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Court : Patna

Decided On : Jan-28-2003

Judge : Chandramauli Kr. Prasad, J.

Acts : Service Law

Appeal No. : C.W.J.C. No. 13938 of 2002

Appellant : Basant Kumar Singh

Respondent : The State Bank of India and ors.

Advocate for Def. : Shailesh Kumar Sinha, Senior Adv. and Binod Bihari Sinha, Adv.

Advocate for Pet/Ap. : S.N. Jha, Sr. Adv. and Wazir Ali, Adv.

Disposition : Petition dismissed

Judgement :

Chandramauli Kr. Prasad, J.

1. This application has been filed for quashing the order dated 8-8-2002 (Annexure-4) whereby and whereunder the petitioner has been transferred to Sasaram branch of the State Bank of India and in order to facilitate his joining at that place, relieved from Rajendra Nagar (Patna) branch of the bank. Further

prayer made by the petitioner is to quash the communication dated 26th of the October, 2002 (Annexure-8) whereby the representation filed against the order of transfer has been rejected by the Chief General Manager.

2. Short facts giving rise to the present application are that by the impugned order dated 8-8-2002, petitioner was transferred to Sasaram branch of the State Bank of India (hereinafter referred to as 'the Bank'). He challenged the said order of the transfer before this Court in a writ application, which was registered as CWJC No. 9416 of 2002 (Basant Kumar Singh v. The State Bank of India and Ors.). By order dated 5-9-2002, the said writ application was disposed of giving liberty to the petitioner to make representation in respect of his grievance before the Chief General Manager of the respondent Bank and a consequential direction was given to the Chief General Manager to decide the representation. In pursuance of the said direction, petitioner filed representation dated 12-9-2002 (Annexure-7) and by the impugned communication dated 26th of October, 2002, (Annexure-8), petitioner has been informed that his representation has been rejected by the Chief General Manager.

3. Dr. S. N. Jha, learned Senior Advocate appearing on behalf of the petitioner submits that transfer of the petitioner to Sasaram branch of the Bank is without any justification and on this ground alone, the order of transfer is fit to be set aside. In support of his submission, he has placed reliance on a large number of authorities. He has drawn my attention to the decisions of this Court, in the case of Shiva Kumar Singh v. The State of Bihar and Ors.) reported in 1992 (1) PLJR 766, Kailash Prasad Singh v. The State of Bihar and Ors.) reported in 1994 (1) PLJR 243 and in the case of Baldeo Chodhary v. The State of Bihar and Ors.) reported in 2000 (1) PLJR 914.

4. As stated earlier, petitioner impugned his order of transfer in CWJC No. 9416 of 2002. Said writ application was disposed of by order dated 5-9-2002 (Annexure-6) and while doing so, this Court observed as follows :

'The scope of interference with orders of transfer and posting in writ jurisdiction of the High Court is well known. The Court can interfere only when there is violation

of any statutory rule or in case of mala fide. Thus, if one were to go strictly by the terms of the Rules, like Rule 47 of the State Bank of India Officers' Service Rules which provides that 'every officer is liable for transfer to any other office/Branch of the bank or any place on deputation or any other organisation in India', it would appear that the petitioner has no case.

However, while the Bank may be right in contending that the petitioner has to complete the assignment in a rural/semi urban place, at the same time transfer and posting has to be so made as not to affect the career path. 'The retention period of JMGS-I officers on the post of Assistant Manager/Assistant Manager (Accounts) or Assistant Manager (Advances)/Assistant Manager (Cash) has been shown as 1, 1 1/2-2 years. In the present proceeding this Court would not like to record a finding as to whether the impugned transfer is likely to result in any obstruction to the career path of the petitioner. I am of the view that the grievance of the petitioner should be considered by a higher authority of the Bank, namely, Chief General Manager, (as the order is said to have been passed with the approval of the General Manager). I would thus permit the petitioner to make representation in respect of his grievance before the Chief General Manager, Patna within two weeks, along with a copy of this order, with a direction to the Chief General Manager to decide the representation, preferably, within four weeks. It is needless to say that the petitioner's posting at Sasaram will be subject to the decision of the Chief General Manager.

The petition stands disposed of.'

5. From a reading of the order of this Court referred to above, it is evident that this Court did not decide as to whether the order of transfer is likely to result in any obstruction to the career path of the petitioner and gave the petitioner the liberty to make representation and the Chief General Manager of the Bank, in turn, was asked to consider the said question. In view of the observation made by this Court while disposing of the writ application and giving only limited scope of representation, I am not inclined to go into the aforesaid submission of Dr. Jha and for that reason, it is in expedient to refer to the authorities relied by him.

6. Dr. Jha then contends that the transfer of the petitioner to Sasaram shall result in obstruction to his career path. He submits that the petitioner has been transferred from the post of Assistant Manager (Advances) at Rajendra Nagar branch to that of Sasaram' branch within ten months and in view of Clause 6-G of the Transfer Policy, the retention period of JMGS-I Officers on the post of Assistant Manager/ Assistant Manager (Accounts) or Assistant Manager (Advances)/Assistant Manager (Cash), is 1, 1/2-2 years.

7. Mr. Shailesh Kumar Sinha, learned Senior Advocate however, appearing on behalf of the respondents Bank submits that the petitioner had earlier worked as Assistant Manager and Clause 6-G of the Transfer Policy shall not in any way affect the career path of the petitioner.

8. Having appreciated the rival submissions, I do not find any substance in the submission of Dr. Jha. In the representation (Annexure-7) filed by the petitioner, in the light of the order of this Court, petitioner had no-where averred that his transfer as Assistant Manager (Advances) shall in any way obstruct his career path in view of Clause 6-G of the Transfer Policy. Mr. Sinha has clearly taken stand that it will not do so. In that view of the matter, I am not inclined to interfere with the order of transfer on the ground urged by Dr. Jha.

9. Dr. Jha lastly submits that it was for the Chief General Manager to decide as to whether the order of transfer is likely to result in any obstruction to the career path of the petitioner and he having not done so while rejecting the representation of the petitioner, his order is fit to be set aside on this ground alone.

10. It is relevant here to state that the petitioner was given liberty to file representation against the order of transfer and in that, liberty was given to raise the point in regard to the obstruction to his career path. The petitioner, in his representation, has nowhere averred as to how his transfer shall affect his career path and in that view of the matter, the Chief General Manager, on consideration of the representation of the petitioner, held that the order of transfer does not require any interference. ,I do not find any illegality in the same.

11. It is well settled that the transfer is an incidence of service and this Court interferes with the same only when it is shown that the same suffers from the vice of mala fide or is in breach of any statutory rule. In my opinion, the order impugned does not suffer from any such error and as such, no interference is called for by this Court,

12. In the result, I do not find any merit in this writ application and it is dismissed accordingly.

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