
(2016) 10 MEG CK 0005

In the Meghalaya High Court

Case No : Writ Petition (C) No. 186 of 2015 & MC (WPC) No. 151 of 2015

Abdul Baten Prodhani

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 06-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLT 437

Hon'ble Judges : Ved Prakash Vaish, J.

Bench : Single Bench

Advocate : Mr. K. Barua and Mr. A.G. Momin, Advocates, for the Respondents;
Mr. N. Syngkon, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Ved Prakash Vaish, J.(Oral) - The petitioner, Shri Abdul Baten Prodhani has assailed order dated 2nd July, 2015 passed by Sub-Divisional School Education Officer, Dedanggre, West Garo Hills District, Meghalaya whereby the petitioner was transferred from Haripur Government L.P. School to Diiapguri Government L.P. School.

2. Shorn of unnecessary details, the case of petitioner is that he was appointed as L.P. School teacher vide Order No. 764, dated 10th November, 1989. The petitioner is working as assistant teacher in Haripur Government L.P. School, Dedanggre, West Garo Hills District, Meghalaya. The petitioner received letter dated 30th April, 2015 from the office of Sub-Divisional School Education Officer, Dedanggre, West Garo Hills District, Meghalaya to show cause regarding negligence of duty and the petitioner sent his explanation on 2nd May 2015. Thereafter, the petitioner received the impugned order dated 2nd July, 2015 whereby the petitioner has been transferred from Haripur Government L.P. School to Dhapguri Government L.P. School which is against the principle of natural justice.

3. The respondents have contested the petition and filed counter affidavit. Respondent No. 3 has also filed counter affidavit.

4. I have heard the learned counsel for both the parties and carefully perused materials on record.

5. The scope of judicial review of transfer under Article-226 of the Constitution of India has been settled by the Hon"ble Supreme Court in view of the decisions of *Rajendra Roy v. Union of India & Anr.* (1993) 1 SCC 148, *National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan & Anr.* (2001) 8 SCC 574 and *State Bank of India v. Anjan Sanyal & Ors.*, (2001) 5 SCC 508. The principle of law unfold in the aforesaid decisions is that an order of transfer is a part of service conditions of an employee and 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 malafide or that the service rules prohibit, such transfer or that the authorities, who issued the orders, were not competent to pass the orders.

6. In the case of *B. Varadha Rao v. State of Karnataka & Ors.* AIR 1986 SCC 1955, their Lordships of the Apex Court laid down as follows:

"4 We agree with the view expressed by the learned Judges that transfer is always understood and constructed as an incident of service. The words "or other conditions of service" in juxtaposition to the proceeding words "denies or varies to his disadvantage his pay, allowances, pension" in R. 19 (1) (a) must be constructed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the Government servant and some disadvantage touching his pay, allowances, pension, seniority, promotion, leave, etc. It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service of his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, I non-transferable post"

7. In case *State of Punjab & Ors. v. Joginder Singh Dhatt* AIR 1993 SC 2486, the Apex Court held as under:

"3. We have heard learned counsel for the parties. This Court has time and again expressed its disapproval of the courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice is caused."

8. In case N.K. Singh v. Union of India & Ors. (1994) 6 SCC 98, Hon''ble Supreme Court observed as under:

"23. Transfer of a Government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subjects to the limited judicial scrutiny indicated."

9. In Abani Kanta Ray v. State of Orissa & Ors. (1995) Supp (4) SCC 169, Hon''ble Supreme Court held as under:

"10. It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer.(See N.K. Singh v. Union of India)."

10. In the case of Mrs. Shilpi Bose & Ors. v. State of Bihar & Ors., AIR 1991 SC 532, their Lordships of Hon''ble Supreme Court has laid down as follows:

"4. In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer order are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer order issued by the Government and its subordinated authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

11. In the case of Rajendra Singh & Ors. v. State of Uttar Pradesh & Ors. (2009) 15 SCC 178, Hon''ble Supreme Court observed:

"8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is

liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see State of U.P. v. Gobardhan Lal, SCC P. 406, para 7)."

12. In the instant case, the petitioner was appointed as teacher on 10th November, 1989. It is stated by learned counsel for both the parties that the petitioner is working as assistant teacher in Haripur Government L.P. School since 30th April, 1993. The petitioner has been transferred after about 22 (twenty two) years from Haripur Government L.P. School to Dhappuri Government L.P. School. It is not the case of petitioner that there was any malafide or the officer who passed the impugned order was not competent.

13. In my considered view, the petitioner has not made out any case to interfere in exercise of extraordinary jurisdiction under Article-226 of the Constitution of India.

14. As a result of above discussion, the writ petition fails, same deserves to be dismissed and the same is hereby dismissed. There is no order as to cost.

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The application is dismissed as infructuous.