
(2015) 09 MEG CK 0006
In the Meghalaya High Court
Case No : Writ Petition (C) No. 176 of 2015

Alice John

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : (2015) 09 MEG CK 0006

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : S. Banik, for the Appellant; N. Mozika, CGC, Advocates for the Respondent

Final Decision : Disposed off

Judgement

T. Nandakumar Singh, J—S. Banik, learned counsel for the petitioner and Mr. N. Mozika, learned CGC appearing for the respondents.

2. By this writ petition, the petitioner is assailing the impugned transfer and posting order dated 26.06.2015, under which the petitioner had been transferred from ARCH (Sukhovi) to 28 AR (Lunglei). It is fairly settled that transfer is an incidence of service, the court, normally, does not interfere with the transfer and posting order inasmuch as it is the authority to decide where the employee is to be transferred and posted. However, the Court interferes the transfer and posting order (i) when the transfer order was issued in violation of the rules; (ii) when the transfer order seriously affect the career of the employee; (iii) when the transfer order was issued as a punishment and; (iv) when the transfer order had been issued with mala fide. Some of the cases regarding transfer and posting of the employees decided by the Apex Court are mentioned hereunder:-

" State of Haryana and Others Vs. Kashmir Singh and Another etc. etc., (2010) 127 FLR 728 : (2010) 11 JT 148 : (2010) 13 SCC 306 : (2011) 1 SCC(L&S) 376

12. Transfer ordinarily is an incidence of service, and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal in

particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the State authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation. The administrative authorities concerned may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well settled that courts must not ordinarily interfere in administrative matters and should maintain judicial restraint, vide *Tata Cellular v. Union of India*.

14. In our opinion, the High Court has taken a totally impractical view of the matter. If the view of the High Court is to prevail, great difficulties will be created for the State administration since it will not be able to transfer/deploy its police force from one place where there may be relative peace to another district or region/range in the State where there may be disturbed law and order situation and hence requirement of more police. Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Holmes, J. of the US Supreme Court pointed out there must be some free play of the Joints provided to the executive authorities.

The Registrar General High Court of Judicature at Madras Vs. R. Perachi and Others, AIR 2012 SC 232 : (2011) 10 JT 505 : (2011) 10 SCALE 606 : (2011) 12 SCC 137 : (2011) 12 SCR 661 : (2011) 6 UJ 3849

22. In the context of transfer of a government servant we may refer to the dicta of this Court in *N.K. Singh v. Union of India* where this Court observed as follows:

"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 the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized 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 subject to the limited judicial scrutiny indicated."

23. In *State of M.P. v. S.S. Kaurav* the Administrative Tribunal had interfered with the transfer order of the respondent and directed him to be posted at a particular place. It is relevant to note that while setting aside the order of the Tribunal this Court observed in para 4 of its judgment as follows:

"4. ... The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background or foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

24. We may mention that this Court has reiterated the legal position recently in *Airports Authority of India v. Rajeev Ratan Pandey* that

"10. In a matter of transfer of a government employee, [the] scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer."

Rajendra Roy Vs. Union of India (UOI) and Another, AIR 1993 SC 1236 : AIR 1992 SC 1236 : (1992) 6 JT 732 : (1993) LabIC 446 : (1992) 3 SCALE 218 : (1993) 1 SCC 148 : (1993) 1 SLJ 93

7.It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department."

3. After hearing the submissions of the learned counsel appearing for the parties, this Court has considered as to whether the impugned transfer order comes under one of the conditions mentioned above where the Court interfered the transfer and posting order. Mr. S. Banik, learned counsel for the petitioner by referring to para 6 of the writ petition strenuously contended that as the petitioner's son is suffering from Asthma, she (petitioner) should be posted at the place nearer to the airport or railway station so that she could immediately rush to the place where her son is staying. For easy reference, para 6 of the writ petition is quoted hereunder:-

"6. That the younger son of the petitioner is suffering from Asthma and as such in the fitness of things the petitioner took a call and had both her sons admitted in respective hostels in Kerala. Presently, the elder son of the petitioner is a Hostel Boarder in the district of Kollam in Kerala and is pursuing studies in B.Com. (IIIrd Year). The younger son of the petitioner is the student of Mar Dionysius Higher Secondary School at Mallappally in Kerala. The younger son of

the petitioner is the student of standard 11th."

4. In para 10 of the writ petition it is stated that the petitioner had been informed verbally that the petitioner had been transferred under the impugned transfer order dated 26.06.2015. In para 10 of the writ petition, nothing had been mentioned as to whether the petitioner had been furnished with the copy of the impugned transfer order dated 26.06.2015 or not. In the course of hearing of the present writ petition, the learned counsel for the petitioner strenuously contended that the copy of the impugned transfer order dated 26.06.2015 had not been furnished to the petitioner.

5. The respondents had filed affidavit-in-opposition wherein, the respondents had categorically stated that the petitioner had already received the copy of the transfer order dated 26.06.2015 and the petitioner had issued the acknowledgment dated 30.06.2015 for receiving the impugned transfer order dated 26.06.2015. The copy of the acknowledgement dated 30.06.2015 is available at Annexure-VI to the affidavit-in-opposition, which reads as follows:-

"ARCH/A/2015/

Dated: 30 Jun. 2015

SERVICE NOTE POSTING OF PARA MEDICAL STAFF

I 5330009 ANM Smt. Alice John was informed by office of the DIG (Med Supdt) about my posting to 28 AR on 30 Jun 2015.

Sd/- (Smt. Alice John) ANM ARCH"

6. This Court vide order dated 19.08.2015 passed in this present writ petition had directed the learned counsel for the respondents to seek instructions and produce the file to show as to whether on earlier occasions also, the petitioner has taken such plea like ailment of her son to seek cancellation of transfer order. In compliance of the said order of this Court dated 19.08.2015, Mr. N. Mozika, learned CGC appearing for the respondents had produced the service profile of the petitioner. This Court also perused the service profile of the petitioner and on such perusal, it is clear that on earlier 4 (four) occasions the petitioner had been transferred and posted at her request. For easy reference, the service profile of the petitioner produced by Mr. N. Mozika, learned CGC appearing for the respondents is quoted hereunder:-

"SERVICE PROFILE IN RESPECT OF No. 5330009 MRS ALICE JOHN, ANM OF ASSAM RIFLES COMPOSITE HOSPITAL, SHUOKHUVI, NAGALAND.

7. It is also well settled law that the employee has no right to be posted at the place of his/her own choice. However, taking into consideration of the plea taken by the petitioner in the present writ petition that her son is suffering from Asthma and her service is required, the respondents are directed to consider and dispose of the representation filed by the petitioner dated 02.07.2015 with human touch by passing a reasoned order within a period of four weeks from the

date of receipt of a certified copy of this judgment and order.

8. With the above observations and directions, this writ petition is disposed of.