

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29/10/2021

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.A.No.1743 of 2021
&
C.M.P.Nos.10931 & 10938 of 2021

(Heard through VC)

T.Ashok

.. Appellant

Versus

The General Manager,
Tamil Nadu Grama Bank,
Head Office,
No.6, Yercaud Road, Hasthampatti,
Salem - 638 007.

.. Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the Order of this Court, dated 10.06.2021 in W.P.No.13826 of 2020.

Prayer in W.P.No.13826 of 2021: Praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent. Bank in Letter Office Order No.OF/TR/65/2020-21 dated 23.07.2020 and quash the same.

For Appellant : Mrs.D.Geetha

For respondent : Mr.K.Srinivasa Murthy
Standing Counsel

JUDGMENT

K.KALYANASUNDARAM, J.,

This intra-court appeal is directed against the order made by the Writ Court, wherein, the challenge made by the appellant for his transfer from Sivagiri to Kancheepuram was rejected.

2. The appellant was appointed as Officer Scale-I and posted as Assistant Manager at Valathy Branch, Villupuram District, vide order dated 01.03.2010. Subsequently, he was transferred to Aravakuruchi Branch, Karur District as Branch Manager, vide order dated 15.06.2011. From where, he was transferred to Neruppur Branch, Dharmapuri District on 05.06.2013 and thereafter to Vellakoil Branch, Tirupur District. While he was serving at Sivagiri Branch, Erode District, by the impugned order dated 23.07.2020, he was transferred from Sivagiri Branch to Kancheepuram Branch.

3. The order of transfer was questioned by the appellant in the Writ Petition. According to him, the transfer was punitive in nature that too it was during Covid-19 Pandemic and the Regional Branch Manager, Kancheepuram was tested positive to Covid and the entire Branch was closed. It is the case of the appellant that on 13.07.2020 all branches were instructed over phone to make attendance entry digitally in a portal. Since there was no clarity so as to make these attendance entry in the portal mentioned, all the Branches requested the Head Office to give clear instructions in this regard. A circular was issued only on 16.07.2020 and after receipt of the circular, attendance were entered in the portal as per the instructions. For non-implementation of digital attendance, an oral instructions, he was transferred.

4. In the counter, all the allegations of the appellant were denied. It is stated that admittedly, the appellant's job is transferable and the impugned transfer was issued due to administrative reasons and not by way of punishment as alleged by the petitioner. According to the respondent, while the appellant was working as a Branch Head of the Sivagiri Branch, Erode District, the Bank received numerous complaints against the appellant, which made the Regional Manager, Coimbatore to visit the Branch on three occasions to neutralize the situation. Despite the same, the situation did not improve and on 20.07.2020, the customers of the Branch had gone to the extent of staging Dharna in front of the Branch premises. This was also circulated in the social media and wall posters were displayed across the town of Sivagiri. The Inspector of Police, Sivagiri Branch had summoned the Regional Manager, Coimbatore and held tripartite meeting with customers and Regional Manager to defuse the situation. Hence, the Branch thought it fit to shift the appellant out of the said Branch and post him in a different Region. Since there was a need in the Regional Office, Kancheepuram, he was posted in the Regional Office so that he can discharge his duties in a different atmosphere.

5. In the counter, it is further stated that during probation of two years, every officer need to work in two or

three branches. That apart, the appellant was suspended in the year 2012 and after revoking suspension, he was posted to Neruppur Branch. In the year 2017, on promotion as Officer Scale-II, the appellant was posted to Sivagiri Branch. There is no vindictive action as alleged by the appellant and the transfer was made in the interest of bank administration. It is also stated that the issue related to non-adherence of Head Office instruction is dealt with separately for nearly 100 officers and the appellant is one among them. That is nothing to do with the transfer under challenge. It is further stated that in the last three months, nearly 100 transfer orders were released by the respondent and many of them were posted to Branches beyond 300 Kilometers and some of the officers were also posted to Kancheepuram Region from Thanjavur and Kallakurichi District and they have already moved to their respective Branches without citing Covid-19 as a reason. The Regional Manager of Kancheepuram was tested positive few months back and he is now healthy and office is functioning smoothly.

6. A reply affidavit was filed by the appellant disputing the averments made in the counter. According to the appellant, these allegations clearly substantiate his case that the impugned order of transfer is punitive measure and not due to administrative reasons.

7. The learned Single Judge dismissed the Writ Petition, holding that the ground of COVID-19 cannot be considered at this length of time as there are many changes. Transfer is an incidental to service. Even in case of raising a mala fide intention, the Authority against whom such an allegation raised must be impleaded as party respondent in the Writ proceedings. Merely stating that the transfer would cause inconvenience, cannot be a ground to set aside the order of transfer issued by the competent authority. Challenging the same, the present Appeal has been filed.

8. The learned counsel appearing for the appellant Mrs.D.Geetha would contend that as per Notification No.115 of 2021 issued by the Registry, extremely urgent matters alone can be taken up for hearing and there was no urgency in the Writ Petition and that apart, the learned Judge without affording an opportunity of bearing heard, dismissed the Writ Petition. It is next contended that the transfer order was punitive in nature and without giving an opportunity to the appellant such transfer cannot be made. In this regard, the learned counsel relied upon the decision of the Hon'ble Apex Court in Somesh Tiwari Vs. Union of India [(2009) 2 SCC 592].

9. Per contra the learned Standing Counsel for the respondent Mr.K.Srinivasa Murthy would contend that the order of

transfer dated 23.07.2020 was challenged in the Writ Petition in the month of September 2020 and an interim stay was granted on 30.09.2020. Within a period of 3 days, the respondent filed a counter along with vacate stay petition and the vacate stay petition was taken up for hearing on 09.11.2020. At the request of the appellant counsel, it stands adjourned to 09.12.2020 and the respondent counsel argued the vacate stay petition and it was posted on 11.12.2020 for the argument of the appellant. When it was listed on 16.12.2020, it was adjourned to 07.01.2021 and thereafter, it did not come up for hearing. Hence, several letters were sent to the Registry to list the matter, but in the meanwhile, the appellant filed Contempt Petition and on 17.04.2021 a statutory notice was issued and the matter was posted on 04.06.2021. Thereafter, explaining urgency, they sent e-mail on 07.06.2021 and 09.06.2021. Eventually, the Writ Petition was taken up for hearing on 10.06.2021 and the learned Judge rejected the request of adjournment and heard both sides on merits and dismissed the Writ Petition. He further added that while the appellant was working as Branch Manager, Sivagiri, he was not courteous to the customers, there were lot of protest by the customers and DYFI and CPIM activists. The Regional Manager was called to the Police more than one occasion to solve the problem. The learned counsel placing reliance on the decision in the case of Tamil Nadu Electricity Board, Madras Vs. K.Raman [1985 (1) LLJ 164] and the decision of the Hon'ble Supreme Court in Union of India Vs. Janardhan Debanath [2004 (4) SCC 245] argued that the impugned transfer was made for administration exigency and in the public interest and justified the order of the Writ Court.

10. We have heard the rival submissions and perused the available materials.

11. In the present case, it is an admitted fact that the appellant was appointed as Officer Scale-I originally in Pallavan Grama Bank on 01.03.2010 and in the year 2019, the said Pallavan Grama Bank was merged with Pandyan Grama Bank and it was renamed as Tamil Nadu Grama Bank. When the appellant was working as a Branch Manager in Sivagiri Branch, vide order dated 23.07.2020, he was transferred and posted at Regional Branch, Kancheepuram. The transfer order was challenged by the appellant and an interim stay was granted on 30.09.2020. Immediately, on 03.10.2020, a vacate stay petition was moved.

12. It has been clearly stated in the counter affidavit that the vacate stay petition was listed on 09.11.2020 and at the request of the appellant, it was adjourned and on 09.12.2020, it was taken up for hearing and the counsel for the respondent argued and it was posted to 11.12.2020 for the appellant counsel arguments. Again when it was listed on

16.12.2020, it was adjourned to 07.01.2021 and it did not come up for hearing on that day and hence, the respondent wrote letters and also sent emails to the High Court's Registry to list the case. It is an admitted fact that when the vacate stay petition was pending, the appellant filed Contempt Petition No.1196 of 2020 and on 17.04.2021, statutory notice was ordered and the matter was posted on 04.06.2021. Thereafter, vacate stay petition was not listed and hence, the respondent sent email to the High Court on 07.06.2021, 09.06.2021 and on 10.06.2021. According to the respondent, adjournment sought for by the appellant was rejected and arguments were heard and the matter was decided on merits.

13. The facts aforementioned would show that the respondent filed the vacate stay petition within a period of three days from the date of the interim stay and when the matter was listed for hearing, the appellant had taken adjournments and also filed a Contempt Petition. Therefore, we are unable to agree with the submission of the learned counsel for the appellant that there is no urgency for taking up the Writ Petition for hearing and it was against the Notification of the Registry, dated 28.05.2021 in Notification No.115 of 2021.

14. The Hon'ble Apex Court in the Judgment cited by the learned counsel for the appellant in [(2009) 2 SCC 592] (supra), in paragraph No.19 has held as follows:-

"19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds— one malice in fact and the second malice in law."

There is no dispute with regard to the proposition laid down by the Hon'ble Supreme Court in the above judgment.

15. In the judgment relied on by the learned Standing Counsel for the respondent in [1985 (1) LLJ 164] (supra), the Division Bench of this Court has held as follows:-

"9. For ought one knows, allegations or complaints however baseless they may be, may constitute, a cause for transfer, sometimes even the foundation for such transfer. After all, what is done by a transfer, which as stated above, is part of a contingency of service? If the administration finds that having regard to the complaints or allegations it is better a particular officer is removed from the particular workspot, transfer is ordered. Beyond that it does not visit the officer concerned with any

penalty whatever, penalty not in the sense of disciplinary proceedings but from the point of view of emoluments, rank or status. If that be the position in law, where then is the necessity for the full exposure of the justifying factors for transfer before the Court? For our part, we are unable to see any necessity."

16. In [2004 (4) SCC 245] (supra), the Hon'ble Apex Court observed as follows:-

"4. The Union of India took the stand that the transfer was done in public interest and on account of exigencies of administration. It was pointed out that the respondents not only misbehaved with the Director (Postal Services), a senior lady officer, she was confined and dragged from one room to another and this was done with a view to force her to withdraw the charge-sheet against the Deputy Postmaster. She was abused in filthy language and was physically manhandled. This conduct was certainly unbecoming of an employee and with a view to enforce discipline and to avoid recurrence of such unfortunate incident, they were transferred. There was no violation of either Rule 37 of the Manual or FR 15. The High Court accepted the prayers made in the writ petitions and held that transfer was impermissible in terms of Rule 37 and was in violation of FR 15. It was as a measure of penalty and the seniority and the promotional prospects were likely to be affected.

14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the

problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs. "

17. Though the appellant has alleged that the transfer was punitive in nature, as rightly observed by the learned Single Judge that if the transfer is made in mala fide intention, the Authority against whom such an allegation raised must be impleaded as a party in the Writ Proceedings and only if the appellant could establish that an order of transfer is issued with mala fide intention or without jurisdiction, the Court can interfere. In the instant case, it is the case of the respondent that the transfer order was made on administrative exigencies and explained the foundation for such transfer in the counter. The Division Bench of this Court and the Hon'ble Apex Court in the judgments, referred supra, have held that in such circumstances, the transfer can be made and it shall not be interfered in the Writ Petition. So, we find no substance in the contention of the learned counsel for the appellant.

18. In such view of the matter, Writ Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

r n s

To

The General Manager,
Tamil Nadu Grama Bank,
Head Office,
No.6, Yercaud Road, Hasthampatti,
Salem - 638 007.

+1cc to M/s.N.G.R.Prasad, Advocate, S.R.No.56068

W.A.No.1743 of 2021 &
C.M.P.Nos.10931 & 10938 of 2021

PMK(CO)
SU(15/11/2021)