

(2012) 08 CAL CK 0084
In the Calcutta High Court
Case No : Writ Petition No. 492 of 2012

Dr. S. Srinivas

APPELLANT

Vs

The Regional Centre, IGNOU, and others

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Citation : (2012) 08 CAL CK 0084

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Anjili Nag, for the Appellant; Hemraj Bahadur and Mr. Rakesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Sambuddha Chakrabarti, J.—The subject matter of challenge in this writ petition is the order of transfer dated June 22, 2012 passed by the Vice Chancellor of Indira Gandhi National Open University (for short IGNOU) transferring the petitioner from the post of Regional Director, IGNOU, Regional Centre, Port Blair, to the same post at Raghunathgunj. The petitioner's case is that in March 1998 he was appointed as Assistant Regional Director in IGNOU and while working at Jabalpur, Madhya Pradesh, he was selected for the post of Regional Director and in February, 2011, he was transferred to Regional Centre at Port Blair of the said university.

2. The petitioner has alleged that he has been transferred in violation of the transfer guidelines which has been annexed to the writ petition at Annexure P-5. The relevant portion of the said guidelines on which the petitioner has placed reliance stipulates that ordinarily a Regional Director will not be transferred before completing 5 years of his stay in a particular centre. It further stipulates that any Regional Director will be shifted on administrative reasons and whenever the exigencies of service so require.

3. These norms/procedures of transfer were recommended by a committee

appointed by the Vice Chancellor to consider the procedure for transfer of academic staff posted at the IGNOU Regional Centre and was approved by the Board of Management on March 01, 2002.

4. By filing this writ petition, the petitioner has, inter alia, prayed for a writ in the nature of certiorari quashing the order of transfer and the subsequent relieving order and a writ in the nature of mandamus restraining the respondents from transferring the petitioner from Port Blair to any other place except his home town Nagpur till or before the completion of 5 years at Port Blair.

5. Ms.Nag, the learned advocate, has relied on the case of Arvind Dattatraya Dhande Vs. State of Maharashtra and others, . The Supreme Court in that case deprecated the government's practice of demoralizing honest officers by mala fide order of transfer and found the order of transfer relevant for that case not to be in public interest. There the appellant had an unimpeachable performance of duties. The conclusion was based on this fact which obviously does not apply to the case here.

6. She has also relied on an unreported order dated June 14, 2012 passed by the Division Bench of this Court in A.K. Ghosh -vs-A & N Administration (WPCT No. 145 of 2012) wherein a teacher of a school was transferred before he completed his tenure of five years which was in violation of the guidelines governing it. The Division Bench held that the petitioner in that case had not been transferred on the grounds of public interest. The same, however, cannot be held in this case. As such both the cases are distinguishable factually from the present one.

7. The university has used an affidavit-in-opposition affirmed by the Deputy Director of IGNOU. While supporting and justifying the order of transfer the stand taken by the respondents is that transfer is a normal incident of service and it is for the employer to decide where the service of a particular employee is required. The letter containing the offer of appointment as a Regional Director clearly contains the stipulation that his service was liable to be transferred to any where in India and the petitioner had accepted it before he had joined his posting. The guidelines relied on by the petitioner does not confer him a tenure of five years at any place of posting as a matter of right. On the contrary it vests in the university concerned a power to transfer the Regional Director on administrative reasons whenever exigencies of his service so demand.

8. The detailed affidavit apart from denying the allegations made by the petitioner says something more. According to the respondents this order of transfer was occasioned by various factors. A number of complaints both from the employees as well as from the students, had been received against the petitioner. About 150 students of the Port Blair Regional Centre lodged a complaint about his conduct which contained serious allegations. The petitioner had lost credibility and faith of his students and the transfer order had been made to restore the faith of the students and goodwill of the university which suffered during the tenure of the petitioner. The affidavit goes further to say that

the respondents authorities intend to initiate an appropriate enquiry against him which is not possible with the petitioner holding the highest office at the Regional Centre. The respondent authorities feared that impartial enquiry might not be possible with him holding the post of a Regional Director and placing him under suspension will not be viable option as the present centre requires a full time working Regional Director to restore public confidence. Thus it was deemed expedient to transfer him from out of Port Blair before an enquiry against him is initiated.

9. The petitioner has used an affidavit-in-reply to the said affidavit-in-opposition and has largely repeated and reiterated the statements made in the writ petition. The petitioner has, however, very strongly denied that his order of transfer has been issued out of administrative exigencies or to restore faith of the students. With regard to the various complaints mentioned by the respondents the petitioner has sought to controvert them one by one.

10. Ms. Nag, the learned advocate appearing for the petitioner, submitted that the order of transfer thus is penal in nature and the petitioner ought to have been given an opportunity to controvert the contents of those so called complaints allegedly received by the respondents authorities before issuing the order of transfer.

11. Mr. Hemraj Bahadur, learned advocate appearing for the respondent authorities, on the other hand has taken me through the various documents annexed to the writ petition as a justification for issuing the order of transfer. According to Mr. Bahadur, in view of the complaints received by them, the Administration had no alternative but to issue an order of transfer.

12. Mr. Bahadur has also referred to a note given by the Deputy Registrar (Vigilance Cell) of the University which is dated 11th July, 2012 and has been annexed to the affidavit-in-opposition. It says that in connection with the complaints received against the petitioner, the then Project Director of the University was asked to make a preliminary enquiry and he had submitted his report on February 09, 2012. The said document further recorded that the Vigilance Cell was contemplating a thorough investigation into those complaints against the petitioner.

13. The cause of action for filing the petition has been very significantly altered by the opposition used by the respondents. The guidelines which the petitioner has alleged to have been violated by the university, was the basis of the writ petition. The respondents by their affidavit had transformed the cause of the violation of the guidelines to one which is the result of complaints received against him.

14. The law relating to adherence to guidelines as it stands now is very clear. These guidelines are entirely in the nature of administrative instructions and lacks statutory force. Through various judgments it has now been held that the stipulations contained in these guidelines do not put a cloak of absolute immunity

upon an employee and in a given case the guidelines are not to be treated as mandatory.

15. Undoubtedly the respondent had received various complaints against the functioning of the petitioner as the Regional Director of the centre. For the present, the university has not entered into the truth or otherwise of the contents of those complaints. They have said that they intend to initiate an enquiry against him which is not possible with the petitioner holding the highest post of the Regional Centre. Suffice it to say that a preliminary enquiry was conducted by the then Project Director who had submitted his report. Based on that the Vigilance Cell of the University is contemplating a thorough and detailed investigation into the complaints.

16. The report of the preliminary enquiry noted certain irregularities. But what is very important to note is that the report recorded that the overall environment of the Regional Centre was not encouraging; the atmosphere was very stressful which was apparent while interacting with the staff of the centre.

17. The basic pre-condition for a good administration of any centre was thus missing. Stressful working condition is the negation of this very pre-condition. Numerous students have a lot more to say against the petitioner. Two lady employees also have their grievances of being harassed by their Director.

18. These are of course mere allegations and the petitioner in the Affidavit-in-reply has refuted them. This is not the proper stage to presume anything. What, however, cannot be gainsaid is that the stressful atmosphere is not conducive to the furtherance of the larger interest of the University or its academic ambience. The respondents have made it very clear why they had to issue the order of transfer. They say that a departmental proceeding against the petitioner by keeping him at the highest post of the Regional Centre is not possible. This is a necessity felt by the administration and this cannot be described as a mala fide exercise of power. This order of transfer cannot be described as a penal measure either. On the contrary this case also has to be considered as one where the exigencies of the administration required the authorities to issue the transfer order. The authorities must be deemed to be the best judge to decide on the exigencies of the situation.

19. In the case of K.B. Shukla and Others Vs. Union of India (UOI) and Others, , the supreme court had held:

The responsibility for good administration is that of the government. The maintenance of an efficient, honest and experienced administrative service is a must for the due discharge of that responsibility. Therefore, the government alone is best suited to judge as to the existence of exigencies of such a Service, requiring appointment by transfer. The term "exigency" being understood in its widest and pragmatic sense as a rule, the court would not judge the propriety or sufficiency of such opinion by objective standards, by mala fides, dishonesty, extraneous purpose, or transgression of the limits circumscribed by the

legislation.

20. Again in the case of N.K. Singh Vs. Union of India and others, , the supreme court re-iterated:

Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

21. That there was tension in the University has been borne out by the report of the preliminary enquiry as reflected in the description of the atmosphere as stressful. If the administration thinks that the continued presence of the petitioner might stand in the way of a normal atmosphere, the authorities are the best judge to decide that.

22. The petitioner has urged that in issuing the order of transfer there has been an infraction of the professed norms of transfer as contained in the Guidelines. Guidelines are just guidelines and it has already been noted that they do not vest in an employee an absolute immunity from transfer before completion of the tenure mentioned in it. This will be clear from the use of the word "Ordinarily" in the Guidelines. The kind of situation reflected through the documents annexed to the Affidavit by the respondents cannot be said to be one ordinarily prevailing in a University.

23. Thus the order of transfer must be held to have been issued in the exigencies of the administration and in public interest, though not specifically mentioned in it. This is also not to be treated as a penal transfer or a punishment in disguise.

24. Thus the challenges to the order of transfer fail.

25. The writ petition is dismissed. There shall, however, be no order as to costs.