

(2015) 07 KL CK 0046

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 13583 of 2015 (W), W.P. (C) Nos. 13696, 13697 and 13698 of 2015

Sagi T.M.

APPELLANT

Vs

Mahatma Gandhi University and Others

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2015) 07 KL CK 0046

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; P. Jacob Varghese, and Varughese M. Easo, SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioners in all these writ petitions are Assistant Professors, engaged on contract basis by the respondent University, and who are working as Heads of Department in various Departments under the School of Medical Education of the respondent University. In these writ petitions, they are aggrieved by an order of transfer dated 18.04.2015 whereby they have been transferred to various centres. The facts in the writ petitions would disclose that initially, they were transferred by an order dated 07.11.2014. On receipt of the said order of transfer, they approached this Court challenging the said transfer order, inter alia, on the ground that the transfer order had been passed solely for the reason that, as per the Special Rules framed for the self financing institutions of the respondent University, all teachers were liable to be transferred after three years of service, from one centre to another centre of the self financing institutions. It was their case in the writ petitions that there was no administrative exigency that was disclosed in the impugned transfer orders, that necessitated a transfer of the petitioners. It was further contended that the transfer order was issued at a time when the children of the petitioners were

studying in various Schools in the vicinity of their present station, and hence, effecting a transfer in the middle of the academic year would visit the petitioners with undue hardship and inconvenience. By a judgment dated 11.11.2014 in the writ petition preferred by the petitioner in W.P.(C). No. 13583 of 2015, the writ petition was allowed, by setting aside the transfer order that was impugned in the writ petition. It is seen from a perusal of the judgment, which is produced as Ext. P2 in W.P.(C). No. 13583 of 2015, that this Court took note of the contention of the petitioner as regards the non-mentioning of any reason in the transfer order, to find that inasmuch as the order of transfer had not explicitly stated any reason that weighed with the respondent University, while effecting the transfer of the petitioners, the said order could not be sustained based on reasons that were supplemented through a counter affidavit filed by the respondent University in the pending litigation. This Court relied on the decision of the Constitution Bench of the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 . The observations of Bose J. in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, AIR 1952 SC 16 : (1952) 1 SCR 135 was also noted by this Court. The said observations read as follows:

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself"

Thereafter, this Court also proceeded to examine the issue of whether the reasons given by the respondent University, while rejecting the representation preferred by the petitioner in W.P.(C). No. 13583 of 2015 on that occasion, could be legally sustained, and found that the transfer of the petitioner even on the grounds that were stated in the order disposing the representation of the petitioner, was not justified. This Court also took into consideration the fact that the transfers had been effected in the middle of the academic year, and found that the orders of transfer did not contain any indication of an administrative exigency that could not brook a delay even up to March 2015, and therefore, set aside the transfer order that was impugned in that case. In the case of the petitioners in W.P.(C). No. 13696 of 2015, W.P.(C). No. 13697 of 2015 and W.P.(C). No. 13698 of 2015, their writ petitions against the transfer order dated 07.11.2014 were also allowed by another Single Judge following Ext. P4 judgment dated 19.12.2014 of the learned Single Judge in W.P.(C). No. 33342 of 2014.

2. In the transfer order dated 18.04.2015, that is impugned by the petitioners in the present writ petitions, the respondent University has once again referred to the Special Rules framed for self financing institutions of the University, which

states that, all teachers are liable to be transferred after three years of service from one centre to another centre of self financing institutions. Thereafter, there is a mention made with regard to the judgments of this Court in the earlier round of litigation. By referring to the Special Rules and the judgments of this Court in the earlier round of litigation, the transfer order dated 18.04.2015, effectively modifies the earlier transfer order dated 07.11.2014 and reiterates the order of transfer in respect of the petitioners. It is the legality of this order of transfer dated 18.04.2015 that is called in question in these writ petitions.

3. I have heard Sri Kaleeswaram Raj, the learned counsel for petitioners in all the writ petitions and Sri. Jacob Varghese, the learned Senior Standing counsel appearing on behalf of the respondent University in all these writ petitions.

4. The main ground urged by Sri. Kaleeswaram Raj while challenging the transfer orders is that despite Ext. P4 judgment of this Court, in the earlier writ petition filed by the petitioner in W.P.(C). No. 13583 of 2015, wherein the transfer order was specifically set aside on the ground that it did not contain any reasons on the face of it, and further, that the transfer that was ordered was not justified on the reasons that were given in the counter affidavit, and in the order disposing the representation filed by the petitioner on that occasion, the present order of transfer also suffers from the same illegality as was pointed out by this Court in Ext. P4 judgment. The contention on behalf of the petitioners, in otherwords, is that, even in the order dated 18.04.2015, there is no mention by the respondent University of any administrative exigency that would necessitate a transfer of the petitioners as contemplated in the order. It is contended, by placing reliance on the decisions of the Supreme Court in Maharashtra Vikrikar Karamchari Sangathan Vs. The State of Maharashtra and Another, AIR 2000 SC 622 : (2000) 1 JT 132 : (2000) 1 SCALE 105 : (2000) 2 SCC 552 : (2000) SCC(L&S) 288 : (2000) 1 SCR 166 : (2000) 3 SLJ 1 : (2000) AIRSCW 138 : (2000) AIRSCW 4943 : (2001) 4 Supreme 159 : (2000) 1 Supreme 225 and C.R. Neelakandan and Another Vs. Union of India (UOI) and Others, AIR 2014 SC 2407 : (2014) AIRSCW 3178 : (2014) 6 JT 260 : (2014) 6 SCALE 380 that the findings in the earlier judgment would operate as res judicata in the present proceeding and disentitle the respondent University from attempting to sustain the present order of transfer, on the basis of reasons that are sought to be supplemented through counter affidavits filed in the present writ petition. Per contra, the learned Senior counsel appearing for the respondent University would contend that, in Ext. P4 judgment, the power of the respondent University to issue orders of transfer at the end of the academic year 2014-2015 was recognised, and a liberty granted to the respondent University to exercise the said power at the end of the academic year. It is pointed out that, it is in exercise of the said power, and taking note of the fact that the academic year had since culminated, that the order dated 18.04.2015 transferring the petitioners was passed by the respondent University. It is contended that the petitioners being contract appointees, in whose contracts there were specific clauses that obligated the petitioners to serve in any of the University centres of the Departments/

Institutions concerned, it was not open to the petitioners to impugn the order of transfer dated 18.04.2015. Reliance is also placed on the averments in the counter affidavit filed on behalf of the respondent University, wherein reference is made to the University orders and the judgement of this Court in the earlier round of litigation, to justify the order of transfer dated 18.04.2015. The learned Senior counsel would also contend that, it is now settled through a plethora of decisions of the Hon'ble Supreme Court that this Court would not ordinarily interfere with orders of transfer that are issued by the employer in the exigencies of service.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that, the writ petitions in their challenge against the order of transfer dated 18.04.2015 of the respondent University must necessarily succeed. It is no doubt, well settled that this Court in exercise of its powers under Article 226 of the Constitution of India would ordinarily be loathe to interfere with orders of transfer, that have been issued by the employer, transferring his employees in the exigencies of service. This Court has recognised that the nuances of administration of an organisation are best left to the wisdom of the employer, for it is the employer who best knows his employees, and where they should be deployed. That having been said, there could be cases where an employer, that answers to the description of "State", within the meaning of the term under Article 12 of the Constitution of India, or to the definition of "authority" for the purposes of Article 226 of the Constitution of India, acts in a manner that is arbitrary or unfair thereby necessitating an interference by this Court, with the orders passed by such authorities. In the instant case, I find that the earlier order of transfer dated 07.11.2014, that was issued in respect of the petitioners in these writ petitions, was set aside by the judgments of this Court. Ext. P4 judgment in W.P.(C). No. 13583 of 2015 was followed in the judgment that allowed the writ petitions filed by the petitioners in W.P.(c). No. 13696 of 2015, W.P.(C). No. 13697 of 2015 and W.P.(C). No. 13698 of 2015. Ext. P4 judgment, that is produced in W.P.(C). No. 13583 of 2015 clearly indicates that the transfer order that was issued on the earlier occasion, was set aside primarily for the reason that the said order did not, on the face of it, contain any valid reason justifying the transfer. That apart, in Ext. P4 judgment, the learned Judge also considered the reasons cited by the respondent University for transferring the petitioner, as borne out by the order passed in a representation preferred by the said petitioner, as also in the counter affidavit filed in the writ petition filed by the said petitioner, and found that the reasons were not such as would justify the transfer of the petitioner in that case. Thereafter, this Court took into consideration the additional ground on which the transfer order was challenged by the petitioner, namely that the transfer was effected in the middle of the academic year, and found that, the transfer order had to be set aside. Liberty was, however, granted to the respondent University to issue fresh orders of transfer at the end of the academic year in the exercise of their power to order transfer. The learned Senior counsel for the respondent

University would vehemently contend that, it is acting on the said liberty that was reserved to them in the earlier round of litigation, that the present order of transfer dated 18.04.2015 has been issued. Persuasive though the said submission may appear at first blush, I am afraid the said contention cannot be accepted for more reasons than one. Firstly, notwithstanding the observations in Ext. P4 judgment, the impugned order of transfer dated 18.04.2015, also does not specifically indicate that the order of transfer was necessitated in the exigencies of service. Secondly, the order refers merely to the provisions in the Special Rules which indicate that the teachers in the self financing institutions are liable to be transferred after three years of service from one centre to another. While one can have no dispute with regard to the liability of a teacher to be transferred in accordance with the special rules framed for the self financing institutions of the University, there is nothing in the order that would indicate as to why there was a necessity to transfer the petitioners at all. While the provision in the Special Rules, that speaks of the liability of a teacher to be transferred, points to the existence of a power in the University to effect the said transfer, the establishment, by the University, of a necessity to transfer is what would validate the exercise of the said power by the University. The respondent University appears to have lost sight of the distinction between the power to transfer and an exercise of that power. In the absence of any valid reasons to show why the petitioners had to be transferred, this Court would have to infer that there was an arbitrariness in the exercise of that power by the respondent University. Thirdly, it is relevant to note that, in the order dated 18.04.2015, a reference is made to the earlier order dated 07.11.2014, and the order dated 18.04.2015 is stated to have been issued in modification of the earlier order dated 07.11.2014. When the respondent University has chosen only to modify the earlier order that was set aside by this Court, it was incumbent upon the respondent University to indicate in the order dated 18.04.2015, the reasons for the transfer which would have removed the basis of the findings of this Court in the earlier round of litigation as regards the legal unsustainability of the earlier order dated 07.11.2014. Inasmuch as there is nothing on the face of order dated 18.04.2015 which would indicate the said aspect, I find that the present order that is impugned in these writ petitions also cannot be legally sustained. The attempt of the respondent University to justify the present order of transfer dated 18.04.2015, through reasons supplemented in the counter affidavit filed in these writ petitions, would also have to be negated through a reliance on the decision of the Constitution Bench of the Supreme Court in Mohinder Singh Gill case (Supra).

6. The upshot of the aforesaid discussion, therefore, is that the order dated 18.04.2015 of the respondent University transferring the petitioners in the aforesaid writ petitions from their present centre to various other centres of the School of Medical Education cannot be legally sustained and is hence quashed. It is made clear that, this Court has not pronounced on the power of the respondent University to effect the transfer of its employees and it has only dealt

with the manner of exercise of the said power by the respondent University.
The writ petitions are allowed as above.