

(2014) 08 GAU CK 0015
In the Gauhati High Court
Case No : Writ Appeal No. 277 of 2014

Gobin Chandra Bora

APPELLANT

Vs

The Assam Agricultural University

RESPONDENT

Date of Decision : 29-08-2014

Acts Referred:

Citation : (2014) 3 GLD 13 : (2014) 4 GLT 1

Hon'ble Judges : Biplab Kumar Sharma, J; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : K.N. Mazimdar, Sr. Advocate and R. Dubey, Advocate for the Appellant; A.C. Borbora, Sr. Advocate and P. Kataki, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. R. Dubey, learned counsel for the appellant. Also heard Mr. A.C. Borbora, learned senior counsel assisted by Mr. P. Katakey, learned counsel, representing the respondent University. This appeal is directed against the judgment and order dated 06/08/2014 of the learned Single Judge passed in WP(C) No. 786/2014 by which the writ petition that was filed by the appellant against the order of his transfer from Jorhat to Gossaigaon has been dismissed. For a ready reference, the impugned transfer order is reproduced below :-

"OFFICE OPF THE REGISTRAR ::: ASSAM, AGRICULTURAL UNIVERSITY :: JORHAT-785013.

No. 2.1(23)-2008/RG/2013-2014 Dtd. /2014.

ORDER

In the interest of Assam Agricultural University service and with the approval of the Vice-Chancellor, Assam Agricultural University, Dr. Gobin Ch. Bora, Pr. Scientist, AICRP on Vegetables, Assam Agricultural University 8, Jorhat is hereby transferred and posted as Principal Scientist at RARS, Gossaigaon vice Dr. (Mrs.)

Prabalee Sarmah, Jr. Scientist, AICRP on Maize, RARS, Gossaigaon, transferred and posted as Jr. Scientist in AICRP on Vegetables, AAU, Jorhat-785013. Dr. Gobin Ch. Bora, PI, AICRP on Vegetables will hand over the charges of PI to Dr. L. Saikia, Principal Scientist, AICRP on Vegetables. Dr. (Mrs) P. Sarmah will move first and shall report for duty immediately but not later than 15(fifteen) days from the date of issue of this order.

They should obtain no dues certificate from the respective Controlling Officer and submit the same to the new Controlling Officer after transfer.

They should submit one copy of the joining report to the Registrar, AAU, Jorhat through his Controlling Officer.

Sd/- B.C. Bhowmick, Registrar i/c Assam Agril. University, Jorhat-785013

Memo No. 2.1(23)-2008/RG/2013-2014/12267-281 Dtd. 27.1.2014."

2. In paragraph 5 of the writ petition, the appellant has laid the foundation towards alleging malafide and colourable exercise of power towards issuing the impugned transfer order as follows :-

"5. That the petitioner begs to state that on 11/11/2013 some news items were published in various dailies of the state regarding the prevalent situation in Assam Agricultural University. Through the said news reports some allegations of omission and commission on the part of the Vice-Chancellor of the Assam Agricultural University were brought. The petitioner states that the Vice-Chancellor on his part on 14/11/2013 hold a press meet and while denying the allegations commented the news reports to be handy work of four professors of Assam Agricultural University which includes one Dr. Umesh Kalita, Principal Scientist, AAU, Jorhat. The said Umesh Kalita apart from hailing from the same discipline is also a relative of the petitioner. After publication of the said news reports, the petitioner was directed to sign a letter in support of the Vice-Chancellor, which he refused. Being infuriated at his refusal, the higher echelons of the university started targeting the employees/teachers like the present petitioner and such attempt culminated in passing an order transferring the petitioner. The petitioner states that by passing order under Memo No. 2.1(23)-2008/RG/2013-2014/12267-281 Dtd. 27/1/2014 the Registrar (IC) of Assam Agricultural University transferred and posted the petitioner as Principal Scientist at Regional Agricultural research Station vice Dr. (Mrs.) Prabalee Sarmah, Junior Scientist, AICRP on Maize, RARS, Gossaigaon transferred and posted as Junior Scientist in AICRP on vegetable crops, AAI, Jorhat."

3. Denying the aforesaid plea of the petitioner-appellant, the respondents in their counter affidavit filed in the writ petition stated thus :-

"6. That, deponent denies the statements made in paragraph 5 of the writ petition as baseless and not true. The answering respondents deny the correctness of the statements to the effect that one Dr. Umesh Kalita, Principal Scientist of AAU, Jorhat along with 3 (three) other professors were responsible

for publication of a report containing allegations against the Vice Chancellor (VC), the petitioner is a relative of Dr. Umesh Kalita, apart from hailing from the same department and as the petitioner refused to put up his signature in a letter to support the Vice Chancellor (VC), the echelons of University started targeting the petitioner which has culminated in issuing the transfer order dated 27.1.2014. That the respondents deny the said transfer order in question had any kinds to connection with the report appearing in the newspaper.

7. That with regard to the statements made in paragraph 6 of the writ petition, the answering respondents deny the correctness of the statements to the effect that the transfer order was issued with an ulterior motive. In fact, the petitioner has been transferred in his own rank. The petitioner worked in a sugarcane crops and so he was transfer as breeder and not on the basis of crop associated with. As regard his expertise vegetable breeding is concerned, the Project Coordinator of All India Coordinated Research Project on Vegetable Crops, of All India Institute of Vegetable Research Varanasi issued a letter dated 20.1.2014 to the Director of Research, Assam Agricultural University, Jorhat to either issue advisory note to the petitioner for improvement or change the Incharge of AICRP(VC) by the suitable persons who can handle the project in systematic way. It may be pointed out that the petitioner utilized AICRP (VC) data and the information of the other AICRP(VC) without prior permission of the Project Coordinator."

4. In paragraph 8 of the counter affidavit, the respondents have stated that the petitioner-appellant has been transferred to the post at Gossaigaon in his own rank and pay and his transfer has no link with the transfer of Dr. Prabalee Sarmah, who also figures in the impugned transfer order. Highlighting the basic facts towards issuance of the impugned transfer order, the respondents in their counter affidavit have stated thus in para 15 of the counter affidavit.

"15. That the case of the answering respondent in brief is that on 17.12.2013, the Chief Scientist of RARS, AAU, Gossaigaon wrote to the Director of Research Agriculture that there is acute shortage of Scientist in the Station. The total number of sanctioned post at RARS, AAU, Gossaigaon, including Chief Scientist is 26 out of which there are of 9 posts of Senior Scientist and 17 post of Junior Scientist under NARP. At present there are only 4 Scientist including Chief Scientist and two Scientist of AICRP on maize at RARS Gossaigaon. Therefore, a request was made for deployment of Scientist in various disciplines including Horticulture etc. Similar request was also made for deployment of Scientist from the Chief Scientist RARS, AAU, North Lakhimpur and Karimganj. Thereafter a note was put up before the Registrar on 21.1.14 stating that most of the posts are lying vacant. It has come to such a pass that it is difficult to take up multi disciplinary experiment in the aforementioned RARS. So a proposal was submitted for filling up of a post in three RARS through transfer and redeployment on priority basis. So far RARS Gossaigaon is concerned, one Scientist from each discipline of Entomology, Social Science and Plant" Breeding

were required to be posted. It was further pointed out that performance of AICRP and vegetable crops in the department of Horticulture, Jorhat is very poor as informed by the Project Coordinator of AICRP (VC), Varanasi both verbally and in writing and requesting to change the principal investigator G.C. Bora Principal Scientist Breeding department of Horticulture. Thereafter matter was discussed with the Dean of the Faculty of the Agriculture, Director of Research Agriculture and thereafter approval was sought for from the Vice Chancellor for posting of Dr. Niloy Bora residue chemist DWSR centre department of Agronomy AAU Jorhat as a Scientist soil subject Project plant RARS North Lakhimpur. Similarly Sri B.N. Choudhury, Principal Scientist in the Department of Namatology, AAU, Jorhat was transferred to RARS Gossaigaon. As the said transfer order was placed before the Vice Chancellor and the same has been approved by the Vice Chancellor on 25/1/2014 and therefore, the impugned order of transfer does not suffer any arbitrariness or illegality and therefore the writ petitioner is devoid of merits and same is liable to be dismissed. Moreover, in view of the exigencies, the transfer order was issued and there was no question of reviewing it on any prayer of any transferee."

5. Mr. K.N. Choudhury, learned counsel for the appellant has submitted that the learned Single Judge ought to have considered the background facts while disposing of the writ petition holding that there was no malafide exercise of power towards issuance of the impugned transfer order. According to him, the malafide exercise of power towards issuance of the impugned transfer order is easily inferable from the given facts, more particularly, in the facts stated in paragraph 5 of the writ petition. He has placed reliance on the decision of the Apex Court reported in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , so as to emphasis that even if an order is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the authority has to act in accordance with and within the limits of that legislation, that order can also be challenged if it is beyond those limitation or is passed on grounds extraneous to the legislation or if there is no ground at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that did not apply its mind to the relevant facts.

6. In the instant case, the learned Single Judge has dealt with the facts leading to issuance of the impugned transfer order. Dealing with the basic thrust of the argument, that the impugned transfer order is the product of malafide exercise of power, the learned Single Judge duly taking note of the said aspect of the matter, has held thus :-

"10. In the instant case, the question to be determined is as to whether the impugned transfer order is vitiated by mala fides or infraction of any professed norms of principle governing the transfer. There is no dispute at the bar that the

impugned transfer order is issued by the competent authority. As the case of the petitioner is on mala fides, in order to find out the existence thereof in the impugned order, I have carefully examined the file produced by the learned senior counsel for the respondents and the examination thereof does not bring out any fact from which an inference can be reasonably drawn that the transfer was done with an ulterior motive. On the contrary, as early as 17-12-2013, the Chief Scientist of RARS had requested the respondent No. 4 informing him that there was an acute shortage of scientist in the station for which it was very difficult to run the station smoothly and requested him to deploy scientists of Plant Protection, Plant Pathology, Entomology, Horticulture, Agronomy and Soil Science. The file for transfer of the petitioner and others were processed with effect from 26-12-2013. There is no evidence of manipulation or overwriting in the notes found in the file. What is noteworthy is that the petitioner was not singled out for the transfer. Nevertheless, the petitioner could be right in his perception that the transfer order was issued with an ulterior motive. But then, there is absolutely no evidence to establish the existence of mala fides in the impugned order. There should be adequate materials from which it can be safely concluded that the impugned transfer order is vitiated by mala fides, but the case of the petitioner is conspicuous by the absence of such materials. In the light of the entries in the file, it is difficult to conclude that the transfer of the petitioner was done with an ulterior motive.

11. In so far as the communication dated 30-3-2012 upon which heavy reliance is placed by the learned counsel for the petitioner to challenge the transfer, is concerned, what was stated by the Director & Project Coordinator, AICRP-Weed Control therein is that scientist associated with the project should not be shifted or replaced without any valid reason and without due intimation and consent of the Director & Project Coordinator of the Directorate. However, the fact that such instructions are not mandatory is the concluding part of his communication stating that "the above suggestions may kindly be kept in mind to improve the work efficiency and output quality of the project". In my opinion, this clinches the issue in favour of the respondent-University."

7. To quell any doubt, we have also perused the records that has been produced by Mr. P. Katakey, learned counsel assisting Mr. A.C. Borbora, learned senior counsel, representing the respondent University. On perusal of the said file, noting is discernible towards establishing that the impugned transfer order is the product of any malafide exercise of power. Situated thus, we are not inclined to admit this appeal and consequently it is dismissed.

8. At this stage, Mr. K.N. Choudhury, learned senior counsel representing the appellant submits that pursuant to the impugned transfer order involved in the present proceeding, the appellant was to join in the present place of posting by yesterday. He prays for further extension of two weeks" time. Mr. A.C. Borbora, learned counsel representing the respondent university submits that in the event of making any application by the appellant seeking extension of joining time, it

will be considered appropriately.

9. With the above liberty to the appellant, the writ appeal stands dismissed, without however, any order as to costs.