
(2006) 05 GAU CK 0059
In the Gauhati High Court

Md.Ajit Shah

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Citation : (2006) 05 GAU CK 0059

Hon'ble Judges : M.B.K.Singh, J

Bench : Single Bench

Advocate : Jalal Uddin, H.Dijen, Advocates appearing for Parties

Judgement

1. Heard Mr. H. Dijen Singh, learned counsel appearing on behalf of the petitioner and Mr.Jalal, learned Addl. G.A. appearing on behalf of the respondents.

2. This Writ petition has been filed praying mainly for quashing the order being No.E/37/16/98PHQ (Adm) Pt (i), 20th Sept.2005 passed by the Director General of Police, Manipur so far as it concerns the petitioner. The impugned order, inter alia, maintains the transfer order of even number dated 29.8.05 in respect of the petitioner by canceling the transfer order of even number dated 17.9.05 in respect of him from Thoubal to Imphal West. By the said transfer order dated 29.8.05, inter alia, the petitioner was transferred from Thoubal to Ukhrul purportedly in public interest and by the transfer order dated 17.9.05, inter alia, petitioner was transferred from Thoubal to Imphal West purportedly in public interest.

3. Mr. H. Dijen, learned counsel appearing on behalf of the petitioner submits that the petitioner has been subjected to frequent transfers and that the impugned order has been passed without assigning any reason and as such it is not sustainable in the eye of law in view of the decision of this Court in Zakir Hussain Vs State of Assam reported in (2001)3 GLT 67. According to the petitioner's counsel, as per the above said decision, once transfer order is made in public interest, subsequent order cancelling or superseding it must be supported by sufficient reasons. In the said case, it was held that if any such

order was passed in cryptic manner without assigning any reason that would seem to be not in public interest. Further, according to the petitioner's counsel, the impugned order has been passed in violation of the Office Memorandum dated 24.4.91 of the Department of Personnel and Administrative Reforms (Personnel Division), Govt. of Manipur, under which no transfer may be made unless the concerned person has completed about 3 years in a post unless there are compelling reason to do so.

4. Mr. Jalal, learned Addl. G.A. has also heard at length. According to him, the impugned order has been passed properly and legally for sufficient reasons and the petitioner has not been subjected to frequent transfers as alleged. Further, according to the learned Addl.G.A., the order dated 17.9.05 transferring the petitioner from Thoubal to Imphal West after some days of transferring him from Thoubal to Ukhrul under an earlier order dated 29.8.05 was passed through mistake and as such after coming to know that the petitioner had already joined at Ukhrul P.S. in pursuance of the said earlier order dated 29.8.05, the impugned order dated 20.9.05 canceling the transfer order dated 17.9.05 and maintaining the earlier transfer order dated 29.8.05 was passed.

5. It is well settled that transfer is not only an incident of service but a condition of service as well and is necessary in public interest and efficiency in public administration. No Government servant has a legal right to be posted forever at any one particular place or place of his choice.

6. The petitioner has been serving as a police Constable in Manipur Police Department since the date of his joining in pursuance of appointment order dated 10.10.86 issued by the S.P. Imphal. He served in Imphal District under the Superintendent of Police, Imphal till he was transferred to Chandel District by an order dated 26.7.96 issued by the S.P. Imphal. Thereafter, he was again transferred to Imphal West District from Chandel Dist. Vide order dated 26.8.99 issued by the S.P. Chandel District. Then, he was transferred to Chandel Dist. again from Imphal West District vide an order dated 8.1.03 issued by the Senior S.P. Imphal West District. In the same year, petitioner was transferred from Chandel to Thoubal vide order dated 6.11.03 issued by the D.G.P. Manipur purportedly in public interest. On 29.8.05 the D.G.P. Manipur issued the said order, inter alia, transferring the petitioner from Thoubal to Ukhrul purportedly in the public interest. After some days of the above said transfer order dated 29.8.05, the D.G.P. Manipur issued another order dated 17.9.05 transferring the petitioner from Thoubal District to Imphal West purportedly on assumption that the earlier transfer order dated 29.8.05 had not been effected. As per counter affidavit of the respondents, in pursuance of the earlier transfer order dated 29.8.05, the petitioner was released by the S.P. Thoubal vide order dated 1.9.05 and he joined at Ukhrul P.S. on 4.10.05. There is no denial in respect of the said facts from the side of the petitioner. It is to be noted that before the petitioner joined at Ukhrul P.S. on 4.10.05, the impugned order dated 20.9.05 had already been passed. On the other hand, purportedly in pursuance of the transfer order

dated 17.9.05, S.P. Ukhrul issued an order on 3.11.05 releasing the petitioner from Ukhrul for enabling him to join at Imphal West oblivious of the fact that the said transfer order dated 17.9.05 had already been cancelled vide impugned order dated 20.9.05. The petitioner also apparently joined at the Office of the S.P. Imphal West on 10.11.05. According to the respondents, in compliance with the order of the D.G.P., Manipur dated 17.9.05, the petitioner was released from Imphal West District to enable him to report to the S.P. Ukhrul immediately vide order passed on 16.11.05 by the S.P. Imphal West. The petitioner has denied the above said fact of his having been released from Imphal West District.

7. On careful consideration of the materials before the Court and in the light of the submissions of both sides through their respective counsel, I do not find sufficient reason as to why the respondents' case should not be believed. In the facts and circumstances, the said transfer order dated 17.9.05 transferring the petitioner from Thoubal to Imphal West was passed through mistake. There is no reasonable basis as to why the said transfer order dated 17.9.05 was passed within some days of passing the earlier transfer order dated 29.8.05. It is already seen that before passing the said transfer order dated 17.9.05, the petitioner had already been released from Thoubal by the S.P. Thoubal on 1.9.05 in pursuance of the earlier transfer order dated 29.8.05. Thus, the earlier transfer order dated 29.8.05 had started to take effect by releasing the petitioner from Thoubal before issuance of the said subsequent order dated 17.9.05. It is not a case of subjecting the petitioner to frequent transfers. In the facts and circumstances of the case, I am of the opinion that the said earlier transfer order dated 29.8.05 was passed in the normal course in the public interest and that the subsequent transfer order dated 17.9.05 was passed through mistake without any appreciable reason and that the impugned order dated 20.9.05 was passed only to correct the mistake and thereby for maintaining the earlier transfer order dated 29.8.05. There is no sufficient basis for thinking that the impugned transfer order has been vitiated by malafide. Further, in the facts and circumstances, it cannot be said that the impugned order has been passed without assigning any reason arbitrarily and as such the decision reported in (2001) 3 GLT page 67 will not be applicable in the present case. The said decision is not of much help to the petitioner's case.

8. The Office Memorandum dated 24.4.91 is only an instruction. It has no force of law and it does not confer any legal right to the petitioner and as such it is not enforceable in his favour. At the same time, it is already seen that the petitioner was posted at Imphal District for about 10 years, then he was posted at Chandel District for about 3 years and thereafter, he was posted at Imphal West District for a period more than 3 years. Then, he was at Chandel District after more than 4 years of his posting at Imphal West District and after 10 months of his posting at Chandel, he was transferred to Thoubal. It was after about 2 years of his posting at Thoubal that the said transfer order dated 29.8.05 was passed. So long as the petitioner is in service, he is required to go wherever his service is required. He has no legal right to be posted at the place of his choice. I am of

the opinion that the impugned transfer order has not been passed in violation of any law or statutory rules.

9. There is also no basis for thinking that the impugned order has been passed by an authority not competent to pass such an order.

10. In the result, the petitioner's case has no merit. No interference is warranted in respect of the impugned order. The prayer of the petitioner is rejected. The petitioner is to comply with the relevant transfer order dated 29.8.05.

11. This Writ Petition is dismissed. Interim order, if any, shall stand vacated. No order as to costs.