

(2015) 02 MAD CK 0254
In the Madras High Court
Case No : Writ Petition No. 34235 of 2014

Usha Bharat

APPELLANT

Vs

UCO Bank and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0254

Hon'ble Judges : K.K. Sasidharan, J.

Bench : Single Bench

Advocate : N.G.R. Prasad for Row and Reddy, for the Appellant; Vijay Narayan, Senior Counsel for Srinath Sridevan, Advocates for the Respondent

Final Decision : Disposed off

Judgement

K.K. Sasidharan, J.—This Writ Petition, at the instance of an employee of United Commercial Bank, working in Chennai region, since 1992, challenges the order dated 18 December 2014, transferring her from Chennai to Hyderabad.

The facts:-

2. The petitioner joined UCO Bank as Clerk in the year 1987. She was initially posted in a local branch at Bhilai in Madhya Pradesh. She was transferred to Chennai in 1992. It was a request transfer. The petitioner is presently working as Scale II Officer.

3. The petitioner was earlier transferred from Chennai to Bangalore by the management. The said order dated 11 July 2007 was challenged by her in W.P. No. 25066 of 2007 on the ground that it was in violation of Clause 17 of the Transfer policy, then in force. The Writ Petition was allowed by order dated 7 February 2013. Thereafter, Bank formulated a new transfer policy for officers in the name and style of "Transfer policy for officers, 2014". The petitioner was transferred to Hyderabad from Chennai, on the basis of new policy.

4. The transfer order is challenged by the petitioner on several grounds.

According to the petitioner, she was singled out in the matter of transfer. It is her contention that she is having 40% disability and as such, it would not be possible for her to work at Hyderabad. The petitioner has taken up a further contention that respondents have violated clause 18(1) of the Transfer policy relating to spouse transfer.

5. The 4th respondent has filed a counter affidavit in answer to the contentions raised in the affidavit filed in support of the Writ Petition. According to the 4th respondent, while transferring the petitioner from Chennai to Hyderabad, the Bank strictly followed the Transfer Policy, 2014, and as such, there was no violation of the policy in question. The 4th respondent further contended that the petitioner has been working at Chennai for the past several years. She was transferred to Hyderabad on the basis of new transfer policy which provides that officers should move out after a period of three years. Accordingly, the 4th respondent justified the impugned order of transfer.

Rival contentions:-

6. The learned counsel for the petitioner made the following submissions:-

(i) Transfer Policy, 2014, provides that manpower assessment will have to be done by 31 January, based on core business figures as of 31 December, for the purpose of effecting transfers. However, in the case of the petitioner, transfer was made on 18 December 2014 itself.

(ii) The petitioner is ailing. She is suffering from 40% permanent disability. The health condition of the petitioner was not taken note of by the respondents while transferring her from Chennai to Hyderabad.

(iii) The petitioner has filed an appeal before the first respondent on 19 December 2014, requesting the said authority to cancel the order of transfer. Even before the disposal of appeal, she was relieved from service and the same shows mala fide exercise of power.

7. The learned Senior counsel for the Bank, challenged the very maintainability of the Writ Petition based on administrative guideline. The following are his submissions:-

"(i) The petitioner has been working at Chennai right from the year 1992. The first transfer out of Chennai was by order dated 11 July 2007. The said order transferring her from Chennai to Bangalore was set aside by this Court, with liberty to pass orders in accordance with the revised transfer policy.

(ii) The new transfer policy mandates that all those who are working for three years should be transferred. The transfer order was made strictly in accordance with the guidelines;

(iii) During the currency of the earlier Writ Petition in W.P. No. 25066/2007, the petitioner was referred to Rajiv Gandhi Government General Hospital, Chennai, for expert opinion. The Medical Officer submitted a report to the effect that she is

medically fit. In view of the medical report dated 12 December 2012, the petitioner is not right in her contention that she should be retained at Chennai on medical grounds.

8. The learned counsel for the petitioner placed reliance on the following decisions:-

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

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

(iii) Judgment dated 10.9.2014 in W.A. No. 961 of 2014 (Dr. D. Ramkumar vs. Pondicherry Society for Higher Education and Ors.)

(a) In P. Pushpakaran, Kerala High Court observed that the right to transfer is sometimes, more dangerous than other punishments. The learned Judge observed that when the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer.

(b) In Arvind Dattatraya Dhande, the Supreme Court found that the Government have transferred an honest officer at the behest of persons interested in liquor business. The Supreme Court held that the transfer was nothing but mala fide and arbitrary action.

(c) In Dr. D. Ramkumar vs. Pondicherry Society for Higher Education (W.A. No. 961 of 2014), a Division Bench of this Court set aside the transfer of an employee, who is stated to be 100% blind.

9. The learned Senior counsel for the Bank cited the decision of the Supreme Court in National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, .

10. The Supreme Court in Shri Bhagwan, observed that no Government servant or employee of public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident but a condition of service, necessary too in public interest and efficiency in the public administration.

Analysis:-

11. The affidavit filed by the petitioner in support of the Writ Petition shows that she was transferred to Chennai, pursuant to her request in the year 1992. She has been working in different branches in and around Chennai. The petitioner was not transferred outside Chennai till 2007. The Bank, for the first time, transferred the petitioner out of Chennai, by order dated 11 July 2007. The order transferring the petitioner from Chennai to Bangalore was challenged by her in W.P. No. 25066 of 2007. The Writ Petition was allowed by this Court by order dated 7 February 2013. The prime reason for cancelling the order of transfer was on account of the violation of Clause 17 of the then Transfer Policy, which

provides that lady officers up to Class II shall not be transferred out of State. The petitioner, on the basis of the interim order in W.P. No. 25066 of 2007, continued to work in Chennai.

12. The Writ Petition filed by the petitioner earlier, challenging her transfer from Chennai to Bangalore was quashed only on the ground of violation of Clause 17 of the Transfer policy. The said clause is now substituted by a new clause. Transfer Policy 2014, does not contain any prohibition for transferring a lady officer, within the circle."

13. The new transfer policy was approved by the Bank on 26 June 2014. The petitioner was transferred thereafter by order dated 18 December 2014.

14. The petitioner has produced string of documents in support of her contention that she is undergoing treatment and is partially disabled. The Bank appears to have referred her to a Medical Board earlier, in view of her contention that it is not possible to move on account of disability. The Medical Board opined that the petitioner is fit for duty but needs regular medical follow up.

15. There are two sets of reports before this Court. The petitioner is placing reliance on the medical report issued by various private hospitals. The Bank is placing reliance on a medical report submitted by the Medical Board constituted by Rajiv Gandhi Government General Hospital, Chennai.

16. The transfer policy for Officers, 2014, contains provisions which mandates that all officers should be rotated every three years. The relevant provisions are extracted below:-

"All officers should be rotated every three years and no officer should remain in the same branch or office for more than three years. In case of officers posted in the branches/offices in Kashmir Valley, NE region, Port Blair, Lakshadweep, etc. they would be transferred on completion of 2 years effective service at such centre".

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Minimum Retention period:

15.1. For inter-zone transfers: Minimum retention period in a zone will be three years effective service (without considering the retention period in a place). However, period spent on deputation in the zone from he/she was transferred beyond 30 days in each year will be excluded in calculating the 3 year effective service period.

15.2 For intra-zone transfers: Minimum retention period in a place will be three years. However, period spent on deputation outside the place of posting beyond 30 days in each year will be excluded in calculating the 3 year period.

Any transfer before the required retention period as aforesaid may be considered by the Competent Authority in the interest of the Bank, on compassionate

grounds or on grounds for mandatory exposure.

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18. Lady Officer

Lady Officers in Scale I shall be transferred within the respective Zone. Lady Officers in Scale II shall be transferred within the respective circles. However, lady officers in Scale III will be transferred as per para 6 and para 7 of this Policy. One time option during their service career for all lady officers will be given for change of their posting to their choice Zone on the grounds of marriage by Head Office.

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31. Appeal:-

An officer aggrieved by an order of transfer in violation of policy, may represent to the Chairman and Managing Director within 7 days from the date of receipt of the order and such representations will be disposed of within 7 days of receipt of such representations.

17. The petitioner has taken up a contention that assessment of manpower was for the purpose of ascertaining the surplus-deficit of the zones. The transfer policy nowhere states that only after assessing manpower and the surplus-deficit position, transfer can be made by the Bank. The clause relating to manpower assessment to arrive at the surplus-deficit position of the zone, was inserted for the purpose of making general transfers. The petitioner was transferred for the simple reason that she has been working in Chennai for the past 22 years. Therefore, no reliance could be placed on the clause regarding manpower assessment to arrive at the surplus-deficit position of the zones.

18. The petitioner has taken up another contention that given her health condition, it would not be possible for her to move out of Chennai. The petitioner, in support of the said contention, has produced documents relating to her treatment up to 1 October 2013. The Bank, on the other hand, is heavily relying on the report submitted by the Medical Board constituted by Rajiv Gandhi Government General Hospital, Chennai. It is not possible for this Court to come to a definite conclusion as to whether the condition of the petitioner is such that it would not be possible for her to move out of Chennai. It is for the Medical experts to decide this issue.

19. In *Rajendra Roy Vs. Union of India (UOI) and Another*, the Supreme Court held as under:-

"It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the

order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department." 20. The transfer policy very clearly provides that all officers should be rotated after three years and no officer should remain in the same branch or office for more than three years. The said provision applies to the petitioner also.

21. There is no dispute that transfer is an incidence of service. The employee has no settled right to say that he/she should be posted and retained at a particular place throughout her career. There would be difficulties to the employee consequent to the transfer on account of various reasons. Such reasons should generally be addressed to the authority who is empowered to take a decision in the matter.

22. Clause 31 of Transfer Policy 2014, provides for appeal to the Chairman and Managing Director in case the officer is aggrieved by the order of transfer. The petitioner has already filed an appeal before the Chairman and Managing Director. It is for the Bank to take a decision in the matter, taking into account the prevailing transfer policy and the health condition of the petitioner. In case the first respondent is of the view that the petitioner should be referred to a Medical Board, it is always open to the Bank to take such a course, as it would enable them to take a decision in the matter on merits.

23. The petitioner is directed to join duty at Hyderabad on or before 2 March 2015. The first respondent is directed to consider and dispose of the statutory appeal preferred by the petitioner thereafter, on merits and as per law. Since liberty is granted to refer the petitioner to a Medical Board, I am of the view that reasonable time should be given to the Bank to dispose of the statutory appeal. Accordingly, the first respondent is given 60 days time from the date of joining, to dispose of the appeal.

24. The Writ Petition is disposed of with the above direction. No costs. Consequently, M.P. Nos. 1 and 2 are closed.