
(2003) 11 GAU CK 0043
In the Gauhati High Court
Case No : Writ Petition (C) No. 5218 of 2003

Bhabendra Sharma

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 20-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 GLR 633

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : B.B. Narzary, S. Chauhan and R.S. Chauhan, for the Appellant; R.K. Bora and M.A. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—The contours of the writ power to examine the validity of a transfer order of a Government servant is the question that has surfaced once again in the present case. Specifically, the challenge is in respect of the transfer order dated 8.7.2003 transferring the writ petitioner Shri Bhabendra Sharma from the office of the Deputy Inspector of Schools at Mangaldoi to the office of the Block Elementary Education Officer at Udalgiri. By the same order, the Respondent No. 4 has been transferred to the post in which the petitioner was earlier working. Both the writ petitioner and the Respondent No. 4 are holding the post of Statistical Assistant. It must be noted, at this stage, that prior to the order dated 8.7.2003, the petitioner had been working at Mangaldoi since the month of January, 2003 pursuant to an order dated 30.12.2002 transferring the petitioner from Kalaigaon to the office of the Deputy Inspector of Schools at Mangaldoi. It must also be noticed that at the said point of time, the Respondent No. 4, though posted at Sipajhar, was temporarily attached to the office of the Deputy Inspector of Schools at Mangaldoi.

2. Mr. R.K. Bora, learned Government Advocate appearing for the official respondents, has placed before the Court the relevant file in original indicating

the manner in which the transfer of the aforesaid two incumbents was processed and finalized. Counsels for the parties had been given an opportunity to inspect the records so as to render effective assistance to the Court in resolving the controversy. The records have been duly inspected by the learned counsels and pursuant thereto, an additional affidavit has been filed on behalf of the Respondent No. 4 yesterday, i.e., 19.11.2003.

3. Unfolding the challenge made in the present case, Mr. B.B. Narzary, learned counsel for the petitioner submits that the impugned transfer order dated 8.7.2003 is in violation of the Office Memorandum dated 22.5.2002 which lays down certain norms and guidelines for transfer of Government servants. According to the learned counsel for the petitioner, the petitioner having been transferred to Mangaldoi only in the month of December, 2002/January, 2003, there must be sufficient and cogent reasons for re-transferring the petitioner within a span of six months. Learned counsel has submitted that the records, produced by the learned Govt. Advocate, does not indicate any such cogent and compelling necessity for the impugned transfer. On the aforesaid basis, an argument has been made that the impugned transfer must be understood to be for reasons extraneous and collateral and, therefore, the same would partake the character of a mala fide action warranting intervention by this Court in exercise of power under Article 226 of the Constitution.

4. The arguments advanced on behalf of the petitioner have met with stiff resistance from the learned counsel appearing for the Respondent No. 4. Mr. M.A. Choudhury, learned counsel for the said respondent, has argued that the Office Memorandum dated 22.5.2002 would not apply to the facts of the present case as by a subsequent notification dated 2.7.2003, it has been clarified that the memorandum dated 22.5.2002 would apply only to the Gazetted Government servants. Learned counsel has further submitted that the records produced would go to reveal that the impugned transfer has been made so as to facilitate medical attention and treatment which the Respondent No. 4 presently requires. It is the further submission of the learned counsel for the Respondent No. 4 that as the Respondent No. 4 is ailing and as there is a Civil Hospital at Mangaldoi, the transfer has been made to enable him to avail of medical facilities. Placing reliance on the judgment of the Apex Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, learned counsel has argued that a transfer made at the request of the incumbent in order to enable such incumbent to tide over certain difficulties, would still be a transfer in the exigencies of the administration and such transfer would not be amendable to interference under Article 226 of the Constitution. Learned counsel for the respondent, has further argued, by relying on the two decisions of the Apex Court in the case of N.K. Singh Vs. Union of India and others, and in the case of State Bank of India Vs. Anjan Sanyal and Others, to contend that the power of the writ Court to interfere with a transfer order is seriously circumscribed and the facts of the present case would not call for exercise of the limited power available. Mr. Choudhury, learned counsel for the respondent, has also argued that though interference of the writ

Court can be made in case a transfer order is proved to be mala fide, mala fide must be pleaded and proved and in the present case, the writ petitioner not having done so, on the ratio of law laid down by Division Bench of this Court in the case of Shri Nurul Amin v. State of Assam and Ors., reported in 1992 (2) GLJ 207 the present writ petition would not call for any interference at the hands of this Court.

5. Having noticed the arguments advanced on behalf of the rival parties, before embarking upon a consideration of the same, it may be apposite to notice and set out herein, what has been disclosed by the records made available.

In the year 1998, the Respondent No. 4, while serving at Sipajhar, was sent on deputation to DPEP for a period of three years. After completion of the deputation period, the Respondent No. 4 could not join at Sipajhar as the post was filled up by some other incumbent. Accordingly, orders were passed temporarily attaching the Respondent No. 4 in the office of the Deputy Inspector of Schools at Mangaldoi. The incumbent holding the post of the Statistical Assistant in the said office was put under suspension by an order dated 8.11.2001. The Block Elementary Education Officer by a letter dated 16.3.2002, suggested that against the suspension vacancy, that has occurred, the Respondent No. 4 could be posted in the office of the Deputy Inspector of Schools at Mangaldoi. No action however, was taken by the Government on that basis. Thereafter, it appears that on 20.8.2002, the Member of Parliament of Mangaldoi Constituency, had given a note to the concerned authority for the posting of the petitioner in the office of the Deputy Inspector of Schools at Mangaldoi. Again, no action was taken on the said note. The records further reveal that by order dated 30.12.2002, the suspension of the incumbent, earlier holding the post of the Statistical Assistant in the establishment of the Deputy Inspector of Schools at Mangaldoi was revoked and by another order passed on the same date, i.e., 30.12.2002, the said incumbent was transferred to Kaligaon and in his place, the writ petitioner was brought to Mangaldoi. Thereafter, on 16.2.20.03, the Member of Parliament once again submitted a note for the posting of the Respondent No. 4 in the office of the Deputy Inspector of Schools at Mangaldoi. The request of the Member of Parliament was processed in the file and it was noted in the file that though the Member of Parliament had made the request, there was no representation from the incumbent for his transfer/posting in the office of the Deputy Inspector of Schools at Mangaldoi. Thereafter, it appears that the wife of the petitioner submitted a written representation dated 24.4.2003 requesting for the posting of her husband, i.e., the Respondent No. 4, in the office of the Deputy Inspector of Schools at Mangaldoi. In the said representation, the wife of the petitioner, apart from stating that a posting at Mangaldoi would enable the Respondent No. 4 to receive requisite medical attention, also mentioned that such a posting would also help in the performance of her duties as a school teacher at Mangaldoi. Pursuant thereto, the matter was processed at different levels and it appears that, on the basis of the request made by the Member of Parliament ; the representation submitted by the wife of

the Respondent No. 4 as well as some medical certificates of the month of May, 2002 submitted to the authority, the impugned transfer was finalized.

Thereafter, the order dated 8.7.2003 was passed effecting the changes in the posting of the writ petitioner and the Respondent No. 4, as has been already noticed.

6. The power of the writ Court to interfere with the transfer of a Government servant is indeed limited but it must be clearly understood that such limitations are self-imposed and have been considered appropriate by the writ Court out of deference to the fact that the employer should normally be considered to be the best judge as to which employee should be posted at what place/station. The pronouncements of the Apex Court, a detailed reference to which would be wholly unnecessary, have made it clear that the power to interfere with a transfer made, ought to be exercised only in the event the action is mala fide or is contrary to the statutory provisions or the professed norms. In view of the fact that it is the settled position in law that the writ Court would not be inclined to interfere with an order of transfer except on the grounds mentioned above, a detailed reference or analysis of the decisions relied upon by the learned counsel for the Respondent No. 4, in this regard, would hardly be necessary. There is one aspect of the arguments advanced on behalf of the Respondent No. 4, however, which has to be addressed. The aforesaid argument would seem to suggest that in the perception of the Respondent No. 4, a mala fide transfer would only mean a transfer which is mala fide in fact. In order of transfer disclosing malice in law would be outside the purview of the writ jurisdiction, the argument advanced, however, does not merit approval in view of the decision of the Apex Court in the case of N.K. Singh (supra) relied upon by the learned counsel for the Respondent No. 4 himself. The law laid down by the Apex Court in the above case would be capable of sustaining a conclusion that, if on the scrutiny of the materials placed on record, an inference can be reached by the Court that the transfer has not been made on account of exigencies of administration, it would be within the power of the Court to strike down such all action on the ground that it is mala fide. The above conclusion also reasonably flows from the observation of the Apex Court contained in Para-86 of the decision in the case of E.P. Royappa Vs. State of Tamil Nadu and Another, where the Apex Court clearly held that, though in matter of transfer, an incumbent cannot be understood to have any legal right to remain at any place of posting, yet, the action of transferring him must be tested on the touchstone of fairness in the context of Articles 14 and 16 of the Constitution. In performing the said exercise, the Apex Court has laid down that the operative reason for the transfer, i.e., whether it was in the exigencies of administration or prompted by consideration having no relevance, are questions that would be open for examination by the Court. In view of the aforesaid, two decisions of the Apex Court, it will be difficult to concede to the argument advanced on behalf of the Respondent No. 4 that the examination of whether the transfer order is vitiated by mala fide, must be confined to the limitations that the learned counsel for the respondent would like to this Court to impose.

7. Having addressed the aforesaid question, this Court now has to turn to the facts of the case as revealed by the records, in order to determine whether the transfer order, impugned in the present case, would be vitiated by mala fide as has been understood by this Court in the preceding paragraph. That the Respondent No. 4 was suffering on account of certain ailments in support of which medical certificates were produced, has to be accepted. Such suffering of the Respondent No. 4, as evident from medical certificates, however, pertain to the month of May, 2002 and though at that point of time, there was, possibly, a vacancy in the post of Statistical Assistant in the office of the Deputy Inspector of Schools at Mangaldoi and though requests were made to post the Respondent against the said post, no action was taken by the State authorities. The post, therefore, remained vacant until it was, filled up by the writ petitioner pursuant to his transfer made by order dated 30.12.2002. Thereafter, it appears, that the local Member of Parliament, again put in a request on 16.2.2003, for posting the petitioner, against the post in which the petitioner was working. A representation was also filed by the wife of the petitioner and acting on the basis of the aforesaid two documents, including the medical certificates made available, the impugned order of transfer was resorted to. The things in the file clearly suggest that the request of the local Member of Parliament was the prime reason for the impugned transfer. The recommendation of the local Member of Parliament, however, does not indicate that the request/recommendation to the posting of the Respondent No. 4 was made on medical grounds. Though a valiant attempt, both on the part of the official respondents and the Respondent No. 4 has been made to contend that the transfer was really made to enable the Respondent No. 4 to avail of the medical facilities at Mangaldoi, the records do not bear out the said contention. It is incomprehensible that the medical reports indicating some ailments of the Respondent No. 4 in the month of May, 2002 could have formed the basis of a rational decision taken in the month of July, 2003 to transfer the said Respondent No. 4. In the absence of any other rational and reasonable basis for the impugned transfer, as evident from the materials recorded in the file, this Court is left with the irresistible impression the impugned transfer has been made for reasons collateral and extraneous, perhaps, to help the Respondent No. 4. Such a transfer cannot be understood to be in the interest of administration or for reasons connected thereto.

8. For all the aforesaid reasons, I am inclined to interfere with the impugned order dated 8.7.2003. This writ petition, therefore, stands allowed by setting aside the impugned order of transfer dated 8.7.2003.