
(2015) 05 OHC CK 0028

In the Orissa High Court

Case No : Writ Petition (C) Nos. 14240, 14241, 14260, 14428, 14429, 14430, 14431, 14432, 14433, 14434, 14435, 14461, 14462, 14463, 14464, 14465, 14466, 14467, 14470, 14472, 14473, 14474, 14487 and 16742 of 2013 and 23892 of 2014

Prasanna Kumar Acharya and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 120 CLT 390 : (2015) 2 ILR Ori 773 : (2015) LabIC 3375

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

Bench : Single Bench

Advocate : A.K. Saa, for the Appellant; A.U. Senapati, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.—In these batch of petitions, the petitioners have challenged the office orders dated 26.06.2013 and 29.11.2014 issued by the Orissa State Civil Supplies Corporation Ltd. transferring them from one place to other and directing them to join in respective transfer places by relieving them w.e.f. 26.06.2013 with immediate effect.

2. The short fact of the case in hand is that in order to procure and distribute essential commodities, the Orissa State Civil Supplies Corporation Ltd. has been established to regulate the Public Distribution System of the State. All the petitioners are continuing as Sales Assistant-cum-Godown Assistant under the Orissa State Civil Supplies Corporation Ltd. on "Ad hoc and until further orders basis" and are continuing for more than 10 years in a particular station. They have been transferred vide impugned order in Annexure-1. Challenging the said order of transfer, the petitioners have approached this Court by filing the present applications.

3. Mr. G.K. Mishra and Mr. G.K. Behera, learned counsel appearing for the petitioners strenuously urged that the petitioners being the "ad hoc and until further order basis" employees of the Corporation, unless their service is regularized, they cannot be transferred by the authority. It is stated that transfer being a concept of continuity in service, without regularization in service, the impugned order of transfer cannot be sustained in the eye of law. Therefore, they seek for interference of this Court.

4. Mr. A.K. Mishra and Mr. B.K. Sharma, learned counsel appearing for the Corporation state that the petitioners being the employees of the Corporation may it be "ad hoc or until further orders" they have been continuing in a particular place for more than 10 years. On the basis of the decision of the Board of Directors, the impugned orders of transfer have been issued and as such transfer being an incidence of service, it will no way prejudice the petitioners and they have to comply the same in letter and spirit. Relying upon the judgment of this Court in Subash Chandra Routray v. Managing Director, Orissa State Civil Supplies Corporation Ltd. and others, 2005 (II) OLR 643, it is urged that the petitioners will be allowed to continue in services and their services shall not be dispensed with and further the corporation shall regularize them as and when regular vacancies are available. They may be deputed to any other project or assignment under the management/control of the corporation. Therefore, it is urged that since the petitioners are still continuing in service and they being the employees of the corporation, they can be transferred by the impugned order.

5. On the basis of the facts pleaded above, it is to be considered as to whether:

i) The corporation can transfer the petitioners, those who are working "ad hoc" and "until further orders basis" being an "employee? of the corporation;

ii) If not, what relief?

6. On the basis of the materials available on record, it is admitted by the petitioners that they are continuing as employees of the corporation holding the post of Sales Assistant-cum-Godown Assistant either "ad hoc" or "until further orders basis" and they are all waiting for regularization of their services subject to availability of vacancy. It is urged that "ad hoc" or "until further order basis" category persons unless their services is regularized, they cannot be transferred by the authority. Therefore, the impugned order of transfer has to be quashed by this Court.

7. The moot question is whether "ad hoc" or "until further order basis" employees are the employees of the corporation or not.

In Regional Director, Employees" State Insurance Corpn., Madras Vs. South India Flour Mills (P) Ltd., AIR 1986 SC 1686 : (1986) 52 FLR 682 : (1986) LabIC 1193 : (1986) 2 LLJ 304 : (1986) 1 SCALE 1315 : (1986) 3 SCC 238 : (1986) 2 SCR 863 : (1986) 3 SLJ 52 : (1986) 2 UJ 625 , the apex Court held that "casual employees" are employees within the meaning of the term "employee" as

defined in Section 2(9) of the Act and, accordingly, come within the purview of the Act.

In *All India Bank Officers' Confederation and Others Vs. Union of India and Others*, AIR 1989 SC 2045 : (1989) 3 JT 389 : (1990) 1 LLJ 352 : (1989) 2 SCALE 320 : (1989) 4 SCC 90 : (1989) 3 SCR 850 : (1989) 2 UJ 644 , the apex Court held that the word "employees" includes "workmen" and "non-workmen".

In *Union Public Service Commission Vs. Dr. Jamuna Kurup and Others*, AIR 2008 SC 2463 : (2008) 117 FLR 773 : (2008) 6 SCALE 84 : (2008) 11 SCC 10 : (2008) 2 SCC(L&S) 1115 : (2008) 3 SLJ 290 , the apex Court held that the term "employee" is not defined in the Delhi Municipal Corporation Act, 1957, nor is it defined in the advertisement of UPSC. The ordinary meaning of "employee" is any person employed on "salary" or "wage" by an employer. When there is a contract of employment, the person employed is the "employee" and the person employing is the "employer". In the absence of any restrictive definition, the word "employee" would include both permanent or temporary, regular or short term, contractual or ad hoc.

8. In view of the law laid down by the apex Court, the petitioners are the "employee" of the Orissa State Civil Supplies Corporation Ltd. Learned counsels appearing for the petitioners also fairly admit that the petitioners are the "employees" of the Corporation, may it be "ad hoc" or "until further orders basis." Therefore, the petitioners being the "employee" of the corporation, being the "employer", there exists a "master and servant" relationship between them.

9. The opposite party-corporation in its Board of Directors meeting decided to transfer the "ad hoc" and "until further order basis" employees like Sales Assistant-cum-Godown Assistant-Kantawalla, who are posted in different MFP shops, RRC-cum-DAC and have completed more than 10 years of service in their respective places for smooth administration of the corporation and its offices at the district level. All the "daily wage employees" have been upgraded to the status of "ad hoc" from 1.4.2012 and they have been allowed time scale of pay and "ad hoc" employees have been upgraded to the status of "until further orders basis" from 1.4.2012 and are entitled to get financial benefits under the Orissa Revised Scale of Pay Rules, 2008. Due to such up-gradation of the status, the petitioners cannot claim to remain in a particular place at their sweet will. The corporation being the employer has absolute right to transfer or depute the petitioners to any place under its administrative control. The status of "until further orders" has been given to the "ad hoc" employees taking the cut off date as 5.1.1999. Since the first appointment of the petitioners have been made after the cut off date, they are all continuing as ad hoc employee since "ad hoc" employee is coming under the meaning of "employee", they are also subject to transfer by its "employer", namely, the opposite party-corporation.

10. As it appears from the pleadings, there is no allegation of mala fide or statutory infraction in transferring the petitioners from one place to other. Only

contention they have raised is that unless the services of the petitioners are regularized, they cannot be transferred from one place to other. Since there exists master and servants relationship between the petitioners and the opposite party-corporation, the employer has every prerogative to transfer its employees.

11. 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.

12. 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.

13. The Hon"ble Supreme Court in *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, AIR 1991 SC 532 : (1991) LabIC 360 : (1991) 2 LLJ 591 : (1991) 2 SCC 659 Supp 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 6 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.

14. 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.

15. Referring to Shilpi Bose case (supra) and Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, AIR 1989 SC 1433 : (1989) 59 FLR 474 : (1989) 3 JT 20 : (1989) 2 LLJ 470 : (1989) 1 SCALE 907 : (1989) 1 SCALE 1483 : (1989) 2 SCC 602 : (1989) 2 SCR 357 : (1989) 3 SLJ 68 : (1989) 2 UJ 222 , 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 mala fide 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.

16. The said view has been reiterated in Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357 , State of Punjab and others Vs. Joginder Singh Dhatt, AIR 1993 SC 2486 : (1993) JT 485 Supp : (1993) 3 SCALE 818 , State of U.P. and Others Vs. Gobardhan Lal, AIR 2004 SC 2165 : (2004) 101 FLR 586 : (2004) 5 JT 454 : (2004) 3 LLJ 749 : (2004) 3 SCALE 574 : (2004) 11 SCC 402 : (2005) SCC(L&S) 55 : (2004) 1 SCR 337 : (2004) 3 SLJ 244 : (2004) AIRSCW 4571 : (2004) AIRSCW 2082 : (2004) 3 Supreme 92 : (2004) 6 Supreme 161 .

17. The same view has also been reiterated by this Court in Niranjana Dash Vs. State of Orissa and Others, (2014) 2 ILR (OR) 1018 : (2014) 2 OLR 844 , Sudhir Kumar Praharaj v. State Bank of India and others (W.P.(C) No. 19816 of 2014, disposed of on 24.02.2015) and Narendra Kumar Jena v. Orissa Forest Development Corporation and another (W.P. (C) No. 8398 of 2014 and batch of

cases, disposed of on 26.09.2014).

18. In view of the law laid down by the Apex Court this 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.

19. In Subash Chanda Routray (supra), this Court has already held that the petitioners be allowed to continue as Kantawalla in the management/corporation and their services shall not be dispensed with and further the corporation shall regularize them as and when regular vacancies are available. They may be deputed to any other project or assignment under the management/control of the corporation. In view of the above mentioned decision whether it is a deputation or transfer, it will not cause any prejudice to the petitioners, rather this Court has held that the services of the petitioners can be deputed to any project or assignment in the management/control of the corporation. In that view of the matter, the petitioners can also be transferred from one place to other for smooth management of the organization as per the requirement of the management. It is their prerogative to post any employee as per their requirement to which this Court has no jurisdiction to interfere with the same, unless the petitioners make out a case within the parameters discussed above.

20. In that view of the matter, this Court is of the considered view that the order of transfer being within the complete domain of the employer, this Court is not inclined to interfere with the same. Accordingly, the writ applications stand dismissed. However, there is no order to costs.