
(2022) 05 OHC CK 0145
In the Orissa High Court
Case No : Writ Petition (C) No. 9273 Of 2022

Laxmidhar Pradhan

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 27-05-2022

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2022) 05 OHC CK 0145

Hon'ble Judges : S.K. Panigrahi, J

Bench : Single Bench

Advocate : Sudarsan Behera, Sonak Mishra

Final Decision : Disposed Of

Judgement

S.K. Panigrahi, J

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The present petition has been directed against the illegal transfer order whereby the petitioner was asked to relocate from Gopabandhu Govt. U.P School, Bharatpur, Bhubaneswar to Govt. High School, Khandagiri. The Petition calls into question and challenges the action of the Opposite Parties for violating the principles laid down in Government Notification No. 22167/S & ME dated 04.10.2018 and prays to quash the said illegal transfer order in the interests of justice.
4. Shorn of unnecessary details, the substratum of the matter presented before this court remain that the petitioner has been working as an Asst. Teacher at Gopabandhu Govt. U.P School, Bharatpur, Bhubaneswar. Subsequently, vide Office Order no. 6838 dated 10.12.2021, the petitioner was issued a transfer order.

5. The petitioner has submitted that he has bona fide reasons towards making representations against the said transfer order as it violates the principles and guidelines laid down in Notification No. 22167/S & ME dated 04.10.2018. Relevant assertions in the complaint reads as follows:

"In order to comply with the provisions reflected in Section 19 and 25 and the Schedule-1(a)(b) of norms and standards for a school of the Right of Children to Free and Compulsory Education Act, 2009 and the Right of Children to Free and Compulsory Education Rules, 2010 i.e., school-wise PTR of 30:01 at primary level and 35:01 at the Upper Primary Level with a minimum of 2(two) teachers per school, rationalization of teachers is essentially required.

II. Transfers on Rationalisation

a) Principles

i. Teachers will be transferred from schools with surplus teachers to schools with teacher deficit. The requirements of teachers can be assessed keeping in view the PTR norms in RCFCE Act, 2009 & Odisha RCFCE Rules, 2010."

6. It is argued on behalf of learned counsel for the petitioner that the staff strength in Gopabandhu U.P School, Bharatpur, as on 31.03.2022, was 13 as compared to the mandated requirement of 18 which is essential to maintain a teacher-pupil ratio of 1:30. Learned Counsel for the petitioner has also submitted that since the Notification No. 22167/S & ME dated 04.10.2018 prohibits the transfer of teachers from deficit school to surplus school, the action of the Opposite Party, in issuing the transfer order to the Petitioner, is contrary to the guidelines and directions formulated by the state government.

7. Indisputably, in the case at hand, the court is of the opinion that transfer being an incident of service, no exception could be taken to the impugned orders of transfer, which came to be made according to the Opposite Party in accordance with law and in public interest, particularly in the absence of any proof of malafides or contravention of any specific prohibitory provision in this regard, rendering the employees immune from such transfers.

8. It is by now well-settled and often reiterated by the Hon'ble Supreme Court that no Government servant or employee of public Undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned.

9. In view of the facts and circumstances of the case presented, this court is also unable to agree with the learned counsel for the petitioner that the guidelines and direction entailed in Notification No. 22167/S & ME dated 04.10.2018 interdicts any transfer of teachers on the basis of staff strength or teacher-pupil ratio.

10. The Hon'ble Supreme Court in the case of N.K Singh v. Union of India 1995 AIR 423 observed that:

"Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer. Accordingly, this aspect requires consideration at the outset".

11. Moreover, this Court is of the considered view that even if a transfer order is passed in violation of executive instructions or orders, there is a well-grounded administrative reason for the same and the courts ordinarily should not interfere with the order; instead, the affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest.

12. The Hon'ble Supreme Court in the case of Union of India And Ors. vs. S.L. Abbas 1993 AIR 2444 observed that:

"It is not the case of the respondent that order of his transfer is vitiated by mala fides on the part of the authority making the order,- though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject.

Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."

13. The Hon'ble Supreme Court, in the case of State of U. P. & Ors. vs. Gobardhan Lal Appeal (civil) 408 of 2004 decided upon the validity of transfer orders made in contravention of administrative guidelines and observed that:

"It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

14. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fide when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

15. Conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any Authority as well as the

basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities effecting transfers.

16. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other organs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously Courts endeavour to safeguard the rights of parties.

17. From the conspectus of factual matrix, this Court is of the opinion that guidelines in respect of transfer does not confer upon the petitioner a legally enforceable right as transfer of a Government servant may be due to exigencies of service or due to administrative reason. The Courts cannot interfere in such matters.

18. Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court rejects this Writ Petition.

19. The Writ Petition is, accordingly, disposed of in terms of the above directions. There shall be no order as to costs.

.....