
(2016) 12 CAL CK 0013
In the Calcutta High Court
Case No : WP No. 30095 (W) of 2014

Kaberi Maitra

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 05-12-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16

Citation : (2017) LIC 238

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Ms. Chaitali Bhattacharjee, Advocate, Mr. Pinaki Dhole, Advocate, for the State; Mr. Lakshmi Kumar Gupta, Ld. Addl. Advocate General, Mr. Joytosh Majumder, Advocate, Mr. Susanta Pal, Advocate, for the Respondent Nos. 3 to 5; Mr. Srijib Chakraborty, Advoca

Final Decision : Allowed

Judgement

Samapti Chatterjee, J. - The following issue is to be determined :-

(a) Whether a permanent employee can be posted on deputation without his/her consent to some other department"

2. The case of the petitioner in nutshell is as follows :-

On 30th June, 1994 petitioner was initially appointed on compassionate ground after the death of her husband as a Junior Clerk in Basumati Corporation Limited at Siliguri and was thereafter posted at Kolkata Head Office. On 29th September, 2014 Principal Secretary Information and Cultural Affairs Department Government of West Bengal issued the impugned order of transfer on deputation thereby directing the petitioner to carry out her work on deputation basis under the department of Information and Cultural Affairs Department, Nabanna.

On 9th October, 2014 the Managing Director of the Basumati Corporation Ltd. issued the impugned release order thereby directing the petitioner to join Information and Cultural Affairs Department, Government of West Bengal. It was

also mentioned in the said impugned order that petitioner will draw salaries from original place of posting i.e. from the said corporation.

Feeling aggrieved by the impugned order the petitioner filed the present writ petition.

3. Mr. Srijib Chakraborty, learned Advocate appearing for the petitioner submitted that as per the service jurisprudence petitioner is liable to be transferred from one department to other department to the same post but the petitioner was never appointed in the department of Information and Cultural Affairs. Petitioner was appointed under Basumati Corporation Ltd on compassionate ground. Thereafter she was transferred to Siliguri Branch and again from Siliguri she was taken to head office at Kolkata. Therefore, in any event petitioner shall not be directed to join on deputation to a completely separate establishment without her consent.

4. Mr. Chakraborty further vehemently contended that when the petitioner was taken to Siliguri Branch of the said Corporation petitioner had given consent but in the present case without obtaining any consent from the petitioner the authority illegally, whimsically and arbitrarily directed the petitioner to perform her duty on deputation under Information and Cultural Affairs Department. The petitioner is no way related to that department. The petitioner's nature of work is also not related to that department. In support of his contention Mr. Chakraborty relied on a Hon'ble Court decision reported in 1982 (2) CHN Page-380 Paragraphs-8, 17 and 22 (Sri Ranjit Basu v. State of West Bengal & Ors) where the Hon'ble Court held that sending an incumbent from his parent department to some separate department on deputation without obtaining consent from the said incumbent is bad in law. Paragraph-17 of the decision is quoted below :-

"Para-17- The general principles that can be deduced from the decisions and the provisions and the rules are, that an employee (1) cannot be transferred out of his cadre or establishment against his wish; (2) when appointment is made to a specified post or a specified group of posts, no transfer can be justified merely because the pay is not being affected, (3) the government servant cannot be asked to perform duties which were never expected of him when he was recruited and (4) expectations of future promotions cannot be wiped off by moving a government servant around. A cadre is the strength of a service or part of a service sanctioned as a separate unit. The Assembly Secretariat staff clearly form such a separate unit even if it is assumed or presumed that they form part of the West Bengal General Service. The petitioner's appointment was as a Bengali Reporter there. He was not recruited as a member of the West Bengal General Service and then given a post in the service. His special qualification for the post, it was submitted, a news reporter was not the same thing as a Bengali Reporter of the Assembly Secretariat. The order of the Speaker cannot be described as an order of transfer. The order can not best be considered to be an order of deputation of foreign services. There cannot be any deputation even

under Rule 97 without the consent of the employee concerned. In any event, Rules 97 to 116 of the West Bengal Service Rules., Part I have not been complied with."

5. Mr. Chakraborty further relied on a Hon"ble Division Bench decision reported in 97 CWN Page-47 (Paragraphs-35 and 36) wherein the Hon"ble Court held that an employee from his present place of service cannot be compelled to go and join some other newly opened establishment on transfer, as such direction clearly violates the Paragraph-7 of the certified standing order. Therefore the Hon"ble Division Bench was pleased to set aside that transfer order.

6. Mr. Chakraborty further contended that the petitioner cannot be forced to work on deputation in different department like Information and Cultural Affairs. Petitioner is however ready and willing to give her consent for deputation work provided to any other branch of the said Basumati Corporation Ltd. In support of his contentions Mr. Chakraborty relied on catena of decisions reported in 1997 (8) SCC Page-372 Paragraph-18 (State of Punjab And Others v. Inder Singh And Others) and also 1992 (2) SCC Page-411 (Amrit Banaspati Co. Ltd. And Another v. State Of Punjab And Another) and AIR 1990 (SC) Page-1132 (Ratilal B. Soni & Others v. State of Gujarat & Others).

7. Mr. Chakraborty also strongly argued that at present petitioner has been working under the Basumati Corporation Ltd as establishment staff. But unfortunately by the impugned order petitioner has been compelled to work to a complete separate department like Information and Cultural Affairs on deputation under the designation of "Office Clerk".

8. Mr. Chakraborty further contended that by the impugned order one Sri Ansuman Sarkar along with the petitioner was also directed to join the said department on deputation but that Ansuman Sarkar also moved before this Hon"ble Court like the petitioner challenging the said order. Since he withdrew his writ petition, therefore he was taken back to his parent establishment i.e. Basumati Corporation Ltd. As the petitioner is fighting this case therefore petitioner has been victimized by the authority thereby facing disciplinary proceedings.

9. Mr. Chakraborty further emphasized in his argument by submitting that definition of transfer as envisaged in the standing order is very much clear to the extent that the service of any workman is liable to be transferred to one post to another or interdepartmental transfer to one shift to another. Therefore transfer is permissible provided the workmen are posted in place as defined in Paragraph-7 of the said standing order.

10. Before parting with his argument Mr. Chakraborty submitted that the impugned orders dated 29th September, 2014 issued by the Principal Secretary Information and Cultural Affairs Department as well as the 9th October, 2014 issued by the Managing Director of the said Basumati Corporation Ltd cannot be sustained in the eye of law and accordingly those impugned orders should be set

aside.

The said corporation did not file any affidavit-in-opposition despite direction. State has filed its affidavit-in-opposition.

11. Per contra, Mr. L.K. Gupta, learned Addl. Advocate General appearing for the corporation vehemently urged that the said corporation is not in a position to sustain itself and it depends on substantial grant from the State Government including planned and non-planned aids.

12. Mr. Gupta further contended that at present there are 115 permanent staffs in the said corporation but unfortunately there is not sufficient printing job. Therefore, a major portion of the staff strength are virtually unutilized whereas the Government has sanctioned Rs. 54,00,000/- in the year 2014-15 for repair and renovation work for the said corporation.

13. Mr. Gupta further contended that under the State Government there are three presses and publication houses namely (1) Saraswati Press (2) Basumati Press and (3) Shilpa Barta Press and there are 127 establishments/offices of Information and Cultural Affairs Department and their printing jobs are done through these three presses. He submitted that if the petitioner joins in Information and Cultural Affairs Department at Nabanna the petitioner will not lose any existing monetary benefit. On the other hand salary and the other benefits the petitioner has been enjoying under Corporation will be same in the said Information and Cultural Affairs Department. No curtailment of existing benefits will be permitted.

14. Mr. Gupta further argued that being the scenario the petitioner's objection to join that department has no merit as the petitioner will not be deprived of any existing financial benefit.

15. Mr. Gupta also drew my attention to Paragraph-7 of the standing orders which reads as follows :-

"7-Transfer:-Service of any workman is liable to be transferred from one post to another or from one department to another or from one shift to another."

16. In conclusion Mr. Gupta submitted that since by the impugned orders the petitioner's service condition will be same and petitioner will get the same salary and other admissible benefits as she has been enjoying under the said corporation therefore these impugned orders do not deserve any interference by this Hon'ble Court.

17. Considering the submissions advanced by the learned Advocates appearing for the parties and after meticulously perusing the records I find the petitioner's initial appointment was under Basumati Corporation Ltd and the petitioner was once on deputation taken to the Siliguri establishment of the said Basumati Corporation on consent and thereafter petitioner was again taken back to the Kolkata office of Basumati Corporation Ltd.

18. It is also evident from the standing orders under Clause 7 that service of any workman is liable to be transferred from one post to another or from one department to another or from one shift to another. Therefore such being the service condition petitioner cannot object against any transfer order. But in the present case petitioner was taken on deputation from his parent department i.e. Basumati Corporation Ltd to a completely separate department/establishment namely Information and Cultural Affairs Department without obtaining any consent from her.

19. I cannot also ignore the fact that this order of deputation cannot be treated under Clause-7 of the standing orders as transfer order. Transfer means the employee is liable to be transferred from one post to another or from one department to another or from one shift to another. But the impugned orders of deputation cannot be termed as transfer order. It is squarely falling under deputation. Deputation under service jurisprudence means service outside the cadre or outside the parent department on a temporary basis and after expiry of the deputation period the employee has to go back to his/her parent department. A deputationist cannot claim any promotion on the deputation post in the said department or absorption under that department, and the employee's lien lies with the parent department. Therefore, before sending any employee on deputation taking consent from the said employee is mandatory and without obtaining any consent from the said employee no one can send any employee on deputation to some other department. But in the present case no consent has been obtained by the authority from the petitioner.

Since the impugned orders passed without obtaining any consent of the petitioner therefore these impugned orders are not sustainable in the eye of law.

20. I also cannot ignore the fact that with the petitioner one Ansuman Sarkar was also sent on deputation to the Information and Cultural Affairs Department and against that he also filed a writ petition but since the said Ansuman Sarkar has withdrawn the writ petition therefore he was taken back to his parent department.

21. In my considered view Government cannot compel any employee to accept any order which is beyond the scope of existing standing orders. It is evident from the record that there are 115 (approx.) employee have been working in the said corporation but only the petitioner has been taken on a pick and choose manner by the impugned orders to work on deputation under Information and Cultural Affairs Department. Such action of the authority is wholly illegal, arbitrary, vindictive and completely contrary to service jurisprudence as well as very much against the Articles 14 & 16 of the Constitution of India.

22. In the light of the above discussions and the decisions cited above by Mr. Chakraborty (Sri Ranjit Basu case, Susmriti Das and Ors case, State of Punjab & Ors case and Amrit Banaspati Co. Ltd case & Ratilal B. Soni case (supra) I am of the considered view that the impugned order dated 29th September, 2014 issued

by the Principal Secretary of Information and Cultural Affairs Department cannot be sustained as well as the following release order dated 9th October, 2014 issued by the Managing Director Basumati Corporation Ltd also is not sustainable.

23. Accordingly, the impugned orders dated 29th September, 2014 issued by the Principal Secretary of Information and Cultural Affairs Department and 9th October, 2014 issued by the Managing Director Basumati Corporation Ltd are hereby quashed and set aside. I direct the Basumati Corporation Ltd to immediately allow the petitioner to resume her service at the said corporation.

24. This writ petition is allowed without any order as to costs.

25. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfilling all the formalities.