

CASE NO.:
Appeal (civil) 226 of 1997

PETITIONER:
STATE BANK OF INDIA

Vs.

RESPONDENT:
ANJAN SANYAL & ORS.

DATE OF JUDGMENT: 12/04/2001

BENCH:
G.B.. Pattanaik & Y.K. Agrawal

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T.....T..J

PATTANAIAK, J.

The State Bank of India is in appeal against the judgment of the Division Bench of Calcutta High Court. The Division Bench upheld the judgment of a learned Single Judge of the said High Court, who had set aside an order of transfer of an officer in Middle Management Grade II of the State Bank. The respondent had been appointed as a Probationary Officer in the State Bank in the year 1971 and had been posted at Calcutta. In 1982, he was transferred to Port Blair, but instead of joining at Port Blair, he remained on leave from 1.7.82 till 15.4.1984. The management of the bank ultimately posted the respondent to Narkeldanga Branch at Calcutta and the earlier orders of transfer to Port Blair was not given effect to. This order had been passed in April, 1984. After the respondent continued at Calcutta for two years, on 14th of June, 1986, the Branch Manager of Narkeldanga Branch at Calcutta was intimated that a decision has been taken to transfer the respondent to the Central Office at Mumbai. The respondent again evaded to go to Mumbai and on the other hand, went on filing representations requesting for cancellation of his transfer to Mumbai. Again from 19.10.86, the respondent applied for leave and did not join the office. On 8.1.1987, the Branch Manager of Narkeldanga Branch advised the respondent that he has been relieved from the Calcutta office and he should join at Mumbai. On 5.12.1987, the respondent made a representation, seeking cancellation of his transfer to the Central Office at Mumbai. That representation, however was never allowed and the bank authorities went on reminding the respondent that he has been transferred to the Central office and he should join the Central office at Mumbai. On 16th of January, 1988, respondent made yet another representation, praying for cancellation of his transfer. The mother of the respondent, then made a complaint to the General Manager, alleging that her son is being harassed. This complaint was made in the year 1991. The General Manager, therefore, called upon the Deputy General Manager to ascertain and advise, as to

whether the respondent has received the communication of having been transferred to Mumbai. On 9.7.1991, the bank informed the respondent that he is absenting from duty unauthorisedly, and therefore, he should report for duty within three days at Calcutta and explain the reasons for absence. On 19.7.91, the respondent was again posted temporarily at M.B.Street at Calcutta. On 8.8.91, he was then transferred to Siliguri, and was directed to report to Deputy General Manager, Siliguri. Instead of joining at Siliguri, the respondent filed a writ petition, challenging the order of transfer to Siliguri. While entertaining the writ petition, the Single Judge passed an interim order, directing the respondent to obey the transfer order and report at Siliguri, but he never obeyed the same. On the other hand, he approached the Division Bench, assailing the said order. The Division Bench also by its order dated 10.2.92, directed the respondent to join his new posting at Siliguri within fifteen days. The respondent being aggrieved by the said directions, approached this Court in a special leave petition, which however was dismissed on 30.3.92. Even, thereafter, the respondent did not join at Siliguri. The learned Single Judge of Calcutta High Court, however delivered the judgment in the writ petition on 10.3.93 and allowed the same, setting aside the orders of transfer. The bank went in appeal to the Division Bench and by the impugned judgment, the appeal having been dismissed, the bank has approached this Court.

The learned Single Judge did notice the fact that ordinarily, writ Court does not interfere in the matters of transfer, but yet being of the opinion that in the case in hand, it is not a case of transfer simplicitor and on coming to the conclusion that the order of transfer from Narkeldanga Branch to Mumbai, not having been served on the respondent, the said transfer orders could not have been given effect to, even if being aware of such order of transfer, the concerned employee might have filed representations. The learned Single Judge also relied heavily upon the fact that even though, the respondent wrote to the Personnel Manager on 12th January, 1988 that he has not been instructed to report to the Chief Officer (Personnel Administration), Central Office, Mumbai, but no reply was received by him. The learned Single Judge, ultimately came to the conclusion that the order of transfer had not been served on the employee and as such in the eyes of law, the employee had not been directed to join any office, after he was released from the Narkeldanga main Branch of the bank. The subsequent period, therefore, must be held to be in a state of suspended animation till July, 1991 and as such the employee would be entitled to claim all benefits of increments and promotion on the basis that he was actually discharging his duties, throughout the span of the intervening five years. So far as the order of transfer to Siliguri is concerned, the Court even interfered with the same, on the ground that until and unless the respondent gets his due promotion at regular intervals, and gets all the emoluments for the past period, he cannot be transferred to Siliguri, as he may have to serve under an officer who might have been junior to him and it will be cruel to send him in the improvised condition, thereby reducing him into a pauper in the place of his new posting. The Single Judge, therefore, directed that the respondent cannot be held to have been transferred from Narkeldanga main branch in December, 1986 or any time, thereafter and he must be

treated as if he was on duty throughout the period from January, 1987 to July, 1991 with all its attendant benefits of getting regular monthly emoluments, the annual increments and the chances of promotion at regular intervals and unless all the steps are taken, the question of transferring the respondent to any place other than the Narkeldanga Main Branch cannot and does not arise. We are indeed shocked to find this sort of order from the High Court, in a matter of transfer and the Court seems to have taken the view that an officer of the State Bank of India in the Middle Management Grade II can only be allowed to continue at Narkeldanga Branch at Calcutta and nowhere else in the country.

On appeal being filed before the Division Bench, the performance of the Division Bench was no better. The learned Judges of the Division Bench reaffirmed the conclusion of the learned Single Judge that no formal order of transfer had been issued and served upon the respondent, transferring him from Narkeldanga Branch to the Central Office at Mumbai. The perversity of the approach of the Division Bench is apparent from the fact that the learned Judges did refer to the letter of the respondent dated 19th of October, 1986 and held that even though, the respondent did not deny the existence of the order of transfer, but nowhere he had stated that he had seen or had been served with the order of transfer and there was no admission on the part of the respondent about the existence of the order of transfer. The High Court has totally lost sight of the fact that it was dealing with the legality of an order of transfer of an employee and not dealing with a criminal case, where the conviction had been maintained on the basis of a confessional statement. The further perversity of the Division Bench was that it came to hold that if in fact the respondent had been transferred from Calcutta to Mumbai, in that event, Calcutta office must have lost all control or jurisdiction over the service of the respondent and the respondent should be treated to be an officer under the administrative control of the Central office, Mumbai, and therefore, the respondent could not have been posted by the Calcutta office temporarily at Mukhtaram Babu Street Branch of the State Bank of India. To say the least, when the employer takes a sympathetic attitude and taking into account the fact that the employee is not going out of Calcutta for the last so many years, even if transferred and a posting is given to the employee, somewhere in Calcutta, that has been considered by the Court to hold that the earlier order of transfer to Mumbai never existed. We also do not find any justification for the Division Bench of Calcutta High Court to go into the question about the admissibility of drawing travelling allowance and daily allowance and then come to a conclusion that the things have been dealt with in a cavalier fashion and there was no order of transfer to Mumbai. The Court ultimately came to hold that there is no question of going into the validity of the transfer, which was neither issued nor conveyed to the person concerned and which had no actual or factual existence at all but only a myth. This conclusion of the Division Bench with utmost respect must be held to be a conclusion on surmises and conjectures and we really fail to understand how the Division Bench of the High Court has come to the aforesaid conclusion, in view of the series of correspondence, which we will refer later. It is also further surprising that the fact that while posting the respondent at Mukhtaram Babu Street Branch, the order had not

indicated about the cancellation of the earlier order of posting at Mumbai and it would be possible for any Court of law to come to a conclusion that there had been no order of transfer as such. The Court then holds the employer liable and guilty of lapses and on that score, allows the salary and emoluments as well as other service benefits from 17th December, 1986. The Court also records a conclusion that the employee should not suffer because of deliberate lapses and negligence on the part of the bank and the bank cannot take advantage of its own wrong done to the employee for so many years. It is curious to note that an employee serving in an All India Organisation, where the service is transferable, could be allowed to flout the orders of transfer on the so-called pretext that the order of transfer had not been served upon him and then would be allowed to draw his emoluments on an erroneous finding that the bank was negligent in not serving the orders of transfer. This case is a glaring instance where the Court in its anxiety to help an employee, recorded the conclusions contrary to the relevant materials and arrived at findings on surmises and conjectures, even in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India.

An order of transfer of an employee is a part of the Service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order. The Central Board of the State Bank of India in exercise of powers conferred under sub-section (1) of Section 43 of the State Bank of India Act, 1955, have framed a set of rules called the State Bank of India Officers Service Rules. Rule 47 thereof, unequivocally provides that every officer is liable for transfer to any office or branch of the bank or to any place or deputation to any other organisation in India. Rule 49 of the said rules, stipulates the joining time, which an employee is entitled to when he is transferred to a new place from his old post. Rule 50 casts an obligation on the employee to comply with and obey all lawful and reasonable orders and directions, which may from time to time be given to him. Rule 50(1) may be quoted herein-below in extenso:

Rule 50(1) : Every officer shall conform to and abide by these rules and shall observe, comply with and obey all lawful and reasonable orders and directions which may from time to time be given to him by any person under whose jurisdiction, superintendence or control he may for the time being be placed.

Any violation of the aforesaid rules, constitutes a misconduct under Rule 66 and becomes punishable under Rule 67. With this background, when we consider the legality of an order of transfer, alleged to have been passed on 14.6.1986, after the employee had continued in Calcutta for more than a decade and the said order has not been held by the High Court either to be mala fide or that the competent authority had not passed the order, it is indeed difficult to come to a conclusion that the said order had not been passed nor had been communicated to the employee concerned. Mr. H.N.Salve, the learned Solicitor General, appearing for

the State Bank of India, invited our attention to the letter of the respondent addressed to the General Manager (Operations), State Bank of India, Calcutta Local Head Office, where- under the respondent had requested to defer his transfer upto June, 1987 and in that letter in the very first paragraph, the respondent in no uncertain terms had indicated that the Branch Manager of the State Bank of India, Narkeldanga Branch, has addressed to me by his letter dated 9th October, 1986, which he alleged to have received on 16th of October, 1986, informing him about his transfer to the Central Office at Mumbai. In the teeth of the aforesaid letter of the respondent, we are little surprised to find the conclusion of the learned Judges of the Calcutta High Court, both the Single Judge as well as the Division Bench in entering into an arena of conjecture and come to a conclusion that there had been no existence of an order of transfer nor the same had been communicated to the respondent. The Branch Manager of Narkeldanga Branch had addressed a letter to the respondent on 8th of January, 1987, intimating him that he has been relieved of his duties from the said Branch. The respondent again in his letter dated 5th of December, 1987 addressed to the Chief General Manager, State Bank of India, categorically stated that he had been informed by the Branch Manager, State Bank of India, Narkeldanga Branch, about his transfer to Central Office at Mumbai and he prayed for cancellation of the said posting and consider the desirability of posting him at a suitable place in Calcutta. The State Bank of India, Calcutta Branch, immediately replied to the aforesaid letter of the respondent, informing him that as per the records, he had been relieved from Narkeldanga Branch at the close of business on 6th December, 1986, with instructions to report to the Chief Officer, Central Office, Mumbai by their letter dated 14th December, 1987, to which the respondent replied by his letter dated 12th January, 1988. Even in that letter, the respondent stated that even though, he has been relieved from the Narkeldanga Branch w.e.f. 6th December, 1986, but he had not been instructed to report to the Chief Officer (Personnel Administration), Central Office, Mumbai, would itself indicate the frivolous pretext of the employee, as in all earlier letters he had been candid enough to state that he had been transferred to the Central Office at Mumbai. In view of the aforesaid correspondence between the employee and the employer, we are indeed surprised, how the High Court could rely upon a sentence in the letter of 30th April, 1991, wherein a mention had been made that the officer concerned was not advised in writing by the Branch at the material time and it is on the basis of this sentence, the High Court jumped to the conclusion that neither there existed an order of transfer nor it had been communicated to the respondent. The bank authorities, on the other hand, have been repeatedly intimating the respondent that he is remaining absent without joining at the place to which he was transferred but yet the employee concerned did not comply with the order in question. Having desperate in their attempt to give effect to a lawful order of transfer, when the authorities, took a sympathetic attitude and posted the respondent temporarily to M.B. Street, Calcutta on 19.7.1991 and then transferred him to Siliguri on 8.8.1991, the High Court finds fault with the same, on the ground that he having been already transferred to Mumbai, could not have been posted to the M.B. Street, Calcutta without cancellation of the earlier order and further could not have been transferred to Siliguri. This in our view is an entirely erroneous approach of the High

Court in dealing with the legality of an order of transfer. The entire fact situation unerringly point out to one fact namely the respondent flouted the orders of transfer, did not join the place of posting, did not apply for or take leave for his absence, did not discharge his duties, and yet the High Court in exercise of its discretionary jurisdiction, not only set aside the order of transfer on a pretext which does not appeal to us with regard to the non-communication of the orders of transfer and even directed that the respondent would be entitled to his salary, increment, promotion and then only, could be considered for further transfer to anywhere else. To us, it appears that the High Court has granted premium to an errant officer, who did not obey the orders of transfer and did not discharge any duty for which conduct of his, he could have been proceeded with, in a departmental proceeding on the charge of gross misconduct and could have been punished.

Mr. S.S. Ray, the learned senior counsel, appearing for the respondent, strongly argued that an officer of a bank could not be orally transferred and, therefore if there does not exist an order of transfer or if the said order had not been communicated to the employee concerned, the Court would be justified in holding that the so-called transfer is illegal and invalid. From the series of correspondence, referred to by us earlier and in view of unequivocal statement of the respondent therein, it is difficult for us to hold that there did not exist any order of transfer and that the respondent did not know of the same. On the other hand, we are persuaded to come to the conclusion that the respondent was fully aware of the orders of transfer and tried to evade the same by adopting all possible pretexts and continued to remain absent without discharging any duties. Mr. Ray, then contended that under the guidelines contained in the hand-book of Staff Matters, Volume I, paragraph 8.34(a) of Chapter VIII deals with a situation where an officer remains absent in an unauthorised manner. The very fact that the said procedure had not been adhered to in the case in hand, justifies the ultimate conclusion of the learned Single Judge of the High Court that the order of transfer had not been served nor the employee had been directed to join the office at Mumbai. We are unable to accept this contention inasmuch as merely because the bank authorities did not proceed against the respondent, as provided in paragraph 8.34(a), it cannot be held that the respondent did not absent himself from the duties without any authority. To us, it appears that even higher authorities of the bank at Calcutta were quite soft towards the respondent and it is possibly for that purpose, had not taken any action against him for all the lapses committed by him. On the materials on record, we are not in a position to agree with the conclusion of the learned Single Judge as well as the Division Bench of the Calcutta High Court that the order of transfer dated 14.6.86, transferring the respondent to the Central Office at Mumbai was in any way illegal and invalid and can be held to be null an void. On the other hand, a valid order of transfer had been issued and the employee concerned had been relieved of his duties but instead of joining the place of posting, the employee concerned went on representing the authorities and openly disobeyed the orders of transfer. We are also of the opinion that there was no infirmity with the order dated 8.8.1991, transferring the respondent to Siliguri and the High Court was totally in error in interfering with the said order on the hypothesis that until and unless the respondent

get his emoluments for the entire period as well as promotion, question of transferring him out of Narkeldanga Branch does not arise. Such a conclusion is not permissible to be drawn on the fact situation and we, therefore, unhesitatingly set aside the same. We further hold that the order of transfer to Siliguri was also valid and the respondent did flout the same.

So far as the direction of the High Court regarding the salary and other pecuniary benefits are concerned, Mr. Ray, contended that for an employee of the bank in the absence of any rules, the principle of no work no pay can be made applicable and so long as the relationship of master and servant continues and the service has not come to an end, the employee is entitled to his salary. It is in this context, Mr. Ray relied upon two decisions of this Court, the case of Bank of India vs. T.S. Kelawala and Others, 1990(4) SCC 744 AND Syndicate Bank and Anr. vs. K. Umesh Nayak, 1994(5) SCC 572. The latter one is a Constitution Bench decision. In the first case, referred to by Mr. Ray, the question for consideration was if an employee takes recourse to strike or go slow or any other method, resulting in no work for the whole day or days, then whether the Management will be entitled to deduct pro rata or otherwise wages of the participating workmen notwithstanding absence of any stipulation in the contract of employment or any provision in the service rules, regulations or standing orders. Mr. Ray relied upon the observations made in the aforesaid judgment in paragraph 22, to the effect- Where the contract, Standing Orders or the service rules/regulations are silent on the subject, the management has the power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed. In the latter Constitution Bench decision also, the Court was considering whether workers having been on strike, whether wages could be paid or the theory of no work no pay would apply. Mr. Ray contended that the ratio in the aforesaid case is that unless the rules permit, the respondent would be entitled to the salary. In the Constitution Bench decision, the Court has observed that to entitle the workmen to the wages for the strike period, the strike has to be held both legal and justified and whether the strike is legal or justified are questions of fact to be decided on the evidence on record. Applying the same to the facts of the present case, the order of transfer having been held by us to be valid and the employee having not obeyed the same, and not having discharged the duties, but yet continuing in service, how the period should be dealt with, will depend upon the relevant rules and regulations of the Bank. We are told that the State Bank of India Officers Service Rules deal with the said situation, and, therefore, the competent authority of the bank would deal with the same. But we have no hesitation in setting aside the directions of the High Court, directing the bank to pay the salary and other benefits to the respondent in the case in hand. In the aforesaid premises, we set aside the judgment of the learned Single Judge as well as that of the Division Bench of Calcutta High Court and allow this appeal. The writ petition filed by the respondent in the High Court stands dismissed.

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JUDIS