

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Present:

Hon'ble Mr. Justice Abdul Quddhose

W.P.No. 28696 of 2022 and W.M.P. Nos. 27976 and 27978 of 2022

30th November, 2022

Senthamizh Selvan. S

... Petitioner

Versus

Senior Manager, Pudukkottai Bharathiar Grama Bank, Pudukkottai and Another

... Respondents

Transfer Order – Punitive Action – Petitioner-employee challenged impugned transfer order passed by Respondent-Bank, hence this petition – Whether, impugned transfer order issued to Petitioner was vindictive and punitive transfer – **Held**, transfer policy relied upon by Respondents bank was only for period of three years and same got expired, even prior to issuance of impugned transfer policy – Respondents had not placed any modification resolution passed by Board under which, transfer policy extended for further period – Unusual hurry on part of Respondent-bank to transfer Petitioner under impugned transfer order – Transfer made not on account of administrative reason, but only to prevent Petitioner from assisting temporary employees to get relief sought by them before conciliation proceedings – Impugned transfer order issued to Petitioner was vindictive and punitive transfer, hence, quashed – Petition allowed.

Held: The transfer policy of the respondent bank relied upon by the respondents is only for a period of three years and the same has also got expired, even prior to the issuance of the impugned transfer policy. The respondents have also not placed before this Court any modification resolution passed by the Board under

which, the transfer policy has been extended for the further period. The unusual hurry on the part of the respondent bank to transfer the petitioner under the impugned transfer order, that too, when the petitioner, being an Office Assistant and belonging to the second lowest cadre in the bank and being the General Secretary of the Trade Union, who is safeguarding the interest of certain temporary employees of the bank, it can be inferred that the transfer has been made not on account of administrative reason, but only to prevent the petitioner from assisting the temporary employees to get the relief sought for by them before the conciliation proceedings. Undoubtedly it is clear that the impugned transfer order issued to the petitioner is a vindictive and a punitive transfer.

[Para 16]

ADVOCATES APPEARED:

T. Mohan for *D. Geetha*, for Petitioner
Jayesh B. Dolia, for Respondents

ORDER

This writ petition has been filed challenging the impugned Transfer order dated 16.09.2022 under which the petitioner has been transferred from Sellipet branch in Puducherry to Yanam branch, which is approximately 813 kms away from Sellipet.

2. The petitioner is an Office Assistant (Multipurpose) and is also the General Secretary of Pudukkottai Bharathiar Grama Bank Employees Union. The petitioner claims that the impugned transfer is a vindictive and a punitive transfer. According to him only due to the conciliation proceedings pending before the Labour Officer with regard to the regularisation of certain temporary employees of the respondent bank, wherein the petitioner as a General Secretary of the Trade union, who is acting on their interests in the conciliation proceedings and in order to prevent him from participating in the conciliation proceedings, the impugned transfer order has been passed transferring him to Yanam branch, which is approximately 813 kms away from Sellipet branch in Puducherry.

3. Heard Mr. T. Mohan, learned counsel for the petitioner and Mr. Jayesh B. Dolia, learned counsel for the respondents.

4. A counter affidavit has been filed by the respondents denying the allegations of the petitioner. According to them only in accordance with the transfer policy of the respondent bank, the petitioner has been transferred for administrative reasons. They would also contend that there have been several such transfers within the City of Puducherry and according to them, the transfer of the petitioner from Puducherry to Yanam is not a punitive transfer and has been done only for administrative reasons. They would also contend that even though a show cause notice was issued to the petitioner, prior to the passing of the impugned transfer order, the same was not responded to by the petitioner.

5. The learned counsel for the petitioner drew the attention of this Court to the following documents, which have been filed along with this writ petition.

a) Labour dispute raised by the petitioner on behalf of the Union, dated 20.06.2022;

b) the petitioner's request letter dated 24.06.2022 to re-schedule the conciliation proceedings;

c) the petitioner's reply dated 16.09.2022 to the show cause notice dated 01.09.2022 sent by the respondent;

d) the impugned transfer order dated 16.09.2022 and

e) the medical documents pertaining to the petitioner's wife dated 06.10.2022.

6. After referring to the aforementioned documents, the learned counsel for the petitioner would contend that only due to the fact that an industrial dispute has been raised by the Union in which the petitioner is a General Secretary with regard to the regularisation of certain temporary employees, the impugned transfer order has been passed transferring the petitioner from Sellipet branch in Puducherry to Yanam branch, which is approximately 813 kms away from Puducherry. He would also submit that the petitioner is a Tamilian and he has been transferred to a far away place, where the language spoken is Telugu. Further, he would submit that the petitioner is a Cashier and therefore, it will be impossible for him to work at Yanam, where the language spoken is Telugu, which is not known to the petitioner.

7. He would submit that the transfer policy, which the respondents rely upon is valid only for a period of three years *i.e.*, from 01.04.2019 which expires on 31.03.2022. Therefore, the reliance upon the said policy has to be rejected by this Court. He would also submit that even as per the list placed by the respondents before this Court with regard to the transfers of Office Assistants made, it is clear that the petitioner is the only person, who has been transferred from Sellipet in Puducherry to Yanam. According to him, the petitioner has been hand picked by the respondents only to prevent him from participating in the conciliation proceedings before the Labour Officer as a General Secretary of the Union.

8. *Per contra* Mr. Jayesh Dolia, learned counsel appearing for the respondent bank would rely upon the transfer policy and in particular, he would submit that only in accordance with the said transfer policy as per Clause – 5 which deals with Office Assistants, the petitioner has been transferred under the impugned transfer order.

9. He would also submit that even though the transfer policy stipulates that the transfer policy for the year 2019-20, will be in vogue for a period of three years from 01.04.2019, the respondent bank as per the said transfer policy in case of necessity shall extend the period to suit the needs of the bank as per Clause 6 of the transfer policy.

10. He would also submit that the show cause notice dated 01.09.2022 was issued by the respondent bank to the petitioner seeking for an explanation, but despite

receipt of the same, the petitioner has not responded to the same, but instead has submitted a reply belatedly on 16.09.2022 seeking for a further period of one month for submitting his explanation. He would also submit that as seen from the medical certificates produced before this Court, it is clear that the petitioner's wife has been discharged from the hospital and therefore, the petitioner will not suffer if he is transferred to Yanam as per the impugned transfer order.

Discussion :

11. Admittedly, the petitioner is an Office Assistant and who falls under Group-B cadre. There are several branches in the city of Puducherry for the respondent bank which is a Puducherry based bank. The branches of the respondent bank outside Puducherry are two in Yanam, two in Mahe and nine in Karaikal. It is also not in dispute that Yanam branch is approximately 813 kms from Puducherry, though the respondents may contend that as the Crow flies the distance between the Puducherry and Yanam, is only 250 kms.

12. It is also not in dispute that the petitioner is a General Secretary of Puduvar Bharathiar Grama Bank Employees Union. It is also not in dispute that the conciliation proceedings are pending before the Labour Officer with regard to the grievances of the temporary employees of the respondent bank, who seek for regularisation. The petitioner being the General Secretary of the Union represents their interests in the conciliation proceedings. When the conciliation proceedings are pending before the conciliation officer, the impugned transfer order has been passed transferring the petitioner from Sellipet branch in Puducherry to Yanam, which is approximately 813 kms away. The petitioner has been singled out in the transfers made by the respondent bank with respect to the post of Office Assistants. He is the only person, who has been transferred from Puducherry to Yanam as seen from the list placed by the respondents before this Court.

13. Admittedly, there are no disciplinary proceedings pending against the petitioner as on date. The petitioner has also categorically contended in this writ petition that only due to the fact that he is the General Secretary of the Union who is safeguarding the interest of some of the temporary employees, who seek for regularisation, he has been transferred under the impugned transfer order, which according to him is vindictive and a punitive transfer.

14. The observations recorded by this Court in the earlier paragraphs makes it clear that the impugned transfer is a vindictive and a punitive transfer. The circumstances which led to the issuance of the impugned transfer order makes it clear that the petitioner's transfer to Yanam is a punitive transfer and has not been done for administrative reasons.

15. The petitioner has also been transferred to a place where, the language spoken is Telugu, whereas, the petitioner is a Tamil speaking person. He is also a Cashier. Without knowing the language of Telugu, it may be difficult for him to handle the customers of the respondent bank at Yanam.

16. The transfer policy of the respondent bank relied upon by the respondents is only for a period of three years and the same has also got expired, even prior to the issuance of the impugned transfer policy. The respondents have also not placed before this Court any modification resolution passed by the Board under which, the transfer policy has been extended for the further period. Admittedly, only for the reasons mentioned in Clause 5 of the transfer policy dealing with "Office Assistant (Multi-purpose)", the respondents are having the power to transfer from Puducherry to any place outside Puducherry. The unusual hurry on the part of the respondent bank to transfer the petitioner under the impugned transfer order, that too, when the petitioner, being an Office Assistant and belonging to the second lowest cadre in the bank and being the General Secretary of the Trade Union, who is safeguarding the interest of certain temporary employees of the bank, it can be inferred that the transfer has been made not on account of administrative reason, but only to prevent the petitioner from assisting the temporary employees to get the relief sought for by them before the conciliation proceedings. Undoubtedly it is clear that the impugned transfer order issued to the petitioner is a vindictive and a punitive transfer.

17. For the foregoing reasons, the impugned order dated 16.09.2022 passed by the respondents has to be quashed and the writ petition will have to be allowed.

18. In the result, the impugned order dated 16.09.2022 passed by the respondents is hereby quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

_____ *Petition allowed.*