

(2016) 08 GAU CK 0005
In the Gauhati High Court
Case No : WP(C) No. 1672 of 2016.

Akbar Hussain Mazumder - Petitioner @HASH State of Assam and Others

Date of Decision : 02-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 GauLJ 54 : (2016) 4 GauLT 899 : (2016) 5 NEJ 508

Hon'ble Judges : Manojit Bhuyan, J.

Bench : Single Bench

Advocate : Mr. J.I. Borbhuiya, Advocate, for the Petitioner; Mr. H. Buragohain and Mr. D. Das, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Mr. Manojit Bhuyan, J. - Heard Mr. J.I. Borbhuiya, learned counsel for the petitioner as well as Mr. H. Buragohain, learned counsel representing the Public Works Department. Mr. D. Das, learned senior counsel represents the private Respondent No.6.

2. Challenge is made to the Notification dated 01.03.2016 issued under the hand of the Deputy Secretary to the Government of Assam, PWRD, Estt. (B) Branch. The said Notification dated 01.03.2016 pertains to transfer of the petitioner, who is an Assistant Engineer (C), PWD from Katigorah Rural Road Sub-Division under Silchar Rural Road Division to Karimganj Rural Road Division, in the same capacity vice the private Respondent No.6 herein. The said Notification dated 01.03.2016 also pertains to the transfer of the Respondent No.6, who is also an Assistant Engineer (T/C), PWD from Karimganj Rural Road Division to Katigorah Rural Road Sub-Division, vice the petitioner herein.

3. The transfer order contained in the Notification dated 01.03.2016 is questioned primarily on two counts. The petitioner submits that he has not completed three years at Katigorah Rural Road Sub-Division and, as such, his transfer without the approval of the Chief Minister, cuts at the root of the transfer order. The second ground urged is that the transfer order was issued at the instance and request of a Member of the Legislative Assembly (MLA) and not for

any other reasons whatsoever. The petitioner contends that the said order having been passed at the dictate of the MLA is, therefore, not in exigency of service or in public interest.

4. Mr. H. Buragohain counters the first argument by submitting that in terms of the Office Memorandum dated 06.08.2013 (Annexure-5), amendment has been made to the earlier Office Memorandum by making it clear that approval of the Chief Minister would be required to be obtained only for transfer of any officer who has not completed two years in a particular place of posting, instead of three years. Mr. Buragohain also submits that records would reveal that the petitioner has been serving in Cachar District since the year 2012. Also, in view of the fact that the petitioner is irregular in attending office and negligent in performing his duties, there has been public resentments and various complaints have also been lodged against the petitioner.

5. Mr. D. Das, learned senior counsel submits that, as would be apparent from the Notification dated 01.03.2016, both the petitioner as well as the Respondent No.6 were transferred in the interest of public service. Mr. Das also submits that even if the transfer order had been occasioned at the instance of a Member of the Legislative Assembly, that by itself would not vitiate the transfer order. It is submitted that it is the duty of the representative of the people to express the grievances of the people and on the face of complaints against the petitioner, the State respondent is well within its jurisdiction to cause transfer of an employee. In this respect, Mr. Das relies upon the case of Mohd. Masood Ahmad v. State of U.P. & Ors., reported in (2007) 8 SCC 150.

6. I have heard the learned counsels for the parties.

7. The Records in original as produced by Mr. Buragohain is also perused. File No.RBEB.50/2013 contains the letter of the MLA, addressed to the Commissioner & Special Secretary, PWD (Roads), which letter is dated 17.02.2016. The contents of the said letter goes to show that the Commissioner & Secretary, PWD (Roads) was apprised of the fact that there were lots of public complaints received against the petitioner and the progress of the departmental works are not satisfactory. Request was made to transfer him from Katigorah Sub-Division to any other place for the greater interest of the public. By the same letter, another request was made that one Mr. Chamed Ali (Respondent No.6) herein, working as Assistant Executive Engineer (T/C), PWD at Karimganj Rural Road Division, Karimganj be posted as the Assistant Executive Engineer at Katigorah Rural Road Sub-Division vice the petitioner. On the basis of the said letter of the MLA dated 17.02.2016, a Note was put up to the Under Secretary/Deputy Secretary (E) informing about the letter received from the MLA of Katigorah Constituency as well as the request made by the MLA to transfer the petitioner vice the Respondent No.6 herein. In turn, the Under Secretary/Deputy Secretary (E) put up a Note to the Commissioner & Special Secretary, PWRD of the request made by the MLA of Katigorah Constituency for transferring the Respondent No.6 to Katigorah Rural Road Sub-Division against the petitioner herein. Thereafter,

the Commissioner & Special Secretary, PWRD put up a Note to the Minister, PWD, reiterating the request for transfer made by the MLA. Eventually, the Private Secretary to the Minister, PWD put up a Note, which was approved by the Minister concerned on 01.03.2016.

8. Notings in the Record of File No.RBEB.50/2013 apparently shows that transfer of the petitioner and that of the Respondent No.6 was initiated at the instance of the MLA of Katigorah Constituency. The said request was passed through various authorities until it reached and received the attention of the Commissioner & Special Secretary, PWRD and that of the Minister of the concerned department. What is of utmost significance is that the Commissioner & Special Secretary, PWRD only reiterated the basic facts appearing in the Notes earlier put up by his subordinate authorities showing the request that had been made by the MLA of Katigorah Constituency.

9. A perusal of the Records do not show any independent assessment made by the Commissioner & Special Secretary, PWRD as regards any complaint filed against the petitioner. On the facts above, the point for determination is whether the Notification dated 01.03.2016 was issued solely at the behest and direction of the MLA concerned or whether there was any independent exercise undertaken by the Commissioner & Special Secretary, PWRD. Another point that would require determination is whether the transfer order issued at the initiative of the MLA concerned was arbitrary and removed from any element of public interest.

10. This Court is alive to the parameters governing the concept of transfer and the parameters within which this Court is to test the legality and validity of a transfer order. If any element of arbitrariness is found in the issuance of the transfer order, certainly this Court is empowered to cause interference in the said transfer order.

11. On the above touch-stone, notice is now had to the case in *The Purtabpore Co. Ltd. v. Cane Commissioner of Bihar & Ors.*, reported in (1969) 1 SCC 308. In the said case, a question arose as to whether the Cane Commissioner while exercising his power, as conferred upon him, can abdicate his responsibility and/or to allow even the Chief Minister to interfere with the function of the Cane Commissioner. The Apex Court held that although in certain cases, authority be obliged to take into consideration the policy of a Minister, however, the same will not absolve the Executive Officers from their duty to exercise their personal judgment in individual cases.

12. What appears from the facts above, more so from the Notings in the File No.RBEB.50/2013, is that the order of transfer was set in motion only at the instance of the MLA concerned. Under no circumstances, the said order of transfer can be termed as a valid exercise of power, uninfluenced by any opinion of any other authority including the MLA concerned. The interference by the MLA and the resultant effects strikes at the root of the Notification dated 01.03.2016.

Also important to note, the Notings in the aforesaid File do not show any independent application of mind and/or the ground realities that the Commissioner & Special Secretary, PWRD was required to satisfy itself from his own personal judgment in the matter. What had been done is only a reiteration of the Notes put up by his subordinate authority, which he had only passed on to the Minister concerned.

13. The facts above clearly shows arbitrariness on the part of the State respondents in issuing the Notification dated 01.03.2016. The element of public interest is singularly absent. Each case being an authority for what it actually decides, reliance placed in Mohd. Masood Ahmad (supra), does not come to the aid of the Respondent No.6.

14. The only conclusion that can be drawn is that the Notification dated 01.03.2016 cannot be sustained, being illegal and arbitrary and liable to be set aside, which is accordingly done.

15. In view of the above, this writ petition stands allowed by setting aside the Notification dated 01.03.2016 (Annexure-4) to the writ petition. No cost.