

*** THE HONOURABLE SRI JUSTICE L. NARASIMHA REDDY**
AND
*** THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM**

-

+ WRIT APPEAL No.1107 of 2014

% Dated 04-08-2014

-

M.Janardhan Rao

.... Appellant

VERSUS

\$ The Chairman and Managing Director,
Syndicate Bank, P.B.No.1, Head Office,
Manipal – 576 119, South Kanara,
and others.

... Respondents

! Counsel for Appellant: Sri J.Sudheer

^ Counsel for Respondents: Sri Deepak Bhattacharjee

< GIST:

> HEAD NOTE:

? CITATIONS:

-

**THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

WRIT APPEAL SR.No.84307 of 2014

-
-
JUDGMENT: *(Per Hon'ble Sri Justice L.Narasimha Reddy)*

-
This writ appeal is filed by the unsuccessful writ petitioner in W.P.No.16768 of 2004.

Briefly stated, the facts are that the appellant joined the service of Syndicate Bank, the respondents herein, in the year 1976, as a Class IV employee. Ever since he has been working in various Branches within the city of Hyderabad. In the year 2002, he was working as Class IV employee in the Rashtrapathi Road Branch of the Bank. Through order dated 18.07.2002, the appointing authority transferred him to the Branch at Proddatur of Kadapa District. Challenging the said order on several grounds, the appellant filed W.P.No.20319 of 2002. The writ petition was disposed of on 11.10.2002, directing the respondents to consider the representation submitted by the appellant herein. On such consideration, the order of transfer was reiterated. Thereupon, the appellant filed W.P.No.14866 of 2003. That was dismissed on 22.07.2003. Writ Appeal No.1581 of 2003 was also dismissed on 23.10.2003.

The appellant did not join the duty at Proddatur, even after dismissal of the writ appeal referred to above. The respondents initiated disciplinary proceedings by framing three charges, which read as under:

“It is on record that you have been posted to Proddatur branch vide Order No.138/ZOH/PS/AS/AT2002/ 223270, dated 18.07.2002, of our Zonal Office, Personnel Section on revocation of your suspension. However, you did not

join there and challenged your posting to Proddatur branch by filing the Writ Petition No.20319/02 and the same was disposed by the Hon'ble High Court vide Orders dated 11.10.2002 with the direction to the Bank Management to consider and dispose your representation submitted in respect of your posting to Proddatur Branch.

That when you submitted medical certificates seeking leave on medical grounds after your posting to Proddatur branch, you were repeatedly advised to submit all your leave requests to the Sr. Branch Manager of Proddatur branch since he is the Competent Authority to sanction leave to you. However, you did not comply with the above instructions, due to which your absence from 27.07.2002 to 09.01.2003 for 156 days was treated as unauthorised by Proddatur branch vide their letter dated 09.01.2003 addressed to you.

It is also observed that while submitting your representation dated 28.08.2002 against your posting to Proddatur branch you had enclosed a Xerox copy of the letter bearing No.HD:PD:PAD:904:0087:99 dated 12.04.99 of HO:Personnel Department addressed to the Dy. General Manager, Personnel Section, Zonal Office, Hyderabad, which is a confidential document and you are not authorized to possess that document under any circumstances. Your explanation was called for in this regard and the reply submitted by you was not found satisfactory."

Almost an *ex parte* enquiry was conducted and the Enquiry Officer submitted a report on 02.05.2003. At one stage, the appellant filed W.P.No.10814 of 2003, challenging the report of the Enquiry Officer. The writ petition was dismissed, leaving it open to the appellant to put forward all his contentions before the disciplinary authority. Writ Appeal filed against it was also dismissed.

Ultimately, through an order, dated 14.07.2003, the respondents imposed the punishment of removal from service. Departmental appeal filed by the appellant was rejected on 03.03.2004. Thereafter, the appellant filed W.P.No.16768 of 2008. Learned Single Judge

dismissed the writ petition, through a detailed order dated 07.04.2014. Hence, this appeal.

Sri J.Sudheer, learned counsel for the appellant, submits that the entire controversy, giving rise to the initiation of disciplinary proceedings, was on account of the failure of the appellant to join the Branch at Proddatur, on being transferred, and that the transfer itself was contrary to the circular, dated 12.04.1999, issued by the Head Office. He submits that there was a clear prohibition of transferring the subordinate staff to outside cities/centres and, ignoring the same, the appellant was transferred from Hyderabad to Proddatur, a very far-off place. He submits that the prejudice, which the respondents have nurtured against the appellant, is evident from the fact that even when a reference was made to the circular, dated 12.04.1999, in representations, a charge was framed in relation thereto. Learned counsel submits that a circular, governing the transfers, issued by the Head Office, in relation to the transfers of a particular category of employees, cannot be treated as an internal communication, much less there exists any confidentiality about it. He submits that the transfer was patently illegal and, had the circular been available to the petitioner when the writ petition and writ appeal were filed challenging the transfer, things would have been different altogether. He submits that the punishment of removal, though with the facility to draw the retirement benefits, is totally unwarranted, disproportionate and arbitrary.

Sri Deepak Bhattacharjee, learned counsel for the respondents, on the other hand, submits that an employer has always a right and discretion to transfer the employees and, in the instant case, the transfer was ordered on administrative grounds. He submits that the circular was only for internal communication and no rights can be said to have been conferred upon the appellant on the basis of the circular.

He submits that taking a sympathetic view upon the appellant, the punishment of removal with all the attendant benefits was imposed, to ensure proper discipline in the Bank.

Though three separate charges are framed, the entire controversy turns around the transfer of the appellant ordered by the respondents. It is no doubt true that an employer has a discretion to transfer its employees depending upon the administrative convenience. However, though a transfer may appear to be innocuous, it has several implications from the point of view of the employee. In a given case, it would be much more than shifting from one place to another. Much would depend upon the nature of the duties, which are required to be discharged by the concerned employee.

Taking into account, the fact that sub-staff is mostly from a particular locality and, having regard to the size of the emoluments, they cannot be expected to work at distant places, the Head Office of the respondent Bank issued a circular, dated 12.04.1999, which reads as under:

“This is further to our letter No.HD:PD:SAS:WS:270 dt. 8.2.99 regarding transfer of workmen staff.

Now it has been decided for periodic rotation of Attenders also within the city/place.

1. Transfer of sub-ordinate staff (Atenders) may be confined only to such cities/centers where we have more than one branch.
2. Attenders who have completed more than 5 years in a branch/Office as on 31.3.99 may be transferred to another branch/office in that centre/city place.
3. Due consideration shall be shown with regard to social status and financial position while transferring them. As far as possible Attenders may be transferred to the nearest branch/office.

You may kindly take note of this and effect transfer for the year 1999. Also send us report along with the report to be submitted as called for by us vide our letter dt.08.02.1999 mentioned above.”

From this, it is clear that a policy decision has been taken to the effect that sub-staff shall not be transferred outside the city or the centres. Despite this, the appellant, who was working at Hyderabad, was transferred to Proddatur, which is at a distance of about 450 kilometres from Hyderabad. The basis pleaded for this was the Bi-partite Settlement. However, the general circular issued by the Head Office cannot be overlooked. Learned counsel for the respondents did not place any material before us, which have the effect of superceding or modifying the circular dated 12.04.1999.

We are conscious of the fact that the validity of the order of transfer is not before us and it has been the subject-matter of the writ petition and the writ appeal. Our effort is only to examine the gravity of the charges. We find that there was every justification on the part of the appellant in hesitating to join at Proddatur. It is necessary to take note of the fact that the disciplinary proceedings were initiated at the time when W.A.No.1581 of 2003, challenging the order of the learned Single Judge dismissing the writ petition, whereunder the order of transfer was challenged, was very much pending. The disciplinary proceedings also proceeded almost on *ex parte* basis.

A perusal of the 3rd charge makes somewhat interested reading. The respondents proceeded as though the appellant had access to some sensitive and highly confidential documents of the Bank. Had it been a case where the appellant made an attempt to have access to other documents, things would have been totally different altogether. The only allegation with reference to the charge is that the appellant had access to circular dated 12.04.1999. When the circular is meant

for the benefit of the employees, mere possession thereof by the respondents cannot be said to be an act of discipline. The 3rd charge was framed almost as a sequel to the initiation of disciplinary proceedings on charge Nos.1 and 2. We are of the view that the order of removal, though with the facility to draw terminal benefits, cannot be treated as legal and valid. The minor acts of insubordination, if any, can be neutralised by subjecting the appellant to some inconvenience or hardship.

We, therefore, allow the writ appeal and set aside the order under appeal. W.P.No.16768 of 2004 is allowed and the order impugned therein is set aside. We direct that the appellant shall be reinstated into service with continuity of service, but with 50% backwages. The retirement benefits, if any, extended to the appellant shall be adjusted towards 50% of backwages and, if they spillover, they shall be adjusted at the time of extending the benefits of attaining the age of superannuation. There shall be no order as to costs.

The miscellaneous petitions filed in this appeal shall also stand disposed of.

L.NARASIMHA REDDY,J

CHALLA KODANDA RAM,J

04.08.2014

-
Note: L.R.copy

B/o

v v