
(2005) 10 JH CK 0029

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4857 of 2005

Saraswati Ekka

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-10-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 1 JCR 310

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Sujit Narayan Prasad, for the Appellant; H.K. Singh (S.C.I), R. Ranjan and A.K. Mishra, for the Respondent

Judgement

M.Y. Eqbal, J.—The petitioner, who is a lady teacher and belongs to Scheduled Tribe community, was posted in the Scheduled Caste Residential Girls High School, Kamre, in the District of Ranchi. Considering her seniority and the fact that she is a tribal lady, the Welfare Department, Government of Jharkhand issued a notification dated 29.6.2005 whereby she was transferred as Head Mistress (Incharge) against the vacant sanctioned post in Schedule Caste Residential Girls High School, Kundi, Khunti. By the said notification, respondent No. 6 who is posted in Scheduled Caste Residential Girls High School, Kundi, Khunti as Head Master (Incharge) was transferred to Schedule Caste Residential Girls High School, Nakti Kathikund, Dumka: The said notification was issued by the Establishment Committee in accordance with rules and all those teaches transferred by the said notification were directed to assume their charges within 15 days from the date of receipt of the letter. Consequently, the petitioner was relieved on 25.7.2005 to enable her to join new place of posting as Head Mistress (Incharge) in the Scheduled Caste Residential Girls High School, Kundi, Khunti. The petitioner accordingly joined the new place of posting on 26.7.2005 which was duly communicated to the respondent No. 5 - the Deputy Director Welfare, South Chhotanagpur Division, Ranchi The petitioner also communicated the fact of her joining in the new place of posting to the Deputy Secretary,

Welfare Department, Government of Jharkhand, Ranchi on 26.7.2005 which was duly received by the Deputy Secretary, Welfare Department, Government of Jharkhand, Ranchi. The respondent No. 5, namely the Deputy Director Welfare, South Chhotanagpur Division, Ranchi, also issued an officer order on 9.8.2005 confirming the joining of the petitioner at Kundi, Khunti, Ranchi. By the said order, respondent No. 6 was directed to immediately hand over charge to the petitioner and give his joining in his transferred place of posting at Dumka. The petitioner's case is that in a highly arbitrary manner, respondent No. 6 managed to get a modification of the transfer order at the behest of concerned Minister and managed to remain in the same School at Kundi, Khunti. At the instance of the Minister, a modified order was issued on 10.8.2005 whereby respondent No. 6 was retained in the same school at Kundi, Khunti wherein the petitioner had already submitted her joining, whereas the petitioner has been transferred to Dumka. This modified order is impugned in this writ petition.

2. It is well settled that a transfer which is an incident of service not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fide or infraction of any professed norms or principle governing the transfer.

3. When this writ petition was first taken up for hearing at the admission stage, the respondent-State did not file counter affidavit in spite of sufficient time allowed by the Court. On 26.9.2005 this Court, therefore, directed the Secretary-cum-Commissioner, Welfare Department, Government of Jharkhand to appear and file show cause as to why a proceedings for contempt be not initiated against him for non-compliance of the order of the Court. It was only thereafter a counter affidavit was filed on behalf of respondent No. 4 by Joint Secretary, Welfare Department, Government of Jharkhand. The said respondent admitted that the petitioner is a graduate trained teacher and was authorized to work in the capacity of Head Mistress on the recommendation of the Departmental Establishment Committee, but her transfer order was modified at the instance of Hon'ble Minister, Department of Welfare on administrative ground. For better appreciation, paragraph 7 of the counter affidavit of the Joint Secretary is reproduced herein below :-

"That it is stated that it is fact that subsequently this transfer order was modified partially and she was posted afresh to the ST Residential High School, Nakti, Kathikund (Dumka) as an acting Headmistress through the department of Welfare's order Memo No. 4/snastha-25/2005-ka-1712, dated 10.8.2005. It is, however, submitted that the modification in the original order was made by the Hon'ble Minister Department of welfare on administrative grounds and in compliance of the decision the impugned order was issued under the signature of the under Secretary of the Department of Welfare. It must be mentioned here that it is the privilege of the Government to transfer and post a public servant anywhere in the interest of work and hence no public servant can claim choice or priority in this regards."

4. This Court heard the learned Advocate General on 5.10.2005 and passed the following orders :-

"Heard the learned counsels for the parties.

There is no dispute with regard to the legal proposition advanced by the learned Advocate General that transfer is an incidence of service and it cannot be challenged even if it is done on administrative exigencies. I also do not dispute with regard to the law laid down by the Supreme Court in the cases reported in (1979) 2 SLR 58 and (2004) 4 SCC 750, but, in my opinion, in a case where it is found that the respondent-State, either the authority of the State of the concerned department or a Minister, in order to accommodate a person in the same place modify the order of transfer, that too after the concerned employee was relieved and joined in the transferred post then this Court has full authority and jurisdiction to review such decision of the Government.

In the instant case, it appears that the petitioner is a lady teacher posted at Ranchi. District Establishment Committee took a decision for transfer of headmasters including the petitioner and in terms of the said decision the petitioner has been transferred from Scheduled Caste Residential High School, Ranchi to Scheduled Caste Residential Girls High School, Kundi, Khunti, Ranchi in place of respondent No. 6. Notification to that effect was issued by the Welfare Department on 29.6.2005 and in the said order it was categorically mentioned that all the Headmasters, Headmistress shall join their respective transferred place within 15 days. Pursuant to the aforesaid notification the petitioner was relieved on 26.7.2005. Her joining was duly informed to the Deputy Director of the concerned Department; when respondent No. 6 did not hand over charge to the petitioner then a letter to that effect was sent to the Department concern on 5.8.2005. It was only thereafter the impugned office order was issued under the signature of the Deputy Director of the concerned Department modifying the order of transfer dated 29.6.2005 by which the petitioner has been sent to Dumka and the person who was posted at Dumka was allowed to continue there. This order shocked the conscious of this Court and, therefore, respondent-State was directed to seek instructions and file counter-affidavit. In the counter-affidavit, it is stated in para 7 that transfer order was modified at the instance and direction of the Minister, Department of Welfare on administrative grounds and in compliance of the decision, the impugned order was issued. Although statements made in para 7 of the counter-affidavit is true to the information of the Joint Secretary, Welfare Department derived from the record but curiously enough the record in which the Minister has modified the order has not been annexed.

Prima facie, I am not at all satisfied with the action by which respondent No. 6 was allowed to continue at Dumka and the petitioner who is a lady has been transferred to Dumka in his place when she was relieved and join her duty and submitted joining in the transferred place.

In the aforesaid circumstances, I direct the concerned Minister, department" of Welfare to swear affidavit disclosing what compelled him to modify the order of transfer which was given effect to. The concerned file where the Minister has changed the decision of the Establishment Committee shall also be produced before this Court.

Put up this case on 18th October, 2005. The Secretary shall produce the record and shall appear in person.

Mr. Rajiv Ranjan, learned counsel appearing for respondent No. 6 shall file counter-affidavit in advance just on the re-opening day of the court after Puja Vacation.

5. In compliance of the aforesaid order a counter affidavit on behalf of the Minister, Department of Welfare, Government of Jharkhand was filed, in the said counter affidavit, the Minister of Welfare took the stand that the transfer order was modified on the basis of the letter of Shri Karia Munda who is local M.L.A. and recommended the case of the respondent No. 6 for his stay at Khunti.

6. Curiously enough, the private respondent No. 6 has taken a quite different stand in his counter affidavit. It is stated that after the order of his transfer from Khunti to Dumka was issued, he made representation before the concerned Minister of welfare who sympathetically considered the representation and modified the order of transfer. As noticed above, the Minister concerned, on the other hand, stated that on the basis of letter of local M.L.A., the transfer order was modified.

7. The aforesaid affidavits filed by the Joint Secretary and the Minister concerned of the Welfare Department are self- contradictory. The Joint Secretary in his affidavit has shifted his responsibility to the Minister concerned of the Welfare Department stating that at his instance the transfer order was modified and, on the other hand, the Minister concerned in his affidavit has stated that at the instance of local M.L.A., the modified order was issued. It is, therefore, clear that the modified order of transfer was issued in the political pressure exerted by the Minister concerned and the local M.L.A. and not on the basis of administrative exigencies.

8. It has not been disputed by the learned Advocate General that the statutory authority under the law for taking decision in the matter of transfer is the Establishment Committee. Admittedly, the initial notification was issued on the basis of decision taken by the Establishment Committee. The subsequent modified order was issued under the signature of Deputy Secretary at the behest of the Minister.

9. One of the elementary principles of administrative law is that the authority which is authorized to exercise power also has to apply its mind before exercising such power. It cannot abdicate its obligation to do such act at the behest of another authority which is not authorized to exercise power. In other words, it is

the competent authority holding, such administrative post who shall apply his mind and make the orders. It is well settled that transfer order will be vitiated if it is directed at the instance of the Minister.

10. In the case of *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, , the Supreme Court in similar circumstances where the order of transfer of Cane Commissioner was purported to have been issued at the instance of Chief Minister observed that :

"The Executive Officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior."

11. In the case of *Brahamchari Yashpal v. The State of Bihar and Ors.*, reported in 1994 PLJR 7, a Division Bench of the Patna High Court considering a similar question held :

"19. It is well known that the Court cannot run the administration as it has neither the time nor the expertise to do so but if the Court finds, as it does in the instant case, that public administration is run at the dictate and design of persons, who have no authority under the law to do so, it is the duty of the Court to interfere and straighten matters out so that people do not lose confidence in the fairness of the administrative machinery.

20. It is equally well settled that when fair play is utterly denied by the administrative authorities, people will turn to Court complaining of such blatant cases of administrative excess and the Court cannot simply fold its hands on the ground that its interdiction may amount to intervention in administrative matters. Our apex Court has laid down that every governmental action must be judged on the touchstone of reason and public interest *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, . Later decision *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , has affirmed the ratio in *Kasturilal's* case and has made it very clear that the sweep of Article 14 will undoubtedly take "within its fold" and unreasonable administrative action which is not in public interest."

12. In the case of *Sarvesh Kumar Awasthi v. U.P. Jal Nigam and Ors.*, reported in 2003 (1) SCC 740, the Supreme Court held that the order of transfer of an Officer at the behest of politicians without following the guidelines is arbitrary and mala fide. Their Lordship observed that transfer of Officers is required to be effected on the basis of set norms or guidelines without allowing any political interference in regard thereto.

13. Although in the counter affidavit filed by respondent No. 6 he has stated that against the order of his transfer from Khunti to Dumka, he made representation stating his difficulties in going to Dumka and on his representation, the Minister concerned has modified the order of transfer, but in the counter affidavit filed by the Joint Secretary it is stated that at the behest of the Minister the order of transfer was modified

14. Be that as it may, from the facts and circumstances of the case, there (sic) that modified order of transfer is not in the public interest or administrative exigency and is manifestly mala fide. Such modified impugned order issued on political pressure exerted by the Minister concerned and the local M.L.A., is illegal, arbitrary, mala fide and wholly without jurisdiction. This Court considering the fact observe that the Ministers should restrain themselves in interfering with the order of transfer issued by the competent authority acting in accordance with statute and the rules.

15. For the aforesaid reason, this writ petition is allowed and the impugned modified order of transfer is set aside. The respondents-authorities are directed to allow the petitioner to continue in her transferred place of posting at Khunti and respondent No. 6 shall forthwith hand over charge to the petitioner and join his transferred post at Dumka. Petition allowed.