

This Product is Licensed to : Bhagyashree Lele, Advocate

Docid # IndLawLib/1250595

(2016) 149 FLR 400 : (2015) 33 LCD 2603

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

GYAN PRAKASH BAJPAI — Appellant

Vs.

STATE BANK OF INDIA — Respondent

(Before : Narayan Shukla and Akhtar Husain Khan, JJ.)

writ Petition No. 1209 of 2015.

Decided on : 13-08-2015

A. Service Law — Transfer and Posting — Spouse Posting Policy — Petitioner, a bank employee, challenged transfer upon promotion from Kanpur to Varanasi, arguing for spousal posting at the same station (Kanpur) where his wife is also employed by another bank — The Bank rejected his representation, stating his promotion required a move out of Kanpur as per guidelines — Court notes the existence of a government and bank policy to post spouses at the same or nearest station — Previous judicial precedent emphasized adherence to such guidelines and minimizing separation of spouses due to transfers, unless in exceptional circumstances. (Paras 3, 4, 5)

B. Service Law — Transfer and Posting — Discretion of Employer — Judicial Review — Previous writ petition challenging the transfer was dismissed, as transfer is an exigency of service and not a statutory violation, but the court directed the competent authority to consider the employee's representation regarding individual hardships and spousal posting in accordance with prevalent norms — The subsequent rejection order by the bank, while termed non-speaking by the petitioner, was found by the court to rely on the bank's guidelines that promotion entails a new administrative office — The court generally does not intervene in transfer matters under Article 226 of the Constitution unless there is a clear statutory violation. (Paras 6, 7, 8)

C. Service Law — Promotion — Forgoing Promotion — Hardship Grounds — After initial dismissal of the petition, the petitioner submitted a supplementary affidavit expressing willingness to forgo his promotion due to severe family problems and his wife's serious illness (liver abscess) — Considering this new development where the petitioner is willing to relinquish his promotion, the High Court directed the bank authorities to reconsider his posting at Kanpur on his original (pre-promotion) post, thereby revoking his promotion if he is reinstated at his original post in Kanpur. (Paras 9, 10, 11)

Counsel for Appearing Parties

Sharad Pathak, Advocate, for the Petitioner; Sudeep Seth, Advocate, for the Respondent

Final Result : Dismissed

JUDGMENT

Narayan Shukla and Akhtar Husain Khan, JJ.—Heard Sri Sharad Pathak, learned counsel for the petitioner and Sri Sudeep Seth, learned counsel for the respondent Bank.

By means of this petition, the petitioner has assailed the order dated 05.07.2015 passed by opposite party no.4-Branch Manager, Kanpur whereby he has been posted at Varanasi as also the order dated 15.07.2015 passed by opposite party no.3-Assistant General Manager, Lucknow whereby his representation to retain his posting at Kanpur has been rejected.

2. The respondent-Bank has rejected the petitioner's representation on the ground that the petitioner has been allotted the place of posting at Varanasi on his promotion and in terms of the guidelines that on promotion, he has to leave out of Kanpur.

3. Learned counsel for the petitioner has submitted that the petitioner is working in the State Bank of India at Kanpur and his wife is also posted in the Bank of Baroda at Kanpur. The Government of India as well as the Bank concerned has framed the policy to post the spouse at the same station or to the nearest station.

4. In view of the policy framed by the Bank, learned counsel for the petitioner has contended that the petitioner has a right of posting at Kanpur itself since his wife is posted at Kanpur. In support of his submission, he has also cited a decision of a Co-ordinate Bench of this Court rendered in **Smt. Deepa Vashishtha v. State of U.P. and others, 1996 (73) FLR 946 (Alld)** in which this Court held that the administration is bound to follow the guidelines which has to be adhered in its terms. In this case, the identical issues was dealt with and the Court opined that the husband and wife be transferred to different places only in exceptional circumstances. It is imperative for the authority concerned to allow the posting of husband and wife at one place, though the posting of spouse at different places has not been declined but it has been held that the spouse posting at different place may

create a difficulty in their family.

5. In view of the aforesaid submissions, learned counsel for the petitioner has submitted that his request for allowing him to continue at Kanpur on the post of promotion be considered.

6. In reply, Mr. Sudeep Seth has submitted that the order dated 05.07.2015, whereby, the petitioner has been allotted the place of posting at Varanasi, had been subject matter of the Writ Petition No.666 (M/B) of 2015, wherein, this Court dealt with the matter and held that "these are not matters involving any statutory violation. The transfer is an exigency of service and hence we see no reason to entertain the petition. The case of the petitioner is that his spouse is working and is presently posted at Kanpur. Such issue or individual hardships are for the competent authority to decide in accordance with the prevalent norms". This Court left it open to the petitioner to submit representation in this regard and further observed that in case the petitioner submits representation before the competent authority that may be looked into expeditiously and an appropriate orders, in accordance with law, may be passed.

7. The order dated 15.07.2015 is a result of the petitioner's representation though learned counsel for the petitioner has submitted that it is absolutely non-speaking order, yet when we examined the order, we found that the authority concerned has observed that the petitioner was well aware with the fact that on promotion he would be allotted to other administrative office as per the Bank's Guidelines.

8. Therefore, we do not appreciate the petitioner's contention to invoke the jurisdiction under Article 226 of the Constitution of India against the order impugned.

9. In the result, the writ petition stands dismissed.

10. After dictation of the aforesaid order but before signing it, the petitioner moved a supplementary affidavit, whereby, he has shown his readiness to fore-go his promotion in view of great family problems and illness of his wife, who is suffering from liver abscess. The supplementary affidavit is taken on record.

11. Since, the petitioner has been posted at Varanasi on promotion and now he fore-goes his promotion, we, hereby, direct the concerned authority of the Bank to reconsider his posting at Kanpur on his original post. On his posting at Kanpur at the original post, the petitioner's promotion to the post of Junior Management Grade Scale-I shall stand cancelled.