
(2000) 09 CAL CK 0018
In the Calcutta High Court
Case No : W.P.S.T. No. 563 of 2000

Birendra Nath Barman

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 ILR (Cal) 90

Hon'ble Judges : Satyabrata Sinha, J;Pratap Kumar Ray, J

Bench : Division Bench

Advocate : Milan Chandra Bhattacharjee and Uttam Kumar Bhattacharyya, for the Appellant; M.C. Das, Chandra Sekhar Das and Atasi Gupta, for the Respondent

Final Decision : Allowed

Judgement

Satyabrata Sinha, J.—The Petitioner in this application has, inter alia, questioned an order dated May 19, 2000 passed by the West Bengal State Administrative Tribunal in Q.A. No. 1850 of 1999 whereby and where-under the application filed by the Petitioner questioning an order of transfer dated December 22, 1998, in terms whereof the Petitioner was posted as District Inspector of Schools (P.E.) from the post which he had been holding, namely, the District Inspector of Schools (S.?.) was dismissed. By pur order dated September 20, 2000. We directed the State to produce the records of the case. The matter came up for hearing but the records could not be produced.

2. Mr. M.C. Das, learned Counsel for the Respondent thus now produced the records. A bare perusal of the said records would show that the allegation made by the Petitioner to the effect that the order of transfer had been passed owing to the representation made by the A.B.T.A. as would appear from annex. "L" to the application appears to be correct as not only the same has been considered by the authority but even Sri. Kanti Biswas, Hon''ble Minister, Secondary, Primary and Madrasa Education has opined and directed:

I think, we may now transfer the District Inspector of Schools (S.E.), Midnapore to the post of District Inspector of Schools (P.E.), Midnapore.

3. The said order was passed on March 3, 1998, which bears signatures of various authorities. Only pursuant to or in furtherance of the aforementioned opinion of the Hon"ble Minister, the impugned notification has been issued. It is well settled principle of law that a statutory authority must apply his mind while passing an order wherefore he alone is entitled.

4. Transfer may be an incidence of service and not a condition of service but in a case of this nature where the Petitioner alleges that an administrative order has been passed on extraneous consideration, the learned Tribunal, in our opinion ought to have taken into consideration that aspect of the matter. An administrative order can be subjected to judicial review, inter alia, on the ground that the same has been passed on extraneous consideration or at the behest of some persons who have no statutory role to play in the matter.

5. It is contended by Mr. Das, learned Counsel for the Respondent that this aspect of the matter has not been placed before the learned Tribunal as the same was not the subject-matter of the original application. It may be so. It is apparent from the order of the learned Tribunal itself that the records had not been produced by the State which ought to have been done having regard to the nature of allegations made by the Petitioner.

6. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India must see that the Government is run by rule of law and not rule of men. If such type of arbitrariness is allowed to have its role even in the matter of transfer of an officer, the democracy will be at its peril. If there had been some allegations against the Petitioner, the same should have been enquired into but only on the basis of mere allegation of an Association, no order of transfer could have been passed which apparently was done by way of or in lieu of penalty. The aforementioned fact is evident as the Petitioner was directed to assume the charge of District Inspector of Schools (P.E.) although he had been holding the posted District Inspector of Schools (S.E.). Technically two posts may be equal in rank but as has been submitted by the learned Counsel for the Petitioner that the status in relation to the two posts are different. In the aforementioned situation, it does not lie in the mouth of Mr. Das, learned Counsel for the Respondent that the aforementioned contention had not been raised before the learned Tribunal. The Petitioner had no opportunity to raise the aforementioned contention as he could not have known that the impugned order of transfer had been passed at the behest of the Hon"ble Minister which could only be detected by us upon looking into the record and not prior thereto.

7. For the reasons aforementioned, we are of the opinion that the impugned order of transfer cannot be sustained. The judgment and order passed by the learned Tribunal as also the order of transfer dated December 22, 1998, are quashed.

8. The appropriate authority may, however, apply his mind without being influenced by the allegations made by the A.B.T.A. as also by the observation made by the Hon"ble Minister and pass an appropriate order of transfer. The Petitioner is allowed to join his post.

9. This application is allowed with the aforementioned direction but in the facts and circumstances of this case, there will be no order as to costs.

Pratap Kumar Ray, J.

10. I agree.