

(2002) 06 GAU CK 0016

In the Gauhati High Court

Case No : Writ Petition (C) No's. 38 and 59 (K) of 2002

Pezalie Chadi

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 14-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 GLT 329

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : T. Koza and Aship-rizho, for the Appellant; Y. Longkumar, for the Respondent

Judgement

S.K. Kar, J.—By this order I propose to dispose of two writ petitions, viz, W.P.(C) 38 (K)/2002 and W.P.(C) 59 (K)/2002, by a common judgment and order, because these two petitions have been instituted by same person, namely Mr. P. Chadi, against the same Respondents, i.e. the State of Nagaland represented by Principal Secretary and Finance Commissioner of Nagaland on same/similar matter.

2. In the former petition, the Petitioner prayed for setting aside office memorandum No. FIN/TAX-1/46/2001 dated 14.3.2002 asking for show-cause and order dated 23.3.2002 passed by the Respondents ordering transfer of the writ Petitioner from one place to another, and in the latter case, there was a prayer for setting aside the order No. FIN/TAX-1/46/2001 dated 4.4.2002. The shorn of unnecessary details, the Petitioner had to institute these petitions to avoid unacceptable consequence of order passed in writ petition No. W.P.(C) 4(K)/2001 wherein he challenged order of transferring him from Dimapur to Mon, by the order of the authority dated 12.1.2001, on different grounds.

3. This Court disposed of the petition i.e. W.P.(C) No. 4(K)/2001 asking the Petitioner to file representation before the Principal Secretary and Fiance Commissioner, Government of Nagaland within two weeks, and if filed, then to be

disposed of within four weeks by the Respondents with further liberty to the Petitioner to approach this Court for the second time for any other legal remedies that may be available to him. (In fact, however, it is seen that the Petitioner did not file the representation within two weeks as per direction of the Court, but filed only on 25.3.2002 which was received by the authority on 28.3.2002).

4. It is seen from the annexures that, in the meantime, Finance Department, Government of Nagaland by office memorandum No. FIN/TAX-1/46/2001 dated 14.3.2002, (Annexure-C/1 to W.P.(C) No. 38(K)2002) directed the Petitioner to proceed immediately to his new place of posting at Mon and asked him to sow cause as to why disciplinary action should not be initiated against him for trying to avoid a legitimate transfer and for making false statement in the affidavit, and it passed another order of transfer (Annexure-C/2) dated 23.3.2002 again posting him at Mon on transfer from Dimapur. Thereafter, the representation (Annexure-B) received by the Respondents were taken into consideration and rejected by a lengthy order No. FIN/TAX-1/46/2001 dated 4.4.2002 (Annexure-D) against which the second writ petition was filed to set aside that order.

5. Opposing these facts, the Respondent presented their affidavit-in-opposition contending that the transfer order was passed bona fide against the vacant post and that the Petitioner had been stationed at Dimapur in different capacities for more than 14 years and that the order was in the interest of public service and there was no infirmities in the transfer order etc. etc.

6. It has also been contended that there was laches on the part of the Petitioner and he also disobeyed the order of the Court passed in W.P.(C) No. 4 (K) 2001 by not filing representation within two weeks as directed. But then, the representation when filed was duly considered and after giving reasons was rejected. That the post of Superintendent of Taxes, Mon has been lying vacant for more than 1 year, and consequently Superintendent of Taxes, Dimapur had to be directed to take additional charge of Superintendent of Taxes at Mon on temporary basis, as the activity of the Petitioner was affecting the revenue interest of the State Government adversely. That the Petitioner had, on untenable grounds and false statements of facts, tried to resist the transfer order finally, adopting the course of agitating on humanitarian grounds, thereby impairing public interest. Accordingly there is no basis in these writ petitions which are liable to be rejected.

7. Giving my anxious consideration to the submissions made by the lawyers in the background of the facts stated as above, I find as follows:

(a) that it is not disputed that the Petitioner was posted at Dimapur and continued to serve from there for atleast 14 to 16 years.

(b) that initially the Petitioner challenged the transfer order on statement of facts which could not be substantiated, particularly when there was nothing to show any case of mala fide in ordering the transfer.

(c) that he took the shifting course of action by raising humanitarian grounds to resist the otherwise honest action of the Government stating that his son is a Polio patient and needs constant medical care which he cannot give if transferred to Mon from Dimapur.

(d) that there is no gainsaying that the Petitioner had by inconsistent submissions had to resort to more than one writ petitions thereby consuming considerable time of the Court in useless and avoidable litigations.

(e) that he absolutely failed to trace-out any legal right for which he can invoke the extraordinary power of this Court for interference under Article 226 of the Constitution etc. etc.

8. Against these backgrounds, learned Government Advocate has drawn my attention to the authorities reported in:

(1) Union of India and Others Vs. S.L. Abbas,

(2) 2000 (1) GLT 91 (Manik Saha v. State of Tripura)

(3) 2000 (2) GLT 55 (Arunendu Deb v. State of Tripura)

to impress that the routine transfer of Government servants does not confer any legal and enforceable rights to transferred person, unless mala fide is pleaded and clearly shown. In citation Union of India and Others Vs. S.L. Abbas, the relevant para of the judgment goes as follows:

who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

The facts of that case was that a garden curator was transferred from Shillong to Pauri (UP) on 29 January 1991 although he was working in Shillong since 1979. He also complained that he had medical problem, his wife was employed in Shillong and the children were studying at Shillong and some persons were serving at Shillong for a longer period than him, and he attributed "mischief" to the Controller Officer. All these were not accepted by the Court and commented as quoted above. In 2000 (1) GLT 91, the contention of the Petitioner against the transfer order that he is a Dental Surgeon claiming to be a specialist was rejected and on the contrary court held that his special qualification would justify his transfer to a new place where he can offer his special service to other people. The relevant portion of the citation is as follows:

If the people of the area has been benefited by the services rendered by the Petitioner, as the Petitioner claims, the people of the area to which the Petitioner has been transferred must also get the benefit of services of the Petitioner. If the unit is not in the said hospital the Petitioner after joining there may move the Government for establishment of the said unit and the Government in due course if found necessary shall establish the said Oral and Maxillo-facial Surgery Unit in the said hospital. No one is indispensable.

In the third case, i.e. 2000 (2) GLT 55, also Court rejected prayer against transfer on medical ground. The Court observed as follows:

Transfer is an incident of service. Courts do not interfere with the transfer order unless the transfer order is malafide, against the statutory rules or orders or the employee has been victimised. In the instant case the Respondents employer has taken sufficient care of the Petitioner's ailment.

9. From study of all these citations and also on the basis as per established law with respect, the question of transfer of the Government servants, there cannot be any dispute that there is no right against transfer order made in public interest and cannot be challenged. Only in rare cases where the transfer is either contemplated as an alternative to penal action or made with latent purpose of victimisation, or apparently is mala fide, the High Court may, in exercise of its special power of review jurisdiction, interfere to meet ends of justice and not in otherwise. We cannot conceive of a situation where there will be volleys of writ petitions challenging each and every transfer order, if so permitted by Court of law. After all, there will be hardly any person who will welcome the transfer order unless it gives him some sorts of extraordinary benefits whether financially or otherwise.

10. Coming to the facts of the instant case, the Petitioner could not convince the Court that he has got any genuine ground to agitate against his transfer order, or that, he has got any case of victimisation to pin point.

11. But then, it is true that due to presentations of the petitions and dragging the Respondents to contest these petitions by filling counter-affidavit repeatedly and by stating facts which are not genuine, the Petitioner might have enraged the Respondents who then thought of departmental action against him. The overactivity on the part of the Respondents may be attributable to the course of action taken by the Petitioner himself against the order of transfer. Be that as it may, the facts remain that due to transfer order the writ petition was filed and the matter then become subjudice. When the matter has become subjudice, it is advisable for the Respondents to fight it in the Court of law. During the pendency of the petitions departmental proceedings against the Petitioner cannot be contemplated. Rightly or wrongly one can approach the Court of law and the Court's verdict will settle the matter once for all. There may not be parallel departmental proceedings on the matter which is subjudiced, unless and until such an action is unavoidable under any special exigency, lest I am afraid, it

invites contempt of Court.

12. Concluding therefore, I find that the issue of memorandum No. FIN/Tax-1/46/2001 dated 14.3.2002 (Annexure-C/1) is not justified and is liable to be struck down, which I do. But there is nothing to interfere with the transfer order dated 23.3.2002 (Annexure-C/2) and order rejecting representation of the Petitioner, vide order No. FIN/TAX-1/46/2001 dated 4.4.2002 excepting a small closing part of it (Annexure-D). The portion of Annexure-D to W.P.(C) 59 (K) 2002 which requires expunction is as follows:

and also to give a proper reply to show cause notice issued to him vide this department's memorandum of even number dated 14th March, 2002).

Accordingly, the excerpts quoted above would thus stand expunged from Annexure-D. For clarification, it is reiterated that the writ Petitioner would immediately join at his new posting latest by 30 (thirty) days from today. That there would be no action by way of disciplinary proceedings or otherwise against the Petitioner on facts which were agitated before this Court in the context of his transfer in question.

A copy of this judgment be tagged with each of the two petitions.