

(2015) 02 OHC CK 0037

In the Orissa High Court

Case No : Writ Petition(C) No. 19816 of 2014

Sudhir Kumar Praharaj

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2015) 1 OLR 988

Hon'ble Judges : B.R. Sarangi, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.—The petitioner who is working in the State Bank of India has filed this application challenging the order dated 21.08.2014 wherein information was issued by the Chief General Manager, Human Resources, Corporate Centre, State Bank Bhawan, Mumbai to the Chief General Manager, State Bank of India local Head Office, Bhubaneswar intimating that the petitioner has not reported to Kolkata Circle even after lapse of considerable time and the letter dated 06.09.2014 in Annexure-4 issued by opposite party No. 5 relieving the petitioner as at close of office on 06.09.2014 with instruction to report to DGM and Circle Development Officer, Kolkata immediately without availing joining time.

2. The short fact of the case, in hand, is that from February, 1985 to June, 1992 the petitioner worked in Lucknow circle and on his request the Management transferred him to the State Bank of India Odisha circle. On his eligibility he got promotion from Assistant Manager to Dy. Manager and thereafter to Manager and Chief Manager and finally to Assistant General Manager in the year 2013. The petitioner gave an undertaking to be posted anywhere in India on promotion to the cadre of Assistant General Manager vide Annexure-A/1 dated 18.07.2013. On 02.08.2013 the petitioner was promoted from the cadre of SMGS-IV to SMGS-V in respect of promotion year 2013-14 along with 29 officers in Bhubaneswar Circle pursuant to letter of the Corporate Centre, Mumbai dated 28.07.2013. The Corporate Centre, Mumbai issued transfer order to 16 SMGS-V Officers Out of 29

officers to various Circles/Corporate Centre/Corporate Centre establishments vide Corporate Centre letter dated 30.09.2013. Corporate Centre, Mumbai on 02.12.2013 reminded the Bhubaneswar Circle regarding non-relieving of those 16 officers. In addition to that Corporate Centre advised the Circle to identify replacements for officers who have recently come back to Bhubaneswar Circle. The name of the petitioner was suggested in respect of Susanta Kumar Sahoo who had come back from North East Circle to Bhubaneswar Circle in November, 2010 thereby the Corporate Centre Mumbai approved the replacement recommended by the Circle vide Corporate Centre letter dated 23.01.2014. On 28.06.2014, 27 officers including opposite party No. 6 were promoted from SMGS-IV to SMGS-V for the promotion year 2014-15 thereby on 24.07.2014 the Corporate Centre issued transfer order of 24 out of 27 newly promoted SMGS-V officers to various Circles/Corporate Centers/Corporate Centre establishments. On 21.08.2014 Corporate Centre, Mumbai reminded the Circle about the letter dated 30.09.2013 and 23.01.2014 and requested to relieve the petitioner to join Kolkata Circle immediately and the petitioner was handed over with the transfer order on 06.09.2014 by the Bhubaneswar Circle to join Kolkata Circle without availing joining time wherefrom he has drawn his salary for the months of September, 2014 and October, 2014. The petitioner stated that such action of the opposite parties transferring him from Bhubaneswar Circle to Kolkata Centre suffers from vice of malafide and seeks for interference of this Court.

3. Mr. S. Patra, learned counsel for the petitioner strenuously urged that the wife of opposite party No. 4 misbehaved the petitioner by using filthy language inside the office. Earlier on two different occasions she had misbehaved the petitioner. Immediately the petitioner informed opposite party Nos. 4 and 5 in their official mobile by way of SMS regarding misbehavior of opposite party No. 4. Then the petitioner wanted to meet opposite party No. 4, but, he was not permitted. Therefore, when the petitioner made allegation against the wife of opposite party No. 4 he was called to the chamber of opposite party No. 4 and was threatened to spoil his service career unless he begged apology to his wife in his residence, but the petitioner did not agree. Therefore, at his behest the order of transfer was issued. It is further urged that the order dated 21.08.2014 referring to two earlier letters dated 30.09.2013 and 23.01.2014 was originated from Corporate Centre, Mumbai regarding transfer and relief of the petitioner to join Kolkata Circle. But, all on a sudden on 06.09.2014 the petitioner was called by opposite party No. 5 to his chamber and was handed over the order Annexure-4 relieving the petitioner with instruction to report at Kolkata Circle without availing joining time. But the order of transfer dated 21.08.2014 vide Annexure-2 was not handed over to him. Though the petitioner made representation vide Annexure-5, the same was not accepted by opposite party Nos. 4 and 5. He sought for the copy of order of transfer dated 21.08.2014 under Annexure-2 under the Right to Information Act, which was supplied to him and it was intimated regarding his transfer replacing one Sri S.K. Sahoo. It is further urged that the order of transfer under Annexure-2 and the consequential relief order

under Annexure-4 are outcome of malafide exercise of power. In addition to that, he further urged that the petitioner had lost five kids at very early stage and now he has a son who is suffering from partial Autism with erratic behavioral syndromes. His son is studying in Class-X and is going to appear final CBSE Examination in February, 2015. His mother is 70 years old, suffering from paralytic brain stroke and bed ridden. Therefore, the order of transfer under Annexure-2 in mid academic session is bad in law.

4. Mr. R.K. Rath, learned Senior Counsel appearing for opposite party Nos. 3, 4 and 5 strenuously refuted the allegations made by the learned counsel for the petitioner. Per contra, he urged that when the petitioner was promoted from SMGS-IV to SMGS-V in respect of promotion year 2013-14 along with 28 officers considering his length of service in Bhubaneswar Circle he was subjected to transfer to Kolkata Circle. Sri S.K. Sahoo, is one of the candidates who was allowed to remain in Bhubaneswar Circle taking into consideration the information received from Corporate Centre, Mumbai on 26.10.2013 as he was recently come back to the said Circle. It is further urged that this Court should not interfere with the order of transfer unless the same suffers from vice of malafide or arbitrary or non-compliance of statutory rules and guideline governing the field. It is also urged that it is the prerogative of the employer where, when and at what point of time its employees are to be transferred. The order of transfer was passed by giving promotion to the petitioner considering his length of service at Bhubaneswar Circle. This cannot be construed to be a malafide act of opposite party No. 4, merely because he being the authority in helm of affairs. Since the petitioner has already been relieved basing upon which he has received his salary from September and October, 2014 at Kolkata Circle, the order of transfer has been given effect to in respect of the petitioner himself and this Court may not interfere with the same.

5. On the basis of the above mentioned facts pleaded by the parties and after going through the records, it appears that there is no dispute with regard to the fact that the petitioner is an employee of the State Bank of India and was posted at Bhubaneswar Circle and while he was discharging his duty he was promoted from the post of SMGS-IV to SMGS-V on 30.09.2013 along with other 28 others and out of that 16 officers belong to various Circles/Corporate Centre/Corporate Centre establishments. The name of S.K. Sahoo was there in these 16 officers. Though they were under order of transfer on 26.10.2013, the Corporate centre, Mumbai advised the Circle to identify replacements for officers who have recently come back to Bhubaneswar Circle, consequence thereof S.K. Sahoo had joined at Bhubaneswar Circle in November, 2010 and considering the length of service rendered by the petitioner in the said circle his name was included in the order of transfer, in consequence thereof vide Annexure-2, the Corporate Centre Mumbai reminded the Chief General Manager that the petitioner had not reported at Kolkata Circle even after considerable lapse of time. Therefore, vide Annexure-4 dated 06.09.2014 he has been relieved to join in Kolkata Circle immediately without availing the joining time.

6. In any service when the relationship is that of master and servant, transfer, retirement, promotion etc. are incidents of service. Usually the master has full power to transfer his servant whenever he wants because transfer is ordered looking to the character and quality of work, the servant does. Thus, if the master is of the opinion that a particular servant is required at a particular place for a particular duty, the master has a right to transfer such a servant from one place to another. However, this power of the master is not absolute and should not be exercised capriciously. At the same time, the master should avoid to transfer his servant simply to accommodate the other favoured servant. Furthermore any order of transfer of a servant should be passed in public interest or in the interest of the institution itself where the servant serves. Exigencies of administrative purpose also sometimes persuade the master to transfer the servant from one place to another.

7. So far as the allegation of the petitioner with regard to malafide intention of opposite party No. 4 is concerned, no materials have been produced before this Court to establish the said allegation. It is the well settled principle laid down by the apex Court that it is very easy to make allegation than to prove it. Therefore, merely making allegation of malafide act of opposite party No. 4 without proving the same as is required under law, this Court is not inclined to take such aspect into consideration for adjudication of the dispute with regard to the malafide acts of opposite party No. 4.

8. The apex Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, has laid down the guideline under which judicial review of an administrative action is permissible. Similar view has also been taken by the apex Court in Union of India and Others Vs. S.L. Abbas, , State of Punjab and others Vs. Joginder Singh Dhatt, and State of U.P. and Others Vs. Gobardhan Lal, .

9. Taking into consideration the law laid down by the apex Court as well as this Court, it appears from the factual background of the case in hand that it does not come within the purview of any of the criteria laid down by the apex Court so as to interfere with the impugned order. The apex Court held that the order of transfer can be interfered with when

"(a) the transfer is mala fide or arbitrary or perverse;

(b) when it adversely alters the service conditions in terms of rank, pay and emoluments;

(c) when guidelines laid down by the department are infringed and lastly;

(d) when it is frequently done;

(e) if there is a statutory infraction."

Since none of the aforesaid conditions is satisfied, it is not a case where this Court can interfere with the transfer and quash the same, rather by virtue of

promotion given to the petitioner taking into consideration his length of service at Bhubaneswar Circle, he has been subjected to transfer.

10. Apart from the above, the apex Court time and again expressed its disapproval of Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time an employee is to be transferred from his present posting and ordinarily Courts have no jurisdiction to interfere with the impugned order of transfer.

11. Considering the factual backdrop of the case in hand and the law laid down by the apex Court, this Court is of the considered opinion that none of the conditions stipulated by the apex Court with regard to interference with the order of transfer having been satisfied and more particularly, it is the employer who has the complete domain to decide when, where and at what point of time an employee is to be transferred from his present posting, this Court is not inclined to interfere with the order of transfer and relief made vide Annexures-2 and 4 enabling the petitioner to join at Kolkata Circle.

12. By way of an affidavit, opposite party-Bank has brought to the notice of this Court that after being relieved from Bhubaneswar Circle, the petitioner has received his salary from Kolkata for the months of September and October, 2014. By filing this writ petition now the petitioner seeks for interference of this Court with the said order of transfer and relief which has already been given effect to by his own conduct.

13. Last but not least so far as the contention raised that the petitioner's son is suffering from partial Autism with erratic behavioral syndromes and prosecuting his studies in Class-X and is going to appear in final CBSE Examination, 2015 in the month of February, therefore, his order of transfer should be quashed is concerned, since this Court has no jurisdiction to interfere with the order of transfer unless the conditions laid down by the apex Court are satisfied if the petitioner is transferred he must comply with the order and it is open to him to make representation before the competent authority for modification or cancellation of order. Instead of approaching the authority, filing the writ petition invoking extraordinary jurisdiction to interfere with the order of transfer is absolutely unwarranted.

14. In view of the above facts and circumstances, this Court is not inclined to interfere with the impugned order under Annexures-2 and 4 as the same have been given effect to by allowing the petitioner to draw his salary from Kolkata Circle for the months of September and October, 2014. Therefore, the writ petition is dismissed having no merits. No order as to costs.