
(2006) 08 DEL CK 0242
In the Delhi High Court
Case No : Writ Petition (C) 9657 of 2006

Mrs. Jojiana Lakra

APPELLANT

Vs

National Council for Teachers Education and Another

RESPONDENT

Date of Decision : 18-08-2006

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 20

Citation : (2006) 131 DLT 671

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : M. Qayamuddin, for the Appellant; K.K. Sharma and P.L. Gautam, for respondent No. 2-UOI, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—In this writ petition, the petitioner has called into question the transfer order dated 19.05.2006. The petitioner was appointed as an Assistant on temporary basis with the respondent on 22nd June, 1998. She was promoted as Section Officer vide office order dated 22nd April, 2004. On 19.5.2006, the petitioner came to know that she was being transferred to Bangalore. She made a representation on the same day. Its relevant portion runs as follows:

My son is 3+ and his admission process is going on in various schools for which already forms had been filled up. Further to submit that my husband is in private business(Financial Consultant) and all his clients are based in Delhi. He is in this business for about 20 years. There would not be any future earning of my husband in other cities. My husband is the eldest son in the family with a younger brother and parents. The whole family depends on the earning of my husband. The responsibility of marriage of brother-in-law is also to be arranged by my husband. The quarter in which we are staying is allotted by KVS, New Delhi which is also in my name.

In the case of my transfer my whole family life would be disturbed since my child

is minor and I cannot leave my child now. It is just the question of 3-4 years and after that as my child becomes understandable, I would be interested to go in any of the Regional Committee. My husband cannot leave Delhi and his parents as all the family depends on him. It is, Therefore, humbly requested that my transfer in other place may not be done at this stage.

On 23.5.2006 the petitioner was on leave as her mother-in-law was unwell. She was called by respondent No. 1 and she was handed over a transfer order dated 19.5.2006, wherein the petitioner was transferred to Bangalore with immediate effect. It is alleged that the transfer order is contrary to OM No. 28034/2/97-Estt.(A) issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions and Vth Central Pay Commission's recommendations. The relevant portion of the office Memorandum is reproduced:

OFFICE MEMORANDUM

Subject: Posting of husband and wife at the same station.

The undersigned is directed to say that on the subject mentioned above, Government had issued detailed guidelines vide O.M. No. 28034/7/86-Estt.(A) dated 3.4.86. the Fifth Central Pay Commission has now recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated, it has also recommended that the scope of these instructions should be widened to include the provision that where posts at the appropriate level exist in the organisation at the same station, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are 10 years of age.

2. The Government, after considering the matter, has decided to accept this recommendation of the Fifth Central Pay Commission. Accordingly, it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in O.M. No. 28034/7/86-Estt.(A) dated 3.4.86 while deciding on the requests for posting of husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organisation at the same station and if no administrative problems are expected to result as a consequence.

3. It is further clarified that even in cases where only the wife is a government servant, the concession elaborated in para 2 of this O.M. would be admissible to the government servant.

2. The respondent has hotly contested this petition. It is objected that the Courts and Tribunals generally do not interfere with the order of transfer unless the same is actuated by malafide or in violation of any law. National Council for Teacher Education i.e. the respondent was formed under the National Council for Teacher Education Act, 1993 with a mandate to achieve planned and co-ordinated development of the teacher education system through the country, the

regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. Section 20 of the said Act contemplates that the Council shall by a Notification constitute 4 Regional Committees situated in different parts of the country. Such Committees were accordingly situated one each (1) the Eastern Regional Committee at Bhubaneswar, (2) Western Regional Committee at Bhopal, (3) the Northern Regional Committee at Jaipur and (4) the Southern Regional Committee at Bangalore. Under the mandate of the NCTE Act and the policy of Government of India for increasing the literacy rate, there is huge requirement of school teachers. Private sector educational institutions are coming up fast in Teacher Education Sector. It is pointed out that whenever an employee is promoted to a higher post, he/she can be transferred to inter region or from region to Head Quarter and vice-versa. Since 1998 the petitioner was not transferred to any other place. In the public interest and for the administrative exigencies she was transferred to Bangalore and was relieved from Delhi on 23.05.2006 to join and report at Bangalore. Three officers in the grade of Section Officers, including the petitioner, who have never been posted outside Delhi were included in the chain of transfer effected through the impugned order dated 19.05.2006. Again, Smt. Mamta Kukreti, a divorcee, single parent, who has been serving the organisation at Bangalore despite having a minor daughter, who has been staying with her parents in Delhi as her daughter is suffering from repeated bouts of respiratory tracts infection and sinus IT is and the doctor had advised that climate of Bangalore is not suited to the child. She made a representation to the department for her transfer to Delhi. Her request was accepted and she was transferred from Bangalore to Delhi. Again her father is also a heart patient. He has been meeting the NCTE authorities for early transfer of his daughter to Delhi. There are 12 posts of Section Officers in the whole of NCTE, out of which 4 posts are at NCTE headquarter in Delhi and 2 each are at the four Regional Offices. Respondents cannot keep six Section Officers against the four sanctioned posts as two officers would be without work whereas the pay and allowances can be drawn against the sanctioned posts only. The petitioner had prior knowledge that a transfer order was in the offing. Possibly because of that reason she had gone on leave.

3. I have heard the counsel for the parties. the learned Counsel for the petitioner made the following submissions. The respondent does not have any transfer rules. It has no policy, the transfer order has to be passed within the ambit of above said Memorandum OM No. 28034/2/97-Estt(A). The petitioner has child aged about 4 years and she should be allowed to stay in Delhi. On the contrary, Mamta Kukreti does not have a good case. The medical certificate submitted by her was given by an Ortho. The relevant portion of the medical certificate runs as follows:

HMT HOSPITAL

HMT P.O. Banglore-560 031

TO WHOM SOEVER IT MAY CONCERN

This is to certify that Deeksha Kukreti D/o Mamta Kukreti is suffering from repeated bouts of Respirator tract infection and sinusitis. Her condition will be aggravated if she continue to reside at Bangalore, which has a cold and humid weather. A change of place of residence will help improve her health.

(Dr. K.G. Seshan)

Chief Medical Officer

Again the said hospital is not on the panel of respondent. Lastly, Bangalore has the best climate in India.

4. I am unable to cotton with his arguments. There are administrative problems in retaining the petitioner at Delhi. Firstly, it must be borne in mind that numbers of Section Officers is limited. There are only 12 posts in whole of India. In Delhi more than four persons cannot be posted. The petitioner joined at Delhi in the year 1998. Her son is four years old, meaning thereby that he will attain the age of ten years in 2012. Consequently, the petitioner cannot be transferred to any other place till the year 2012.

5. Secondly, respondent has a policy. This policy was framed vide FL No. 41/2003/Est/NCTE dated 1.5.2003. The relevant portion runs as follows:

This was discussed by MS with DS(Acad.II) when the undersigned was also present. It was decided to make postings of Section Officers within the following parameters:

- (i) As far as possible there should be change in the posting and preferably from an RO to HQ and HQ and HQ to RO.
- (ii) In case change from RO to HQ and HQ to RO is not possible, change should be made from one RO to another.

It is crystal clear that as per the above said policy, the petitioner is liable to be transferred from Headquarter to Regional Office.

6. The prime reason is that the petitioner is a consenting party. At the time of joining the service the petitioner had accepted offer of appointment for the post of Assistant at NICI, New Delhi on 22nd June, 1998. Clause 3 of terms of her appointment unequivocally stipulates that the appointment carries with it the liability to serve in any part of India. The acceptance letter given by the petitioner, dated 20.07.1998 is available on the record. It is thus clear that the petitioner has herself agreed to be transferred. It is clear that she must have signed the papers with open eyes. She must have considered the pros and cons of her employment.

7. Again, she has not come to the court with clean hands. When she came to

know that she was going to be transferred, she went on leave and did not receive the transfer order. Her husband is not a government servant. If her transfer is stayed or stopped it would be difficult to run the office because her replacement has already joined at Delhi.

8. It is Axiomatic that if transfer order is actuated with mala fide or extraneous consideration or malice or has been made in violation of a statutory rule or regulation, it will be illegal. This is also the obvious implication of the dicta of the Hon'ble Supreme Court that a transfer order is liable to be struck down if it is made with the aforesaid reasons. It is well settled law that the transfer is an incidence of service. The Govt. employee cannot claim the posting at a particular place. That apart the respondent is not required to disclose administrative exigency in the order of transfer itself. Public interest demands that there has to be an equitable distribution of the manpower at different regional stations and at the headquarter on reasonable criteria.

9. Now I turn to the Memorandum dated 12.06.1997. This is directory in nature and does not have a binding effect. Such guidelines cannot be construed to mean an executive instruction which can create an enforceable right in favor of the employees in case the govt does not strictly comply with such instruction.

10. The Apex Court in case of Abani Kanta Ray Vs. State of Orissa and Others, was pleased to observe:

It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer.

11. In case of State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, it was held:

The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous considerations without any factual background foundation. In this case transfer orders having been issued on administrative grounds, expediency of those orders cannot be examined by the court.

12. The Apex Court while relying upon National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, in State of U.P. and Others Vs. Siya Ram and Another, took the same view.

13. The Apex Court in State of U.P. and Others Vs. Gobardhan Lal, took a view that transfer made even in transgression of administrative guidelines cannot be interfered with by the courts, as they do not confer any legally enforceable rights, unless such transfer is shown to be vitiated by mala fides or is made in violation of any statutory provision.

14. This position was reiterated by the Apex Court in *Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others*, by observing that who should be transferred and posted where, is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines, the courts should not ordinarily interfere with it.

15. In *Union of India and Others Vs. S.L. Abbas*, it was held:

No doubt the guideline requires the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.

I am of the considered view that this authority neatly dovetails with the facts of case in hand.

16. This view is further followed by recent High Courts' judgments reported in *Padam Singh v. State of MP* 2006 (3) S.L.R 129 *P.L. Choudhry v. Chairman Jodhpur Discom Jodhpur* 2006 (3) S.L.R 285. *State of Maharashtra and Ors. v. Prakash Pandharinath and Ors.* 2006 (3) S.L.R. 402, *Krishan Lal and Ors. v. Bharat Sanchar Nigam Ltd. and Ors.* 2006 (3) F.L.R. 514 and *Krishan Kumar Pahwa Director Industrial Training and Vocational Education* 2006 (3) S.L.R. 841.

17. No malice, no mala fides, no extraneous considerations were pleaded. There is no evidence that transfer of the petitioner was actuated with violation of statutory rule. The writ petition is sans merits and Therefore it is dismissed. Interim order, if any shall stand vacated. No costs.