

(2014) 12 MAD CK 0171

In the Madras High Court

Case No : Review Application No. 153 of 2014 and M.P. No. 1 of 2014

S.V. Tharanath

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
State Bank of India Act, 1955 — Section 43

Citation : (2014) 12 MAD CK 0171

Hon'ble Judges : Pushpa Sathyanarayana, J; K.K. Sasidharan, J

Bench : Division Bench

Judgement

1. The respondent in writ appeal No. 924 of 2014 is the petitioner in this review petition.

The facts:

2. The petitioner was transferred by Chennai Zone of State Bank of India (hereinafter referred to as "Bank") from Chennai to Gauhati by order dated 2 May 2014. The said transfer order was challenged in W.P.No. 13611 of 2014. The learned Single Judge allowed the writ petition by order dated 15 May 2014. The Bank challenged the order dated 15 May 2014 in W.A.No. 924 of 2014. The Division Bench was pleased to allow the intra court appeal by judgment dated 7 November 2014. The petitioner, alleging that there is an error apparent on the face of record filed this review petition invoking Order 47 Rule 1 of the Code of Civil Procedure.

3. The petitioner raised the following issues to review the judgment in W.A.No. 924 of 2014.

(i) The petitioner was under the impression that the appeal would be dismissed on account of the observation made by the Division Bench that instead of filing the appeal, the Bank could have passed a fresh order for transfer.

(ii) The Division Bench has not taken the consent of parties for disposal of writ appeal at the time of admission.

(iii) The transfer in question was contrary to the Statutory Regulations framed by the Bank.

(iv) The daughter of the petitioner is now undergoing her Plus Two Course. The Division Bench erred in stating that she has already completed the course.

4. The Bank filed a counter affidavit in answer to the contentions raised in the review petition. According to the Bank, transfer was made strictly in accordance with the Regulations. The transfer was not in violation of the Regulations. There is no error apparent on the face of record to review the order. It was further contended that the petitioner has already been relieved from duty.

Submissions:

5. Thiru.N.G.R.Prasad, learned counsel for the petitioner made the following submissions:

(i) The writ appeal was taken up for final disposal at the time of admission without obtaining consent from the parties.

(ii) The Guidelines issued by the Bank in the matter of transfer contain provisions to the effect that every attempt should be made to transfer employees within the parent circle and that such transfer should be made only after a period of seven years. Only in case posts are not available within the same Circle, transfer should be made outside the Circle. Similarly, there is a provision to the effect that transfer should be effected to coincide with the academic year to the extent possible.

(iii) The writ appeal was decided without giving opportunity to file counter affidavit.

(iv) The Division Bench set aside the order passed by the learned Single Judge without analyzing the background facts including the factual position that the petitioner has to look after his daughter and aged mother.

6. Thiru S. Ravindran, learned counsel for the Bank contended that transfer was made in accordance with the Regulations. According to the learned counsel, the writ petition was moved before the vacation Bench and without giving an opportunity to the Bank to file counter affidavit, arguments were heard and ultimately it was allowed. The learned counsel contended that it was only with the consent of the learned counsel for the petitioner, the writ appeal was taken up for final disposal. It was further contended that there is no error apparent on the face of record to review the judgment passed by the Division Bench. The learned counsel clarified the position that Regulation 47 deals with transfer and the guidelines relied on by the petitioner has no statutory force.

Discussion:

7. The issue that arises for consideration in this review petition is whether the Division Bench while passing the judgment in Writ Appeal No. 924 of 2014 committed a jurisdictional error or otherwise an error apparent on the face of record warranting interference by exercising review jurisdiction.

First point:

8. According to the petitioner, the Division Bench made an observation that the Bank was not correct in filing writ appeal inasmuch as it would enable them to pass a fresh order on administrative ground. It is not possible to review the judgment on the ground of certain observation stated to have been made by the Bench. There is nothing on record to show that the Division Bench has made any such observation. In any case, any observation made during the course of hearing of appeal cannot be a ground to review the final judgment passed on merits. We therefore reject the first contention.

Second point:

9. The petitioner has taken up a contention that without obtaining consent from the parties, writ appeal was taken up for final disposal during the time of admission. There is absolutely no merit in the said contention in view of the record of proceedings dated 21 July 2014, 7 August 2014 and 5 November 2014 relating to Writ Appeal No. 924 of 2014.

21 July 2014

At the request of the learned counsel for the parties, with the consent of learned counsel for the Caveator, call on 04-08-2014.

7 August 2014

M/s. Row and Reddy accepts notice for respondent and is granted four weeks time to file counter. Call after four weeks.

5 November 2014

The learned counsel for the respondent wanted this matter to be taken up for final disposal tomorrow. Hence, at the request of the learned counsel for the respondent, post tomorrow (6.11.2014)."

10. The writ appeal was taken up on 6 November 2014 for final disposal. The records speak itself. It is not permissible to advance arguments to discredit the records. We therefore do not find any merit in the contention regarding disposal of appeal at the time of admission and the allegation of violation of principles of natural justice.

Third point:

11(a) According to the petitioner, the Regulation regarding transfer was not taken into account by the Division Bench. The Guidelines regarding transfer shows that ordinarily transfers would be effected within the parent circle. It

further contained a provision that transfers will be effected to coincide with the academic year. The very same regulation contained a statement to the effect that notwithstanding the provisions, the Bank would not be precluded from effecting transfers of officials any time earlier to any place at its discretion, keeping in view the exigencies of service. The word used is "to the extent possible" and therefore no right would accrue to an employee to contend that transfer should not be effected during midway.

(b) Chapter X of State Bank of India Officers Service Rules 1992 deals with transfer. Rule 47 reads thus:

"Every officer is liable for transfer to any office or branch of the Bank or to any place or deputation to any other organisation, in India."

(c) The Guidelines produced by the petitioner and relied on by the learned Single Judge are nothing but administrative guidelines having no force of law. Those guidelines would not override the statutory rules. Even the guidelines nowhere provided that transfer would be made only once in seven years. It only provides that maximum period of stay at any particular place is seven years. This does not mean that employees cannot be transferred before the expiry of seven years period from a particular station. The Division Bench was therefore correct in its finding recorded in paragraphs 12 and 13 of the judgment.

Fourth Point:

12(a) The fee receipt produced by the petitioner shows that his daughter is presently undergoing her Plus Two course. The fact that the Division Bench made an observation that the daughter of the petitioner completed her course alone would not give a cause of action to review the judgment. The Court should see the judgment as a whole to decide as to whether the matter requires review.

(b) In *Palanisamy v. General Manager, Tamil Nadu State Transport Corporation Ltd.* (2006) 1 LLJ 62, a Division Bench of this Court negated the plea taken by the employee on the ground of education of children.

"The learned Single Judge has however directed that the transfer order shall not be given effect to till the end of the academic year viz., May 31, 2005 since the petitioner's two children are studying in Class IX in a school at Valparai. In our opinion, the learned Single Judge was not justified in passing such an order. Almost everyone has children and if such kind of request is entertained no transfer order can ever be passed. Every transfer order causes some hardship but if one wants to remain in service, he has to obey the transfer order as a transfer order is purely administrative order, and is not a punishment. Transfer is an ordinary exigency of service."

13. The learned counsel for the petitioner placed reliance on the following decisions in support of his contention regarding scope of review jurisdiction and punitive nature of transfer to cause trouble to a honest officer.

(i) K. Backiya Lakshmi & Others v. Adilakshmi and others - Order dated 23 September 2011 in Review Application (MD) Nos. 37, 79 and 31 of 2011.

(ii) Arvind Dattatraya Dhande Vs. State of Maharashtra and others, .

(iii) P. Pushpakaran Vs. Coir Board and Another,

14. There is no dispute with regard to the scope and ambit of review jurisdiction. Similarly, legal position is clear that transfer should not be a mala fide exercise of power.

15. It is trite that neither the procedural law nor technicality would stand in the way of exercising review jurisdiction to correct the mistake committed by Court. In case the Court passed an order under a mistake and if it is allowed to stand, serious prejudice would be caused to the aggrieved, technicality would not operate as a bar in reviewing the order to avoid miscarriage of justice. The High Court is a court of record. The court has therefore the inherent jurisdiction to rectify the mistake and to make the records correct. Order 47 Rule 1 of the Code of Civil Procedure gives jurisdiction to court to review its order not only on specific grounds but also for any other sufficient reason. The word "Sufficient Reason" are very wide and extensive. It would enable the Court to correct both mistake of fact and/or law on the peculiar facts and circumstances of a given case. There can be no hard and fast rule and each case has to be considered on its own peculiar facts.

16. The petitioner has not alleged malafides against the Bank. The fact that his case was recommended by the higher officials to retain him at Chennai and in spite of such recommendation, transfer was made would not show that transfer was a malafide exercise of power.

17. The learned counsel for the petitioner by placing reliance on the achievements made by the petitioner by settling the cases and conduct of 850 Lok Adalats and the related observation made by the learned Single Judge contended he should have been retained at Chennai. The fact that a particular officer has done excellent work at a particular zone would not give him a right to continue indefinitely. The services of such officers must be available in other places also.

18. The State Bank of India Officers Service Rules, 1992 was considered by the Supreme Court in State Bank of India v. Anjayn Sanyal (2001) 3 LLN 720. The following observation would make it clear that transfer is governed by Rule 47 of the Rules.

"4. An order of transfer of an employee is a part of the Service Conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order. The Central Board of the State Bank of India in exercise of the powers conferred

under sub-section (1) of Section 43 of the State Bank of India Act, 1955, have framed a set of rules called the State Bank of India Officers Service Rules. Rule 47 thereof, unequivocally provides that every officer is liable for transfer to any office or branch of the bank or to any place or deputation to any other organisation in India. Rule 49 of the said rules, stipulates the joining time, which an employee is entitled to when he is transferred to a new place from his old post. Rule 50 casts an obligation on the employee to comply with and obey all lawful and reasonable orders and directions, which may from time to time be given to him."

19. The learned counsel for the petitioner has taken us through the earlier transfer order issued by the Bangalore Circle, registration of First Information Report against the petitioner and subsequent withdrawal of transfer order and posting him at Chennai circle. Those facts are not relevant for the purpose of deciding this review petition. We are concerned only with a limited question as to whether the petitioner has made out a case for review of judgment.

20. The Division Bench considered the case of the appellant in the light of Statutory Regulations. We, therefore, do not find any reason to review the judgment.

21. The learned counsel for the petitioner while winding up his arguments submitted that the daughter of the petitioner would be completing her course by the end of April, 2015 and as such he should be retained till then and thereafter effort should be taken to post him in any of the nearby zones.

22. The petitioner was transferred from Bangalore Circle to Bengal Circle by order dated 17 January 2011. The said order was modified later by order dated 25 January 2011. He was transferred to Chennai Circle. Thereafter by way of the impugned order dated 2 May 2014 he was transferred to Assam.

23. The wife of the petitioner died on 12 June 2010. The police registered a case against the petitioner pursuant to the complaint preferred by his father in law. The police after investigation referred the case. In the meantime he was transferred to Chennai Circle. The petitioner has to maintain his daughter and ailing mother. We are therefore of the view that the Bank should take a sympathetic view in the matter.

24. The petitioner is directed to join duty at the transferred place on or before 29 December 2014. He is given liberty thereafter to submit a representation to the concerned authority for transferring him to any other zones in the State of Tamil Nadu or other Southern States. In case any such representation is given, the same shall be considered and disposed of by the competent authority on merits and taking into account the above observation. Such exercise shall be completed within a period of four weeks from the date of receipt of representation.

25. The review petition is disposed of as indicated above. Consequently the connected MP is closed. No costs.