

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.767 of 2023

In

Civil Writ Jurisdiction Case No.4837 of 2022

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1. Bank of India through the General Manager, Personnel, Mumbai Head Office, Mumbai.
 2. The Deputy General Manager, H.R., Bank of India, Mumbai Head Office, Mumbai.
 3. The Zonal General Manager, Ujjain Zone, Bank of India, Ujjain, Madhya Pradesh.
 4. The Senior Manager, H.R., Ujjain Zone, Bank of India, Ujjain, Madhya Pradesh.
 5. The Senior Manager, Sarangpur Branch, Bank of India, Ujjain, Madhya Pradesh.
 6. The Zonal Manager, Bank of India, Muzaffarpur Zone, Muzaffarpur.
 7. The Deputy Zonal Manager, Bank of India, Muzaffarpur Zone, Muzaffarpur.
 8. The Senior Manager, H.R., Bank of India, Muzaffarpur Zone, Muzaffarpur.
 9. The Branch Manager, Bank of India, Barauli Branch, Gopalganj.
 10. The Branch Manager, Bank of India, Narayanpur Chowk Branch, Madhubani.
 11. The Zonal Manager, Bank of India, Siwan Zone, Siwan.

... .. Appellant/s

Versus

Shailendra Kumar Pandey S/o Shri Rajendra Pandey, Resident of Village-Bhantee, P.S. Raghubanthpur, Dist-Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Nishi Nath Ojha, Advocate Mr. S.K. Sharma, Advocate
For the Respondent/s	:	Mr. Sanjay Singh, Sr. Adv

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-03-2024

The appellant is a Bank aggrieved by the directions in the impugned judgment, to disburse the salary



of the writ petitioner, the respondent herein, during the period he had not been allowed to work and costs of Rs. 15,000/- since, the writ petitioner was compelled to approach this Court.

2. We heard Sri. Shivendra Kishore, learned Senior Advocate appearing on behalf of the appellant-bank and Sri. Sanjay Singh, learned Senior Advocate appearing on behalf of the respondent in the appeal, the writ petitioner.

3. The learned Senior Counsel appearing for the appellant would submit that the respondent had refused to obey the order of transfer issued by his employer and had approached this Court. There was no stay order granted by this Court and despite that he remained away from service without joining in the transferred post. The learned Single Judge while considering the writ petition was piqued by the fact that the bank did not respond favorably to the various opportunities given to it, to make correctional measures and hence issued the above directions.

4. The learned Senior Counsel asserts that there could have been no correctional measures, since the petitioner had unauthorizedly absented himself from the



employment.

5. The learned Senior Counsel for the respondent, however, asserts that his initial transfer was on a request made to look after his aged mother. The transfer, however, did not fructify and he was relieved only after a long period. When he attempted to join at the transferred post, he was again shifted to another locality, thus frustrating the intention behind his transfer which was on a specific request made and on compassionate ground.

6. The admitted facts are that at the request of the respondent; made for reason of his mother's illness, the competent authority transferred the petitioner to Barauli branch under the Muzaffarpur zone, subject to the conditions laid down in the order of transfer.

7. One of the conditions in the memorandum in duplicate, enclosed with the transfer order, produced as Annexure-3, in the writ petition was that the bank reserves to itself its discretion to transfer him back to Sarangpur branch within Ujjain Zone or any other branch as may be expedient, without assigning any reason for such transfer.

8. Admittedly, the petitioner could not join in



the Barauli branch, since he was not relieved from the Sarangpur branch within the Ujjain Zone. Though the transfer was ordered by letter dated 18.11.2021, the respondent could submit his joining only on 07.02.2022. The Barauli branch on the said date was under administrative control of the Muzaffarpur Zone but very soon thereafter, the said branch fell under the newly constituted Siwan Zone; from April 2022.

9. The Dy. Zonal Manager, Muzaffarpur Zone issued an inter-office memorandum memo dated 09.02.2022, whereunder, the petitioner was posted to Narayanpur Chowk branch. The contention of the respondent was that the Dy. Zonal Manager of the bank could not have differed from the order of transfer issued by the Senior Manager (HR), Zonal Office, Ujjain. We cannot countenance the said contention.

10. We have already noticed the specific terms in the memorandum accompanying the transfer order, which was also agreed to by the respondent. Even while transferring the petitioner on his request, the bank reserved the right to transfer him back to Sarangpur branch or to any other branch as may be expedient. The exigencies of



administration cannot be overlooked in the matter of transfer. The petitioner by an inter-zone transfer was posted at Barauli within the Muzaffarpur Zone. After he joined in Barauli branch, within the Muzaffarpur Zone, he was transferred to another branch in the very same zone by the Dy. Zonal Manager of the Bank. The respondent cannot argue that the Dy. Zonal Manager had no authority to overlook the transfer order of the Senior Manager (HR), of the Zonal Office, Ujjain. We reiterate that it was an inter-zone transfer, the petitioner had requested and he was posted to a specific branch within the zone. It is for the administrative head of the Zone to decide as to whether, he could be continued in the branch to which he was transferred or shifted to another branch.

11. The petitioner made representations as is seen at Annexure-5 on 04.03.2022, to the General Manager, Head Office, Human Resource Department (Transfer & Placement Division), Bank of India, Mumbai, which was not responded to. The respondent then approached this Court, as is seen from the writ petition, which was registered on 30.03.2022. The writ petitioner in the meanwhile did not join



as per the transfer order issued by the Dy. Zonal Manager, Muzaffarpur Zone on the ground that this was sheer harassment on the part of the bank. The submission was also that the two places were at a distance of 200 kms and this frustrated the request made.

12. Whatever that be, it was incumbent on the respondent to have joined in the transferred position and then agitated his cause, while continuing in the transferred post. It is also an admitted fact that, in the writ petition filed, the respondent was not granted any interim order. In the above circumstances, it was an obligation on the part of the respondent to have joined at the branch to which he was transferred.

13. The Dy. Zonal Manager has also an explanation that though the inter-zonal transfer order was dated 18.11.2021, the respondent had accepted the same only on 23.12.2021. The petitioner having not reported at the Barauli branch till 24.01.2022, due to shortage of staff, the competent authority had taken a decision to depute/post another staff to make up the shortage of staff at the Barauli branch. It was hence, when the respondent joined at the



Barauli branch, he was directed to report at another branch to which he was transferred on administrative exigencies, within the very same zone.

14. We do not agree with the learned Single Judge that because the petitioner was transferred inter-zone and posted to a particular branch, the petitioner cannot be further transferred within the zone in which he was posted.

15. The further fact that the petitioner could not have fulfilled his desire to cater to his mother would have been of some consequence but, the petitioner ought to have joined the branch to which he was transferred and then, agitated the cause. The fact that the request was made to cater to his mother's illness and that the subsequent transfer would have frustrated the cause, is no reason for the petitioner to abstain from duty.

16. Admittedly, the transfer of the petitioner was delayed by the reason of delay in acceptance of transfer and also by reason of the delay in relieving him from the Ujjain Zone. Again, when the respondent reported for duty at the branch to which he was transferred within the Muzaffarpur Zone he was transferred to another branch



within the Muzaffarpur Zone itself. These are all matters left best to the employer to decide, on exigencies of administration, which cannot be a valid reason for not complying with the transfer order and remaining absent from duty; which would be unauthorized absence.

17. In the present case, the petitioner had approached this court and was unable to obtain any stay of his transfer, which definitely obliged him to join at the transferred position. The respondent should have agitated his cause after joining at the transferred post.

18. The grounds on which a transfer can be challenged is well established. It can only be when the post is not transferable, the transfer was made by an authority, who is not competent so to do or when the allegation is of malafides. Though the petitioner had pleaded harassment on the part of the Dy. Zonal Manager, there is nothing coming out from the pleadings as to why, such a harassment was perpetrated on him. The petitioner also has not impleaded the Dy. Zonal Manager in his personal capacity which would be mandatory in case of allegation of malafides. Admittedly, he worked in a transferable post and the Dy. Zonal Manager



was the competent authority to make inter-zonal transfers.

19. We also notice the specific condition in the transfer order itself that there could be a further transfer made which cannot be objected to by the petitioner; back to the zone he was transferred or within the zone to which he was transferred. The Dy. Zonal Manager of the Muzaffarpur Zone did not transfer the petitioner back to the Ujjain Zone. The post in which he had been directed to be transferred at Barauli branch had been filled up. The Dy. Zonal Manager only transferred the respondent within the zone and we cannot find any infirmity in the same.

20. The writ petition filed in the year 2022, was disposed of after one year when the petitioner remained absent from service. We do not agree with the reasoning in the impugned judgment either of the Muzaffarpur Zone acting unilaterally or that the Muzaffarpur Zone having been left with no other option other than allowing the writ petitioner to join at Barauli branch. We find absolutely no reason to accept the contention of the respondent, insofar as his unauthorized absence from duty.

21. We see that the respondent has been



directed to be posted to Barauli branch which now falls under the Siwan Zone. We are unable to sustain the said directions since it is for the administrative authority to decide on posting of each individual employee and if the administrative exigency does not require the posting of the respondent in Barauli branch it would result in displacing another person from that branch. We hence set aside the direction which permitted the respondent-writ petitioner to directly submit his joining at Barauli branch, which joining was directed to be accepted by the Branch Manager, Barauli branch, Bank of India, Muzaffarpur.

22. We however direct the Zonal Manager/Dy. Zonal Manager to consider the respondent's transfer to Barauli branch especially since his request transfer to the inter-zone transfer was only to cater to his mother's illness. Insofar as the direction to pay the salary, we are unable to sustain the same. The respondent has remained unauthorizedly absent and he cannot claim any salary during the said period. If there was a stay obtained and he had not been allowed to join, probably he would have been entitled to the salary.



23. From the facts and circumstances, the respondent cannot justify his non-joining at the transferred post. We reiterate that he should have joined the transferred post and agitated his cause especially since, the trite principles of interfering with a transfer does not arise in the present case. The cost imposed on the appellant-bank also has to be set aside, since we have found the conduct of the respondent to be not in consonance with a disciplined employee.

24. Definitely an employee can challenge an order of the employer, which caused some prejudice to him but the right to challenge does not permit him to disobey the order issued, as far as it is not patently illegal or so declared, and on individual perception of illegality absent himself from duty. The transfer within the zone by no stretch of imagination can be found to be patently illegal. The appellant-bank was perfectly within its right to transfer its employee from one branch to another. The respondent's claim before the writ court was also only on equity and unless the writ court allows the claim there cannot not be any disobedience of a lawful order of transfer passed by the



employer. Equity is not a one way street and one who claims equity should also be equitable, in his conduct, to the entity from whom he claims it.

25. We set aside the judgment of the learned Single Judge but clarifying that despite the petitioner not being entitled to any salary, he would have continued service, but the annual increment due would be adjusted reckoning his period of absence. We direct the respondent to join at the transferred place at Narayanpur Chowk and make a request for transfer to Barauli branch, if he so desires and in that case his request shall be considered sympathetically also reckoning the exigencies of administration.

26. The appeal is allowed with the above directions.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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CAV DATE	
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