

PETITIONER:
CANARA BANKING CORPORATION LTD.

Vs.

RESPONDENT:
U. VITTAL

DATE OF JUDGMENT:
22/04/1963

BENCH:

ACT:
Industrial Dispute-Transfer of a Bank employee not belonging to subordinate staff-Application of Sastry Award- No absolute prohibition-Industrial Disputes Act, 1947 (14 of 1947), s. 33A.

HEADNOTE:

The respondent, a Bank employee not belonging to Subordinate staff, was transferred from one station to another. In an application filed by him under s. 33A of the Industrial Disputes Act, he contended that the order of his transfer was mala fide and as was act of victimisation for his lawful trade union activities. He prayed for the cancellation of his transfer order. His prayer was accepted by the Labour Court which held that the transfer of the respondent was against the Sastry Award which provided that a clerk like the respondent could not be transferred outside the State or the language area in which he had been serving except with his consent.

The appellant came to this Court by special leave. His contention was that the Sastry Award did not absolutely prohibit the Bank from transferring workmen not belonging to the subordinate staff outside the State or the language area in which he had been serving except with his consent. Moreover, as the order of the Bank had been found to be bona fide, there was no contravention of the Sastry Award. Held that the Sastry Award makes a distinction between the workmen belonging to the subordinate staff and others. While there was absolute prohibition against the transfer of the subordinate staff from their language area, there was no such absolute prohibition with regard to other workmen. The Sastry Award had laid down that "as far as possible", the other workmen were not to be transferred outside their language area but that left discretion with the Banks to transfer employee of the category of the respondent if the best interests

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of the Bank so required. It was for the Bank to decide how to distribute its manpower in its best interests, Transfers were to be avoided if that could be done without scarifying the interests of the Bank.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 755 of 1962.
Appeal by special leave from the order dated March 5, 1962, of the Labour Court (Central) Ahmedabad, in Complaint No.

153 of 1961 in Reference No. 1 of 1960.

N. V. Phadke, S. N. Andley, Rameshwar Nath and P. L. Vohra, for the appellant.

M. K. Ramamurthi; for the respondent.

1963. April 22. The judgment of the Court was delivered by DAS GUPTA J.-This appeal by special leave is against the decision of the Labour Court, Ahmedabad, in an application by the respondent under s. 33A of the Industrial Disputes Act. The appellant is a banking company which has numerous branches all over southern India. The respondent joined the service of the appellant-bank on June 14, 1951 and after confirmation in September 1952 was posted at Udipi. He was later transferred to Trichur; but on his representation was transferred to Mandvi Branch, Bombay, in July 1956. On May 20, 1961, another order of transfer was made by the appellant-bank posting the respondent back at Trichur. The present application under S. 33A was made on August 26, 1961, praying that the transfer order of May 20, 1961 be cancelled and the respondent permitted to continue at Bombay. It was alleged in the application that the appellant made the transfer order mala fide and as an Act
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of victimization for the lawful trade union activities of the complainant. It was also alleged that the transfer was made to deprive the complainant of his lawful dues.

This application was made before the National Industrial Tribunal at Bombay before which proceedings in respect of an industrial dispute between the appellant-bank and its workmen was then pending. The National Tribunal transferred the application to the labour Court, Ahmedabad, for disposal. Before the Labour Court the appellant contended that there had been no contravention of the provisions of s. 33 of the Industrial Disputes Act as no change had been made in the service conditions of the respondent's employment and further that the transfer had been made bona fide on account of sheer business considerations and exigencies of business. It was also contended that the order of transfer made by the bank did not offend the terms of the Sastry Award on the question of transfer of Bank employees. The labour Court held that under the terms of the Sastry Award the appellant's right to transfer his employees was limited to this extent that a clerk like the respondent could not be transferred outside the State or language area in which he had been serving except with his consent. Holding that there had been no such consent, it came to the conclusion that the conditions of service of the respondent had been altered in a manner not in accordance with the standing order contained in the Sastry Award. Proceeding next on the assumption that the Sastry Award permitted the Bank to transfer clerks outside the State or the language area when it was in the interests of the Bank's business, it considered the question whether the bank had no other alternative but to transfer this particular clerk outside the State or the language area in which he had been serving and came to the conclusion that this had not been
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established by the Bank. The Court rejected the allegation that the transfer had been made to victimize the respondent for his union activities. Being of opinion however that by the transfer the appellant had materially altered the respondent's service conditions and this alteration was not in accordance with Sastry Award, the Court directed the bank to cancel the transfer order and to retransfer the complainant to Mandvi Branch, Bombay. The Bank has now appealed against this direction.

The relevant direction in the Sastry Award on the question of transfer is in these words :

"We direct that in general the policy should be to limit the transfers to minimum consistent with the banking needs and efficiency. So far as members of the subordinate establishment are concerned there should be no transfers ordinarily and if there are any transfers at all, they should not be beyond the language area of the person so transferred. We further direct that even in the case of workmen not belonging to the subordinate staff, as far as possible there should be no transfer outside the State or the language areas in which the employee has been serving except, of course, with his consent."

It is not disputed that these directions were binding on the appellant-bank nor is it disputed before us that these directions amounted to "standing orders" applicable to Bank's workmen within the meaning of s. 33 (2) of the Industrial Disputes Act. It cannot also be doubted that the result of the transfer would be a material alteration in the respondent's conditions of service.

Two contentions are urged before us in support of the appeal. The first is that the Labour Court
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erred in thinking that the direction in the Sastry Award absolutely prohibited the Bank from transferring workmen not belonging to the subordinate staff outside the State or the language area in which the employee had been serving except with his consent. On a proper construction, it was urged, the direction only required the bank to refrain from making such transfers as far as possible and did not prevent the bank from making such transfers where it was really found necessary in bank's interests. The second contention was that when the bank claimed to have made the transfer in the interests of its business and was found to have acted bona fide, it should have been held that the direction in the Sastry Award had not been contravened.

In our opinion, there is considerable force in both these contentions. It will be noticed that in making the directions as regards the transfer of workmen the Sastry Award drew a distinction between workmen belonging to the subordinate staff and others. As regards members of the subordinate staff the direction was to the effect that there should be no transfers ordinarily and there was absolute prohibition against transfers beyond the language area of the persons concerned. The words used for the purpose are "if there are any transfers at all, they should not be beyond the language area of the person so transferred." As regards these workmen the award did not say that "as far as possible transfer should not be beyond the language area of the person so transferred." It is easy to see that here the prohibition was absolute. When they go on to consider the case of workmen not belonging to the subordinate staff, the member of the Tribunal however use markedly different language and preface the direction with the words "there should be no transfer outside the State or the language area in which he is serving except of course, with his consent" by the words "as far as possible". It is not possible to consider this direction as amounting
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to absolute prohibition without ignoring, the words "as far as possible". It is clear that these words were deliberately used to leave it to the banks to decide on a consideration

of the necessities of its business interests whether a transfer of a workman not belonging to the subordinate staff outside the State or the language area in which he had been serving could be avoided or not, and directing that where possible it should be avoided. We are satisfied the Labour Court was in error in holding that transfers outside the State or the language area can be made only with the consent of the employees. What that clause means is that with consent such transfers can of course be made, otherwise they should be avoided as far as possible.

This brings us to, the question whether in the present case the appellant contravened the direction in the award in transferring the respondent outside the Maharashtra State in which he was serving and also outside the language area in which he had been serving. It is necessary to remember in this connection that a bank which has branches in different parts of the country has to distribute its total manpower between these different branches in accordance with the needs of these branches and with an eye to its business interests. To attain the best results it becomes necessary to transfer workmen from one branch to another. The best interests of the bank may require at times that the transfer should be made outside the State or the language area in which a particular workman had formerly been employed. We have found above that the right of the bank to distribute its workmen not belonging to the subordinate staff to the best advantage, even though this may involve transfers outside the State or the language area in which a particular workman had been serving, was left unimpaired by the Sastry Award, except that such transfers have to be avoided, if they can be avoided without sacrificing the interests of the

bank. The management of the bank is in the best position to judge how to distribute its man-power and whether a particular transfer can be avoided or not. It is not possible for industrial tribunals to have before them all the materials which are relevant for this purpose and even if these could be made available the tribunals are by no means suited for making decisions in matters of this nature. That is why it would ordinarily be proper for industrial adjudication to accept as correct any submission by the management of the bank that an impugned transfer has been made only because it was found unavoidable. The one exception to this statement is where there is reason to believe that the management of the bank resorted to the transfer mala fide, by way of victimization, unfair labour practice or some other ulterior motive, not connected with the business interests of the bank.

In the present case the Labour Court has rejected the respondent's challenge to the bona fides of the management. It has held that there is no evidence whatever to support the complainant's allegation that he was transferred because he joined the Union and that the management had adopted a particular policy towards the workmen of the Union. We can find nothing that would justify us in interfering with the Labour Court's finding that these allegations have not been proved. It is true that the Labour Court has in considering the question whether the conditions of his service had been altered observed that the transfer seems to be very "unfair" to the employ) cc. What it obviously means by this is that this transfer will work harshly on the employee. That may indeed be true. But that does not amount to a finding of unfair labour practice. In these circumstances the Labour Court was not justified in thinking that the respondent's transfer to Trichur could have been avoided without any

injury to the bank's interests.

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We have therefore come to the conclusion that the Labour Court has erred in holding that the transfer was not made in accordance with the "standing orders" regarding transfers as contained in the Sastry Award.

We therefore allow the appeal, set aside the order of the Labour Court and order that the respondent's application under s.33A be rejected. There will be no order as to costs.

Appeal allowed.

JUDIS