

The Management Of The Syndicate Bank ... vs The Workmen on 4 November, 1965

Equivalent citations: AIR1966SC1283, [1966(12)FLR159], (1966)ILLJ440SC, AIR 1966 SUPREME COURT 1283, 1966 2 MADLJ(CRI) 57, 1965-66 28 FJR 275, 1966 (1) LABLJ 440, 1966 2 LABLJ 21, 1966 2 SCWR 438, 1966 (12) FACLR 159, 1966 5 FACLR 190, 1966 (1) SCR 922, 1962-63 FJR 298, 1966 3 SCR 453, 1966 2 SCJ 488

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Bench: P.B. Gajendragadkar, K.N. Wanchoo, V. Ramaswami, P. Satyanarayana Raju

JUDGMENT

V. Ramaswami, J.

1. This appeal is brought, by special leave, from the award of the Industrial Tribunal, Andhra Pradesh dated January 18, 1964 in Industrial Dispute No. 33 of 1963 and published in the Gazette of India No. 6 dated February 8, 1964.

2. K. Veeranna was employed as a Clerk by the Syndicate Bank Ltd. (hereinafter called the 'Bank') in the Vijayawada branch. An order was made on May 2, 1963 for the transfer of Veeranna from Vijayawada to a new branch of the Bank which was to open at Banganpalli. Veeranna refused to join duty at Banganpalli and applied for leave on medical grounds. Veeranna continued to remain on such leave till December 12, 1963 when the Bank had to post one Chandrasekhar from the Nandyal branch to the Banganpalli branch in place of Veeranna. In June, 1963 Veeranna was elected as Joint Treasurer of the Andhra Pradesh unit of the respondent's Union. Veeranna claimed that he was entitled to exemption from transfer under the Sastry Award and the dispute was referred for adjudication by the Government of India under Section 10(1)(d) of the Industrial Disputes Act to the Industrial Tribunal Hyderabad. The issue was:

"Whether the transfer of K. Veeranna a workman of Canara Industrial and Syndicate Bank Ltd., from Vijayawada to Banganpalli is justified and if not, to what relief is the workman entitled?"

3. After hearing the evidence adduced by the parties the Industrial Tribunal decided the issue in favour of the respondent's Union and held that the transfer of Veeranna was prompted by mala fide considerations and, therefore, he was entitled to be retained at Vijayawada.

4. On behalf of the appellant Mr. Setalvad put forward the argument that the finding of the Tribunal is perverse and is not supported by any evidence and that the award of the Tribunal may, therefore, be set aside as being defective in law. In our opinion, the argument of Mr. Setalvad is well founded and must be accepted as correct. The Tribunal has stated, in the first place, that the order of transfer was mala fide because the Bank had framed charges against Veeranna regarding a scheme of pigmy collections and the transfer was an attempt to victimise Veeranna for the part he had taken in the dispute between the Bank and the employees in this connection. It appears that the Bank had framed charges against Veeranna in September, 1962 and the dispute about the pigmy collections arose because the Reserve Bank of India, acting under the provisions of the Banking Companies Act, objected to the payment of allowance to the employees of the Bank by virtue of the Deposit Scheme and therefore the Bank had to suspend the collection of deposits by members of its staff. It appears that Veeranna refused to surrender the Collection Cards etc. though he was asked to do so twice by the Bank by notice in writing. After the framing of the charges on November 20, 1962 for indiscipline an enquiry was held by the Bank and the charges were found proved against Veeranna. But the significant fact is that Veeranna was subsequently pardoned by the Bank and no action was taken against him. Veeranna himself admitted in his deposition as follows:

"There was a domestic enquiry and after the enquiry the recommendation was that I shall be dismissed but the Managing Director pardoned me".

It is, therefore, clear that the dispute concerning pigmy deposits was settled between the Bank and the workmen on January 20, 1963 on which date the parties to the settlement agreed to refer the dispute to the Industrial Tribunal. It is far-fetched to say that there is any connection between that dispute and the order of transfer made on May 2, 1963. The second reason given by the Tribunal is that Veeranna was Joint Treasurer of the Provincial unit of the All India Union and the transfer was made by the Bank as the Bank wanted to victimise Veeranna and to deprive the Union of his services as an office-bearer of the Union. But it is the admitted position that Veeranna was elected to the office of Joint Treasurer-ship in June, 1963 i.e., about a month after his transfer order was issued and the Bank could not have known at the time of making the order of transfer that Veeranna would be elected as the Joint Treasurer of the Union. It is, therefore, not possible to attribute bad faith to the Bank in making the order of transfer of Veeranna. The third reason given by the Tribunal is that there was an alternative person viz., Balaramiah Chetty who could have been transferred to Banganpalli in place of Veeranna but the alternative arrangement was not deliberately made and Veeranna was forced to go to Banganpalli. It appears from the evidence that Balaramiah Chetty made an application on April 24, 1962 for transfer to Raichuti or Banganpalli but at that time he was working at Madras which is regarded as Area I for the purpose of remuneration under the Desai Award. Therefore, in the event of transfer of Balaramiah Chetty the Bank would have had to continue paying him the Area I remuneration and would also have had to pay his substitute in Madras at the same rate. The post at Banganpalli was in a lower remuneration area and the transfer of some one from a similar remuneration area, such as Vijayawada, would have involved the Bank in no extra cost. The Bank had, therefore, offered to transfer Balaramiah Chetty on condition that he should be prepared to receive the remuneration of the area where he desired to be posted. As this condition was not acceptable to Balaramiah Chetty the transfer order was issued to Veeranna on May, 2, 1963.

5. Lastly, the Tribunal has stated that Veeranna was under an apprehension that on account of the transfer he would be deprived of a special allowance of Rs. 20 which was payable to him under the Desai award. There is no substance in this point, because the Bank has said that Veeranna was posted as a Clerk at Banganpalli in the same scale of pay and was entitled to the same allowance as he was drawing at Vijayawada. It is also stated by the Bank's witness before the Tribunal that Veeranna would be paid Rs. 20 allowance even at Banganpalli.

6. Having analysed the evidence in this case, we are of opinion that the finding of the Tribunal that the transfer of Veeranna is mala fide is not supported by any evidence and it is, therefore, perverse and defective in law. There is no doubt that the Banks are entitled to decide on a consideration of the necessities of banking business whether the transfer of an employee should be made to a particular branch. There is also no doubt that the management of the Bank is in the best position to judge how to distribute its employees between the different branches. We are, therefore, of opinion that Industrial Tribunals should be very careful before they interfere with the orders made by the Banks in discharge of their managerial functions. It is true that if an order of transfer is made mala fide or for some ulterior purpose, like punishing an employee for his trade union activities, the Industrial Tribunals should interfere and set aside such an order of transfer, because the mala fide exercise of power is not considered to be the legal exercise of the power given by law. But the finding of mala fide should be reached by Industrial Tribunals only if there is sufficient and proper evidence in support of the finding. Such a finding should not be reached capriciously or on flimsy grounds as the Industrial Tribunal has done in the present case. This view is borne out by the decision of this Court in *Bareilly Electricity Supply Co. Ltd. v. Sirajuddin*, (1960) 1 Lab LJ 556 (SC).

7. For these reasons we allow this appeal and set aside the order of the Industrial Tribunal dated January 18, 1964 and hold that transfer of Veeranna from Vijayawada to Banganpalli was justified and the issue referred to the Industrial Tribunal should be answered in favour of the Bank. There will be no order as to costs.