

High Court for the State of Telangana

The Hon'ble The Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Dr. Justice Shameem Akther

W.A. No. 651 of 2019

Date: 07-08-2019

Between:

Rekha Nellypally

...Appellant

and

Union Bank of India
Rep. by its Managing Director and CEO
Hyderabad and 3 others

...Respondents

Counsel for the Appellant:

Mr. Goda Siva

Counsel for the respondents:

**Mr. C. R. Sridharan,
Senior Counsel
for Mr. Salloori Ramesh**

The Court made the following:

Judgment: (per Hon'ble The Chief Justice Raghvendra Singh Chauhan)

Mrs. Rekha Nellypally, the appellant, has challenged the legality of the order dated 28-06-2019, passed by the learned Single Judge, in W.P. No. 10334 of 2019, whereby the learned Single Judge has dismissed the writ petition filed by the appellant questioning the transfer order dated 07-05-2019, wherein she was transferred from Hyderabad to Chennai.

Briefly, the facts of the case are that the appellant joined the Union Bank of India on 01-09-1986 as a Cashier-cum-Clerk. Subsequently, due to her merit and meritorious service, she was promoted to Scale-I on 28-04-1995, to Scale-II on 15-05-2002, and to Scale-III in April 2007. On 01-06-2011, she was promoted as Scale-IV officer. During her tenure of service, she was posted to different parts of the Country, namely Karimnagar, Lucknow, Hyderabad, Chennai, and Secunderabad. During her stay in Hyderabad in the year 2009, the appellant claims that she had filed a complaint against the then Deputy General Manager for sexual harassment. Due to her complaint, the said Deputy General Manager was transferred from Hyderabad.

However, despite an enquiry being held against the said Deputy General Manager, nothing came out of the enquiry. She was eventually informed that the enquiry was stopped as she could not establish her allegations against the said Deputy General Manager. The appellant further claimed that due to her complaint, she has been victimized from 2009 to 2017. Eventually, by the impugned transfer order dated 07-05-2019, she has been transferred from Hyderabad to Chennai. Challenging the same, she filed the writ petition. However, by the impugned order dated 28-06-2019, the writ petition had been dismissed. Hence, the present writ appeal before this Court.

Mr. Goda Shiva, the learned counsel for the appellant, has vehemently pleaded that the learned Single Judge has ignored the fact that the transfer policy covering the transfers of the employees has been violated by the respondent, Bank. Moreover, the learned Single Judge has ignored the fact that while the other employees were retained in Hyderabad, despite the fact that they had completed more than ten years, the appellant was transferred from Hyderabad to Chennai. Thus, the transfer is selective in nature.

Lastly, the learned Single Judge has also ignored the fact that the appellant has been transferred in order to victimize her for the complaint of sexual harassment given by her in the year 2009. Therefore, the impugned order deserves to be set aside by this Court.

On the other hand, Mr. C.R. Sridharan, the learned Senior Counsel for the respondents, pleads that all the three issues raised by the learned counsel for the appellant have, indeed, been dealt with by the learned Single Judge. According to the learned Senior Counsel, a legally valid order has been passed by the learned Single Judge. Hence, no interference is called for by this Court.

Secondly, the policy stated by the appellant was not even binding upon the respondents as it does not relate to the officers holding the posts of Scale-IV. Moreover, even after the appellant had submitted her complaint of sexual harassment in the year 2009, she was duly promoted in the year 2011. Thus, the question of victimisation would not even arise in the present case.

Lastly, certain freedom at the joints should be given to an employer to select and post the employees whom he

thinks is suitable for a particular post. Therefore, according to the learned counsel, the impugned order is legally valid.

A bare perusal of the impugned order clearly reveals that the appellant had raised three pleas before the learned Single Judge, namely violation of the transfer policy, plea of victimization, and plea of selectivity in favour of certain employees.

The learned Single Judge has clearly noticed that the transfer policy is not applicable to Scale-IV employees. Admittedly, the appellant is a Scale-IV employee. Therefore, the learned Single Judge was justified in concluding that the transfer policy is inapplicable to the appellant. Hence, the very question of violation of the said policy would not even arise. Even otherwise, in catena of cases, the Hon'ble Supreme Court has observed that the transfer policy is merely directory in nature, and not a mandatory one. Moreover, sufficient freedom at the joints has to be given to an employer to select and post an employee keeping in mind the administrative exigencies and the requirement of the job. Therefore, the appellant is unjustified in claiming that the transfer policy had been violated.

As far as the retention of certain employees is concerned, suffice it to say that a discretionary power is always vested in the employer to choose the employees and their places of posting. Since the appellant has not pleaded *mala fide* against any particular person, the fact that some employees were permitted to continue beyond a period of ten years would not vitiate the impugned transfer order.

The plea of victimization raised by the appellant is highly misplaced. For, despite the fact that the appellant had filed a complaint of sexual harassment in the year 2009, she was, indeed, promoted in the year 2011. If there was a *mala fide* intention to victimize the appellant, the same would have been done immediately after filing of the complaint, and not after an inordinate delay of lapse of a decade. This point also has been noticed by the learned Single Judge.

Therefore, a bare perusal of the impugned order clearly reveals that the learned Single Judge has given cogent and convincing reasons for dismissing the writ petition.

For the reasons stated above, this Court does not find any merit in the present appeal. It is, hereby, dismissed.

As a sequel to dismissal of the writ appeal,
Miscellaneous Petitions, pending if any, stand disposed of as
infructuous.

(Raghvendra Singh Chauhan, CJ)

(Dr. Shameem Akther, J)

Dt: 7th August, 2019
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