
(2006) 04 GAU CK 0016
In the Gauhati High Court
Case No : Writ Petition (C) No. 6036 of 2005

Monidutta

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 2 GLT 508

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Advocate : S.N. Sharma, A.J. Das, R. De and N. Mitra, for the Appellant; S.C. Education, T. Islam, M. Bhuyan and M. Mahanta, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—Orders of transfer dated 2.6.05 (annexure-II) and 16.8.2005 (annexure-I) both passed by the District Elementary Education Officer, Lakhimpur, North Lakhimpur have been challenged by the Petitioner in the present writ petition on the ground that the transfer orders are punitive, malafide and were passed to accommodate one Bipin Bez.

2. By order dated 2.6.2005 issued by the District Elementary Education Officer, the Petitioner who was the Headmistress of Boginadi Girls" M.E. School was transferred and posted at Kadam Janajati Girls" M.E. School vice Sri Bipin Bez, Headmaster of Kadam Janajati Girls" M.E. School transferred in the place of the Petitioner. The said order of transfer was modified partially vide order dated 16.8.2005 issued by the same authority staying the transfer of Bipin Bez, Headmaster of Kadam Janajati M.E. School to Boginadi Girls" M.E. School and transferring the Petitioner to Kananadi M.E. School instead of Kadam Janajati Girls" M.E. School vide Sri Jyoti Kamal Borah (Respondent No. 5) Headmaster of said Kananadi M.E. School to Boginadi Girls" M.E. School. By the said order Respondent No. 5 was directed to move first.

3. I have heard S.N. Sharma, learned Sr. counsel for the Petitioner, Mr. T. Islam, learned standing counsel, Education Department for Respondent Nos. 1 to 4 and Sri Manojit Bhuyan, learned Counsel appearing on behalf of the Respondent No. 5.

4. Mr. Sharma, learned Sr. counsel for the Petitioner challenging the orders of transfer dated 2.6.05 and 16.8.05 has submitted that the Petitioner was transferred from Boginadi Girls" M.E. School not in public interest but as a punitive measure for not being able to comply with the direction issued by the District Elementary Education Officer (in short DEEO) dated 20.4.05 asking the Petitioner to release, one Kamal Chutia, an Assistant Teacher of Boginadi Girls" M.E. School, who was transferred from the said school to Usha M.V. School vide order dated 10.3.2005, as the said order of transfer of Kamal Chutia was suspended by the High Court vide order dated 6.4.2005 passed in W.P. (C) No. 2694/05. According to the Petitioner in spite of the said interim order passed by the High Court in favour of the said Kamal Chutia, the DEEO insisted the Petitioner to release him from Boginadi Girls" M.E. School and as the Petitioner in view of the order of the High Court could not release him from her school, she was transferred out from Boginadi Girls M.E. School, initially to Kadam Janajati M.E. School vice Sri Bipin Bez and thereafter modifying die same and transferring the Petitioner to Kananadi M.E. School vice the Respondent No. 5. According to the learned Sr. counsel the transfer orders were not issued in the public interest or in administrative exigencies but were issued as a measure of punishment for not obeying the direction of the DEEO contained in the letter dated 20.4.2005 for release of Sri Kamal Chutia, which she could not do because of the aforesaid High Court's order. The further submission of the learned Sr. counsel is that the transfer orders were passed to accommodate Sri Bipin Bez. It has further been submitted that the process of transfer of the Petitioner was initiated immediately after the reply submitted by the Petitioner to the DEEO to his direction contained in the communication dated 20.4.2005 asking her to release the Kamal Chutia and on the basis of the desire of the minister WPT and BC etc. for transfer of the Petitioner from the said school and to bring Bipin Bez to the school where the Petitioner was initially serving. The learned Sr. counsel therefore, submits that the transfer order requires to be interfered with by this Court. In support of his contention the learned Counsel has placed reliance on the decision of this Court in Shivapada Bhattacharjee v. State of Assam and Ors. reported in 1994 (1) GLJ 307, Pranabjyoti Deka (Dr.) v. State of Assam and Ors. reported in 1998 (2) GLT 378 and Jibeswar Thakuria Vs. State of Assam and Others,

5. Mr. T. Islam, learned standing counsel Education Department relying on the records produced by him has submitted that the transfer orders were not issued as a punitive measure or with a malafide intention of harassing the Petitioner and to accommodate any person in any school but were issued in the interest of public service and in administrative exigencies. According to the learned standing counsel the order of transfer dated 2.6.2005 having been modified vide order dated 16.8.2005, the order dated 2.6.2005 became non-existent and therefore,

there cannot be any challenge of the said transfer order dated 2.6.2005 at the instance of the Petitioner, that too, without making Bipin Bez as party Respondent. Therefore, according to the learned standing counsel, this Court is required to scrutinize the legality and validity of the order of transfer dated 16.8.2005 only Mr. Islam has further submitted that the said order dated 16.8.2005 was issued in the interest of public service and in administrative exigencies as there are certain allegations levelled by the Managing Committee of the school against the Petitioner and the authority has thought it fit and proper keeping in view the interest of the school as well as its students to transfer out the Petitioner from the said school and therefore, it cannot be said that the transfer order was not issued in the interest of public service. The standing counsel further submits that record reveals that the process of transfer of the Petitioner from the Boginadi Girls" M.E. School was not initiated after she submitted the reply dated 25.4.2005 to the DEEO against his direction to release Sri Kamal Chutia, Respondent No. 4 contained in the letter dated 20.4.2005 but was initiated on 4.4.2005 and because of the complaint against her. In fact, according to the learned standing counsel, the Minister WPT and BC etc. on 4.4.2005 requested the DEEO to cancel the order of transfer of Kamal Chutia an Asstt. Teacher of Boginadi Girls" M.E. School to Usha M.B. School. The learned standing counsel has further submitted that it is no doubt the Minister WPT and BC etc. had suggested the transfer of the Petitioner from Boginadi Girls" M.E. School to Kadam Janajati Girls M.E. School vice Bipin Bez and the authority taking into the entire facts and circumstances and in the interest of public service initially passed the order dated 2.6.2005 which was subsequently modified vide order dated 16.8.2005.

6. Mr. Bhuyan, learned Counsel appearing on behalf of the Respondent No. 5, relying on the statements made in the application filed by him in Misc. case No. 2908/05 praying for vacating the interim order passed in the writ petition, which application has been treated as the affidavit-in-opposition to the writ petition, as agreed to by the learned Counsel for the parties, has submitted that the scope of judicial review under Article 226 of the Constitution of India of an order of transfer is very limited and an order of transfer can only be challenged and interfered with when it is shown that the same was passed in malafide exercise of power or in violation of any statutory provision or passed by the authority not competent to do so. According to learned Counsel, the High Court cannot lightly interfere with the transfer order as a matter of course or routine for any or every type of grievance sought to be made. Mr. Bhuyan, has submitted that order of transfer which was issued in the interest of public service and in administrative exigencies may not be interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India as the Petitioner has failed to demonstrate any malafide action or violation of any statutory provision in issuing such order of transfer and also as it is not the case of the Petitioner that the DEEO is not the competent authority to issue such order of transfer. The learned Counsel has further submitted that pursuant to the order of transfer issued on

16.8.2005 whereby the Respondent No. 5 was directed to move first, he joined the transferred place of posting i.e. Boginadi Girls" M.E. School on 18.8.2005 and the writ Petitioner has approached this Court only on 23.8.2005 and got ex-parte interim order on 24.8.2005. The further submission of the learned Counsel is that the Petitioner was serving in the Boginadi Girls" M.E. School for about 19 years and has been transferred to a school namely Kananadi M.E. School, which is only 7/8 Kms away. The learned Counsel therefore, submits that the Petitioner could not make out any case for interference with the order of transfer passed by the authority. Mr. Bhuyan, in support of his submission has relied upon a decision of the Apex Court in State of U.P. and Others Vs. Gobardhan Lal,

7. The scope of judicial review by the High Court of an administrative action of the authority in passing an order of transfer is very limited. An order of transfer can be challenged and interfered with if the same is not issued in the interest of public service or in administrative exigencies or in violation of any statutory provision. It can also be interfered with if the same amounts to changing the conditions of service of an employee or was passed in malafide exercise of power or by an authority who is not competent to pass such transfer order. The violation of any guideline, which has no statutory force, cannot be a ground for challenge of an order of transfer.

8. In the backdrop of the aforesaid position in law regarding interference with an order of transfer, let me now consider whether the orders of transfer challenged in the present writ petition suffer from any illegality as mentioned above and whether this Court can interfere with the said orders of transfer.

9. The Petitioner's case is that the process of her transfer was initiated after she refused to release Sri Kamal Chutia from Boginadi Girls" M.E. School pursuant to the direction contained in the communication dated 20.4.2005 issued by the DEEO and that too, at the instance of the minister WPT and BC etc. According to the Petitioner the orders of transfer are the consequences of her refusal to release Kamal Chutia as High Court passed an interim order suspending operation of the order of transfer of Kamal Chutia and the said order of transfers are therefore, punitive in nature. The further ground of challenge to the order of transfer dated 2.6.2005 is that the same was issued to accommodate Bipin Bez.

10. It appears from the records produced by the State Respondents that the process for transfer of the Petitioner was initiated in the interest of public service. The record also reveals that the Kamal Chutia, who was transferred vide order dated 10.3.05 was not released by the Petitioner from Boginadi Girls" M.E. School in spite of the direction issued by the DEEO on 30.3.2005, on the ground that Kamal Chutia has applied for leave. It also appears from the record that in fact minister WPT and BC on 4.4.05 requested the DEEO to cancel the order of transfer of Kamal Chutia from Baginadi Girls" M.E. School. Therefore, it is not that the process for transfer was initiated because of the refusal of the Petitioner to release Kamal Chutia from the school so as to enable him to join the transferred place of posting, in view of the interim order passed by this Court in

the writ petition filed by Kamal Chutia staying his order of transfer. As discussed above, the action on the part of the Petitioner was also not overboard as she refused to release Kamal Chutia in terms of transfer order from Boginadi Girls" M.E. School. Moreover, it appears from the record that there are certain allegations against the Petitioner by the Managing Committee about her performance in the school as Headmistress. The authority, therefore, issued the order of transfer keeping in view the interest of the school in question and in administrative necessity. It also cannot be said that the order of transfer is punitive as the same was issued as because there are certain allegation against the Petitioner levelled by the Managing Committee as the authority in view of the such allegations can decide to transfer the Petitioner, in administrative exigencies and as a solution of the problem faced by the school and the student, which has been done in the instant case. The authority at its wisdom has thought it fit in the public interest that the Petitioner should not be in Boginadi Girls" M.E. School and therefore transferred her out from the said school. This Court in exercise of the power of judicial review cannot interfere in the such order of transfer.

11. The Petitioner has also challenged the order of transfer dated 2.6.2005 by which she was initially transferred from Boginadi Girls" M.E. School to Kananadi M.E. School in place of one Bipin Bez and also subsequent modification dated 16.8.2005 on the ground that the same were issued to accommodate Bipin Bez. Though the Petitioner has made such allegation she has not added Bipin Bez as party Respondent in the writ petition. Moreover, the first order of transfer dated 2.6.2005 has been modified vide order of transfer dated 16.8.2005.

12. Though the Petitioner in the writ petition has alleged that the transfer order was issued by the DEEO because of her refusal to release Kamal Chutia, in view of the High Court order of stay, on the ground of malafide, the Petitioner did not add the officer by name against whom, such malafide is alleged. In a petition where malafide is alleged, the person against whom such malafide is alleged, has to be added as party Respondent by name, so that he has a chance to rebut such allegation. In the instant case the District Elementary Education Officer who passed the impugned order or Minister WPT and BC, according to the Petitioner at whose instance the process of transfer was initiated, have not been added as party Respondents by name, therefore, such allegation of the Petitioner cannot be gone into in the present writ petition. That apart the record does not reveal initiation of the process of transfer of the Petitioner for not releasing Kamal Chutia from Boginadi Girls" M.E. School.

13. The Petitioner has relied upon the decision of this Court in Shivapada Bhattacharjee (supra) wherein it has been held that the frequent transfers, without sufficient reason to justify such transfers can be regarded as malafide and if a transfer order is made to accommodate any person for undisclosed reasons that can also be challenged as malafide. A division bench of this Court in Pranabjyoti Deka (Dr.) (Supra) has held that if the transfer order was issued on extraneous consideration not germane to exigency of public service and was

passed at the behest of a minister to accommodate any person, such transfer order can be interfered with by the High Court. The Petitioner has also relied upon a single bench decision of this Court in Jibeswar Thakuria and Ors. (supra) wherein this Court has held that High Court can interfere with the transfer order, if the same has been issued by the concerned authority at the instance of political interference. The said decisions cited by the learned Counsel are not applicable in facts and circumstances of the present case as discussed above.

14. In *State of U.P. and Ors. v. Gobardhan Lal* (supra) the Apex Court has reiterated the scope of judicial review of an order of transfer by the court and has held that 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 the conditions of service and unless the order of transfer was shown to be an outcome of a malafide exercise of power or violative of any statutory provision 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. It has further been held that even administrative guidelines for regulating transfers or containing transfer policies at the 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 to any place in public interest and as it 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.

15. In the instant case the orders of transfer have been challenged on the ground of malafide and also on the ground that the same were issued as a punitive measure or to accommodate one Bipin Bez, which contentions of the Petitioner have already been rejected. It is not the case of the Petitioner had the DEEO is not the competent authority to pass the order of transfer or the status of the Petitioner has been adversely affected or there is infraction of her career prospects, seniority, scale of pay and secured emoluments etc.

16. In view of the aforesaid discussion, I do not find any merit in the present writ petition and hence the same is dismissed. No cost.