

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5318 OF 2022

(Nilesh Prakash Sarad Vs. State Bank of India Officers Association (Mumbai Metro & Maharashtra Circle)
& Anr.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Akshaya M. Sudame, Advocate for the petitioner.
Shri M. Anil Kumar, Advocate for respondent No.1.
Shri Yash Kullarwar, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : SEPTEMBER 5, 2022.

The petitioner is aggrieved by the rejection of his nomination paper by which he sought to contest the elections for the post of 'Chief Regional Secretary' – Amravati Zone, elections for which were to be conducted for the period from 2022 to 2025.

According to the petitioner, his services came to be transferred from the Amravati circle to the Mumbai circle on 29/4/2022 for administrative reasons. The representation made by him against such transfer was rejected on 30/4/2022. The petitioner filed his nomination form but on 24/8/2022, he was asked to clarify by stating that he was under orders of transfer. After considering the petitioner's clarification, the nomination form came to be rejected on 25/8/2022 by stating therein that he was under orders of transfer. Being aggrieved, the petitioner has challenged the said action.

The learned Counsel for the petitioner submits that though his services were transferred out of the Amravati circle prior to the declaration of the election programme, he had not been relieved. He was drawing salary from the Amravati circle till August-2022. Since he was never relieved from the Amravati circle and his name was in the voters list for that circle at Sr. No. 241, his nomination form could not have been rejected. Reliance was placed on Clause 33.5.13 of the Bye-Laws 2019-2022 to urge that only if the order of transfer was issued after commencement of the process of election, the same would operate

as disqualification. It is thus submitted that the petitioner's nomination be directed to be accepted.

The learned Counsel for respondent No.1 on the other hand submitted that as per Clause 3(d) of the election notification, since the petitioner was under transfer orders, he was not eligible to submit his nomination form. The petitioner's representation was considered and rejected on the same point. It is further submitted that the aspect of relieving an employee under transfer was the lookout of the employer and under the Rules under which the elections were held, the candidate was required not to be under transfer orders.

We have heard the learned Counsel for the parties and we have perused the documents placed on record.

It is undisputed that in April-2022, the petitioner has been issued a transfer order transferring him out of the Amravati circle. It is also clear that the petitioner is yet to be relieved since he continues to receive salary at the Amravati circle. It is however to be seen that as per Clause 33.5.13 read with Clause 3(d) of the election notification, a candidate filing nomination form must ensure that he is not under transfer orders. Though it has been stated therein that such transfer orders should be issued by the Local Head Office or the Employees' Controller, in the present case, the transfer orders are issued by a Superior Authority. In our view, the aspect that the transfer orders have not been issued by the Local Head Office or by the Controller would not be relevant in these facts. On reading of Clause 33.5.13 and Clause 3(d) together, we find that an employee under transfer would not be entitled to file his nomination form from the circle from where he has been transferred. Clause 33.5.13 makes it clear that if an order of transfer is issued during the process of election, the candidate filing his nomination form would stand disqualified. Though it is urged by the learned Counsel for the petitioner that the stipulation that the candidate filing his nomination form must ensure that he is not under orders of transfer has not been stated in Clause 33.5.13 of the election notification, we find that the same merely clarifies what has been stated in Clause 3(d) of the election notification. If a candidate is transferred during the process of election, he would stand disqualified. The object appears to be to prevent an employee

who is transferred/ under orders of transfer to contest such elections. Hence that contention cannot be accepted.

We therefore find that the Chairman of the Election Committee did not committed any illegality by referring to Clause 3(d) of the election notification for rejecting the petitioner's nomination form.

The Writ Petition is therefore dismissed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A. S. CHANDURKAR, J.)

SUMIT