

S/L 1
21.12.2023
Court. No. 29
Sourav

WPA 21069 of 2022

Deep Narayan Majumder
Vs.
UCO Bank & Ors.

Mr. R. Guha Thakurta
Mr. Subhajit Ghosh

...for the petitioner.

Mr. Raghunath Ghosh

...for the respondent/Bank.

1. Both the writ petitioner and the respondent/Bank and its officials are represented by their respective learned advocates.
2. The affidavit-in-opposition as filed by the respondent/Bank through Mr. Ghosh, learned advocate be taken on record.
3. The instant writ petition is now taken up for hearing.
4. Heard learned advocate for the writ petitioner and learned advocate for the respondent/Bank at length.
5. The present writ petition is now taken up for passing appropriate order.
6. By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioner has prayed for quashing of the impugned letter dated 10.05.2022 as passed by the respondent/Bank whereby and whereunder many representations have not been considered by the respondent/Bank favourably.
7. From the materials as placed before this Court, the following facts are undisputed, viz.:

- i) The writ petitioner is an employee of the respondent/Bank.
- ii) At the relevant time, he was posted at Jhorehat Howrah Branch (Branch Code No. 0403).
- iii) He has been transferred to Patharghata Chhapna Branch (Branch Code No. 2567) vide respondent/Bank's transfer order dated 30.11.2021.
- iv) Prior to such transfer, the writ petitioner made a representation with the respondent/Bank on 17.10.2019 for transferring him to a branch nearer to his home on account of his parents' illness.
- v) However, such prayer for transfer was not considered by the Bank even during lockdown due to COVID-19 pandemic.
- vi) The writ petitioner, thereafter, filed a writ petition being WPA 10691 of 2021 before this Hon'ble High Court which was disposed of directing the respondent/Bank to consider the representation made by the petitioner on 17.10.2019 within a period of eight weeks from the date of passing of the order dated 15.11.2021.
- vii) Such petition was, thereafter, considered by the respondent/Bank and ultimately, on 30.11.2021, the writ petitioner was

transferred to Patharghata Chhapna Branch
(Branch Code No. 2567).

viii) Since the writ petitioner has not been transferred nearer to his home, he was on leave from 29.03.2020 to 05.12.2022 which according to the respondent/Bank is unauthorized.

8. In Course of his submission, Mr. Guha Thakurta, learned advocate for the writ petitioner at the very outset draws attention of this Court to the order as passed by the co-ordinate Bench of this Court in WPA 10691 of 2021. It is contended by Mr. Guha Thakurata, learned advocate for the petitioner that considering the predicament of the writ petitioner in attending his duty at Jhorehat Howrah Branch on account of his parents' illness, the co-ordinate Bench of this Court directed the Bank to consider his representation dated 17.10.2019.

9. It is further submitted that because of such direction the respondent/Bank woke up from its eternal slumber and, ultimately, passed a favourable order of transfer on 31.11.2021 thereby transferring the writ petitioner from Jhorehat Howrah Branch to Patharghata Chhapna Branch. It is further contended that in the event, the petitioner's application and/or representation for transfer dated 17.10.2019 and subsequent representations as made by the writ petitioner has been considered by the respondent/Bank, there could have been no occasion on the part of the writ petitioner in attending his duty in a branch nearer to his home. It is further submitted that

the while issuing the impugned letter dated 10.05.2022, the respondent/Bank has miserably has failed to consider the above mentioned predicament of the writ petitioner and thus persuaded itself in a wrong perspective while declining to pay various allowances which has been unauthorizedly deducted and/or withheld by the respondent/Bank.

10. Mr. Guha Thakurata, learned advocate for the petitioner thus submits that it is a fit case for allowing the instant writ petition thereby quashing the said letter of the bank dated 10.05.2022 with a further direction upon the respondent/Bank to pay all the arrears dues which has been declined by the Bank by its impugned letter dated 10.05.2019.

11. *Per contra*, Mr. Ghosh, learned advocate for the respondent/Bank and its officials at the very outset draws attention of this Court to the various advisories as issued by the Bank which has been annexed to the instant writ petition. It is contended by Mr. Ghosh that in spite of repeated reminder given by the Bank which dispense public service, the writ petitioner on the pretext of non-consideration of his transfer representation remained on unauthorized leave from 29.03.2020 to 05.12.2022.

12. It is further contended by Mr. Ghosh that from the materials placed before this Court, it would reveal that even during lockdown a door pickup and drop facility was offered to the writ petitioner but instead of availing the same, the writ petitioner remained in unauthorized leave for the period mentioned in the foregoing paragraph. Mr.

Ghosh, learned advocate for the respondent/Bank further submits that even though such action on the part of the writ petitioner tantamounts to violation of the Service Rules and Regulations of the employee of the respondent/Bank even then, the salary of the writ petitioner from December, 2021 onwards have been released.

13. It is further argued by Mr. Ghosh that since the writ petitioner was on unauthorized leave, he was not entitled to the other benefits as mentioned in the impugned letter dated 10.05.2022. It is thus submitted by Mr. Ghosh that the respondent/Bank is very much justified in issuing the letter dated 10.05.2022 declining to pay the other benefits as wrongly claimed by the writ petitioner during the period of leave without pay.
14. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it reveals that admittedly the present writ petitioner on 17.10.2019 made a representation with the respondent/Bank for his transfer nearer to his home on account of his parents' unwellness. Admittedly, such prayer as well as his subsequent prayers have not been considered.
15. As discussed supra, a co-ordinate Bench while disposing WPA 10691 of 2021 passed an order dated 15.11.2021 directing the respondent/Bank to consider the representation of the writ petitioner for his transfer to a nearer place to his home.

16. In considered view of this Court, such an order which has been passed by a co-ordinate Bench of this Court did not hold the action of the Bank in not considering the earlier representation of the writ petitioner either bad or illegal in the eye of law. It is settled principle of law that within the meaning of service jurisprudence that leave is not a right of an employee even though the same is due to the employee. In the case in hand, this Court finds that the writ petitioner made several representations before his employer for his transfer to a branch nearer to his home, may be on account of his parents' illness but non-consideration of such representation does not give any right to an employee of the Bank, more specifically the writ petitioner to remain absent from his duty without informing his employer.
17. Admittedly, during COVID- 19 pandemic, normal life and avocation of the human being throughout the world had come to a halt. However, with the decrease of surge of pandemic, normalcy had been restored gradually.
18. In the case in hand also, it has been placed before this Court that time to time the respondent/Bank has issued various circulars to its employees to resume their duties phasewise for dispensation of public service. The same thing happened with the present writ petitioner also. The writ petitioner was offered with pickup and drop facility from and to his door and in spite of that the writ petitioner declined to attend his duty at Jhorehat Howrah Branch on some pretext or other.

19. In considered view of this Court, the writ petitioner has miserably failed to justify his unauthorized absence from 29.03.2020 to 05.12.2022. From the materials, it further appears that he has been asked to give his explanation for his unauthorized absence from duty which also he could not justify in his reply.
20. Considering the every pros and cons of the matter as involved in the *lis*, this Court finds no *mala fide* action on the part of the respondent/Bank while issuing impugned letter dated 10.05.2022 since the writ petitioner is not entitled to those benefits which have been mentioned in the said letter dated 10.05.2022 on account of his leave without pay.
21. This Court, thus, finds no merit in the instant writ petition and, thus, the instant writ petition being **WPA 21069 of 2022** is dismissed on contest but considering the facts and circumstances of the present case without any order as to costs.
22. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)