

Punjab And Sind Bank vs Durgesh Kuwar on 25 February, 2020

Bench: D.Y. Chandrachud, Ajay Rastogi

CA 1809/2020

1

REPORT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 1809 of 2020
(Arising out of SLP(C) No 11985 of 2019)

Punjab and Sind Bank and Others

A

Versus

Mrs Durgesh Kuwar

R

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Leave granted.

2 A senior officer of a public sector banking institution complains that her reports about irregularities and corruption at her branch and her complaints against an officer who sexually harassed her met with an order of transfer. The case involves the intersection of service law with fundamental constitutional precepts about the dignity of a woman at her workplace.

3 This appeal arises from a judgment of a Division Bench of the Indore Bench of the High Court of Madhya Pradesh dated 18 March 2019 in a Writ Appeal arising out of an order of the learned Single Judge dated 11 February 2019.

4 The respondent was appointed as a Probationary Officer of the Punjab and Sind Bank, the first appellant, on 8 October 1998 in Junior Management Grade Scale I. She was promoted to the post of Chief Manager in Scale IV. On 2 September 2011, the respondent was transferred to the Zonal Office at Mumbai. On 7 October 2011, she was transferred to the Branch Office at Indore. In September 2016, the first respondent was promoted to the post of Chief Manager in Scale IV. On 23 September 2016, the competent authority of the bank decided to continue her at the branch in Indore upon promotion. On 11 December 2017, the respondent was transferred from the Branch Office at Indore to the Branch Office at Sarsawa in the district of Jabalpur. Intimation of the transfer was furnished to her on 14 December 2017. On 31 January 2018, the respondent submitted a representation to the Zonal Manager, recording a reference to the circulars of the bank governing the posting of women

officers. She made a request for being retained at Indore. Following the earlier representation, she submitted a reminder on 15 February 2018 and a representation on 19 February 2018 to the Executive Director of the bank. 5 In the course of her representations, the respondent submitted that during the course of the previous two years, she had, as a Branch Manager, inquired into the concentration of accounts maintained by liquor contractors at the branch and had detected grave irregularities which were hazardous to the interest of the bank. The respondent had submitted a detailed report to the Zonal Manager, Bhopal on 31 December 2016. In her report, she made several observations about lapses such as the existence of duplicate Bank Guarantee registers. She had recorded that the registers were not identical and some entries are missing from the new register. She observed that limits were sanctioned to parties not having any connection to Indore for the execution of liquor contracts. The Respondent's grievance was that instead of taking steps to rectify the irregularities, she was being pressurized to cover up the misdemeanors at the level of the branch. Moreover, she alleged that this was compounded by the Zonal Manager (who was named) calling her at late hours at home to discuss business which was not of urgent nature. The respondent made a specific allegation against the Zonal Manager. For the purpose of the present proceedings, it would be necessary to extract from the representation which was submitted by the respondent to the Executive Director. It reads thus:

“I was surprised to observe that within a span of last 2 years during my predecessor time many accounts of liquor contractors had shifted to this branch from local branches as well as from far off places in UP. Many accounts of newly floated firms were opened and fresh limits of substantial amounts were sanctioned in a very haphazard manner, where even KYC norms were not followed. In a very short time concentration of liquor accounts had reached to such a high level that created a suspicion. When I started analyzing these accounts as per banking norms, I found many grave irregularities hazardous to the interest of the Bank. Furthermore, high value BGs were issued where copies of such Bgs were neither available in branch nor at ZO. Guarantees were issued to the liquor contractors in a manner that facilitated the contractors to use the same on different occasion with different Govt. Departments for different tenders, which caused huge revenue loss to the bank. I submitted detailed report to ZM Bhopal vide my letter dated 31.12.2016 (serious irregularities -copy attached) and followed by many subsequent communications and discussions from time to time for taking necessary action and guidance.

It was shocking to observe that ZO instead of taking necessary steps to rectify the irregularities or providing desired guidance and support to me, I was pressurized to keep the things under cover by various nets and communications which are on record. I had difficult road to travel as it is a well-established fact that I have never given up to corrupt practices. When I tried to fix these issues at branch level, first I was offered bribe, on my refusal, efforts were made to malign my image by raising many false complaints. I did my duties honestly unhindered by these events in safeguard the interest of the bank.

I was regularly bringing this to the notice of my next higher authority Zonal Manager i.e. Mr. Pankaj Dwivedi he started harassing me personally as well as professionally. First he called me at late hours at home to discuss not so important official matters then started insisting me to meet him personally either in Indore or Bhopal unofficially. Seems that my spurring of his advances towards me provoked him into adopting vengeful attitude towards me.

Finding me not dancing to their tunes for covering up the ill practices going on in the branch. ZO thought it proper to transfer me from P.Y. Indore Branch to a far off (Distance about 600 Kms) small rural branch.” (Emphasis added)

6 The respondent also made a grievance of the fact that she had been transferred to a small rural branch situated at a distance of about 600 kilometers, which would be headed by a Scale I officer and was hence not a posting commensurate with her position as a Scale IV officer of the bank. In response to her representations, the respondent was informed that her transfer was in accordance with administrative and service exigencies and that she should join the place of posting immediately.

7 The order of transfer was challenged before the High Court of Madhya Pradesh under Article 226 of the Constitution. During the pendency of the proceedings, the order of transfer was stayed by a learned Single Judge. After the pleadings were completed, the writ petition was heard and by a judgment dated 11 February 2019, a learned Single Judge quashed the order of transfer. The learned Single Judge was of the view that though, as a matter of principle, transfer orders are ordinarily not interfered with in the exercise of judicial review, the respondent has been transferred in violation of the circulars of the bank as well as the guidelines issued by the Ministry of Finance in the Department of Financial Services. The High Court noted that contrary to the classification which has been made by the bank, the respondent who is a Scale IV officer, was posted to a branch at which only a Scale I officer could be posted. That apart, the learned Single Judge also observed that no reply had been filed by the fourth respondent controverting the specific allegations which had been levelled by the original petitioner.

8 The judgment of the learned Single Judge has been affirmed in appeal by the Division Bench of the High Court. Among other things, the Division Bench has held that the respondent had levelled serious allegations against the Zonal Manager which were brought to the attention of the Executive Director of the bank. The High Court has taken note of the fact that the respondent had drawn several irregularities to the notice of the higher authorities and the transfer was mala fide, as a reprisal to the action which had been initiated by the respondent and the allegations which she had levelled against the Zonal Manager. 9 Proceedings under Article 136 of the Constitution have been instituted before this Court by the bank as well as its General Manager, Zonal Manager and Deputy General Manager. The Zonal Manager against whom allegations have been levelled by the respondent has since been promoted as Deputy General Manager and is presently posted at the head office in New Delhi. The Special Leave Petition under Article 136 of the Constitution has also been filed on his behalf and he is represented as the fourth petitioner. 10 Assailing the judgment of the High Court, Mr Sudhir Chandra, learned senior counsel appearing on behalf of the appellants

submitted that the postings of the respondent indicate that she has been in Indore for several years. This was sought to be buttressed by relying on a chart which is annexed to the proceedings and is extracted below:

Place of W.E.F. Total Tenure Reasons for transfer posting Branch Office, 08.10.1998
2.5 years Joined the Bank at Jaipur Jaipur Station at the place of her Road, Jaipur
domicile.

Zonal Office, Jaipur	11.04.2001	3.1 years	Routine transfer and remained posted at her domicile.
Branch Office, Gandhi Road, Ahmedabad	11.05.2004	3.1 years	Transferred to spouse's place of posting.
Branch Office, Reid Road, Ahmedabad	07.06.2007	1.10 years	Routine transfer. Her husband was also posted at Ahmedabad or nearby.
Branch Office, Pushpak Complex, Ahmedabad	02.04.2009	2.5 years	Routine transfer. Her husband was also posted at Ahmedabad or nearby.
Zonal Office, Mumbai	02.09.2011	01 month	Transfer on promotion from Scale II to Scale III
Branch Office,	07.10.2011	08 months	Transfer on promotion
PY Road, Indore Branch Office, Nanda Nagar, Indore	29.06.2012	4.1 years	from Scale II to Scale III Routine transfer to spouse's place of posting.
Branch Office, PY Road, Indore as 2nd Man	05.07.2016 20.09.2016 as Incharge (on promotion to Scale-IV)	1.5 years	Even after the promotion kept at the same place of posting

11 It is urged that during the pendency of the proceedings before the Divisional Bench,

on 13 March 2019, an offer was made by the bank by which the respondent was proposed to be transferred to a Scale IV branch either in Jabalpur, Jaipur or New Delhi. It was urged that despite the above offer, the respondent did not indicate any choice of posting to one of the three branches which were suitable for a Scale IV

officer. During the course of the hearing, it is also urged in the alternative, the bank is willing to accommodate the respondent at a Scale IV branch in Bhopal, should she be willing to proceed to the new place of posting.

12 On merits, it was urged by the learned senior counsel appearing on behalf of the appellants that in the initial representation that was submitted by the respondent on 31 January 2018, there was no reference to either the allegations of irregularities at the branch which had been detected by her or of sexual harassment by the Zonal Manager. It was urged that these allegations were set up in the communication dated 19 February 2018 addressed to the Executive Director. Learned senior counsel submitted that the order of transfer was issued by the Executive Director on the recommendation of three General Manager level officers and, as a consequence, it would be far-fetched to attribute the malafides which were urged against the Zonal Manager to the authority which had effected the transfer. Moreover, it was urged that the Internal Complaints Committee¹ of the bank had, upon enquiring into the allegations which were levelled by the respondent, found that there was no substance in those allegations in its report dated 26 February 2019. The bank has submitted that upon the receipt of the complaint of the respondent, the bank had carried out a vigilance and special audit. On these grounds, it was urged that the settled principle of restraint in matters of judicial review, where transfer is an exigency of service, must apply in the facts of this case. In this context, reliance was placed on the decisions of this Court in *Bank of India v Jagjit Singh Mehta*², *State of UP v Gobardhan Lal*³ and *Rajendra Singh v State of UP*⁴.

13 Controverting these submissions, Mr Colin Gonsalves, learned senior counsel appearing on behalf of the respondent submitted that there has been a gross suppression of fact on the part of the appellants in moving this Court. It has been urged that four sets of vital documents have not been brought to the attention of this Court. The first set of documents, it has been urged, are those 1“ICC” 2(1992) 1 SCC 306 3(2004) 11 SCC 402 4JT 2009 (10) SC 187 pertaining to the communications by the respondent to the higher authorities outlining in detail the irregularities and corruption that she discovered in the transactions of the bank after she had taken over as a Branch Officer at Indore.

It was urged that these letters by the respondent commenced from 31 December 2016 and were followed by communications dated 31 January 2017, 6 February 2017, 1 March 2017, 3 March 2017 and 15 November 2017. On the basis of these communications, it has been submitted that it was as a result of the stringent measures which were suggested by the respondent that she was met with the order of transfer barely a year after her promotion to Scale IV and continued posting as Chief Manager at the Indore branch. 14 The second set of documents which, according to Mr Gonsalves, have been suppressed pertain to the report of the Local Complaints Committee⁵. It appears from the record that the respondent was not satisfied with the enquiry which was being conducted by the ICC of the bank. She had moved a complaint before the LCC in terms of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013⁶. According to the

submission of the learned senior counsel, the LCC has concluded that the charge of sexual harassment directed against the fourth appellant by the respondent has been established. As regards the ICC, the grievance of the respondent is that the members of the Committee were biased against the respondent and there was an absence of an independent member as mandated by the provisions of the 5“LCC” 6 “Act” Act. The so-called independent member, it was urged, was a panel counsel drawn from advocates who appear on behalf of the bank.

15 The third set of documents is that, according to Mr Gonsalves, the original order of transfer dated 14 December 2017 had proposed the transfer of the respondent from Indore to a branch falling under the Zonal Office at Dehradun. Mr Gonsalves submitted that the original order of transfer was subsequently modified so as to provide for a transfer and posting to a branch at Sarsawa in the district of Jabalpur where the respondent would continue under the administrative control of the same Zonal Office.

16 Finally, it has been submitted that the bank has not apprised this Court fairly of the Office Memorandum of the Central Vigilance Commission in regard to rotation of officers in sensitive posts. Mr. Gonsalves submitted that the manner in which the order of transfer was effected close on the heels of the allegations of corruption levelled by the respondent would indicate a clear case of malafides. It was urged that the respondent who was a Scale IV officer, was posted to a Scale I level bank in the teeth of the Board Resolution dated 27 September 2017, approving the policy in regard to the classification of branches. It has been submitted that the list of branches indicates that the branch to which the respondent has been transferred is a rural branch at which Scale I officers are posted. The respondent was functioning as a Chief Manager in Indore at an “exceptionally large branch” (deposits of Rs 250 crores and above) being a Scale IV officer. In the circumstances, Mr Gonsalves submitted that the reason why the respondent is inclined to press ahead with these proceedings instead of accepting one of the suggested places of posting is in order to vindicate her own position as a matter of principle. Mr Gonsalves submitted that, as a matter of fact, one of the suggested places of posting is Jaipur, where her maternal home is situated, but despite this, as a matter of principle, the respondent would request this Court to determine the validity of the order of transfer in the present case.

17 We must begin our analysis of the rival submissions by adverting to the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be malafide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere. These principles emerge from the judgments which have been relied upon by the appellants in support of their submissions and to which we have already made a reference above. There can be no dispute about the position in law.

18 The real issue which the Court needs to enquire into in the present case is as to whether the order of the High Court quashing the order of transfer can be sustained, having regard to the above

principles of law. The material on record would indicate that commencing from 31 December 2016 and going up to 15 November 2017, the respondent, who was posted as Chief Manager in her capacity as a Scale IV officer at Indore branch, submitted as many as six communications drawing attention to the serious irregularities which she had noticed in the maintenance of bank accounts of and transactions by liquor contractors. The contents of the complaints raised serious issues. The order of transfer was served on the respondent within a month of the last of the above representations, on 14 December 2017. On 19 February 2018, the respondent levelled allegations specifically of sexual harassment against the Zonal Manager. The bank initially constituted an ICC. The respondent raised an objection to the presence of some of the members of the Committee. The Committee as constituted initially consisted of the following persons:

(i) Ms Havinder Sachdev, GM	(Presiding Officer)
(ii) Ms Rashmita Kwatra, AGM	(Member)
(iii) Ms Abha Sharma, CM	(Member)
(iv) Mr Vimal Kumar Attrey, CM	(Member & Convenor)
(v) Ms Shountal Singh, SRM	(Member)
(vi) Ms Seema Gupta, Advocate	(Independent Member)

19 The report of the ICC contains a reference to the objections which the

respondent raised to the members at serial numbers (ii), (iv) and (vi) above. These objections were noted in the course of the report of the ICC dated 26 February 2019. The respondent drew the attention of the Presiding Officer of the ICC to the fact that Ms Rashmita Kwatra, AGM is the spouse of a retired General Manager, who was part of the process of the transfer of the respondent. As against Ms Seema Gupta, who was nominated as an independent member, the respondent noted that she was a panel advocate of the bank and was regularly contesting cases in court involving the bank. The respondent also raised an objection in regard to the presence of Mr Vimal Kumar Attrey as a member of the Committee. The report of the Committee contains a reference to the fact that following the objections which were raised by the respondent, the Committee was reconstituted, as a result of which Ms Rashmita Kwatra and Mr Vimal Kumar Attrey were substituted by two other officers of the bank. However, Ms Seema Gupta, Advocate continue to be a member of the ICC.

20 The Act was enacted to provide protection against sexual harassment of women at the workplace as well as for the prevention and redressal of complaints of sexual harassment. Sexual harassment at the workplace is an affront to the fundamental rights of a woman to equality under Articles 14 and 15 and her right to live with dignity under Article 21 of the Constitution as well as her right to practice any profession or to carry on any occupation, trade or business. Section 3 of the Act provides the following:

“3. Prevention of sexual harassment-

(1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:-

(i) implied or explicit promise of preferential treatment in her employment; or

(ii) implied or explicit threat of detrimental treatment in her employment; or

(iii) implied or explicit threat about her present or future employment or status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.” (Emphasis added)

21 Section 4 of the Act requires the constitution of an ICC at all the administrative units or offices of the work place. Sub-section (2) of Section 4 of the Act provides for the constitution of the ICC. Section 4(2) is extracted below:

“4(2). The Internal Committee shall consist of the following members to be nominated by the employer, namely:-

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge:

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.”

22 Clause (c) of Section 4(2) indicates that one member of the ICC has to be drawn from amongst a non-governmental organization or association committed to the cause of women or a person familiar with issues relating to sexual harassment. The purpose of having such a member is to ensure the presence of an independent person who can aid, advise and assist the Committee. It obviates an institutional bias. During the course of hearing, we have received a confirmation from the learned senior counsel appearing on behalf of the bank that Ms Seema Gupta was, in fact, a panel lawyer of the bank at the material time. This being the position, we see no reason or justification on the part of the bank not to accede to the request of the respondent for replacing Ms Seema Gupta with a truly independent third party having regard to the provisions of Section 4(2)(c) of the Act. This is a significant facet which goes to the root of the constitution of the ICC which was set up to enquire into the allegations which were levelled by the respondent.

23 The respondent did not participate in the proceedings before the ICC since, in the meantime, she had moved the LCC in terms of the provisions of Section 6 of the Act. Mr Sudhir Chandra, learned senior counsel urged that the LCC under Section 6 can be set up in a situation where the ICC has not been constituted or if the complaint is made against the employer himself. It has been urged that in the present case there was no complaint against the employer himself and hence the LCC would have no jurisdiction under Section 6 of the Act. Be that as it may, we have a situation in the present case where the appellants did not participate in the proceedings before the LCC and the respondent did not participate in the proceedings before the ICC. What, however, does emerge from the record is that there was a fundamental defect in the constitution of the ICC which was set up by the bank.

24 The material which has been placed on record indicates that the respondent had written repeated communications to the authorities drawing their attention to the serious irregularities in the course of the maintenance of accounts of liquor contractors and in that context had levelled specific allegations of corruption. The respondent was posted on 14 December 2017 to a branch, which even according to the bank, was not meant for the posting of a Scale IV officer. The sanctity which the bank attaches to posting officers of the appropriate scale to a branch commensurate with their position is evident from the Board's Resolution to which we have adverted earlier. Admittedly, the branch to which the respondent was posted was not commensurate to her position as a Scale IV officer. There can be no manner of doubt that the respondent has been victimized. Her reports of irregularities in the Branch met with a reprisal. She was transferred out and sent to a branch which was expected to be occupied by a Scale I officer. This is symptomatic of a carrot and stick policy adopted to suborn the dignity of a woman who is aggrieved by unfair treatment at her workplace. The law cannot countenance this. The order of transfer was an act of unfair treatment and is vitiated by malafides. 25 In view of the above analysis, we are of the view that the High Court cannot be faulted in coming to the conclusion that the transfer of the respondent, who was holding the office of Chief Manager in the Scale IV in Indore branch to the branch at Sarsawa in the district of Jabalpur was required to be interfered with. At the same time, a period of nearly four years has since elapsed. Despite the order of stay, the respondent was not assigned an office at Indore and had to suffer the indignity of being asked to sit away from the place assigned to a Branch Manager. Considering the period which has elapsed, it would be necessary for the Court to issue a direction, which, while

sub-serving the interest of the bank, is also consistent with the need to preserve the dignity of a woman employee who, we hold, has been unfairly treated. 26 We accordingly direct that Ms Durgesh Kuwar, the respondent officer, shall be reposted at the Indore branch as a Scale IV officer for a period of one year from today. Upon the expiry of the period of one year, if any administrative exigency arises the competent authority of the bank would be at liberty to take an appropriate decision in regard to her place of posting independently in accordance with law keeping in view the relevant rules and regulations of the bank, in the interest of fair treatment to the officer.

27 While affirming the decision of the High Court, the appeal is disposed of in terms of the above directions. The respondent would be entitled to costs quantified at Rs 50,000 which shall be paid over within one month.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [Ajay Rastogi] New Delhi;

February 25, 2020

ITEM NO.2

COURT NO.8

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PUNJAB AND SIND BANK & ORS.

Appellant(s)

VERSUS

MRS. DURGESH KUWAR

Respondent(s)

(With appln.(s) for appropriate orders/directions, exemption from filing O.T. and permission to appear and argue in person) Date : 25-02-2020 These matters were called on for hearing today.
CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE AJAY
RASTOGI For Appellant(s) Mr. Sudhir Chandra, Sr. Adv.

Mr. Sandeep Prabhakar, Adv.

Mr. Amit Kumar, Adv.

Mr. P. S. Sudheer, AOR Mr. Rishi Maheshwari, Adv.

Ms. Anne Mathew, Adv.

Mr. Bharat Sood, Adv.

Ms. Shruti Jose, Adv.

For Respondent(s) Mr. Colin Gonsalves, Sr. Adv.
 Ms. Olivia Bang, Adv.
 Mr. Satya Mitra, AOR

UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is disposed of in terms of the signed reportable judgment.

Pending application(s), if any, stand disposed of.

(Chetan Kumar)
A.R. -cum-P.S.

(Saroj Kumari Gaur)
Court Master

(Signed reportable judgment is placed on the file)