
(2003) 09 GAU CK 0002

In the Gauhati High Court

Case No : Misc. Case No. 909 of 2003 in WP (C) No. 4516 of 2003

Jyoti Kumar Das

APPELLANT

Vs

Rubul Sarmah

RESPONDENT

Date of Decision : 30-09-2003

Acts Referred:

Citation : (2004) 1 GLR 596 : (2005) GLT 764 Supp

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : K.N. Choudhury and I. Choudhury, for the Appellant; B.K. Sharma, S. Sarma, U. Das and S.K. Das, for the Respondent

Judgement

D. Biswas, J.—This miscellaneous petition has been filed for vacating the order dated 17.6.2003 passed in W.P.(C) No. 4516 of 2003 staying the operation of the transfer order of the applicant issued by the Government vide Memo No. SPWD 190/2000/31 dated 9th June, 2003.

It would appear that by the aforesaid order the applicant was transferred and posted as CDPO, Binnakandi ICDS Project, Nagaon vice the opposite party (writ petitioner) Shri Rubul Sarma. The applicant's case is that he has already taken over charge in pursuance of the aforesaid order of transfer and, therefore, the stay granted by the Court be vacated.

2. The opposite party (writ petitioner) challenged the order of transfer on the ground of mala fide. His case is that he has been subjected to frequent transfer and this time he has been transferred in order to accommodate the applicant. It is further alleged that the order of transfer has also been made in violation of the transfer policy of the State Government.

3. I have heard Mr. K. N. Choudhury, learned senior counsel for the applicant and Mr. B. K. Sarma, learned senior counsel for the opposite party.

4. There is no dispute that the writ petitioner has been transferred from

Binnakandi to Rajabazar in the District of Cachar before completion of three years at Binnakandi.

5. I have perused the office file produced by the learned State counsel. It appears that the applicant had already taken over the charge unilaterally in pursuance of the Government order contained in W.T. Message dated 21.6.2003. The office note further reveals that the aforesaid W.T. Message was issued after the order of stay was passed by the Court. The W.T. message was issued on 21.6.2003, i.e., within four days from the date of order passed by the Court, without moving the Court for vacating the interim order. The reasons for such an haste on the part of the Government in issuing the W.T. Message on 21.6.2003 allowing the applicant (private respondent) to take over charge unilaterally is not understood. At least, it is clear that public interest was not of such importance that an officer of the rank of the CDPO ought to have been dislodged by permitting the reliever to take over the charge unilaterally despite there being a stay issued by this Court. There is no doubt that the writ petitioner has been transferred just on the verge of completion of two years at Binnakandi and this is apparently in violation of the transfer guidelines which provide for transfer after completion of three years in normal course. The government had adopted certain policy decision to regulate transfers. Obviously, the policy adopted by the State Government cannot be flouted by any authority. It was formulated with certain objects in view. It was noticed that haphazard transfer of Government Officers created administrative impasse besides financial implications. In order to regulate the same, normal period of stay in a particular place has been prescribed as three years. The transfer policy further provides that in case of premature transfer, it may so be ordered only with the prior approval of the Chief Minister. The office file, in the instant case, do not show that any such approval was obtained from the Chief Minister before the impugned order of transfer was passed. Even though the order of transfer was issued on the direction of the Minister In-charge, yet it was incumbent upon the Secretary to move the Chief Minister for approval before the order was issued.

6. Records further reveal that transfer was ordered primarily on consideration of certain complaints lodged by some political persons and members of the public against the writ petitioner. If the writ petitioner has been indulging in any conduct not befitting the office of the CDPO contrary to the public interest, the respondent authority should have gone for an enquiry for imposing such penalty as may be permissible under the rules. Premature transfer at the behest of the members of the public without any enquiry is against public interest. It tends to destroy the morale of the government servant. Such a transfer cannot get the seal of approval from the Court. Hence, the application for vacating the order of stay is rejected.

7. In terms of this order, Writ Petition (C) No. 4516 of 2008 and Miscellaneous Petition No. 626 of 2003 are also disposed of. The order dated 26.6.2003 passed in Miscellaneous Petition No. 626 of 2003 is hereby made absolute. Consequent

thereupon the order impugned in this writ petition is hereby set aside remitting the matter to the State authority for action strictly in accordance with the provisions of law, if so advised.