
(2012) 10 GAU CK 0049

In the Gauhati High Court

Case No : M.C. No. 2903 of 2012 and W.P. (C) No. 2745 of 2012

Kiran Shakya (MRS.)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Citation : (2013) 2 GLT 878

Hon'ble Judges : Anima Hazarika, J; Amitava Roy, J

Bench : Division Bench

Advocate : A. Ganguli, for the Appellant; R. Baruah, CGC, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—By the instant application, the respondent in WP(C) No. 2745/2012 (since disposed of) seeks to recall the judgment and order dated 04.09.2012 rendered therein. We have heard Mr. A. Ganguli, learned counsel for the applicant and Ms. R. Borah, learned Central Govt. Standing Counsel for the opposite party.

2. The facts, in bare essential for the disposal of the instant application are that the applicant while posted as Hindi Teacher at 3(NH) Bn Assam Rifles, Chariduar, Assam was by order dated 07.12.2011 issued from the office of the Directorate General, Assam Rifles, Shillong, transferred to 14 Assam Rifles, Serchhip in the State of Mizoram. She having come to learn of this order on 26.12.2011 laid a request before the concerned authority requesting extension of the date of her release pursuant thereto till April, 2012 to see the completion of the current academic session of her children. This request was accepted and by order dated 07.02.2012 issued by the above Directorate she was directed to be released so as to enable her to join the receiving unit before 21.05.2012.

3. Being aggrieved, the applicant approached the learned Central Administrative Tribunal, Guwahati Bench, Guwahati (hereinafter for short referred to as the Tribunal) contending inter alia that the order of transfer dated 07.12.2011 had

not been served on her and that she was arbitrarily sought to be posted during the mid academic session of her children which was not permissible in law.

4. The learned Tribunal by its judgment and order dated 12.04.2012 interfered with the order of transfer and directed the authorities concerned to allow her to continue at Chariduar till the end of the academic session of her children. In this backdrop, the decision of the learned Tribunal was impeached before this Court in the abovementioned WP(C) No. 2745/2012.

5. This Court, after hearing the learned Central Govt. Standing Counsel for the writ petitioner (opposite party) herein, issued notice on 23.07.2012 making it returnable on 10.08.2012. The writ petitioners were ordered to take steps for service of notice on the applicant (respondent therein) by registered post with A/d. Liberty was also granted to cause dasti service on her. By an affidavit dated 21.08.2012, the writ petitioners affirmed personal service of notice of the writ proceedings on the applicant on 18.08.2012 and stated on oath that she on acknowledgement thereof had subscribed her signature as well. This Court by order dated 27.08.2012, on a perusal of this affidavit accepted service of notice on the applicant, but instead of taking up the matter for hearing on that date, adjourned it till 29.08.2012. The writ petitioners were directed to officially inform the applicant of the next date fixed. On 29.08.2012 the learned Central Govt. Standing Counsel laid before this Court a copy of the receipt dated 27.08.2012/28.08.2012 evidencing service of the letter No. I.11011/A-Discp/2012/591 dated 27.08.2012 from the office of the Commandant, 3(NH) Bn Assam Rifles, intimating the applicant of the next date of the hearing of the writ petition to be 29.08.2012. This Court being satisfied about the service of notice on the applicant, however listed the writ petition for final disposal on 03.09.2012 noticing that she had remained unrepresented. It was observed in clear terms that in case the applicant was not present on the next date, the writ petition would be heard and decided ex parte. On the next date as well i.e. 04.09.2012 the applicant was not only unrepresented, no prayer for adjournment on her behalf was also made. This Court, therefore, heard the learned Central Govt. Standing Counsel and by its judgment and order dated 04.09.2012 allowed the writ petition and interfered with the impugned decision dated 12.04.2012 of the learned Tribunal.

6. While traversing the facts, as above demonstrating the sequence of events in seriatim and culminating in the order dated 07.02.2012 directing the release of the applicant so as to enable her to join the receiving unit before 21.05.2012, this Court declined to interfere with her transfer observing as well that the order to that effect was not vitiated either by the violation of statutory norms or proved mala fide on the part of the concerned authorities.

7. In the instant application, the applicant has pleaded the following grounds in endorsement of her request to recall the judgment and order dated 04.09.2012:

a) after the judgment and order dated 12.04.2012 was passed by the learned

Tribunal, she came to Guwahati in the month of May, 2012 and instructed her previous counsel Shri H.G. Baruah, to take steps for filing a caveat petition.

b) her learned counsel, as above, however did not take steps as a result she went unrepresented in WP(C) No. 2745/2012;

c) on 28.08.2012 she had received a copy of the writ petition along with letter No. I.11011/A-Discp/2012/591 dated 27.08.2012 from the office of the Commandant 3(NH) Bn Assam Rifles informing her that the next date of the hearing of the writ petition was fixed on 29.08.2012;

d) being in service in the Armed Forces it was impossible to expect her to appear on the very next date. She, therefore, contacted Shri H.G. Baruah, Advocate who expressed his inability to represent her and advised her to come to Guwahati and take necessary steps, in consultation with a Senior Counsel;

e) she, therefore, went unrepresented on the next date i.e. 04.09.2012 as after 29.08.2012 she had no intimation of the next date of the petition.

f) it was not possible for her to take leave and come to Guwahati since she has two minor children and her husband was then away at Gowalior.

g) on 27.08.2012 she and her children were afflicted with various ailments and had to visit the unit hospital to take treatment.

h) though, she had made an application on 26.12.2011 for extension of the date of her release, from 15.01.2012 to April, 2012, the gist thereof was only recorded and she only affixed her signature thereon;

i) the Assam Rifles School located in Mizoram follow a syllabus, which is different from the one in the Assam Rifles School at Chariduar and that her transfer if made now, would entail a change over for her children in the mid academic session resulting in severe problems.

Whereas, Mr. Ganguli has reiterated the above in his emphatic bid to have the judgment and order dated 04.09.2012 recalled, Ms. Borah has insisted that none of the grounds now urged is contemplated in law for review of a judicial decision and therefore the application ought to be rejected.

We have duly considered the pleadings on record as well as the documents in support thereof. The circumstances in which the writ petition was heard and disposed of on 04.09.2012 have been narrated herein before. The instant application clearly records the applicant's admission of service of the notice of the writ petition on her on 27.08.2012 and the next date thereof i.e. 29.08.2012. It is apparent from the averments made by her, in the application under consideration that she in spite of her knowledge of the pendency of the writ petition and the date fixed, failed to take steps as expected of her to secure her representation therein. Her plea of having contacted her learned counsel for making an application for lodging caveat and thereafter to represent her in the face of the intervening developments is wholly unconvincing. To say, the least,

her failure to enter appearance in the writ petition demonstrates an inexplicably casual approach qua a judicial proceeding. Her endeavour to contend that the request for extension of time for her release from 15.04.2012 to April, 2012 as is made in her application dated 26.12.2011 had not been correctly projected and entertained lacks persuasion, as well. Being in a transferable service, her plea based on mid academic session of her children in the above conspectus of facts also does not appeal to us.

The opposite party (writ petitioners) in paragraph-12 of the writ petition had highlighted the service exigency necessitating the applicant's joining at 14 Assam Rifles (Serchhip), Mizoram without further delay;

That it is further pertinent to mention herein that the post of the Hindi Teacher where the Applicant/Respondent stands posted has been vacated in anticipation of arrival of the Applicant/Respondent, as agreed by her to move on termination of the academic session 2011-2012 of her children and now, as a fallout of the impugned order passed by the Hon'ble CAT, Guwahati Bench, the Assam Rifles School at 14 Assam Rifles (Serchhip, Mizoram) would be now without any Hindi teacher and the innocent school children would be at the receiving end, thus jeopardizing the future of the children, for no fault of theirs.

Thus her resistance on the ground of transfer during the mid academic session of her children on this count as well is of no avail. We find no cogent and convincing reason to recall the judgment and order dated 04.09.2012.

The miscellaneous case is rejected. No costs.