
(2014) 09 OHC CK 0073

In the Orissa High Court

Case No : W.P. (Civil) Nos. 8398, 8399 & 8400 of 2014

Narendra Kumar Jena

APPELLANT

Vs

Orissa Forest Development Corporation

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 OHC CK 0073

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.—The petitioners, who are Class-IV employees working under the Divisional Manager, Orissa Forest Development Corporation Ltd. (in short "OFDC") at Jajpur Road-C Division have filed these petitions challenging the order dated 27.01.2014, vide Annexure-1, transferring them from Jajpur Road-C Division to Jeypore-CKL Division and thereafter by order dated 21.4.2014 from Jeypore-CKL Division to Bhanjanagar-C Division, vide Annexure-2.

2. The short facts of the case in hand are that the petitioners entered into service as labourers on NMR basis under the OFDC. Thereafter their services were regularized from 01.04.1990. While they were discharging their duties at Jajpur Road-C Division, they were transferred to Jeypore-CKL Division, vide Annexure-1 dated 27.01.2014. Challenging the said order of transfer they had approached this Court by filing W.P.(C) Nos. 2423, 2424 and 2425 of 2014 which were disposed of by order dated 27.03.2014 directing opposite party no. 1 to consider the representation of the petitioners in the light of the judgment of the apex Court in B. Varadha Rao Vs. State of Karnataka and Others, with special reference to paragraph-6 of the said judgment. On consideration of the representations, the earlier order dated 27.1.2014 under Annexure-1 transferring them to Jajpur Road-C Division was modified by transferring them to Bhanjanagar-C Division, which has been assailed in the present writ petitions.

3. Mr. S.K. Das, learned counsel for the petitioners, submitted that such modification of the transfer order from Jajpur Road-C Division to Bhanjanagar-C Division is arbitrary and unreasonable in view of the judgment of the apex Court in B. Varadha Rao(supra) in which it was observed in paragraph-6 as follows:

" x x x We wish to add that the position of Class-III and Class IV employees stand on a different footing. We trust that the Government will keep these considerations in view while making an order of transfer."

Therefore, the petitioners being Class-IV employees they should not have been transferred from their place of posting, i.e. Jajpur Road-C Division.

4. Mr. S.K. Pattnaik, learned Senior Counsel appearing for opposite parties while admitting that the petitioners are Class-IV employees argued that there was need of Watchers at Jeypore-CKL Division. The post of Watcher being a transferable job throughout Orissa such transfer was made keeping in view the requirement and smooth management of the work of the corporation. He has referred to Rule 26 of the Service Rules of the Corporation and submitted that by transferring the petitioners, no illegalities or irregularities were committed by the authority, inasmuch the initial order of transfer from Jajpur Road-C Division to Jeypore-CKL Division has been modified on consideration of their representation pursuant to the earlier direction of this Court and they have been reposted in Bhanjanagar-C Division, so as not to cause any prejudice to them. It is further urged that the order of transfer having been made in the commercial and administrative interest of the Corporation, the petitioners have already been relieved from 07.02.2014 to join their modified places of posting. It is further urged that it is the employer's prerogative to post its employees keeping in view the exigency of service. Therefore, since no irregularity or illegality has been committed by the authorities in posting the petitioners at Bhanjanagar-C Division, this Court may not interfere with the order of transfer, which has been made as per the requirements in new places of posting.

5. It is admitted that the petitioners are Class-IV employees. They were discharging their duties at Jajpur Road-C Division. Due to reduction of work in the said Division and as their services were very much required at Jeypore KCL Division, they were transferred from Jajpur Road-C Division to Jeypore-CKL Division vide Annexure-1 dated 27.01.2014 even though there was need of work at Bhanjanagar-C Division. As per the judgment of the apex Court in B. Varadha Rao(supra), considering the representations of the petitioners the order of their transfer was modified and they have been transferred from Jeypore-CKL Division to Bhanjanagar-C Division. As it appears from the pleadings of the parties, the petitioners have neither alleged any mala fide against the opposite parties nor have they shown any statutory infraction warranting interference by this Court with the impugned order of transfer, except pleading their being Class IV employees.

6. In the aforesaid factual backdrop of the case in hand it is to be considered as

to whether this Court can exercise power under Article 226 of the Constitution of India to interfere with the impugned order of transfer of the petitioners.

7. In every service there exists a relationship of master and servant. Transfer, retirement, promotion, etc. are incidence of service. Usually the master has full power to transfer his servant whenever he wants because transfer is ordered looking at the character and quality of work the servant does. Thus, if the master is of the opinion that a particular servant is required at a particular place for a particular duty, the master has the right to transfer its servant from one place to another. This power of the master is however not absolute and should not be exercised capriciously. At the same time, the master should avoid to transfer a servant simply to accommodate any other favoured servant. Furthermore an order of transfer of a servant should be passed in public interest or in the interest of the institution itself where the servant serves. Exigencies of service also sometimes persuade the master to transfer a servant from one place to another.

8. The Hon"ble Supreme Court in Mrs. Shilpi Bose and others Vs. State of Bihar and others, has observed as under:-

"XXXXXX the Courts should not interfere with a transfer order which are 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 the 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."

From the above it is evident that the executive instructions even if not followed, the Court should not interfere with the order of transfer.

9. Effective utilization of service of an employee is in the very core of administrative exigency. It is an accepted position of law that even while a service is transferable, an employee in public employment cannot be transferred on mere ipse dixit of the superior authority having power to make an order of transfer. The administrative exigency and/or public interest must be fulfilled before passing the order of transfer against an employee. Transfer is a very important incidence of service and often the order of transfer though may appear to be innocuous, causes serious hardship to the concerned employee. It should be noted in this connection how best the services of an employee can be utilized must be left to the wisdom of the employer and for that purpose, to the appropriate authorities in a public service. Whether the service of an employee can be better utilized in some other place is not a justifiable issue in a court of law. It will be sufficient to sustain an order of transfer if it can be shown that the service is transferable and by the impugned order of transfer, no condition of

service or the norm laid down for such transfer has been violated and that a proper consideration of administrative exigency and/or public interest has been made by the concerned authority and on being satisfied of such administrative exigency and/or public interest, the order of transfer has been made.

10. Referring to Shilpi Bose case (supra) and Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, it is held that a judicial review of an administrative action is of course permissible, but orders of transfer are interfered when:-

- a. the transfer is malafide or arbitrary or perverse;
- b. when it adversely alters the service conditions in terms of rank, pay and emoluments;
- c. when guidelines laid down by the department are infringed and lastly;
- d. when it is frequently done; and
- e. if there is a statutory infraction.

Therefore, whenever a public servant is transferred, he must comply with the order but if there be any genuine difficulty in the proceeding of transfer, it is open to him to make representation to the competent authority for modification or cancellation of the transfer order.

The said view has been reiterated in S.L. Abas case (supra), Joginder Singh Dhatt case (supra). Gobardhan Lal case (supra).

11. In view of the law laid down by the Apex Court, there is no dispute that Court should not interfere with the order of transfer which is within the complete domain of employer. The Apex Court has time and again expressed its disapproval of courts below interfering with the order of transfer of public servants from one place to another. It is entirely for the employer to decide when, where and at what points of time an employee is to be transferred from the place where he is continuing and ordinarily Courts have no jurisdiction to interfere with the impugned order of transfer.

12. The applicability of B. Varadha Rao(supra) case to the present context is to be considered vis-a-vis the Rules applicable to the petitioners. In paragraph-6 of the judgment, the apex Court has expressed that the position of Class-III and Class-IV employees stands on a different footing while making a pious observation that the Government will keep this consideration in view while making an order of transfer. As submitted by the counsel for the opposite parties, the said judgment is distinguishable to the extent that under the Rules governing the field, transfer is applicable to Class-IV employees, where there is no such restriction and rather the Rules itself prescribe for transfer, which should be adhered to, Rule-26 being:-

"Rule-26-Transfer-Employees and workmen may be transferred due to exigencies

of work or an administrative grounds from one Division/Department/Section/Office/Branch/Unit/Zone to another provided the wages/salary, grade, continuity and condition of service of the employees/workmen are not adversely affected by such transfer. The transfers may be regulated by the Corporation in general or special orders for the smooth management of the work of the Corporation."

13. In view of the provisions contained in the service Rules and the ratio of the judgments of the apex Court referred to supra, it is well within the domain of the employer to transfer its employees according to exigencies of service. Therefore, the impugned orders of transfer of the petitioners cannot be called arbitrary, unreasonable and rather the same is in consonance with the Rules governing the field. This Court therefore declines to interfere with the impugned transfer orders of the petitioners.

All the three writ petitions are dismissed. No costs.