
(2018) 12 GAU CK 0041
In the Gauhati High Court
Case No : Writ Appeal No. 319 Of 2018

Arpana Sarkar

APPELLANT

Vs

State of Assam and ors

RESPONDENT

Date of Decision : 14-12-2018

Acts Referred:

Citation : (2018) 12 GAU CK 0041

Hon'ble Judges : Ajjikuttira Somaiah Bopanna, CJ; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : N. Haque, D. Saikia, B. Gogoi, P. Mahanta

Final Decision : Disposed Off

Judgement

A.S. Bopanna, CJ.

1. Heard Mr. N. Haque, learned counsel for the appellant and Mr. D. Saikia, learned Senior Additional Advocate General, Assam, appearing for the State respondents.

2. The petitioner in WP(C) No.167/2018 with WP(C) No.461/2018 is before this Court in this intra Court appeal. The learned Single Judge having considered the matter in its entirety, has, through the order dated 12.10.2018, dismissed the writ petition thereby vacating the interim order dated 12.01.2018 passed in WP(C) No.167/2018. With the dismissal of WP(C) No.167/2018, WP(C) No.461/2018 was disposed of as infructuous. In that view, the order of transfer dated 05.01.2018 came to be upheld by the learned Single Judge.

3. The learned counsel for the appellant, while assailing the order passed by the learned Single Judge, would seek to contend that the learned Single Judge has failed to notice that the order of transfer is punitive in nature, more particularly, keeping in view the averments that had been put forth in the affidavit-in-opposition to the writ petition, wherein the respondents contended that the petitioner, the appellant herein, was found to be arrogant, unhelpful, having

uncalled for behaviour, harassing public, etc. In that view, he contends that the order of transfer would attach a stigma to the appellant and, therefore, the order calls for interference. Hence, he contends that the order passed by the learned Single Judge is liable to be set aside and consequently, the order of transfer dated 05.01.2018 is also liable to be set aside.

4. The learned Senior Additional Advocate General, Assam, would, however, refer to the very aspects of the matter and, while arguing the appeal, has also placed before us the original records to indicate the nature of consideration that was made before the order of transfer dated 05.01.2018 was issued. In that light, it is contended that the learned Single Judge, having appreciated these aspects of the matter and also having kept in view the legal aspects by referring to the decisions which were cited before the learned Single Judge, has arrived at his conclusion. Hence, he contends that neither the order passed by the learned Single Judge nor the impugned order of transfer calls for interference.

5. In the light of the above, we have perused the appeal papers as also the records produced before us during the time of hearing. It is, no doubt, true that in the instant case, in the course of the proceeding before the learned Single Judge, it was indicated in the affidavit-in-opposition that the respondents had taken the decision to transfer the appellant before the period of tenure was over for the reason that several complaints had been received against the appellant herein. In that background, what is necessary to be determined by us is as to whether in that circumstance the order of transfer should be held to be punitive in nature attaching a stigma on the appellant or as to whether the order, as it appears, would be justified in law.

6. In that regard, we notice that the order of transfer dated 05.01.2018 is at Annexure-C to the petition. A perusal of the same does not indicate the allegations that have been made against the petitioner in the affidavit-in-opposition filed in the writ petition. Hence, on the face of it, the notification dated 05.01.2018 does not cast any stigma but has been made in a routine manner, where the transfer order was required to be made in public interest.

7. Having taken note of this aspect, what will also be relevant to take note is whether in view of the allegations made with regard to the conduct of the appellant in the affidavit-in-opposition, the transfer order can be regarded as punitive in nature. In that background, what we notice is that with regard to the allegations against the appellant, who is a Treasury Officer, it was indicated that there were several complaints and in that regard, a letter was addressed by the Chief Executive Member on 13.12.2017 to the Hon'ble Finance Minister. In that background, a discrete enquiry was held. In the process of enquiry, it was noticed that there were several complaints against the appellant. Though the appellant had denied such misdemeanour on her part, those aspects would arise for consideration, if ultimately, the respondents take steps to initiate a detailed enquiry into the matter.

8. However, taking into consideration the very nature of the complaints, where the citizens of the area were being exposed to hardship due to the conduct of the appellant, even if the same are taken to be only as allegations for the present, the immediate need would have been to shift the officer from the said place and thereafter to proceed with the matter in accordance with law. Therefore, if these aspects of the matter are kept in view and a reference is made

to the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Janardhan Debnath and another reported in (2004)2 SC 162, the transfer order cannot be held to be punitive. In paragraph 13, the Hon'ble Supreme Court in Janardhan Debnath (supra) has held as hereunder:-

"13. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

9. Hence, we are of the opinion that in the present facts, the order of transfer passed can neither be held as contrary to law nor would the same cast any stigma on the appellant at this point in time as no allegations are depicted in the order. Even if the veil is pierced, we do not find it as punitive for the reasons stated supra. Therefore, we find no reason whatsoever to interfere with the order passed by the learned Single Judge as well as the impugned transfer order.

10. The appeal, accordingly, being devoid of merit, stands disposed of.