
(2021) 07 GAU CK 0003

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3204 Of 2021

Karge Kamki

APPELLANT

Vs

Union Of India And 6 Ors.

RESPONDENT

Date of Decision : 01-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 07 GAU CK 0003

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : T Baruah

Judgement

1. Heard Mr. C.P. Sharma, learned Senior counsel assisted by Mr. R. Phukan, learned counsel for the petitioner and Mr. C. Baruah, learned Standing

counsel for the respondent nos.2 to 6.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order of transfer dated 23.06.2021, thereby

transferring the petitioner from Haflong to Regional office, Ranchi.

3. The case projected by the learned Senior counsel for the petitioner is that aggrieved by the actions of the private respondent no.7 who is the

Regional officer and is in command of the Regional Office of respondent no.2 at Guwahati, the petitioner had submitted a representation dated

19.06.2021 and accordingly, the petitioner sought for immediate removal of the respondent no.7 and for posting of a broad-minded and honest officer.

Accordingly, to the learned Senior counsel for the petitioner, this was followed by an office order dated 23.06.2021 by the respondent no.5, thereby

transferring the petitioner to Regional office, Ranchi with immediate effect.

Projecting that the said order was a punishment transfer order, the petitioner had submitted another representation dated 24.06.2021 to relook into his transfer and review the same accordingly.

4. The learned Standing counsel for the respondent nos.2 to 6 has raised a preliminary issue and objection regarding ouster of jurisdiction of the Court

to interfere with the interim order dated 23.06.2021. He has referred to the website of cgatnew.gov.in and submitted that a recast Appendix VI to the

Central Administrative Tribunal Rules of Practice 1993 is available and that the name of the respondent no.2 is now included at Sl. No.50 under clause

â??Dâ?? of Department-wise Classification of Cases at Appendix VI. Accordingly, it is submitted that without availing alternative remedy of

approaching the Central Administrative Tribunal, the writ petition filed by the petitioner cannot be entertained by this Court.

5. In response to the plea of alternative remedy, the learned Senior counsel for the petitioner has submitted that ordinarily the Court may interfere with

the transfer orders on the ground of malafide, if the transfer is by way of punishment, or if the order is contrary to statutory rules.

6. It is submitted that the jurisdiction of the High Court to issue prerogative writs has not been taken away by establishment of CAT and it is submitted

that non-entertaining of the writ petition in certain cases is a rule of discretion and not one of compulsion. In this regard reference is made to the case

of N. Chandra Kumar Vs. Union of India and ors, (1997) 3 SCC 261 and the case of M.P. State Agro Industries Development Corporation Limited

Vs. Jahan Khan, (2007) 10 SCC 88. As regard to the power of the Court to interfere with the transfer orders, the learned Senior counsel has placed

reliance on the cases: (1) NHPC Vs. Sri Bhagwan, (2001) 8 SCC 574, (2) SBI VS. Anjan Sanyal, (2001) 5 SCC 508 and (3) Takhelmayum Thoyba

Singh Vs. State of Manipur, (2008) 4 GLR 30.

7. The learned Standing counsel for the respondent no.2 has submitted that on the point of ouster of the jurisdiction of the High Court, he may be

granted a short time to submit his argument supported by relevant case laws and he submits that the matter be fixed on 06.07.2021. In this regard the

Court is of the considered view that presently the Court is in summer vacation from on 28.06.2021 to 10.07.2021. Hence, it would not be appropriate

for this Bench to burden another Honâ??ble Judge who would be taking up

matters as a Vacation Judge on 06.07.2021. Therefore, on the point of jurisdiction, the matter would be fixed after the vacations are over.

8. As the Court is deciding on the issue of ouster of jurisdiction, this Court taking note of the fact that the petitioner has already submitted a representation dated 24.06.2021, it would be appropriate to direct the competent authority to take a decision on the said representation atleast 1 day prior to the next date of listing.

9. Accordingly, the Court is inclined to direct the respondent nos.2 to 6 that pending further orders by the Court on the issue of jurisdiction, they would not take coercive measures against the petitioner and insist on his transfer till the next date of listing.

10. List the matter on 14.07.2021 for hearing on the preliminary issue of jurisdiction.

11. The Court is hereby dispensing with the requirement of the certified copy. Thus, liberty is given to the learned counsel for the respondent nos.2 to 6 to download a copy of the order from the website of the Court and act accordingly. Similarly, liberty is granted to the petitioner to serve a downloaded copy of the order to the competent authorities who would be at liberty to verify the correctness of the order from the website of the Court and act accordingly.

12. In view of the question of jurisdiction being taken up, issuance of notice on remaining respondents is dispensed with at this stage.