
(1998) 08 GAU CK 0008

In the Gauhati High Court

Case No : Civil Rule No's. 257 and 258 of 1998

Aswini Kumar Sinha and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 12-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 3 GLT 442

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : D.B. Sengupta and C.S. Sinha, for the Appellant; U.B. Saha, G.A., for the Respondent

Judgement

D. Biswas, J.—By this common judgment Civil Rule No. 257 of 1998 and Civil Rule No. 258 of 1998 are proposed to be disposed of at the stage of Motion.

2. Mr. U.B. Saha, learned Government Advocate accepted notice on behalf of the Respondents in both the cases. Mr. D.B. Sengupta and Mr. C.S. Sinha, learned Advocates appeared for the Petitioners. I have heard the argument advanced by all of them.

3. The Government of Tripura formulated guidelines in respect of special privilege in the matter of transfer of office bearers of recognised associations Vide Memorandum No. 23 (24)-GA/93 dated 28.2.1994. The Petitioner in Civil Rule No. 257 of 1998 is the Treasurer of State Committee of the Tripura Employees' Action Committee, a constituent body of all Tripura Employees Federation and the Petitioner Shri Sanjib Kar of Civil Rule No. 258 of 1998 is the General Secretary of All Tripura Employees' Federation, Khowai Sub-Division. It is alleged that they have been transferred in violation of the provisions of the said guidelines. In both these writ petitions, the validity of the transfer orders of the writ Petitioners have been challenged on the ground that the transfer orders were issued without obtaining prior approval of the concerned departmental Ministers.

4. Mr. U.B. Saha, learned Government Advocate referring to the memo, dated 28th February, 1994 (Annexure-5), submitted that the relevant provisions in this regard does only provide for transfer of the office bearers holding the rank of President or Chairman, Secretary General or General Secretary, Treasurer or Cashier with the approval of the departmental Minister. Mr. Saha, further argued that this provisions available only to the state level and sub-Divisional level office bearers of any recognised association or its constituent unit. Referring to explanation 1 and 2, he further elaborated that a state level association or its constituent based at Agartala shall be entitled to this benefit only in respect of three office bearers while its Sub-Divisional unit (including constituent units) may claim this special privilege only in respect of two, According to him , Tripura Employees" Action Committee is a constituent body of All Tripura Employees" Federation and as such, this special privilege having been granted to the parent body, the office bearers of a constituent unit such as All Tripura Employees" Action Committee cannot claim this benefit in addition to what has been extended to the Apex body. Although this argument has not been advanced in respect of Tripura Employees" Federation, it has, however, pointed out that the transfer orders of the Petitioners have been approved by the concerned Ministers. Mr. Saha has also produced the original file which shows that the concerned Ministers accorded ex-post-facto approval to the transfer of the Petitioners.

5. The common question, therefore, arises whether the transfer orders of both the Petitioners have been issued flouting the provisions of para 1 of the guidelines of the Government policy. Para 1 of the guidelines reads as follows:

1. The undersigned is directed to state that henceforth, 3 (three) state level office bearers, by designation and (two) Sub-Division level office bearers, by designation of any recognised employees association or its constituent unit shall be given special privilege in the matter of transfer to the extent that their transfers, when warranted by administrative requirements, shall be issued only with the approval of the departmental Minister concerned.

6. After going through the writ petitions and the documents placed I find that the transfer orders of both the Petitioners have been initially issued without approval of the Ministers concerned. However, ex-post-facto approval of the Ministers was taken later on. The omission, in my opinion, to issue the transfer orders without prior approval of the Ministers concerned is a mere irregularity and it is not incurable. This irregularity in the administrative action crept in and continued till the approval of the Minister was obtained. As soon as the concerned Minister accorded his approval, the defect is removed and the order of transfer becomes enforceable. A rigid approach without reserving any scope for inbuilt flexibility to cure such administrative error will serve no purpose as the power to transfer an employee is inherent with the Government which can be exercised at any time with prior approval. Therefore, it cannot be said conclusively that the omission on the part of the transferring authority to obtain prior approval of the Minister has

created an irreversible situation prohibiting transfer of the Petitioners in perpetuity. This omission is an administrative error curable ex-post-facto by obtaining approval of the departmental Minister. In the case at hand, the defect having been cured by obtaining approval of the Ministers at a subsequent stage, there remains no scope to interfere with the impugned orders.

7. In *Union of India and Others Vs. S.L. Abbas*, in para 7 the Apex Court held as follows:

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it, while ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

In *State of Punjab and others Vs. Joginder Singh Dhatt*, the Apex Court set aside the order of the High Court vide which the transfer order of the Respondent was quashed by the High Court on the ground that it was contrary to the instructions and mid-term transfer within two years of the superannuation. Setting aside the said order the Supreme Court held as follows:

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 Anr. . 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 Hoshiapur 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 was caused.

8. The ratio laid down above in both the cases also show that a Court shall not normally interfere with the order of transfer unless malafide is shown. In the instant case the point urged is that it was issued contrary to the provisions of the Policy framed in this matter. But the initial irregularity which crept in because of commission to obtain prior approval has set at the right by obtaining Ex-post-facto approval. That being the position, I am of the opinion that the Petitioners are not entitled to any relief in this writ petitions.

9. Scrutiny of the policy dated 28.2.1994 shows that the benefit proposed to be given is limited to three state level office bearers and two Sub-Divisional level office bearers or its constituent units. From the provisions of para 3 it would appear that a state level association is entitled to this special privilege only in

respect of three office bearers mentioned in explanation 1 and a Sub-Divisional association or its constituent unit is entitled to the special privilege only in respect of two Sub-Divisional level office bearers mentioned in explanation 2. By way of interpretation, the scope of this special privilege cannot be extended to the constituent bodies to multiply the said number.

10. From the writ petition of Civil Rule No. 257 of 1998 it would appear that Tripura Employees' Action Committee is a constituent body of All Tripura Employees' Federation. Even if this Action Committee has been given recognition by the State Government under Clause 4 (b) of Tripura Government Services (Recognition of Services Association) guidelines, 1995, this Action Committee does not cease to be a constituent unit of its parent body. Therefore, the Action Committee cannot claim further protection for its office bearers since its parent body has already received the benefit as per submission of the learned Government Advocate.

11. In the result, both the writ petitions are dismissed. Before parting with the record, it is considered necessary to mention that the provision in para 1 does not confer any right on the office bearers of the Associations or constituent bodies. It only requires prior approval of departmental Minister before certain categories of office bearers are transferred. The Minister concerned, therefore, has the power either to refuse or to approve of the proposed transfer. The guidelines of 1994 does not lay down any norm as to how the power of the departmental Minister is to be exercised. A State Action must not only be fair but must be accepted by all as fair. From this point of view, the Government may like to consider whether any norm should be prescribed regulating the exercise of this power of the departmental Minister. This is necessary to avoid any controversy regarding equal and impartial treatment to the different associations. It is for the State Government to determine and prescribe the norms.