
(2004) 12 RAJ CK 0038
In the Rajasthan High Court

Dr. Babu Lal Meghwal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2005) 104 FLR 1184

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—The petitioner has filed the present writ petition under Article 226/227 of the Constitution of India on 1.11.2004 against the respondents with a prayer that by an appropriate writ, order or direction the transfer order dated 30.9.2004 (Annexure 4) passed by the respondent No. 1 (Dy. Secretary, Medical and Health Department (Group-2), Government of Rajasthan, Jaipur) by which the petitioner was transferred from Rajsamand to Chhinch, District Banswara on vacant post of St. Medical Officer and judgment dated 7.10.2004 (Annexure-5) passed by the Rajasthan Civil Services Appellate Tribunal (respondent No. 4) by which appeal filed by 1 the petitioner for quashing the transfer order dated 30.9.2004 (Annexure 4) was dismissed, be quashed and set aside.

2. It arises in the following circumstances:

(i) That the petitioner was initially appointed on the post of doctor in the year 1987 at Primary Health Centre, Jeelola, District Rajsamand.

(ii) Further case of the petitioner is that lastly he was promoted on the post of Sr. Medical Officer and transferred from Primary Health Centre, Kankroli to R.C.H.O., Rajsamand in the same district vide order dated 28.8.2004.

(iii) Further case of the petitioner is that in pursuance of order dated 28.8.2004

by which the petitioner was promoted to the post of Sr. Medical Officer, the respondent No. 2 (Chief Medical and Health Officer, Rajsamand) passed the order dated 13.9.2004 (Annexure 1) whereby the petitioner was transferred to R.C.H.O., Rajsamand on the post of Sr. Medical Officer in the same district.

(iv) Further case of the petitioner is that pursuant to order dated 13.9.2004, the petitioner was relieved from Primary Health Centre, Kankroli, District Rajsamand and he joined his duties at R.C.H.O, Rajsamand on 15.9.2004. A copy of relieving order dated 15.9.2004 and joining report dated 15.9.2004 are marked as Annexures 2 and 3 respectively.

(v) Further case of the petitioner is that vide order dated 30.9.2004 (Annexure 4) passed by the respondent No. 1 (Dy. Secretary, Medical and Health Department (Gr. 2), Jaipur), the petitioner was transferred from Rajsamand to Community Health Centre, Chhinch, District Banswara alongwith 129 other doctors.

(vi) Further case of the petitioner is that he had challenged the transfer order dated 30.9.2004 (Annexure 4) by filing appeal before the respondent No. 4 (Rajasthan Civil Services Appellate Tribunal), (hereinafter referred to as the Tribunal) and the learned Tribunal vide order dated 7.10.2004 dismissed the appeal filed by the petitioner inter alia holding that there was no discrimination and mala fide on the part of the respondents in making transfer of the petitioner from Rajsamand to Chhinch, District Banswara on vacant post of Sr. Medical Officer.

(v) In this writ petition, the order dated 30.9.2004 (Annexure 4) passed by the respondent No. 1 (Dy. Secretary, Medical and Health Department (Gr. 2), Government of Rajasthan, Jaipur) by which the petitioner was transferred from Rajsamand to Chhinch District Banswara and order dated 7.10.2004 (Annexure 5) passed by the learned Tribunal (respondent No. 4) by which the appeal filed by the petitioner was dismissed have been challenged.

3. In this writ petition, the main case of the petitioner is that since on promotion, vide order dated 13.9.2004 (Annexure 1), he was posted as Sr. Medical Officer at R.C.H.O., Rajsamand and therefore his transfer from Rajsamand to Chhinch, District Banswara after a period of 16 days vide order dated 30.9.2004 (Annexure 4) should be treated as mala fide one and that order dated 30.9.2004 (Annexure 4) was passed due to political reasons and hence, the impugned order dated 30.9.2004 (Annexure 4) and order dated 7.10.2004 (Annexure 5) passed by the learned Tribunal should be quashed and set aside and this writ petition should be allowed.

4. No reply to the writ petition was filed by the respondents and it has been submitted by the learned Counsel for the respondents that since the petitioner after promotion was given first posting in the same district i.e. from Kankroli to Rajsamand, but when general transfers were made he was transferred from Rajsamand to Chhinch, District Banswara on vacant post of Sr. Medical Officer

vide order dated 30.9.2004 (Annexure 4) and therefore, there was no mala fide in issuing transfer order dated 30.9.2004 (Annexure 4) and the Tribunal has rightly dismissed the appeal vide order dated 7.10.2004 (Annexure 5) and hence no interference be called for in this writ petition and the same deserves to be dismissed.

5. Heard.

6. There is no dispute on the point that vide order dated 28.8.2004, the petitioner was promoted to the post of Sr. Medical Officer and pursuant to order dated 28.8.2004, the petitioner was promoted and transferred to R.C.H.O., Rajsamand from Primary Health Centre, Kankroli vide order dated 13.9.2004 (Annexure 1)

7. There is also no dispute on the point that Kankroli falls in Rajsamand district, in other words on promotion, initially, the petitioner was accommodated in the same district i.e. in Rajsamand district.

8. There is also no dispute on the point that through order dated 30.9.2004 (Annexure 4) as many as 129 doctors were transferred and the name of the petitioner finds place at serial No. 76 which reveals that he was transferred from Rajsamand to Chhinch, District Banswara on vacant post of Sr. Medical Officer.

9. The question for consideration is whether in the facts and circumstances, just mentioned above, the impugned transfer order dated 30.9.2004 (Annexure 4) and order dated 7.10.2004 (Annexure 5) passed by the Tribunal can be sustained or not?

10. It may be stated here that the transfer is an incidence of service whether it is expressed or not in the service Rule. Government is to run the administration and is in a better position to decide when and where an employee is to be posted and it has wide discretion in the matter. However, this power must be exercised honestly, bonafide and reasonably. It Should be exercised in public interest. If the exercise of power is based on extraneous consideration or for achieving an alien purpose or an oblique motive, it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers cannot but be held as mala fide. A transfer is mala fide when it is made not for professed purpose such as normal course or in public or administrative interest or in the exigencies of service but for other purpose that is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration that even administrative actions should be just and fair.

11. It is settled law that a transfer which is an incident of service not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norms or principle governing the transfer see *Abani Kanta Ray v. State of Orissa* 1995 (71) PLR 1134(SC).

12. It is also well settled that a transfer order which is made to accommodate

another employee is not a bonafide exercise of power. If the transfers are made in order to adjust particular persons with no reasonable basis, such type of transfers can be termed as mala fide one and liable to be quashed and set aside. The transfer will be vitiated if it is directed at- the instance of vested interests.

13. If the above principles are applied to the present case, in my considered opinion, it is neither a case of mala fide transfer nor it can be said that the transfer order dated 30.9.2004 (Annexure 4) has been passed arbitrarily in order to accommodate another person or has been passed against any breach of provisions of Rules pertaining to transfer. Since through order dated 13.9.2004 (Annexure 1), the petitioner was promoted to the post of Sr. Medical Officer and was posted in the same district, it does not mean that he has secured any vested right to remain posted in the same district. Since the petitioner was promoted to the post of Sr. Medical Officer and in general transfer vide order dated 30.9.2004 (Annexure A), if he has been transferred to a vacant post at Chhinch in District Banswara, the transfer of the petitioner cannot be said to be mala fide nor it can be said that the transfer of the petitioner has been made in order to accommodate some other person.

14. Some times it happens that when a person is promoted, then he is accommodated in the same district and when general transfers are made, that person is transferred to another place out of the district. This thing has happened in this case because when the petitioner was promoted on the post of Sr. Medical Officer, he was posted in the same district i.e. in District Rajasamand, but when general transfers were made, the petitioner was transferred to Chhinch, District Banswara on vacant post of Sr. Medical Officer and when this being the position, no mala fide can be attributed on the part of respondents in making transfer of the petitioner from Rajasamand to Chhinch, District Banswara and therefore the argument of the petitioner that since the petitioner has been transferred within a period of 16 days from district Rajasamand to Chhinch, District Banswara, therefore, his transfer should be treated as mala fide one cannot be accepted because the petitioner has been transferred by general transfer order dated 30.9.2004 by which as many as 129 doctors were transferred and he was transferred on promotion.

15. Thus, the findings recorded by the learned Tribunal are based on correct appreciation of entire evidence and material available on record and it cannot be said that the findings of the learned Tribunal are erroneous or perverse or patently unreasonable or based on no material or evidence. It also cannot be said that the learned Tribunal committed any illegality in holding the transfer of the petitioner as valid and legal. The findings of the learned Tribunal do not suffer from any basic illegality or infirmity.

16. Apart from that, under Article 227 of the Constitution of India, the High Court cannot interfere with the exercise of a discretionary power vested in the inferior Court or Tribunal, unless its findings or order is clearly perverse or patently unreasonable.

17. For the reasons mentioned above, no interference is called for with the impugned order dated 30.9.2004 (Annexure 4) and the judgment dated 7.10.2004 (Annexure 5) passed by the learned Tribunal (respondent No. 4) in exercise of the powers under Articles 226 and 227 of the Constitution of India and thus, this writ petition is liable to be dismissed.

Accordingly, the present writ petition is dismissed. No order as to costs.