
(2015) 03 RAJ CK 0041
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1450/2010

Lalita Mohnot

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0041

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Vikas Balia, for the Appellant; Sunil Joshi and V.R. Mehta, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sandeep Mehta, J.—By way of the instant writ petition, the petitioner has approached this Court seeking to challenge the order/guidelines Annexure-8 dated 19.7.2003 whereby the power of transfer of the employees in service of Panchayat Samiti and Zila Parishads were delegated for setting aside the transfer order dated 31.7.2007 (Annex. 2) and for implementing the transfer order dated 24.2.2009 (Annex-10) as well as for releasing the salary of the petitioner. The petitioner has also assailed the legality and validity of the order dated 18.12.2009 passed by the Rajasthan Civil Services Appellate Tribunal in an appeal preferred by the respondent No. 3 Smt. Kamla Purohit.

2. The matter involves a complex chequered history and multiple litigations preferred before the Rajasthan Civil Services Appellate Tribunal as well as this Court.

3. Succinctly stated the facts are that the petitioner was appointed on the post of Field Officer (Pracheta) at Panchayat Samiti, Luni. At the same time, the respondent No. 3 Smt. Kamla Purohit was posted as a Pracheta at Panchayat Samiti, Baap.

4. It is asserted in the writ petition that the petitioner's husband was suffering

from thalassaemia and her nine year old daughter was a student of Class-VI and the petitioner is the only person in the family who could care for both of them. The respondent No. 3 Kamla Purohit submitted an application Annexure-1 to the Zila Pramukh, Zila Parishad, Jodhpur for being transferred from the Panchayat Samiti, Baap to the Panchayat Samiti, Luni. The Zila Pramukh recommended the transfer of Smt. Kamla Purohit from Panchayat Samiti, Baap to Panchayat Samiti, Luni. Accordingly, the Project Director, Dist. Women Development Agency, Jodhpur issued an order dated 31.7.2007 (Annex. 2) whereby respondent No. 3 Kamla was transferred to Panchayat Samiti, Luni and vice her, the petitioner was transferred to Panchayat Samiti, Baap. Immediately on coming to know of the transfer order, the petitioner submitted an application to the Zila Pramukh for cancelling the same. She also submitted a representation to the Minister concerned against her transfer.

5. In reference of an order dated 4.9.2007 passed by the Minister for Child and Women Welfare Department, Jaipur, the Additional Director, Women Empowerment, Rajasthan, Jaipur issued an order Annexure-4 dated 6.9.2007 instructing the Project Director to retain the headquarters of the petitioner at her original place of posting (Luni) looking to her personal and family circumstances/difficulties and to report compliance. Another letter Annexure-6 dated 26.6.2008 was issued by the Director, Women Empowerment Rajasthan, Jaipur to the Project Director directing him to rescind the office order dated 31.7.2007 and to retain the petitioner's services at Panchayat Samiti, Luni. The petitioner served a legal notice dated 14.7.2008 to the authorities asserting that she had not been relieved from duty in pursuance of the order dated 31.7.2007 and on strength of the subsequent order dated 6.9.2007 she continued to work at Panchayat Samiti, Luni. It was claimed in the notice that the petitioner's salary was withheld without any reason. It was further mentioned that by order dated 26.6.2008, the transfer order dated 31.7.2007 stood impliedly and explicitly cancelled and thus the petitioner was entitled to be paid her due salary etc.

6. On receiving the said legal notice, the Dy. Secretary, Jan Abhiyog Nirakaran Department, Jaipur wrote a letter to the Collector, Jodhpur forwarding along with it, the notice served by the petitioner and to direct payment of her due salary etc. and to report compliance.

7. An order dated 19.7.2003 Annexure-8 has been placed on record as per which the Women and Child Development Department of the State of Rajasthan formulated the Rules and procedure applicable to various integrated Child Development Projects being undertaken in the Panchayat Samitis all over the State. So far as the procedure for transfer is concerned, it was stipulated in the Rules that inter Panchayat Samiti transfer could be ordered by Zila Parishad after consultation with both the Panchayat Samities. The Dy. Director, Integrated Child Development Services, Jodhpur passed an order dated 24.2.2009 (Annex. 10) whereby, the respondent No. 3 Smt. Kamla was transferred from the Child Development Scheme, Lunito the Child Development Scheme, Baap and the

petitioner was transferred vice versa.

8. The respondent No. 3 Smt. Kamla Purohit preferred an appeal Annexure-11 before the Rajasthan Civil Services Appellate Tribunal against the order dated 24.2.2009 whereby the inter se transfer of the respondent No. 3 and the petitioner was cancelled and the respondent No. 3 was retransferred to the Child Development Scheme, Baap. The Appellate Tribunal passed an interim stay order in favour of the respondent No. 3, which the petitioner challenged in this Court by way of S.B. Civil Writ Petition No. 9236/2009. The writ petition was disposed of, directing the Appellate Tribunal to decide the appeal preferred by the respondent expeditiously. The appeal came to be decided vide order Annexure-14 dated 18.12.2009. The Tribunal in its order held that the respondent No. 3 in the appeal i.e. the petitioner herein was not relieved from duty in pursuance of the order dated 31.07.2007 which is impugned in the instant writ petition as Annexure-2. The Tribunal further held that the subsequent transfer order dated 24.2.2009 (Annexure-10) was issued by an incompetent authority and quashed it by a majority view. The Tribunal upheld the validity and legality of the transfer order dated 31.7.2007 and held that the Dy. Director, Integrated Child Development Services was not competent to pass the order dated 24.2.2009. Being aggrieved of the Tribunal's order dated 18.12.2009 the petitioner has approached this Court by way of the instant writ petition praying for quashing of the guidelines Annexure-8 dated 19.7.2003 and the transfer order Annex. 2 dated 31.7.2007 and for directing the respondents to make payment of her accrued salary.

9. Reply was filed to the writ petition by the respondents raising a preliminary objection that after being transferred to Baap, the petitioner did not join her place of posting and remained willfully absent from duty. It is asserted in the reply that departmental proceedings have been initiated against the petitioner for the said delinquency. It is claimed that the petitioner is not entitled to any salary for the period she remained willfully absent from duty and thus the writ petition deserves to be dismissed.

10. Mr. Vikas Balia, learned counsel for the petitioner vehemently contended that inspite of the transfer order Annexure-2 dated 31.7.2007, the petitioner continued to work on the post of Pracheta at Luni as she was never relieved from her post. She was entitled to and was rightly granted her due salary for the intervening period under the interim order dated 15.9.2010 passed by this Court. He thus submitted that the matter may be disposed of affirming the above interim order passed by this Court and thereafter the respondents be given liberty to reconsider the matter afresh regarding the question of transfer of the petitioner vis a vis respondent No. 3 in accordance with law. He submits that such an order is warranted to secure the ends of justice because the original transfer order was passed way back in the year 2007 and thereafter the petitioner was transferred to Integrated Child Development Scheme, Bawari vide order dated 6.9.2012 against which a second stay petition was preferred.

However, he concedes that the second stay application was ultimately not pressed. He further submitted that had the petitioner remained absent from duty as claimed by the respondents, then they definitely would have resorted to disciplinary action against her. He urged that to the best of his knowledge, no disciplinary action has been initiated against the petitioner so far for the so-called unauthorized absence.

11. Per contra Mr. Joshi, Assistant to learned AAG vehemently opposed the submissions advanced by the counsel for the petitioner. He submitted that the petitioner remained unauthorizedly absent from duty and thus she is not entitled to receive any salary whatsoever for the period of absence. He submitted that the respondents sent repeated notices at the petitioner's residence requiring her to join duty at the Panchayat Samiti, Baap pursuant to the transfer order. The petitioner deliberately did not respond to the notices upon which a notice was published in the news paper dated 18.12.2007 informing the petitioner that she had not proceeded to the place of her transfer and had avoided joining duty and thus disciplinary action was proposed against her. He thus prays that the petitioner is not entitled to any relief whatsoever and the writ petition deserves to be dismissed.

12. I have given thoughtful consideration to the arguments advanced at the bar and perused the material available on record. Since, the respondent No. 3 has retired during the pendency of the instant writ petition and the petitioner has also been transferred to another place (Bawari) during the pendency of the instant writ petition, the question regarding the legality or otherwise of the transfer orders impugned in the writ petition has lost significance. The only question which now remains alive for consideration is regarding the entitlement of the petitioner to receive salary for the interregnum period.

13. This Court passed an interim order dated 27.5.2010 directing that the services of the petitioner shall be maintained at Luni and she shall not be relieved from that station without the leave of this Court. Thereafter on 15.9.2010 this Court further directed the respondents to make payment of salary to the petitioner for past three years immediately and also continue to pay regular salary to her month by month during pendency of this writ petition. The said amount was directed to be paid subject to the final outcome of the writ petition.

14. The said interim order dated 15.09.2010 was challenged by the respondent State of Rajasthan by way of D.B. Civil Special Appeal (Writ) No. 633/2010. The Division Bench of this Court rejected the special appeal by order dated 6.10.2010 giving liberty to the State of Rajasthan to move an application for modification of the order dated 15.9.2010 before the Single Bench. After dismissal of the special appeal, the respondents released the salary of three years to the petitioner in compliance of this Court's order dated 15.9.2010. Few of the observations made by this Court in the order dated 15.9.2010 have a material bearing on the outcome of this writ petition and are thus quoted hereinbelow for the sake of

convenience:--

"The petitioner also verifies the same, but she submits that she is working at Luni for last 3 years continuously in pursuance of order Annex. 4 dtd. 6.9.2007 passed by the Additional Director, Jaipur and order Annex. 6 dtd. 26.6.2008 passed by the Director, Women Empowerment and Child Development Department, Government of Rajasthan, Jaipur by which the transfer order dtd. 31.7.2007 earlier passed was cancelled and therefore, the petitioner deserves to be paid salary for these three years which has not been paid and on the contrary in the order dtd. 3.9.2010, the respondent - Dy. Director has stated that the petitioner is voluntarily absent from her duties and for which the respondents are contemplating disciplinary action against her. The petitioner has further submitted that belated order passed on 24.2.2009 by the said Dy. Director Annex. 10 on record (page 56) only has been quashed by the Rajasthan Civil Services Tribunal at Jodhpur in its order dtd. 18.12.2009(Annex. 14) in appeal No. 70/2009 filed by one Kavita (sic. Kamla) Purohit who was transferred vice the petitioner finding the same to be without competence by the said Dy. Director in the said majority 2 : 1 decision. However, the earlier orders passed by the State Government referred to above on 6.9.2007 (Annex. 4) and 26.6.2008 (Annex. 6) have neither been discussed nor quashed and therefore, the petitioner submitted that she was correctly working at Luni as Pracheta under these orders of the State Government whose orders have not been doubted by the Service Tribunal and therefore, she cannot be said to be voluntarily absent from her duties as stipulated in the order dtd. 3.9.2010 and there is no question of taking any disciplinary action against her.

The aforesaid official Mr. Shakti Singh, Dy. Director, present in the Court was also unable to point out from the order of the Service appellate Tribunal which is under challenge in the present writ petition that the aforesaid orders dtd. 6.9.2007 and 26.6.2008 have been quashed or set aside by the Rajasthan Civil Services appellate Tribunal. In view of above, prima facie this Court is of the opinion that the petitioner cannot be said to be absent from duty at Luni for all this period of 3 years since the orders dtd. 6.9.2007 and 26.6.2008 clearly stipulated her to be kept and posted at Luni only. The said orders survive even now. The petitioner's contention that she has not been paid salary for all these 3 years since 2007 is also not rebutted by the respondent - Dy. Director."

15. Thus it is evident that the Court recorded a finding that the petitioner cannot be said to be absent from duty for the entire period of three years. The Rajasthan Civil Services Appellate Tribunal whilst deciding the appeal preferred by the respondent No. 3 also recorded a finding on the same issue which also has a material bearing on the controversy involved in the writ petition. The Tribunal's finding is quoted herein below for the sake of convenience:--

16. Thus, the contention advanced on behalf of the petitioner that she was never relieved from Panchayat Samiti, Luni in pursuance of the order dated 31.7.2007 and continued to discharge her duties at that station has substance in view of the

aforequoted findings recorded in this Court's order dated 15.9.2010 as well as the observations made by the Tribunal in its order dated 18.12.2009.

17. While the Court was hearing the arguments on the previous date of hearing i.e. on 27.11.2014, respondents were directed to keep available the attendance register of the concerned Panchayat Samiti for perusal of the Court. In response, the petitioner has filed an additional affidavit and submitted her own attendance register claiming that since she was working in the field, she was not signing the attendance register at the headquarters but instead, being a Pracheta, her primary duties are in the field and therefore, as per the practice prevalent, the field workers are required to prepare an attendance sheet and to submit it for verification to the officers for payment of salary. The respondents have produced the register maintained at the headquarters in order to portray that the petitioner never marked her attendance at Panchayat Samiti, Luni during this period. The fact remains that there was a serious tug of war going on between the parties on the rival claims as to whether the petitioner was ever relieved from duty from the Panchayat Samiti, Luni or not. The respondents have not placed on record any order or communication so as to prima facie establish that the petitioner was ever relieved from the Panchayat Samiti, Luni. Contrary thereto, a specific finding was recorded by the Rajasthan Civil Services Appellate Tribunal in its order dated 18.12.2009 passed in the appeal preferred by the respondent No. 3 reflecting that the petitioner was never relieved from duty in pursuance of the order dated 31.7.2007. This Court also whilst passing the interim order dated 15.9.2010 heard the Project Director in person and examined the record and arrived at a conclusion that the petitioner was not relieved from the Panchayat Samiti, Luni. Another significant fact which goes a long way to establish that the petitioner was not relieved from the Panchayat Samiti, Luni is that no disciplinary action was ever initiated against the petitioner for her so-called unauthorized absence. Had the petitioner remained unauthorizedly absent from duty, the respondents would have definitely resorted to disciplinary measures against her.

18. At this stage, it is worthwhile to note that the Dy. Director of the respondent department Mr. Shakti Singh appeared in person before the Court on 15.9.2010 and submitted a written clarification stating therein that an enquiry under Rule 16 is pending against the petitioner and therefore she is not entitled to any salary for the period of her unauthorized absence. However, while addressing the Court on 17.12.2014, Mr. Sunil Joshi, Advocate, Assistant to the AAG after referring to the entire record and in consultation with the officer in charge candidly admitted that no disciplinary enquiry was ever initiated against the petitioner for the so-called unauthorized absence from duty.

19. Had there been an iota of truth in the allegations of the respondents that the petitioner did not join duties at the Panchayat Samiti, Baap in pursuance of the transfer order Annexure-2, the concerned officers would definitely have initiated disciplinary proceedings against her. The conduct of the officers who remained

silent and unresponsive in the background of this factual scenario casts serious doubts on their bonafides. As a matter of fact if the allegation that the petitioner remained unauthorisedly absent from duty has an iota of truth then the concerned officers who failed to take any action in this regard are liable to be penalised for acting with rank apathy while discharging their duties and thereby facilitating the payment of a huge amount of money as salary to an employee who allegedly remained unauthorizedly absent from duty.

20. The other side of the coin may be that officers all along knew that the petitioner was performing and discharging her duties as a Pracheta at the Panchayat Samiti, Luni and that is why, no action was ever taken against her. Be that as it may. As the controversy squarely stands concluded looking to the abovequoted findings recorded by the Tribunal and by the interim order dated 15.9.2010 passed in the instant writ petition, this Court is of the firm opinion that the petitioner was entitled to receive the salary by treating her to be continuously on duty. Admittedly even as per the respondents, the petitioner is performing her duties in pursuance of the subsequent transfer order. In view of the subsequent developments, this Court is not required to examine the legality or otherwise of the various transfer orders, the policy Annexure-3 and the Tribunal's order Annexure-14 dated 18.12.2009 as the exercise is now rendered just academic for all practical purposes.

21. Thus, the writ petition is disposed of with a direction that the respondents shall not be entitled to take steps for recovery of payment made to the petitioner in pursuance of the order dated 15.9.2010 passed by this Court. If so required, the respondent authorities shall be at liberty to pass lawful and appropriate orders regarding the posting of the petitioner without being influenced or prejudiced by any of the observations made hereinabove.

22. With the above observations, the writ petition stands disposed of. No order as to cost.