courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 08/11/2025

(2011) 07 CAL CK 0088

Calcutta High Court

Case No: MAT No''s. 921 of 2008 and 473 of 2011

National Bank for Agriculture and Rural Development	APPELLANT
Vs	
Sri Dipankar Sen Roy	RESPONDENT

Date of Decision: July 15, 2011

Citation: (2011) 5 CHN 249

Hon'ble Judges: Pranab Kumar Chattopadhyay, J; Mrinal Kanti Sinha, J

Bench: Division Bench

Advocate: M. Rasjeswar Rao, for the Appellant;P.S. Basu and Pralay Kar, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.
Both the appeals relate to identical facts and involve common points of law. Therefore, the said appeals were heard analogously and we also dispose of the same by this common judgment.

2. The relevant facts leading to these appeals are briefly stated hereinafter:

The writ Petitioners are the employees under the Appellant. The disciplinary authority issued charge sheets to the writ Petitioners while they were posted at West Bengal Regional Office of the Appellant at Kolkata as Senior Development Assistant on the allegation that they had participated in writing indecent and disparaging remarks against one lady employee on the wall of the office building of the said regional office of the Appellant at Kolkata.

3. After issuance of the aforesaid charge sheet enquiry proceeding was conducted and the enquiry officer after the conclusion of the enquiry submitted his report before the disciplinary authority. In the said enquiry report, the enquiry officer specifically observed that the charge of abetting the act of writing on the wall was not established. The disciplinary authority however did not accept the aforesaid findings of the enquiry officer.

4. On or about May 21, 1994 the writ Petitioners were served with further show cause notices together with the findings of the enquiry officer as well as the findings of the disciplinary authority. In the said show cause notice the writ Petitioners were also informed about the proposed punishment of deduction of pay by three stages for a period of one year having effect of postponing the date of future increments.

5. It is the case of the writ Petitioners that no opportunity was granted by the disciplinary authority for offering explanations on the points of disagreement with the findings of the enquiry officer or in relation to the proposed punishment. The writ Petitioners were thereafter served with the transfer order dated May 23, 1994 whereby the said writ Petitioners were transferred to Bhubaneswar Regional Office of the Appellant. The writ Petitioners submitted representation alleging that the aforesaid order of transfer was issued with mala fide intention by way of punishment. The said representation was however rejected by the disciplinary authority.

6. Challenging the disciplinary proceedings as well as the transfer order dated 23 May, 1994 writ petitions were filed whereupon an interim order of stay was granted by this Court. The Appellant herein preferred appeal against the aforesaid interim order passed by the learned single Judge and the said interim order of stay of transfer order was thereafter vacated by the Appeal Court. The writ Petitioners thereafter joined at Bhubaneswar. It has been submitted on behalf of the writ Petitioners that in view of their stay outside Kolkata, it was not possible to keep proper track in respect of the Court cases and there was lack of communication with the lawyer engaged by the writ Petitioners.

7. The writ Petitioners were very much aggrieved by the order of transfer to Bhubaneswar and the issue was ultimately taken up by the NABARD Employees Association, Bhubaneswar. The said association also submitted representation requesting the competent authority of the Appellant to repatriate the writ Petitioners to their earlier place of posting at Kolkata. The aforesaid representation of the association as well as the representations submitted on behalf of the writ Petitioners in this regard were however rejected by the competent authority of the Appellant as a result whereof the writ Petitioners were compelled to stay out of home station at Bhubaneswar.

8. The relationship of the writ Petitioners with the lady colleagues during their long stay at Bhubaneswar was cordial and dignified. According to the writ Petitioners a powerful section amongst the staff and the management are hostile and inimical towards the said writ Petitioners and in view of their influence management of the Appellant turned down the aforesaid proposal for repatriating the writ Petitioners. In the aforesaid circumstances, the writ Petitioners had to stay at Bhubaneswar for long 14 years under compelling circumstances.

9. On February 7, 2007, writ Petitioners made another representation to the competent authority of the Appellant with the specific request to repatriate them to Kolkata. After

much persuasion the aforesaid request for repatriation was allowed and by the letter dated 5th May, 2008 the head office of the NABARD at Mumbai intimated that the proposal of the transfer of the Respondent/writ Petitioners to Kolkata had been allowed.

10. Thereafter the General Manager of the Appellant by a letter dated 5th May, 2008 issued formal orders for transfer of the Respondent/writ Petitioners from Bhubaneswar to Kolkata. The copy of the aforesaid order dated 9th May, 2008 issued by the General Manager of the Appellant to one of the Respondent/writ Petitioners, namely, Sri Dipankar Sen Roy is set out hereunder:

Shri Dipankar Sen Roy (UIN-5118)

DA

NABARD

Orissa Regional Office

Bhubaneswar,

Dear Sir,

Staff-Group-B-Transfer

Please refer to your representation seeking transfer to West Bengal Regional Office, Kolkata. In this connection, we advise that your request has been acceded to by Head Office and it has been decided to post you in Natural Resource Management Centre (NRMC), Kolkata. Accordingly, you will be relieved from this office in your existing capacity as at the close of business on 09 May 2008 for reporting to the Chief General Manager, West Bengal Regional Office, Kolkata for being posted to Natural Resource Management Centre (NRMC), Kolkata after availing yourself of usual journey period.

You may please note that you are not entitled for any transfer benefit.

Yours faithfully

(A.K. Mukhopadhyay)

General Manager

11. Pursuant to the aforesaid orders of transfer all dated 9th May, 2008 the writ Petitioners were relieved from Bhubaneswar office and joined the regional office at Kolkata on 12th May, 2008.

12. Soon after the writ Petitioners joined the Kolkata office, NABARD Employees Association and Bank Employees Federation West Bengal made representations

expressing serious apprehension that the transfer of the writ Petitioners will affect the congenial working atmosphere at the Kolkata regional office of the Appellant.

13. The management of the Appellant at Mumbai and Kolkata being illegally pressurised by the aforesaid Employees Association again transferred the writ Petitioners to the Regional Training College at Bolpur within a couple of months from their joining the Kolkata office. The writ Petitioners filed two writ petitions bearing No. 1284 of 2008 and 1285 of 2008 challenging their transfer from Kolkata to Bolpur without any valid reason.

14. The aforesaid writ petitions were finally disposed of by the learned single Judge by the judgment and order under appeal wherein the said learned Judge specifically held that the subsequent order of transfer of the writ Petitioners from Kolkata to Bolpur was not made on the ground of administrative exigency.

15. Assailing the aforesaid common judgment and order passed by the learned single Judge in the two writ petitions, two appeals were preferred by the Appellant herein which were heard analogously.

16. On behalf of the Appellants it has been submitted that there was no malice on the part of the management in transferring the writ Petitioners from Kolkata to Bolpur. Had there been any malice, the writ Petitioners would not have been transferred from Bhubaneswar to West Bengal Regional Office at Kolkata by the said Appellant.

17. Mr. Rao, learned Counsel of the Appellant submitted that it is the duty of every Management to maintain peace and harmony in the work place. The apprehension expressed by the lady employees of NABARD cannot be ignored by the Management and the same cannot be taken lightly.

18. Mr. Rao, also submitted that if all the lady employees felt threatened at the transfer of the writ Petitioners, the Management was bound (as per Visakha guidelines of the Supreme Court of India) to pay heed to the same.

19. Mr. Rao, submitted that the Management had rightly transferred the writ Petitioners to Bolpur from Kolkata and it could be said that the same was under any pressure from any Trade Union. The utter disrespect shown by the writ Petitioners to the lady employees at Kolkata cannot be undone and the Management cannot be blamed for the order of transfer issued subsequently, upon considering the grievances of the lady employees.

20. Mr. Rao, further submitted that it was the duty of the management to respect the sentiments of the lady employees who were aggrieved due to the past conduct of the writ Petitioners who were responsible for the insult of the one of the lady employees working in the Kolkata Regional Office of the Appellant herein.

21. The learned Counsel of the Appellant submitted that the transfer of the writ Petitioners from Kolkata to Bolpur for the purpose of maintaining peace at the Kolkata Regional

Office of the Appellant cannot be said to be an irrelevant consideration.

22. Mr. Rao, learned Counsel representing the Appellant referred to and relied on the decisions of the Supreme Court in the cases of Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, and T.D. Subramaniam alias Satyapalan Vs. Union of India (UOI) and Others, in support of his arguments. The aforesaid decisions, in our opinion, have no manner of application in the facts of the present case.

23. The learned Counsel representing the writ Petitioners however, submitted that the initial order of transfer of the said writ Petitioners to Bhubaneswar Regional Office was illegal since the same was punitive in nature and was issued with mala fide intention and ill motive. We are, however, not inclined to decide the validity and /or legality of the earlier order of transfer issued to the writ Petitioners by the competent authority herein whereby the said writ Petitioners were transferred to Bhubaneswar Regional Office of the Appellant. Since the writ Petitioners admittedly joined to the transferred post at Bhubaneswar Regional Office pursuant to the said order of transfer and worked there till their repatriation by the management of the Appellants to the Kolkata Office, after a considerable period of almost 14 years.

24. It is not in dispute that the Appellant NABARD upon considering the representations of the writ Petitioners decided to repatriate them to the Kolkata Regional Office and as a matter of fact the writ Petitioners were transferred from Bhubaneswar Regional Office to Kolkata Regional Office pursuant to the specific orders issued by the competent authority of the Appellant.

25. Furthermore, it is also not in dispute that the writ Petitioners were allowed to join the duty at the Kolkata Regional Office pursuant to the order of transfer dated 9th May, 2008 issued by the General Manager of the NABARD. If it is accepted that the writ Petitioners were guilty for commission of the offence mentioned in the charge sheet issued by the Appellant, even then it cannot be said that the said writ Petitioners will have to remain outside the Kolkata Regional Office for the remaining service period. It also does not appear from the punishment order issued to the writ Petitioners that the said writ Petitioners would have to be posted outside the Kolkata Regional Office during the remaining service period. The learned Counsel of the writ Petitioners has rightly urged before this Court that the Appellant herein cannot compel the writ Petitioners to suffer any punishment which was not awarded by the competent authority and mentioned in the order of punishment.

26. Mr. Partha Sarathi Basu, learned Counsel representing the writ Petitioners submitted that in the instant case, not only the writ Petitioners have been made to suffer double jeopardy but also compelled to suffer permanently for the remaining service period even on a charge which was not established before the enquiry officer.

27. The competent authority of the Appellant upon considering the representations of the writ Petitioners and further considering all other relevant factors decided to bring the writ Petitioners back to the Kolkata Regional Office after long 14 years of stay at Bhubaneswar. Therefore, there could not have been any valid reason or proper grounds to transfer the said writ Petitioners once again to Bolpur within a very short span of a couple of months. The learned Counsel of the writ Petitioners placed reliance on the decision of the Supreme Court in the case of Somesh Tiwari Vs. Union of India (UOI) and Others, wherein the Hon"ble Supreme Court observed:

indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds ---- one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the Appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

28. The order of transfer issued to the writ Petitioners on behalf of the Appellant herein is undoubtedly an administrative order.

29. Going through the available records we are satisfied that the writ Petitioners were transferred to Bolpur by the competent authority of the Appellant not on account of administrative exigency but due to the illegal pressure created by the employees union or association.

30. In the instant case, independent decision of the competent authority of the Appellant regarding transfer of the writ Petitioners from Bhubaneswar Regional Office to Kolkata Regional Office could not be implemented due to illegal and unjustified pressure of the employees union/association.

31. The competent authority of the Appellant upon considering all the relevant factors thought it fit to bring the writ Petitioners back to the Kolkata Regional Office and therefore, allowed the representations of the writ Petitioners. Accordingly, the General Manager of the Appellant NABARD issued specific order of transfer on 9th May, 2008 in order to bring the writ Petitioners back to Kolkata. Unfortunately, due to subsequent threat of a section of employees, the competent authority of the Appellant once again decided to transfer the writ Petitioners outside the Kolkata Regional Office within a couple of months which under no circumstances can be held to be an independent decision of the competent authority taken in the best interests of the administration.

32. In the present case, we are satisfied that the appropriate decision taken by the competent authority regarding repatriation of the writ Petitioners to Kolkata had to be changed within a couple of months due to the illegal pressure of a section of employees represented by a particular union. We also find that the decision making process of the competent authority was illegally interfered with by the unauthorised person or persons and the competent authority of the Appellant unfortunately, succumbed to the illegal pressure of the unauthorised person/persons which cannot be approved by this Court. The competent authority of the Appellant should not have victimised the writ Petitioners in order to satisfy a section of the employees represented by a particular union.

33. For the reasons discussed hereinabove, we are satisfied that the writ Petitioners were transferred to Bolpur within a couple months from their joining at Kolkata office without any administrative exigency or bonafide interests of the administration.

34. The learned single Judge in our opinion, has rightly decided the issues raised in the writ petition and granted necessary relief to the writ Petitioners upon holding that the order issued on behalf of the Appellant herein transferring the writ Petitioners to Bolpur was not on the ground of administrative exigency and the same suffers from impropriety.

35. In the aforesaid circumstances, we find no scope to interfere with the impugned decision of the learned single Judge.

36. Therefore, we affirm the judgment and order under appeal passed by the learned single Judge and dismiss both the appeals as we do not find any merit in the same.

37. In the facts of the present case, there will be no order as to costs.

38. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.