(1993) 09 DEL CK 0050

In the Delhi High Court

Case No : Civil Revision Appeal No. 483 of 1993

State Bank of India and Others — APPELLANT

Vs

R.P. Khurana — RESPONDENT

Date of Decision : 08-09-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Specific Relief Act, 1963 — Section 41

Citation : (1993) 52 DLT 98 : (1994) 1 LLJ 605

Hon'ble Judges : D.K. Jain, J

Bench : Single Bench

Advocate : Arun Jaitley, R.P. Kapur, Sanjay Kapoor, Y.K. Jain, Anju Singh and Rajiv Dutta, for the Appellant;

Judgement

D.K. Jain, J.

(1) This revision petition u/s 115 read with Section 151 of the CPC (the Code) by the State Bank of India (for short the bank) and others is directed against the appellate order dated 28/06/1993oftbeld. Senior Sub Judge, Delhi allowing the appeal against the order dated 26/04/1993 of the Id. Sub. Judge and setting aside the latter''s order made in respondent''s/employee''s application under Order 39 Rules 1 A 2 of the Code in Suit No. 199/93 and directing the bank not to transfer the respondent from one of its Delhi branches to Dehradun and further directing the bank to assign regular duties to him as per his status in the same branch, he was working prior to his transfer, and to report to the Court within three days the compliance of ifs order.

(2) The respondent was working as Junior Management Grade I Officer in the bank''s branch at Sonepat (Haryana). He was transferred as such on 14/10/1991 to Delhi and was given extension in service up to 19/01/1984 i.e. up to the age of 55 years, and while serving at Green Park branch of the bank, was promoted to Middle Management Grade Scale II(MMGS II) on 18/12/1991. He was transferred to bank''s Greater Kailash-I branch on Ii November 1992 and on

22/01/1993 was served with an order transferring him from Delhi module to Dehradun module, which be did not join.

(3) On 27/03/1993, the respondent filed a suit for perpetual and mandatory injunction along with an application under Order 39 Rules 1 & 2of the Code for ad interim relief against the bank and others, seeking a direction to the bank to withdraw the transfer order dated 22/01/1993and for restraining it from transferring him to Dehra-dun. The said transfer order was sought to be challenged primarily on the ground that it had been issued by petitioner No. 4 (Asstt. General Manager, G.K.-I) at the instance of petitioner No. 3, (Asstt.-General Manager, Parliament Street), who had held out threats to him; the order is illegal and mala fide, not passed by competent authority; made as a measure of victimisation; the order violates the transfer policy of the bank because an officer cannot be transferred against his will from one module to another unless he has completed five years of service in a grade in that module, and further that a person about to attain the age of superannuation cannot be transferred without seeking his choice for a particular station and the representation made against the transfer order was not beaded to.

(4) The bank opposed the suit as misconceived, being barred u/s 41(e) of the Specific Relief Act and the application for interim order not covered by Order 39 Rules 1 & 2 of the'' Code and both being not maintainable. It was stated that the respondent as a bank employee was governed by statutory rules, namely, Sbi Officers (Determination of Terms& Conditions of Service) Rules, 1979, under which an employee has no vested right to remain posted in a particular module; the post being transferable ,a transfer order can be and was made considering the administrative exigencies of the service; the transfer order was passed by the General Manager (Operations), who is the competent authority to make it and there was no mala fides whatever; the transfer policy is a mere executive instruction /guidelines, having no statutory force and its compliance is not mandatory ; that Haryana being a Delhi module and the respondent having served for long within the Delhi module, and he having not attained the age of 55 years, his transfer does not offend condition No/VI or X of the transfer policy; the respondent did not join duty at Dehra-dun, and made a representation against the transfer order, he was not given personal hearing by the Chief General Manager, who directed that the respondent must join his posting on transfer which he did not comply and'' was not entitled to discretionary relief. It was, thus, stated that the suit as well as the application under Order 39 Rules 1 and 2 of the Code were without any merit and we reliable to be dismissed.

(5) While disposing of the respondent''s application under Order 39Rules 1 & 2, the learned Sub Judge examined the transfer policy and came to the conclusion that the bank had not deviated from it in transferring the respondent from Delhi to Debra-dun module'' and the order of transfer had been passed by the competent authority. Allegations of mala fide were considered by him to be not prima facie supported. He accordingly declined to grant ad-interim relief to the

respondent.

(6) On appeal, the learned Senior Sub Judge has set aside the order of the learned Sub Judge. In the absence of any other order being placed on record, he has assumed the letter dated 20/01/1993 to be the transfer order, and the same having not been issued or made by the General Manager(Operations) nor shown to have been issued under competent authority''s direction or approval, has held it to be not legal and'' valid. He has further held that the transfer order violates the transfer policy and is mala fide. Bank''s contention that the transfer order was made by the General Manager(Operations), as conveyed in bank''s letter dated 19/01/1993 has been turned down by him holding, in view of some banks in it etc., the said letter is an after thought, manipulation by petitioners 3 to 5 and as such totally mala fide. He, thus, issued directions to the bank to withdraw the transfer order, post and keep posted the respondent in Greater Kailash-1branch and not transfer him in view of the transfer policy of the bank.

(7) I have heard learned Counsel for the parties who have urged the same pleas which were raised before the Senior Sub Judge and have taken me through the records. I am of the view that there is good ground to allow the revision petition. To me it appears that the approach of the I appellate Court is improper. He has completely overlooked the preliminary objections in the written statement about the suit being misconceived and the suit as also the application for stay not being maintainable. In a lengthy order, instead of taking a prima facie view of the matter at this stage he seems to have decided the merits of the case, which has not gone so far beyond the pleadings stage. Issues have yet not been framed, complete documents not filed, the matter has not gone to trial but the Id. Appellate Court has held the letter dated 22/01/1993 to be the transfer order mala, fide made as a measure of punishment and bad in law as it violates the transfer policy. Similarly he has exceeded his jurisdiction in holding bank''s letter dated 19/01/1933 to be collusive act of petitioners 3 to 5 and a forgery. All these findings of facts have been recorded before the trial.

(8) Besides, the order suffers from legal infirmity. The legal position in regard to transfer of employees stands settled by a catena of decisions of the Supreme Court and various High Courts, some of which have been relied on by the parties, and I do not propose to burden the judgment by making reference to each of them. Suffice it to say that the Courts have been at pains to reiterate that transfer is an incidence of service and a person holding a transferable post has no legal right to remain posted at one place or the other ; guidelines for transfer are neither statutory nor exhaustive and/or mandatory, but meant only for the guidance of the transferring authority and merely because an order of transfer is not strictly in terms of guidelines, it would not per se be sufficient ground for interference by the Courts unless the transfer orders are made in violation of any mandatory statutory rules or on the ground of mala fide , the burden of establishing the same is very heavily on the person who alleges it and the Court should be slow to draw dubious inferences from incomplete facts placed before it.

After hearing the parties I am not. convinced prima fade, that the transfer has been in breach of the transfer policy. Even otherwise, examined in the light of the above, respondent''s transfer, if it be against any policy, cannot, without some thing more, be; treated as illegal and liable to be set aside.

(9) Dealing with the question of mala fides, the Supreme Court in are cent case reported as Rajendra Roy Vs. Union of India (UOI) and Another, observed that it may not always be possible to establish malice, in fact in a straight out manner. In an appropriate case it is possible to draw reasonable inference of mala fide action from the pleadings and antecedents of facts and, circumstances. But for such inferences, there must be firm foundation of facts pleaded and established. Such inferences cannot be drawn on the basis of insinuations and vague suggestions. It is only where a strong case of mala fide is made out that the Court may be justified in inferring that order of transfer as malafide and bad in law.

(10) The case is, Therefore, to be examined in the light of the afore''said legal position. Though apparently conscious of the legal position, the learned Senior Sub Judge seems to have misdirected himself and recorded findings of facts on wrong premises, ignored the legal aspect in the pleadings and has laboured hard to, make out a case for interference in the matter of transfer of the respondent. The appellate order cannot, therefore; be sustained.

(11) For the purpose of application for interim stay the crucial issue before the Trial Court as also the learned Appellate Court was to identify and examine the transfer order and see if the respondent herein had a prima facie case on the pleas raised in the plaint, warranting interference at this stage namely whether the transfer order had been made by the competent authority or with his approval. Question on the plea of mala fide may require evidence and would, Therefore, have little bearing at this stage unless the same was shown as patent on the record or there is firm foundation of facts pleaded and established. The impugned letter dated 22/01/1993is admittedly a communication of the transfer order to the respondent and it is not a transfer order by itself. The letter dated 19/01/1993 is also in the form of a communication of some transfer order having been made by the General Manager (Operations) who, by common consent, is the competent authority to make such an order in the case of the respondent. Confronted with this position learned Counsel for the petitioners referred to some office nothings dated 8/01/1993 for the transfer, in the file containing the approval of the General Manager (Operations), which was neither produced before the Trial Court nor the Appellate Court. Exception to its production here was taken by learned Counsel for the respondent, especially because the Courts below have had no opportunity to comment thereon. It is not understandable why it was not produced before the Courts below. I am constrained to remark that the handling of the matter by and on behalf of the bank in the Courts below has been rather casual and negligent. Without the said approval having been placed on record and its examination, any comment on the office order (fated

19/01/1993or on the validity and otherwise of the transfer order by the Courts below is futile and meaningless.

(12) Having considered the matter thoughtfully, I am of the view that non-production of the order of the competent authority by the bank and its consequent non-consideration by the Trial Court or the Appellate Court has resulted in grave error and serious miscarriage of justice, for which the blame squarely rests on the petitioners.

(13) To arrive at the just decision in the matter, it is necessary that the relevant transfer order/documents containing the approval of the competent authority are placed on record for a fresh decision by the Trial Court in accordance with law. The Courts below have acted on the assumption that bank''s letter dated 22/01/1993 and/or . 19/01/1993, referred to above, are the transfer order(s) and taking one of these to be the transfer order, which factually is not so, have recorded their findings: the Trial Court holding that it is a valid order and the Appellate Court that it is not, Each of them have laboured under the mistaken belief of it being the transfer order. The order of the Trial Court as also the Appellate Court suffer from this infirmity. Consequently, the orders of the Courts below are not sustainable and are set aside and the matter is remanded back to the Trial Court for reconsideration and a fresh decision on the respondent''s application for stay, after giving Opportunity to the parties to file documents, if any, including the stated approval of the competent authority dated 8/01/1993, relied upon by the petitioners before me. The application for interim relief shall be disposed of as expeditiously as possible, in any case within two months from today.

(14) The parties are directed to appear before the Trial Court on 21.2.1993. Trial Court records be sent back forthwith along with a copy of this Order so as to reach there within a week from today.

(15) The petition stands disposed of in the aforesaid terms.

(16) Lapse in not producing the relevant documents by the bank at the appropriate stage has resulted in wastage of time of the Courts and I feel that it is a fit case where costs should be imposed on the petitioners, which are quantified at Rs. 2000.00. The costs shall be deposited by the petitioners with the High Court Legal Aid and Advice Committee, Chamber No. 4, Lawyers'' Chambers Delhi High Court, New Delhi within a week from today.