalf of the appellant drew our attention to a letter of the very same person i.e., Mr. Suresh Chandra Arya who had purportedly given the said certificate dated 09.05.2012. The letter is dated 04.07.2012 and is addressed to the Branch Manager, Lohaghat. It is indicated in the letter that the respondent had visited the branch on 09.05.2012 at 9.30 a.m. where he stayed up to 11.45 a.m. He again came to the branch at 2.30 p.m. and when Mr. Suresh Chandra Arya had asked him to take over the charge he stated that he would come back after some time and left the branch but did turn up thereafter. Our attention was also drawn to an affidavit sworn at Haldwani, Uttarakhand on 19.07.2012 by the same Mr. Suresh Chandra Arya. The affidavit reveals disturbing facts. It indicates that on 09.05.2012 under coercion and threat from the respondent, the letter dated 09.05.2012 had been signed by him. He also indicated that the contents of the letter had been dictated by the respondent and the same had not been given by him as per his free will. In the said affidavit he also confirmed that on 09.05.2012, the respondent had not joined his duties. Paragraph 4 of the affidavit indicates that a copy of the letter dated 09.05.2012 was enclosed with the affidavit and that the said letter was taken coercively and Mr. Suresh Chandra Arya categorically denied the contents of the said letter.

5. Mr. Rao, appearing on behalf of the respondent states that this affidavit has come to his knowledge for the first time before the learned Single Judge and he had no opportunity to respond to the same. In any event he has instructions to dispute the contents.

6. This in itself would indicate that there are serious disputed questions of facts. The entire case hinges upon whether the respondent reported for duty on 09.05.2012 at Lohaghat or not. If he had reported on 09.05.2012 as contended by the respondent, then possibly Rule 40(3) of the SBI Officers Service Rules has been wrongly involved while issuing the order dated 14.07.2012 holding that the respondent had voluntarily vacated his service. At this juncture it would be pertinent to set out Rule 40(3) of the SBI Officers Service Rules:-

Where an officer who has not submitted an application for leave or where an officer having submitted his application was refused sanction of leave, absent himself for a period of 90 or more consecutive days or over stay the sanctioned leave by 90 or more consecutive days notwithstanding the provision of sub rule (2), the bank may at any time thereafter give a notice to the officer at his last known address available with the bank calling upon him to report for duty within 30 days of the notice. If the officer does not report for duty within the stipulated period, he may, by an order of the appointing authority, be deemed to have voluntarily vacated his employment on the expiry of the said period set out in the

notice. In such cases the officer shall also be liable to pay to the Bank notice monies as are payable in case of resignation as if he has been permitted to pay the emoluments in lieu of notice.

Provided however, that an officer may appeal to the competent authority within a period of three years from the date of order recording voluntary vacation under the aforesaid rule. The competent authority shall consider such appeal to treat the said order as rescinded if it is satisfied that the officer was prevented by any sickness incapacitating him from reporting for duty within the prescribed time or for any other sufficient cause, and pass such orders as it may deem fit in the circumstances of the case.

7. It would be apparent that before a person could be deemed to have voluntarily vacated his employment, there has to be a 90 or more consecutive days of abstention on the part of the concerned officer. Thereafter, a notice requiring him to report within 30 days is essential before the said Rule 40(3) can be invoked to hold a person deemed to have voluntarily vacated his employment. In the present case we find that the respondent had been relieved on 10.02.2012. Counsel for the parties admit that the 90-day period would end on 17.05.2012. According to the appellant the respondent was absent from duty for this entire period of 90 days without even applying for leave or even challenging the transfer order. On the other hand the learned counsel for the respondent submits that on the 87th day i.e., on 09.05.2012 the respondent had reported for duty at Lohaghat, Uttarakhand and therefore it cannot be regarded as a period of 90 days consecutive absence from work.

8. Thereafter on 24.05.2012 a notice was given by the appellant to the respondent requiring him to report for duty within 30 days. That 30-day period ended on 23.06.2012. The respondent, according to the appellant had not reported during this 30-day period either. Therefore it is the contention of the appellant that the pre conditions for invoking Rule 40(3) are clearly satisfied and therefore the order dated 14.07.2012 was perfectly legal and justified. The said letter dated 14.07.2012 reads as under:-

State Bank of India (Network-2) local head officer, G M Sectt.

Business & Operations

Performance Monitoring Department

11, Sansad Marg, New Delhi-110001

Tel No. 011-23407230 epbax:011-23407000 exnt 7230

Fax:011-23344367,23340043

Email:gm2.lhodel@sbi.co.in

Shiri Himanshu Kapur,

33, bank enclave,

Ring road,

Rajouri garden,

New Delhi-110027

No.nw-2/p&c/2446 Date: 14/07/2012

Dear Sir,

VOLUNTARY VACATION OF SERVICE

It is observed that you have been absenting from duties without submitting an application

For leave and despite your leave being refused. In this connecting, We refer to our notice dated 24.05.2012 instructing you to report for duty within 30 days it is, however observed that you have so far not complied with the instructions contained therein.

Now that you have failed to report for duty inspite of the above notice it is deemed that you have voluntarily vacated your service in the bank w.e.f. 14.07.2012.

You are hereby called upon to pay three months emoluments within 15 days of receipt of this notice failing which the bank will be constrained to set off the same against your terminal dues and other amounts payable to you without prejudice to recovering the full amount of part thereof by initiating legal proceedings.

Yours faithfully

General Manager (NW-II),

(Appointing Authority)

9. Mr. Rao submits that although there are undated leave applications, they were rejected on 09.05.2012. So he also disputes the statement of the learned counsel for the appellant that there was no leave application even for the period prior to 09.05.2012.

10. The learned counsel for the appellant also submitted that the learned Single Judge ought to have been taken into consideration the proviso to Rule 40(3) which provides for an alternative remedy of appeal to the competent authority.

11. Anyhow, without going into the question of alternative remedy, we feel that the interim order passed by the learned Single Judge whereby he has stayed the operation of the order dated 14.07.2012 which, in fact, means that the respondent is reinstated, cannot be permitted to stand. It amounts to virtually allowing the writ petition at the interim stage. If an authority for the proposition is needed the same is provided by the decision of the Supreme Court in the case of Public Services Tribunal Bar Association Vs. State of U.P. and Another, , in

which the Supreme Court observed to the following effect:-

36. In Suman Dutta case this Court set aside the order passed by the High Court staying the order of termination as an interim measure in the pending proceeding. It was observed:

We are clearly of the opinion that the High Court erred in law in staying the order of termination as an interim measure in the pending writ petition. By such interim order if an employee is allowed to continue in service and then ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same.

37. Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the courts. This Court consistently has been taking a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in vindictive manner.

38. From the above quoted decisions, it is evident that this Court has consistently been of the view that by way of an interim order the order of suspension, termination, dismissal and transfer etc. should not be stayed during the pendency of the proceedings in the court.

(underlining added)

In view of the foregoing, we are of the opinion that the learned Single Judge erred in granting interim stay of the order dated 14.07.2012 which has the effect of reinstating the respondent during the pendency of the writ petition. Consequently, we direct that the stay granted by the learned Single Judge stands vacated. The appeal stands disposed of accordingly without any order as to costs.