
(2009) 10 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (C) No. 305 of 2009

Priti Mog Chowdhury

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 08-10-2009

Acts Referred:

Citation : (2010) 3 GLR 264 : (2009) 5 GLT 592

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : A.C. Bhowmik and D.C. Roy, for the Appellant; T.D. Majumder, for the Respondent

Judgement

U.B. Saha, J.—The present petition is directed against the order of transfer dated 16.6.2009 (Annexure-D) issued by the Principal Chief Conservator of Forests and the order of release dated 23.9.2009 (Annexure-F) issued by the Divisional Forests Officer, Direction Division whereby and where under, along with others, the present petitioner Smt. Priti Mog Choudhury has been transferred from the office of the P.C.C.F, Agartala to the office of the Forest Training Division, Hatipara and released thereupon.

2. Heard Mr. A.C. Bhowmik, learned Counsel assisted by Mr. D.C. Roy, learned Counsel for the petitioner as well as Mr. T.D. Majumder, learned Additional Government Advocate appearing for the State respondents.

3. Mr. Bhowmik would contend that though the transfer is an incident of service, but it is the duty of the respondents employers to consider even the family problems of its employees like the petitioner who was in fact transferred on four occasions in her service life. He also contended that the petitioner was initially joined as a Lower Division Clerk under the respondents in the year 1990 and she was promoted to Upper Division Clerk. Subsequently, she was again promoted to Head Clerk in the year 2003 and ultimately, she was posted on transfer in the office of the P.C.C.F, vide order dated 23.2.2006. Thereafter, all on a sudden, the

petitioner was transferred from office of the P.C.C.F., Agartala to the Forest Training Division, Hathipara by the impugned order.

4. The learned Counsel for the petitioner further submits that against the said order, the petitioner made a representation to the hon"ble Minister of Forest Department for modification of the impugned order of transfer, a copy of the said representation was given to the Principal, Chief Conservator of Forest, Tripura, Agartala, the respondent No. 2 herein on 18.6.2009. But without replying anything to the said representation, the respondent No. 3 issued the impugned release order on 23.9.2009 with a direction that the petitioner shall be treated as released from the office of the P.C.C.F., with effect from 23.9.2009, Mr. A.M. Bhowmik also contends that on 24.9.2009, the petitioner again submitted a representation to the respondent No. 2 for staying the operation of the released order, but till today, the same has not been disposed of. The learned Counsel for the petitioner further submits that though a Government employee is supposed to serve in any part of the State in the public interest, but the present petitioner is suffering from various family diseases and had undertaken major operation for which the instant transfer order is required to be interfered with. The learned Counsel for the petitioner finally submits that her only son is now studying in Class-XI and due to her instant transfer, she would not be in a position to look after her son also.

5. On the other hand, Mr. Majumder, learned Additional Government Advocate would contend that the present: petition cannot be entertained by this Court as there is no allegation of either mala fide action on the part of the respondents authorities or violation of statutory Rules and it is not a case that the impugned transfer order as well as the release order was issued without any authority. He further submits that as the transfer order was issued in the public interest, this Court cannot interfere with. He also referred to a decision of the Apex Court in the case of Union of India and Others Vs. S.L. Abbas, and a decision of this Court in the case of V.K. Mathew Vs. Union of India (UOI) and Others, He also placed reliance on a decision of this Court in the case of Khonbrailakpam Shyama Devi Vs. State of Manipur and Others, in support of his contention, Mr. Majumder also submits that Hathipara is a place nearer to Agartala town where the petitioner can go from her own residence easily.

6. This Court has anxiously considered the rival submission of the learned Counsel for the parties and also taken note of the prayer made in the writ petition. Considering the nature of the case, the instant writ petition is taken up for disposal at the admission stage as agreed to by the learned Counsel for the parties.

7. It appears from the petition that the petitioner mainly attacked the order of transfer on the ground of personal inconvenience and hardship and that some others who are staying longer than the petitioner had not been transferred. More so, the representation of the petitioner dated 24.9.2009 has not yet been disposed of. It is settled position that the employer is the best judge to decide

who will be transferred where and how in the interest of administration. Not only that the transfer of an employee can be set aside, if the same is found to be mala fide. No doubt, frequent transfer can also constitute the evidence of mala fide in some cases, but in the instant case, there is no plea of frequent transfer of the petitioner, rather it is a normal transfer and it is also evident from the impugned transfer order that the petitioner is not singly transferred by the said order, some other employees were also transferred by the said impugned transfer order. A Government employee or any servant of a public undertaking has no legal right to insist for being posted at any particular place even on the ground of hardship. But at the same time, it is the duty of the employer also to dispose of the representation if any filed by the employee transferred with some reasons.

8. In the instant case, it appears from the record that the petitioner made a representation to the hon''ble Minister of the Forest Department and a copy of which was also served upon the respondent No. 2. The hon''ble Minister has not been made a party in the instant writ petition. As the representation was made to the hon''ble Minister, it cannot be expected that the same can be disposed of by the respondent No. 2. Except the said representation, the petitioner did not make any representation before the respondents authorities between the date of transfer and the date of release. However, a representation has been submitted by the petitioner on 24.9.2009 to the respondent No. 2 after the order of release which has not yet been disposed of.

9. This Court has already stated that the court can interfere with an transfer order where an aggrieved employee can make out a case either on mala fide or that the order of transfer is issued by an incompetent authority or in violation of any Statutory Rules. Here in the instant case, none of the aforesaid grounds has been raised. However, as the petitioner made a representation to the respondent No. 2, this Court hope and trust that the authority will consider such representation with humane touch.

10. The petitioner is also at liberty to file a fresh representation to the respondent No. 2 raising all her grievances within a period of one week and the respondents No. 2 shall dispose of the same within period of two weeks from the date of receipt of the representation by a reasoned order.

11. At this stage, Mr. Bhowmik, learned Counsel for the petitioner submits that if the authority wants not to interfere with its earlier order, then the authority may be directed to consider whether the petitioner can be transferred in a place in and around Agartala, where she can go from her own residence. The court cannot direct the authority to transfer its employee in any particular place as stated supra being the exercise of the power of transfer is within the domain of the executive authority/employer for public interest. However, as the petitioner is facing some ailments, the authority may consider the aforesaid prayer for the petitioner while the representation of the petitioner will be disposed of.