

(2008) 09 GAU CK 0107

In the Gauhati High Court

Case No : Writ Appeal No. 204 of 2008 and Miscellaneous Case No. 2096 of 2008 in WP (C) No. 1732 of 2008

Girish Chandra Medhi

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Citation : (2009) 2 GLR 342

Hon'ble Judges : Jasti Chelameswar, C.J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : R.C. Saikia, for the Appellant; D. Saikia, for the Respondent

Judgement

I.A. Ansari, J.—While serving as Health Assistant at Ghograpar Public Health Center, Nalbari, under the Department of Health, Government of Assam, the Appellant herein was, vide order, dated 24.4.2008, issued by the Director, Health Services, Nalbari, transferred to Kumarikata State dispensary at Tihu, Nalbari. Aggrieved by the said order of transfer, the Appellant impugned the same in WP(C) No. 1732/2008, the ground of challenge to the validity of the impugned transfer order being that since the Appellant was President of Ghograpar Unit of Assam State Federation of Employees Association, his services were indispensable for the Association and he ought not to have, therefore, been transferred. The Appellant also contended that he had undergone two surgical operations recently and that he had been suffering from hypertension. Having held to the effect that the Appellant's transfer could not be shown to be mala fide, arbitrary, stigmatic or penal in nature, a learned Single Judge of this Court has dismissed the writ petition by judgment and order, dated 6.6.2008. While, however, dismissing the writ petition, the learned Single Judge left the Respondents/authorities concerned free to consider the Appellant's representation, which the Appellant had filed against his transfer order. Aggrieved by the dismissal of his writ petition, the writ Petitioner has preferred this appeal.

2. We have heard Mr. R.C. Saikia, learned Counsel for the Appellant, and Mr. D. Saikia, learned Standing Counsel, Health Department.

3. While considering the present appeal, what needs to be pointed out is that the impugned transfer order, dated 24.4.2008, was an order of transfer simpliciter and it gave no indication that the transfer order would leave any stigma on the Petitioner's career. In these circumstances, when the Appellant put to challenge the said transfer order, the Respondents/authorities concerned reacted by filing an affidavit-in-opposition, wherein they had assigned the reasons for transfer as under:

6. That as regards to the statements made in the paragraph 8 of the writ petition, the deponent most respectfully begs to state that the transfer order of the Petitioner was issued for the following reasons:

(i) That the Petitioner, who is the Health Assistant of Ghagrapar PHC, is very irregular in his duties. He does not visit and work in the field and does not care to submit any report, As a result of his non-performance, one person died of fever recently in his field of work. It is evident from the report of the District Malaria Officer "The visit of the concerning Health Worker found very poor/Nil".

Further, the report of the SDM & HO of Ghagrapar PHC states, "Assistant has never visited his allotted section nor he submitted any report of the said section where recently one death occurred".

In both the above-stated reports, the concerned Health Worker is the Petitioner, i.e., Sri Girish Ch. Medhi.

(ii) That the Petitioner misbehaved with his controlling officer (SDM&HO) and threatened him of bad consequences at his office.

(iii) That the Petitioner also misbehaved with Dr. (Mrs.) Nilima Devi, SDM&HO at District Headquarter and threatened her that he would report against her in the newspaper.

(iv) That the Deputy Superintendent, Community Health Centre, Tihu, requested to the Deponent, i.e., Joint Director of Health Services, Nalbari, to place one health staff under him to work at diarrhea (Dysentery) affected area.

As a result, Sri Girish Ch Medhi was ordered to work under Deputy Superintendent of Tihu CHC. This was not an order of transfer but was a temporary arrangement for the time being to control diarrhea (Dysentery)/fever etc.

Under the above circumstances, Sri Girish Ch. Medhi, Health Assistant of Ghagrapar PHC was directed to report for duty at Tihu CHC.

4. On being pointed out by this Court at the time of admission hearing of this appeal, that the impugned order of transfer was per se not penal or stigmatic in nature, Mr. Saikia, learned Counsel for the Appellant, submits that in their

affidavit-in-opposition, the Respondents have assigned, in order to sustain the Appellant's transfer from Ghograpar Public Health Center to Kumarikata State dispensary, some reasons, which are stigmatic in nature and if such accusations, remain on record, the same would, in future, adversely affect the Appellant inasmuch as the Appellant may even be denied promotion on those, grounds, which the Respondents have mentioned in their affidavit-in-opposition, as the grounds for transfer, though no notice was ever given to the Appellant to show cause, if any, against the imputations, which have been made, against the Appellant, for the purpose of sustaining the impugned transfer order. To a query made by this Court, Mr. D. Saikia, learned Counsel for the Respondents, has submitted that the Respondents undertake to serve a notice inviting the Appellant's comments on the grounds, which, according to the Respondents, had led to the said transfer order.

5. In view of the fact that the impugned transfer order was an order of transfer simpliciter and did not impute any allegations against the Appellant, we find no reason to interfere with the said transfer order. However, when the Appellant put to challenge the said transfer order, the Respondents reacted by furnishing reasons, which had led to the Petitioner's transfer. The reasons, which have been so assigned, may or may not be correct. The fact, however, remains that the reasons, which the Respondents have assigned in order to sustain the said transfer order, would leave stigma on the Appellant's career and may adversely affect him in future. In these circumstances, when the Respondents have agreed to give a notice of showing cause to the Petitioner against the imputations, which have been mentioned in their affidavit-in-opposition, we do not find any reason to interfere with the impugned transfer order.

6. Because of what have been discussed and pointed out above, we are of the view that in the facts and circumstances of the present case, ends of justice would be served well if the Appellant is given a notice to show-cause as has been undertaken by the Respondents before this Court.

7. Considering, therefore, the matter in its entirety and in the interest of justice, while the impugned order of transfer is not interfered with, this Court directs the Respondents/authorities concerned to issue, to the Appellant, a notice to show-cause, if any, against those imputations, which may leave stigma on the Appellant's career.

8. With the above observations and directions, this appeal shall stand disposed of.

9. There shall, however, be no order as to costs.