
(2008) 04 CHH CK 0012
In the Chhattisgarh High Court
Case No : W.A.S. No. 1062 of 2008

Mohd. Firoz Khan

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 04 CHH CK 0012

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Mohd. Firoz Khan in person, for the Appellant; Alok Bakhshi, Govt. Advocate, for the Respondent

Judgement

Satish K. Agnihotri, J.—The Petitioner has filed this petition impugning of the transfer order dated 06.07.07 (Annexure P/2) whereby, the Petitioner, (sic) as Coach was transferred from Government Gurukul Vidyalaya, (sic) Road, District Bilaspur to Boys Sports Campus. Narayanpur, Distt. Narayanpur, on administrative exigency, (ii) order dated 14.11.07, whereby, the Petitioner was directed to comply with the earlier transfer order dated 06.07.07 and (iii) order dated 01.02.06 passed by the Secretary, Govt, of Chhattisgarh, Scheduled Castes & Scheduled Tribes Development, DKS Bhawan, Raipur (CG) whereby, the representation of the Petitioner was dismissed.

2. According to Mohd. Firoz Khan, Petitioner in person, the Respondents are annoyed with the Petitioner because of filing writ petitions, being W.P. Nos. 2199/03 and 2256/05 and punished the Petitioner on false ground by transferring the Petitioner from the present place of posting to the Boys Sports Campus, Narayanpur, showing on administrative ground. The Petitioner has initially filed W.P. No. 4297/06 (Mohd. Firoz Khan v. State of Chhattisgarh and Ors.) impugning the transfer order dated 06.07.07 which is again under challenge in the instant petition. The earlier petition, W.P. No. 4297/06 was withdrawn on 25.3.07.2007 with liberty to make a representation. Thereafter, the

Petitioner made a representation to the authority concerned.

3. The Petitioner again filed a writ petition being W.P. (S) No. 7705/07 seeking disposal of the representation, pending consideration before the Deputy Secretary, Scheduled Tribes & Scheduled Castes Welfare Department, Mantralaya, Raipur and further impugning the order dated 14.11.07 (Annexure P/4) whereby the Petitioner was directed to comply with the order dated 06.07.07. The said order is again impugned in this petition.

4. This Court, on 03.01.08, disposed of the W.P. (S) No. 7705/07 holding that since the representation was not decided, the order directing the Petitioner to comply with the transfer order cannot be taken as order passed on the representation. The Respondent No. 1 was accordingly directed to consider his pending representation and pass appropriate order in accordance with rules within a period of four weeks from the date of receipt of the order.

5. The Respondent No. 1 considered the case of the Petitioner at length and observed as under:

6. Shri Firoz Khan, Petitioner in person submits that the notings dated 12.10.07 made in official record by the Under Secretary, Govt. of Chhattisgarh, Scheduled Tribes & Scheduled Castes Welfare Department, Mantralaya, Raipur, indicates that Shri R.S. Verma, Principal, Gurukul Vidyalyaya, Pendra Road, District Bilaspur is mimical to Shri Firoz Khan. It is clearly established that the impugned order was passed on account of animosity nurtured by the Principal.

7. Per contra, Shri Alok Bakhshi, Govt. Advocate, submits that on finding that principal has mala fide intention against the Petitioner, independent inquiry by the Additional Collector, Schedule Tribes & Scheduled Castes Welfare Department was made as is clear from the note sheet dated 12.10.2007.

8. The Additional Collector, Schedule Tribes & Scheduled Castes Welfare Department, Bilaspur, after having conducted the independent inquiry reported that the complaint made by the Principal against the Petitioner was correct. Accordingly, the file was further moved and the Secretary confirmed the recommendation of Under Secretary for transferring the Petitioner from outside the districts vide his noting dated 31.10.07.

9. I have heard rival contentions of the Petitioner in person and learned Counsel appearing for the State/Respondents. It is evident that on the basis of representation made by the Petitioner, the State Government has examined the matter thoroughly. I have perused and examined original files produced by the government counsel. The notings in the note sheets of records, made by the Under Secretary indicates, that the State Government asked the Assistant Commissioner, Schedule Tribes & Scheduled Castes Welfare Department for report independently, for which on 12.10.07 it was reported by the Under Secretary that the Principal has nurtured some animosity against the Petitioner. The Assistant Commissioner, Schedule Tribes & Scheduled Castes Welfare

Department has submitted his report independently observing that the complaint made by the Principal was true and correct. It was thereafter recommended on 31.10.07 for transfer outside the district, which was confirmed by the Secretary that the Petitioner was correctly transferred out of the district.

10. Legal position in case of transfer is well established that Court should exercise its jurisdiction only in case of proved malafide, non-competence of the officer passing the order, violation of rules and regulations, applicable to the employees.

11. In case of E.P. Royappa Vs. State of Tamil Nadu and Another, the Hon''ble Supreme Court observed as under:

88.....with the vast multitudinous activities in which a modern State is engaged, there are bound to be some posts which require for adequate discharge of their functions, high degree of intellect and specialised experience. It is always a difficult problem for the Government to find suitable officers for such specialized posts. There are not ordinarily many officers who answer the requirements of such specialized posts and the choice with the Government is very limited and this choice becomes all the more difficult, because some of these posts, though important and having onerous responsibilities, do not carry wide executive powers and officers may not, therefore, generally be willing to be transferred to those posts. The Government has in the circumstances to make the best possible choice it can, keeping in view the larger interests of the administration. When, in exercise of this choice, the Government transfers an officer from one post to another, the officer may feel unhappy because the new post does not give him the same amplitude of powers which he had while holding the old post. But that does not make the transfer arbitrary. So long as the transfer is made on account of the exigencies of administration and is not from a higher post to a lower post with discriminatory preference of a junior for the higher post, it would be valid and not open to attack under Articles 14 and 16.

92. We must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility..... In this context it may be noted that top administrators are often required to do acts which affect other adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inference from incomplete facts placed before it by a party, particularly when the imputations are grave and they are mad against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up-these considerations are wholly irrelevant in

judicial approach-but because otherwise, functioning effectively would become difficult in a democracy.

12. In case of Shilpi Bose (Mrs.) and Ors. v. State of Bihar and others, 1991 Supp (1) SCC 659 the Hon''ble Supreme Court observed as under:

3..... If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the court merely because the transfer orders were passed on the request of the employees concerned. The Respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other. The transfer orders had been issued by the competent authority which did not violate any mandatory rule, therefore the High Court had no jurisdiction to interfere with the transfer orders.

4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead 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 be conducive to public interest

13. In case of State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, the Hon''ble Supreme Court observed as under:

4.... The Court or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala files or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative ground the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place.

14. In case of Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, the Hon''ble Supreme Court observed as under:

14..... For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehavior or conduct unbecoming of an

employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned Counsel for the Respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the Respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration.

15. In case of Mohd. Masood Ahmad Vs. State of U.P. and Others, the Hon''ble Supreme Court observed as under:

7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in *Rajendra Roy v. Union of India*, *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan*, *State Bank of India v. Anjan Sanyal*. Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in *Vijay Pal Singh v. State of U.P. and Onkar Nath Tiwari v. Chief Engineer, Minor Irrigation Deptt.* has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is mala fide or that the service rules prohibit such transfers, or that the authorities who issued the orders, were not competent to pass the orders.

16. In view of the well-settled principles as enunciated by the Supreme Court in the cases cited above, the Petitioner has failed to establish any malafide against the officers. No enquiry is necessary to find out truth of the complaint and the Petitioner has not challenged the transfer order on any other ground, i.e. non competence of the concerned authorities passing the impugned order and violation of any rules and regulations governing the service conditions of the Petitioner. Thus, the order dated 01.02.08 (Annexure P/6) passed by the Secretary, Schedule Tribes & Scheduled Castes Welfare Department, after considering all the facts, on representation made by the Petitioner, is just and proper and does not warrant any interference. This petition is accordingly dismissed.