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W.P.No.30800 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.30800 of 2022
and
W.M.P.No.30253 of 2022

Bhubaneshwar Padhy

... Petitioner

Vs.

1.Managing Director & Chief Executive Officer,
UCO Bank Head Office,
No.10, BTM Sarani,
Kolkata - 700 001.

2.Executive Director,
UCO Bank Head Office,
No.10, BTM Sarani,
Kolkata - 700 001.

3.General Manager,
HRM, PSD, Training and OL,
UCO Bank Head Office,
No.10, BTM Sarani,
Kolkata - 700 001.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of



W.P.No.30800 of 2022

respondents in issuance of order bearing office notification No.45/2022-23 dated 07.11.2022 and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.S.R.Rajagopal
Senior Advocate
for Ms.Shanmitha. S

For Respondents : Mr.P.S.Raman
Senior Advocate
for M/s.Srinath Sridevan

ORDER

The petitioner has challenged a transfer order in this Writ Petition. He is an Assistant General Manager (*Hereinafter referred to as AGM*) in the respondent Bank. He has been transferred to Ahmedabad from Chennai under the impugned transfer order dated 07.11.2022. The petitioner contends that it is a malafide transfer.

2. The petitioner had earlier filed a Writ Petition in W.P.No.25157 of 2022 on account of the non conferment of promotion to him to the post of Deputy General Manager (*Hereinafter referred to as DGM*) in the



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respondent Bank despite he being included in the promotion panel. An interim order was granted by this Court on 01.11.2022 in W.P.No.25157 of 2022, under which, a direction was issued to the respondent Bank to reserve one post for the petitioner in the post of DGM in the respondent Bank. Thereafter, the petitioner apprehended that he will be transferred and he has also issued a contempt notice on 17.11.2022. After issuance of the contempt notice, the petitioner has filed the present Writ Petition viz., W.P.No.30800 of 2022, challenging the impugned transfer order, under which, he has been transferred to Ahmedabad from Chennai.

3. This Court by its interim order dated 18.11.2022 in W.M.P.No.30253 of 2022 in W.P.No.30800 of 2022 granted interim stay of the impugned transfer order, after recording the submissions made by the learned counsel for the petitioner which is as follows:

" 5. The learned counsel for the petitioner would submit that despite the order dated 01.11.2022 under which the respondents have undertaken to reserve one post for the petitioner as DGM, the respondents have filled up all the vacancies and the petitioner has



already taken steps to file a contempt petition.

According to him, only with a malafide intent and to deprive the legitimate rights of the petitioner to get promoted, the impugned transfer order dated 07.11.2022 has been passed transferring the petitioner from Chennai to Ahmedabad."

4. Learned counsel for the petitioner would categorically contend that the impugned transfer order has been made with a malafide intent only on account of the fact that the petitioner had earlier filed a Writ Petition in W.P.No.25157 of 2022, challenging the non inclusion of his name in the promotion panel to the post of DGM and in the said Writ Petition, an interim direction was issued to the respondent Bank to reserve one post vacant for the petitioner in the post of DGM in the respondent Bank.

5. Learned counsel for the petitioner also drew the attention of this Court to the impugned transfer order dated 07.11.2022, under which, several persons have been transferred and they are forty two in number. According to the learned counsel for the petitioner, the petitioner has been



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singled out, as he is the only AGM who has been transferred from Chennai to a different zone i.e., to Ahmedabad, whereas, the other persons who have been transferred are within the very same zone. In so far as one Ramesh Kumar Singh, who is also an AGM who has been transferred from Pune to Ranchi is concerned, he would submit that he has served in the present zone i.e., at Pune for more than eight hundred and seventy five days, which is also admitted by the respondents. According to him, the petitioner has served in Chennai only for a period of 364 days.

6. Learned counsel for the petitioner on instructions would submit that the petitioner is willing to give an unconditional undertaking to this Court that he shall join duty, as per the impugned transfer order at Ahmedabad, on or before 15th April, 2023. The said undertaking given by the petitioner is recorded by this Court.

7. In support of his contentions, learned counsel for the petitioner drew the attention of this Court to the following Authorities:

a) ***Somesh Tiwari Vs. Union of India and Others*** reported in **2009 (2) SCC 592;**



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b) *Mohd. Masood Ahmad Vs. State of U.P. and Others* reported in **2007 (8) SCC 150**;

8. Relying upon the aforesaid decisions, the learned counsel for the petitioner would submit that the transfer order has been passed with a malafide intent and that too on account of personal animosity with the petitioner on account of the fact that he has filed a Writ Petition in W.P.No.25157 of 2022, challenging the non inclusion of his name in the promotion panel to the post of DGM. The principles laid down in the aforesaid decisions are squarely applicable to the case of the petitioner and therefore, he would submit that the impugned transfer order is arbitrary and illegal. He would also submit that the petitioner had not suppressed any material fact before this Court as contended by the respondents in their counter affidavit. He would submit that the petitioner has approached this Court with clean hands and with utmost good faith. He would submit that the petitioner, only after coming to know that he is transferred to Ahmedabad from Chennai, had sent a contempt notice prior to filing of the present Writ Petition viz., W.P.No.30800 of 2022.



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9. However, learned senior counsel appearing for the respondents would submit that only due to administrative exigencies, the petitioner has been transferred under the impugned transfer order. Apart from the petitioner, there is one more employee in the cadre of AGM, who has also been transferred to another zone. Further, it is contended that not alone the petitioner, but there are several other persons, who are forty two in number, who have been transferred to various places by the respondent Bank and therefore, there is no malafides on the part of the respondent Bank, as alleged by the petitioner.

10. It is also submitted by the learned senior counsel for the respondent Bank that the place viz., Ahmedabad, where the petitioner ought to have joined duty as per the impugned transfer order is now lying vacant and there is no AGM in the said place. He would also submit that in place of the petitioner at Chennai another person has already been appointed and he has also joined duty at Chennai. Therefore, the question of interfering with the impugned transfer order at this stage will not arise.



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11. Learned senior counsel appearing for the respondents also drew the attention of this Court to the following Authorities in support of his contentions that, unless and until the petitioner is able to establish malafides, the scope for interference under Article 226 of the Constitution of India will not arise:

a) *Morgan Stanley Mutual Fund Vs. Kartick Das* reported in **1994 (4) SCC 225**;

In particular, he referred to paragraph No.36 (e), where the Honourable Supreme Court has observed that while granting an *ex parte* injunction, the Court would expect a party applying for *ex parte* injunction to show utmost good faith in making the application.

12. Learned senior counsel appearing for the respondents would submit that the petitioner had not shown utmost good faith while seeking stay of the impugned transfer order as he would submit that the petitioner had sent a contempt notice even prior to filing of the present Writ Petition viz., W.P.No.30800 of 2022, where the impugned transfer order was stayed by this Court, pursuant to an interim order.



W.P.No.30800 of 2018

WEB COPY

b) A decision of a learned Single Judge of this Court in the case of ***K.Manoharan Vs. The Director General Central Institute of Plastics Engineering and Technology and Others*** reported in ***MANU/TN/0196/2004***;

Relying upon the aforesaid decision, he would submit that to make out a case of malafides, it is most essential to array the authority in his personal capacity and also to substantiate the same by placing positive evidence.

13. According to the learned senior counsel appearing for the respondents, as seen from the documents available on record, the petitioner has not been able to satisfy the aforesaid decision to establish malafides against the respondent Bank.

14. Learned senior counsel appearing for the respondent would also submit that as per the transfer Policy of the respondent Bank, if aggrieved by any transfer order, the petitioner's remedy is to prefer an Appeal as per



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Clause 27 of the said transfer Policy before the General Manager, HRM within seven days from the date of receipt of the transfer order. Therefore, he would submit that the present Writ Petition is not maintainable, as the petitioner has not exercised his Statutory Appellate remedy available as per the transfer policy of the respondent Bank. For this submission, learned counsel for the petitioner would submit that since the impugned transfer order has been issued only by the General Manager, the question of the petitioner once again approaching the General Manager by way of an Appeal will not arise and cannot be done.

Discussion:

15. At the outset, before going into the merits of the respective contentions, this Court will have to take note of the fact that the petitioner has given an unconditional undertaking that he shall join duty at Ahmedabad pursuant to the impugned transfer order on or before 15th April, 2023. He is stating that his children are studying in a School at Chennai and therefore, in the middle of the Academic Year, it will be difficult for him to shift to Ahmedabad from Chennai, which is far away



from here, leaving his family at lunch at Chennai.

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16. Admittedly, the petitioner has challenged the non conferment of promotion to him to the post of DGM though his name was included in the promotion panel, by way of Writ Petition in W.P.No.25157 of 2022. In that Writ Petition, an interim direction was also issued to the respondent Bank to reserve one post for the petitioner in the post of DGM until further orders of this Court.

17. In the earlier promotion panel, the petitioner's name has been included, but, he was not conferred promotion as indicated earlier. One N.Srikanth was a waitlisted candidate in the earlier promotion panel and was ranked lower to the petitioner, which is also not in dispute. In the earlier promotion panel, there were only seventeen vacancies and N.Srikanth was eighteenth in number and he was waitlisted. However, subsequent to the filing of the earlier Writ Petition in W.P.No.25157 of 2022 by the petitioner, N.Srikanth has been promoted to the post of DGM by the respondent Bank with effect from 01.03.2023. When the petitioner was ranked ahead of N.Srikanth in the promotion panel, the question of



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appointing N.Srikanth ahead of the petitioner to the post of DGM in the respondent Bank, has to be tested by this Court in the Writ Petition filed by the petitioner in W.P.No.25157 of 2022. Pending consideration of the same, that too when a seat has been kept vacant by the respondent Bank for the petitioner until further orders of this Court in W.P.No.25157 of 2022, it creates some suspicion in the mind of this Court about the true intention of the respondent Bank as to whether the impugned transfer order is a transfer made for administrative exigencies or on account of malice and animosity towards the petitioner. Only when the other Writ Petition viz., W.P.No.25157 of 2022 is disposed of by this Court, on merits and in accordance with law, wherein the petitioner had challenged the non conferment of promotion to him, the contentions of the respective parties with regard to the impugned transfer order can be adjudicated on merits and in accordance with law.

18. Here is a case, where the petitioner, based on the above mentioned observations, categorically contends that the impugned transfer order is a malafide transfer and has been made with an animosity towards the petitioner on account of the fact that he had earlier filed a Writ Petition



in W.P.No.25157 of 2022 before this Court on account of non conferment of promotion to him to the post of DGM.

19. On the other hand, the respondent Bank contends that the impugned transfer order is a routine transfer and has been made on account of administrative exigencies. No reasons have been given in the impugned transfer order, excepting for the fact that several employees of the respondent Bank have also been transferred along with the petitioner. The impugned transfer order also discloses that only few persons have been transferred to other zones. The transfer policy of the respondent Bank also makes it clear that annual inter-zone transfer exercise shall be normally initiated by the respondent Bank only in the month of March and the eligibility for transfer shall be determined on the basis of cut-off date as decided by the respondent Bank each year.

20. Clause 6.1 of the transfer policy reads as follows:

"6.1. Each year, Inter-Zone transfer exercise shall be initiated in the month of March. Eligibility for transfer shall be determined on the basis of cut-off date



WEB COPY



W.P.No.30800 of 2022

as decided by the bank each year."

21. However by deviating from the transfer policy, the impugned transfer order has been issued in the month of November, 2022, in the middle of the Academic Year for the students. No reasons have been given as to why the inter-zone transfer has been done in the month of November, 2022 to the petitioner under the impugned transfer order. If genuinely the transfer has been made on account of administrative exigencies, that too when a Writ Petition has already been filed by the petitioner before this Court, challenging the non conferment of promotion to him to the post of DGM, reasons ought to have been stated for such a transfer, whatever may be the administrative exigencies. When no reasons have been given, this Court will have to *prima-facie* believe the statement made by the petitioner based on the facts and circumstances of this case that the impugned transfer order is a malafide transfer. It is also to be taken note of the fact that the petitioner has given an unconditional undertaking that he will join duty at Ahmedabad as per the impugned transfer order on or before 15th April, 2023. Therefore, the respondent Bank will not be put to any hardship in their administration as they will have to wait only for few more months before the petitioner is



placed at Ahmedabad.

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22. Further, once W.P.No.25157 of 2022 filed by the petitioner on account of non conferment of promotion to him to the post of DGM is finally decided by this Court, the real truth as to whether there was any malafide intention or animosity shown by the respondent Bank against the petitioner will be found out. In case the petitioner succeeds in W.P.No.25157 of 2022, he will be promoted as a DGM and in that event, in the usual course, he may have to move out of Chennai zone. After doing a balancing act, in the interest of justice, this Court deems it fit to accept the unconditional undertaking given by the petitioner to join duty as per the impugned transfer order at Ahmedabad on or before 15th April, 2023. Therefore, this Court is of the considered view that the impugned transfer order issued to the petitioner can be kept in abeyance till 15th April, 2023 to enable the petitioner to take care of his family and his children at Chennai. Only based on equity and on a *prima-facie* consideration and in the interest of justice, this Court is constrained to pass this order after recording the unconditional undertaking given by the petitioner.



W.P.No.30800 of 2023

WEB COPY

23. For the foregoing reasons, this Writ Petition is disposed of by directing the petitioner to file an Affidavit of unconditional Undertaking within two days from the date of receipt of a copy of this order that, he shall join duty at Ahmedabad as per the impugned transfer order on or before 15th April, 2023. On receipt of the said unconditional undertaking, the respondents shall allow the petitioner to remain at Chennai till 15th April, 2023.

24. With the aforementioned directions, this Writ Petition is disposed of. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

03.01.2023

Index : Yes/No

Speaking Order : Yes / No

Neutral Citation Case: Yes / No

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Note: Upload Order Copy on 05.01.2023.



W.P.No.30800 of 2018

To
WEB COPY

1.Managing Director & Chief Executive Officer,
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No.10, BTM Sarani,
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W.P.No.30800 of 2022

ABDUL QUDDHOSE. J.,

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W.P.No.30800 of 2022

**03.01.2023
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