
(2014) 09 MAN CK 0021

In the Manipur High Court

Case No : Writ Petition(C) No. 606 of 2014

David Tulzathang

APPELLANT

Vs

The State of Manipur

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : (2014) 09 MAN CK 0021

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J

Bench : Single Bench

Advocate : M. Hemchandra, Advocate for the Appellant; Mani, Sr. Advocate and K. Jagat, G.A, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Laxmi Kanta Mohapatra, C.J.—The petitioner, in this writ application, challenges the legality of the order dated 2.8.2014 in Annexure-A/5 in which he has been transferred and posted as in-charge Joint Director (Planning) in the Directorate of Education (S), Manipur as well as for quashing Annexure-A/10 dated 8.8.2014 in which the respondent No. 4 has been allowed to function as in-charge Z.E.O. Zone-III, Thoubal.

2. Brief facts of the case are that the petitioner, while working as Z.E.O., Churachandpur, was transferred as ZEO Zone III, Thoubal by an order dt. 3.3.2014 in Annexure-A/3. By the impugned order in Annexure-A/5 the petitioner was transferred and posted as in-charge Joint Director (Planning) in the Directorate of Education(S), Govt. of Manipur. When the order of transfer was passed on 3.3.14 transferring the petitioner from the post of ZEO Churachandpur to the post of ZEO Zone III, Thoubal, 6(six) other officers were also transferred along with the petitioner. One Kh. Amuba Singh, who was working as in-charge ZEO, Kakching, had been allowed to remain in-charge to the post of ZEO, Thoubal by the order dated 18.1.2013. When the petitioner was posted as ZEO, Thoubal, the said Kh. Amuba filed W.P. (C) No. 313 of 2014 challenging the order dt. 3.3.14 in which the petitioner had been transferred and posted as ZEO Zone-

III, Thoubal.

Notice was issued in the said writ petition on 19.5.2014 and as an interim measure it was directed that the said order dt. 3.3.14 shall not be given effect to so far as the present petitioner and Kh. Amuba Singh are concerned. During pendency of the said writ petition, the order in Annexure-A/5 was passed transferring the petitioner to the post of Joint Director (Planning) in the Directorate of Education(S), Manipur. In view of the said order in Annexure-A/5, another order was passed in Annexure-A/10 dt. 8.8.2014 permitting Kh. Amuba Singh to continue as in-charge ZEO, Thoubal. Challenging both the orders in Annexure-A/5 and A/10, this writ petition has been filed.

3. Mr. H. Hemchandra, learned counsel appearing for the petitioner assails the order of transfer in Annexure-A/5 dt. 2.8.14 on the ground that the said order was passed in intervention of the Minister of Education and in support of such submission reference was made to Annexure-A/4 (series). It was, further, contended by Shri Hemchandra, learned counsel for the petitioner that the respondent No. 4 did not have the requisite qualifications for holding the post of ZEO and accordingly he could not have been posted as in-charge ZEO Zone III, Thoubal. It was also contended that the order of transfer in Annexure-A/5 is mala fide having been directed by the Minister of Education and therefore same should be quashed.

4. Mr. Kh. Mani, learned counsel appearing for the respondent No. 4 submitted that an order of transfer can be challenged either on ground of mala fide or on ground of contravention of any statutory rules. Merely because Minister, Education directed for transfer of the petitioner to the post of Joint Director in-charge does not necessarily mean that the said order was tainted with mala fide. It was also contended that continuance of the respondent No. 4 as in-charge ZEO Zone-III, Thoubal cannot be challenged by the petitioner on the ground that he was ineligible for the post of ZEO since the said respondent No. 4 has been discharging his duties as in-charge ZEO for more than 6(six) years by now.

Mr. Jagat, learned Addl. GA appearing for the State respondents submitted that the petitioner has been transferred and posted as in-charge Joint Director (Planning) in public interest and there is no mala fide in such transfer.

5. There is no dispute that by order dt. 3.3.2014 in Annexure-A/3 the petitioner had been transferred from the post of ZEO, Churachandpur to the post of ZEO Zone-III, Thoubal. The said order of transfer was challenged by the respondent No. 4 in W.P. (C) No. 313 of 2014 before this Court and an interim order was passed on 19.5.2014 directing that the said order of transfer dt. 3.3.2014 may not be given effect to so far as the petitioner and the respondent No. 4 are concerned. There is also no dispute that during pendency of the said writ petition, another order was passed in Annexure-A/5 on 2.8.14 transferring the petitioner and posting him as in-charge Joint Director (Planning) in the Directorate of Education. Referring to Annexure-A/4(series), it was contended by

the learned counsel for the petitioner that under the orders of Minister of Education, the earlier order dt. 3.3.2014 was changed and the petitioner was transferred and posted as in-charge Joint Director (Planning). From the Annexure-A/4(series) it is clear that the Minister of Education has passed an order that in the interest of public service, the petitioner be posted as Joint Director in the Directorate of Education and suitable replacement be suggested for posting as ZEO, Thoubal. Another order has been passed by the Minister of Education on 8.8.2014 to the effect that pending posting of a regular ZEO at Thoubal, the respondent No. 4 be allowed to continue.

6. In this connection reliance was placed by the learned counsel for the petitioner on a decision of the Gauhati High Court in the case of Dr. Pranabjyoti Deka Vs. State of Assam and Others, The Division Bench of the Gauhati High Court was hearing a writ appeal against the judgment of a learned Single Judge in relation to transfer. In the said reported case the note sheets revealed that the transfer was at the behest of the Minister to accommodate another person. The Court observed that the transfer has to be in public interest and it cannot be made on extraneous consideration to seek or achieve oblique purpose which in that case was writ large. In the present case, from the Annexure-A/4(series) I find that the transfer of the petitioner as Joint Director (Planning) was not with an oblique motive or to accommodate someone as ZEO at Thoubal. As a matter of fact, the order passed on 30.7.2014 by the Minister of Education clearly shows that in the interest of public service, petitioner be posted as Joint Director in the Directorate of Education and suitable replacement should be suggested by the Department for posting as ZEO Thoubal. If the Minister had some officer in mind to be posted in place of the petitioner, he could have passed such order. Similarly on 8.8.2014 the Minister of Education also passed order to the effect that the respondent No. 4, who was in-charge of the post of ZEO, Thoubal should be allowed to continue pending posting of a regular ZEO.

I am, therefore, unable to agree with the submission of the learned counsel for the petitioner that in order to accommodate respondent No. 4, the Minister of Education had passed the above two orders.

7. Coming to the question as to whether the respondent No. 4 was eligible to continue as in-charge ZEO or not, the learned counsel placed reliance on three decisions. The first decision is the case of State Bank of India Vs. Anjan Sanyal and Others, which deals with question of transfer. The Apex Court, in the said case, held that unless the order of transfer is mala fide or prohibited by service rules or passed by incompetent authority, Court should not exercise its discretionary jurisdiction. There is no dispute with regard to the said proposition of law laid down by the Apex Court in the above cases. The second case relied upon by the learned counsel for the petitioner is the case of Government of A.P. and Another Vs. A.V. Venugopala Rao, . The question that came up for consideration before the Apex Court, in the said case, is legality of the senior most eligible employee being kept in-charge of a promotional post pending

finalisation of seniority list. The Apex Court held that such interim arrangement has a rational and reasonable basis. The third case relied upon by the learned counsel for the petitioner is the case of Rajendra Roy Vs. Union of India (UOI) and Another, This case also relates to transfer. The Apex Court held that inference with regard to mala fide must be based on firm foundation of facts pleaded and established and not merely on insinuation and vague allegations. From the records, I find that the respondent No. 4 has been working as in-charge ZEO for more than five years by now. Moreover the petitioner, in the writ application, is interested in challenging his order of transfer. Even if the order at Annexure-A/10 is quashed and order in Annexure-A/5 is not interfered with, petitioner shall not be benefited in any way.

9. Since the petitioner has failed to establish that the order of transfer in Annexure-A/5 is a mala fide one, or that the said order of transfer is in contravention of a statutory rule, I find no reason to interfere with the said order of transfer. Writ petition, being devoid of merit, is accordingly dismissed.