
(2002) 10 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No's. 3473, 3474 and 3501 of 2002

Sahebrao D. Labde

APPELLANT

Vs

Jaising Shivaji Patil and Others

RESPONDENT

Date of Decision : 14-10-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 2 BomCR 614 : (2003) 1 MhLj 358

Hon'ble Judges : C.K. Thakker, C.J.;Ranjana Desai, J

Bench : Division Bench

Advocate : K.K. Singhvi, G.S. Godbole, Y.S. Jahagirdar, R.M. Patne, P. Janardhanan, Additional A.G. and S.R. Nargolkar, A.G.P, for the Appellant; C.J. Sawant, V.A. Thorat, Nitin Dhumal, K.K. Singhvi, G.S. Godbole, P. Janardhanan, A.A.G. and S.R. Nargolkar, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—Rule. Mr. C. J. Sawant appears and waives service of Rule on behalf of respondent No. 1 in all writ petitions. Mr. P. Janardhanan, Additional Advocate General, appears and waives service of Rule on behalf of respondent Nos. 2 to 4 in Writ Petition No. 3473 of 2002 and respondent Nos. 3 to 5 in Writ Petition No. 3474 of 2002. Mr. K.K. Singhvi appears and waives service of Rule on behalf of respondent No. 2 in Writ Petition Nos. 3474 of 2002 and 3501 of 2002. We have taken up all the matters for final hearing with the consent of all parties.

2. All these three petitions are filed against an order passed by the Maharashtra Administrative Tribunal, Mumbai Bench, on 18th June, 2002 in Original Application No. 453 of 2002. By the said order, the Tribunal was pleased to quash and set aside an order of transfer passed against Jaising Shivaji Patil, respondent No. 1 in the present group of petitions.

3. To appreciate the controversy raised in the petitions, few relevant facts may now be stated.

4. Respondent No. 1, Jaising Shivaji Patil (petitioner of Original Application No. 453 of 2002; and will be referred to as such) was serving as Assistant Commissioner of Police (Crime) in Navi Mumbai. He entered Government service as a directly recruited Police Sub-Inspector through Maharashtra Public Service Commission in the year 1969. He was promoted as a Police Inspector in 1986 and was further promoted as an Assistant Commissioner of Police on 13th August, 2001. He was posted to the newly upgraded post of Assistant Commissioner of Police (Crime) at Navi Mumbai. It appears that on April 20, 2002, the Home Department of the Government of Maharashtra instructed the Director General of Police (MS), Mumbai, to transfer the petitioner from Navi Mumbai to Mumbai City on administrative grounds. On the basis of the said direction, D.G.P., Mumbai, passed a transfer order No. 77/2002 on April 29, 2002 transferring the petitioner from Navi Mumbai to Mumbai. Pursuant to the above orders, the Commissioner of Police, Navi Mumbai, passed an order on 4th May, 2002 relieving the petitioner from the post of Assistant Commissioner of Police (Crime), Navi Mumbai since he was transferred to Mumbai. Respondent No. 1, Sahebrao D. Labde (petitioner of first petition, Writ Petition No. 3473 of 2002), was transferred as Assistant Commissioner of Police (Crime), Navi Mumbai vice the petitioner. He was directed to take charge of the transferred post immediately.

5. Being aggrieved by the above order of transfer, the petitioner approached Maharashtra Administrative Tribunal by filing O. A. No. 453 of 2002.

6. It was, inter alia, contended by the petitioner that the order of transfer was illegal, unlawful and contrary to law. It was also bad in law as it was not in consonance with the Government Resolutions issued from time to time. The petitioner had not completed three years. On the promotional post, he had not completed even one year and hence he could not have been transferred. The action was taken without there being any administrative reason and/or ground. Nothing has been mentioned in the order of transfer as to why he was sought to be transferred even though he was not due for such transfer. Mr. Labde had also completed several years and yet he was accommodated at the same place. The action was mala fide and had been taken in colourable exercise of power as the petitioner did not oblige any person out of way and was exercising his powers and discharging his duties strictly in accordance with law. Undesirable political elements and criminals, therefore, were against the petitioner and under the political influence, an action was taken by the authorities. It was also clear from the fact that though he was transferred from Navi Mumbai to Mumbai, no posting was made and the petitioner was not asked as to where he had to report for duty. The petitioner's honesty and integrity was above board and his service career was outstanding. There was unhealthy rivalry between political parties to gain control over Navi Mumbai Corporation over years. There was nexus between undesirable political elements and criminals. According to the petitioner, he himself had experienced such interference in discharge of his lawful duties by influential persons, such as, Deputy Mayor of Navi Mumbai Municipal Corporation. The petitioner, however, never succumbed to such outside

pressures. He, therefore, believed that his abrupt removal from Navi Mumbai was due to political pressure by those anti-social elements in order to facilitate vested interests through pliable officers. Since the action was taken for oblique motive and for collateral purpose, the order was liable to be quashed and set aside.

7. Affidavits are filed on behalf of the authorities as also by respondent No. 4. It was contended that the action was an administrative action and did not call for interference. The order was passed in bona fide exercise of power for administrative convenience. Regarding service record, it was stated that though by and large the record of the petitioner was good, at several occasions the petitioner was reprimanded by superiors for negligence in discharge of his duties. It was also stated that the petitioner had completed almost seven years in Navi Mumbai and was due for transfer. It was the case of the authorities that the petitioner had permanently settled down in Navi Mumbai and considering that fact he was transferred to Mumbai in view of the Government Resolution dated November 27, 1997 and Rule 187 of the Mumbai Police Manual. An averment was also made that the petitioner was having immovable properties in Navi Mumbai but taking into account the fact that petitioner's service record was by and large satisfactory, he was transferred to the nearest place i.e. Mumbai from where he can go to his home within an hour's time. The allegations of mala fide and colourable exercise of power were emphatically denied. It was stated that the allegations were "blissfully vague"; totally baseless, false and mischievously made to mislead the tribunal. Cogent and sufficient materials had not been placed on record to support those averments. Hence, the order could not be held to be mala fide or malicious. Regarding Government Resolutions, it was submitted that they were guidelines and normally they were to be taken into account. It, however, cannot be urged that no transfer can be ordered of an employee whose services are transferable. The deponent was also surprised as to what special interest the petitioner had in remaining and discharging duties at a particular place. It was stated that the Assistant Commissioner was not interested in party politics and his action cannot be tested on the touchstone of political philosophy. In normal and usual circumstances an order was passed and there was no reason for the petitioner to make grievance against such order. It was, therefore, prayed that the petition was liable to be dismissed.

8. Respondent No. 4 (petitioner in Writ Petition No. 3473 of 2002) also supported the stand taken by the authorities and prayed for dismissal of the petition. According to him, his service record was also excellent. If the petitioner had received 111 rewards and 2 President's police medals, he had also received about 340 rewards. He was working as Assistant Commissioner of Police, Turbhe Division. The Commissioner of Police, Navi Mumbai, under whom respondent No. 4 was working, had transferred respondent No. 4 by posting him as Assistant Commissioner of Police (Crime), Navi Mumbai and there was nothing wrong in the said order. Transferability was a service condition and unless the order was arbitrary or mala fide, no exception could be taken against such an order. About mala fide, respondent No. 4 has stated that all allegations levelled by the

petitioner were baseless and without any material whatsoever on record. The petitioner was, therefore, not entitled to any relief.

9. The tribunal by the order impugned before us held that the action taken by the authorities was mala fide and an order of transfer was passed against the petitioner without any justification whatsoever. There was neither public interest nor administrative ground for such transfer and the order did not recite such ground. The order also did not state as to where the petitioner was posted. He was just moved out of post. As per Government Resolutions, an employee has to be kept at one place for three years and in any case one year minimum. Moreover, in case of transfer, choice is also asked from an employee, which was not done in the case on hand. There was no "special reason" for transfer. Even if it was true that prior to the promotion of the petitioner, he was in Navi Mumbai, respondent No. 4 was also at the same place for more than five years. So, according to the tribunal, it was not the real reason. The tribunal further observed that when the entire file was perused, it revealed that the Deputy Chief Minister (Minister for Home) made an endorsement that the petitioner who was working in Navi Mumbai was to be brought to Mumbai city. The tribunal found it difficult to understand who prompted the Deputy Chief Minister to pass such orders.

10. The tribunal then stated : "Clearly somebody interested in transferring the applicant and bringing the respondent No. 4 in his place succeeded in it. The applicant has averred about the interest of the Dy. Mayor of Navi Mumbai who was trying to interfere with the investigations carried out by the applicant. It cannot be said that the averment made about the political pressure is vague and therefore, it should be ignored."

11. Taking into consideration the totality of facts and circumstances, the tribunal observed that they unerringly indicated that the transfer order was motivated and lacked bona fide. The action was mala fide and had been taken in colourable exercise of power. It was made without factual foundation and liable to be set aside. Accordingly, the action was held to be vitiated and the order was quashed and set aside.

12. Being aggrieved by the above order passed by the tribunal, three petitions have been filed, as stated earlier. Writ Petition No. 3473 of 2002 is filed by Mr. Labde, who was respondent No. 4 before the tribunal in Original Application No. 453 of 2002 and who is really an aggrieved person as he was sought to be transferred vice the petitioner and by the impugned order the tribunal has set aside the said order. Thus the order passed by the tribunal has affected him and he has challenged it on various grounds.

13. Writ Petition No. 3501 of 2002 is filed by the State of Maharashtra, Director General of Police and Commissioner of Police, respondent Nos. 1, 2 and 3 before the tribunal. Obviously they are aggrieved by the order passed by the tribunal since their order was set aside by the tribunal.

14. Writ Petition No. 3474 of 2002 is filed by one Anil Omprakash Kaushik, who was not a party before the tribunal. His limited grievance is that though he was not joined as party respondent in Original Application No. 453 of 2002, allegations of mala fide were made by the petitioner against him. Even the tribunal did not think it fit either to direct the petitioner to make the present petitioner as respondent nor the tribunal suo motu issue notice to him as to what he had to say on averments and allegations levelled against him. The tribunal, in absence of the present petitioner, concluded the matter by making observations against him. Such an order, submitted the petitioner, was clearly violative of principles of natural justice and fair play and all observations and remarks made by the tribunal are required to be expunged and ignored.

15. Since the matter related to an order of transfer and the tribunal had finally decided it quashing and setting aside the said order, we asked the learned Counsel for the parties to make submissions on all points so that the matters can be finally disposed of. The learned Counsel agreed and we have heard them fully for final disposal of all the matters.

16. The learned Counsel for the petitioners of Writ Petition Nos. 3473 and 3501 of 2002 contended that the tribunal has committed an error of law and jurisdiction in interfering with an order of transfer. As per settled law, submitted the Counsel, transfer is an incident of service and unless an action is contrary to statutory provisions or arbitrary or mala fide, the tribunal has no jurisdiction to interfere with it. The tribunal was not exercising appellate jurisdiction. It was, therefore, not expected of the tribunal to go into larger or wider questions such as whether action of transfer could have been made; or the order could have been passed or whether the petitioner could have been retained at Navi Mumbai. Regarding service record, it was submitted that if service record of petitioner was clean and satisfactory, service record of respondent No. 4 was also clean and satisfactory. In any case, these are the considerations which can be taken into account by an authority and the tribunal cannot say that on the basis of service record, an action of transfer which is within the power of the authorities, could not have been taken. Regarding mala fide exercise of power and so-called political pressure, it was contended that allegations were vague and general in nature. No material has been placed in support of such allegations. Neither the Deputy Chief Minister was made a party nor Deputy Mayor was joined as respondent. In absence of those persons, no observations could have been made by the tribunal on allegations of mala fide. In any case, the order was passed by the competent authority and when the competent authority had filed an affidavit controverting and denying the allegations of mala fide, the tribunal was in error in basing its decision on mala fide exercise of power and the order deserves to be set aside.

17. The learned Counsel for the petitioner supported the order of the tribunal and prayed for dismissal of petitions. It was urged that on the basis of the facts in their entirety and attenuating circumstances, the tribunal formed an opinion

that there was no justifiable reason/ground to transfer the petitioner. On the basis of the averments in the application and affidavits in reply filed by the authority as well as by respondent No. 4, a conclusion was recorded by the tribunal that the action was arbitrary and mala fide. It cannot be said that no such conclusion could have been arrived at. If it is so, obviously, the order passed by the tribunal does not deserve interference and the petitions are liable to be dismissed.

18. Having heard all the learned Counsel for the parties, in our opinion, all the petitions deserve to be allowed. It is not in dispute and is an admitted fact that the petitioner was holding a transferable post. Once the said fact is not disputed, it cannot be contended that no such action can be taken against an employee. In several cases, the Apex Court as well as this Court has held that transfer is an incident of service and such an action can be taken, no doubt, subject to statutory provisions, and it being lawful and bona fide. The tribunal was conscious of the above legal position and conceded to the submission on behalf of the authorities on that count. But it was observed that the action was mala fide and had been taken in colourable exercise of power. For coming to that conclusion, the tribunal had considered several facts; such as, the petitioner had not completed the requisite period as per the Government Resolutions; in the order of transfer there was no reference to public interest or administrative reason/ground; no posting at a particular place in Mumbai had been mentioned in the order of transfer; service record of the petitioner was clean and satisfactory; even respondent No. 4 had completed more than five years at Navi Mumbai; it was alleged by the petitioner that he was sought to be punished by an order of transfer since he was exercising his powers and discharging his duties fearlessly and without obliging anyone; an endorsement was made by the Deputy Chief Minister regarding bringing back the petitioner to Mumbai from Navi Mumbai; "somebody" was interested in transferring the petitioner; according to the petitioner, Deputy Mayor of Navi Mumbai was trying to interfere with the investigation carried out by the petitioner; etc. The action was, therefore, motivated and lacked bona fide.

19. In our opinion, the learned Counsel for the authorities are right in contending that so far as Government Resolutions are concerned, they are administrative guidelines or norms which are to be kept in mind by the authorities in effecting transfer of employees. Ordinarily, they do not confer a justiciable right to an employee who is holding a transferable post. No provision of law has been brought to our notice which goes to show that the petitioner could not have been transferred from Navi Mumbai to Mumbai. Adherence to guidelines are normally expected of the Government but as held by the Supreme Court in *Union of India and Others Vs. S.L. Abbas*, who is to be posted where is the right of an authority and normally a Court of law will not interfere with such right. In our opinion, omission to recite in the impugned order a reason or ground about administrative exigency or public interest cannot make the order vulnerable, if such order is otherwise legal and valid.

20. It is no doubt true that if action is vitiated by mala fide, it has to be quashed. But it is equally well settled that there must be sufficient particulars and adequate materials on record on the basis of which an inference can be drawn that the action is mala fide or malicious. Allegations of mala fides are of a serious nature and cogent materials making out a case of mala fide must be stated in the petition. If sufficient particulars have not been furnished, the Court would not make a roving inquiry in such so-called allegations. A bald assertion that the order was passed mala fide or with a view to punish the petitioner or to favour another person cannot be said to be adequate proof. It is settled law that it is very easy to make such allegations but very difficult to prove. As observed in *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, , it is "the last refuge of a losing litigant". Moreover, if such allegations are factual allegations i.e. malice in fact (as distinguished from malice in law), the person or persons against whom such allegations are made must be made party or parties by joining them eo nomine.

21. In the instant case, in the petition itself, allegations were made by the petitioner against the Deputy Mayor and it was averred that the petitioner himself had experienced in the "recent past", many such efforts interfering with lawful course of his duties by politically influential persons, such as, the Deputy Mayor of the Navi Mumbai Municipal Corporation. In spite of it, the petitioner did not think it proper to join Deputy Mayor as a party nor he has named Deputy Mayor. In our opinion, therefore, the grievance voiced by the authorities in Petition No. 3473 of 2002 is well founded that the Tribunal ought not to have taken into consideration the so-called mala fide on the part of the Deputy Mayor. Similarly, the grievance of petitioner in Writ Petition No. 3474 of 2002 is equally well founded that if the tribunal was of the view that there was substance in the allegations and a prima facie case was made out, it ought to have either directed the petitioner to join Deputy Mayor as a party respondent or ought to have issued notice suo motu by giving an opportunity to him as to what the Deputy Mayor had to say about the allegations levelled by the petitioner in the petition. We are clearly of the view that the tribunal was not justified in observing that "the averments made by the petitioner in the petition about the interest of the Deputy Mayor of Navi Mumbai who was trying to interfere with the investigations carried out by the petitioner could not be said to be vague and hence could not be ignored". Thus, apart from the fact that the tribunal, on the facts and in the circumstances of the case, ought not to have interfered with an order of transfer, it also could not have made observations against the Deputy Mayor and his alleged interference with the investigation said to have been carried out by the petitioner of which no particulars have come forward.

22. Regarding service record, it was fairly submitted by the authorities before the tribunal as well as before us that by and large service record of the petitioner is clean and satisfactory. That, however, does not empower the tribunal to interfere with an action of administrative nature, i.e. of transfer, inasmuch as virtually, it would be substitution of the decision by the tribunal for the decision of an

employee, which is not within the jurisdiction of the tribunal. If the petitioner has any difficulty or problem, it is always open to him to make an appropriate application/representation to the authorities, particularly when, the employer is Government. It is expected of the authority to consider such problem/difficulty as an ideal employer and to take appropriate action so that employees also feel that their legitimate grievances have been considered and ventilated and their moral courage is preserved and protected. The order, however, cannot be held to be bad in law, mala fide or otherwise objectionable.

23. For the foregoing reasons, in our opinion, all the petitions deserve to be allowed and are hereby allowed. The order passed by the tribunal on 18th June, 2002 in Original Application No. 453 of 2002 is hereby quashed and set aside and the Application of the petitioner is ordered to be dismissed.

24. In view of the dismissal of the original application and allowing of the petitions, no further order is necessary in Writ Petition No. 3474 of 2002 since the observations made by the tribunal no longer remain. In the facts and circumstances of the case, however, there shall be no order as to costs.