
(2012) 09 CAL CK 0121
In the Calcutta High Court
Case No : Writ Petition No. 15642 (W) of 2012

Satyakam Pal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 CHN 263

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Kallol Basu and Suman Banerjee, for the Appellant; Sadhan Kumar Halder, for the Respondent

Judgement

Biswanath Somadder, J.—Let the report in the form of an affidavit filed on behalf of the Birbhum Zilla Parishad be taken on record. After considering the submissions made by the learned advocates for the parties and upon perusing the instant application, it appears that the writ petitioner is working as a Job Assistant under Birbhum Zilla Parishad, since the year, 1982. From 1982 till April, 2012, the petitioner served different Gram Panchayats within the same Block, i.e., Bolpur-Sriniketan Block, without ever being transferred out of that Block. On 9th April, 2012, the writ petitioner and three others were transferred to Hatia Gram Panchayat, which falls under an adjacent Block, namely Labpur Block. The petitioner filed the instant writ petition on 20th July, 2012, challenging his order of transfer, inter alia, on the ground of arbitrariness and the transfer not being made in accordance with the transfer policy. When the matter was taken up for hearing on 22nd August, 2012, this Court, upon hearing the parties and upon perusing the writ petition had directed the Executive Officer, Birbhum Zilla Parishad, to file a report in the form of an affidavit stating therein specifically as to whether the allegations made in the writ petition have any basis or not. Such report in the form of an affidavit filed on behalf of the Executive Officer, Birbhum Zilla Parishad, reveals clearly the facts, as stated above.

2. In the report, the transfer policy of Gram Panchayat and Panchayat Samiti employees issued by the Department of Panchayats & Rural Development, West Bengal, vide memo dated 19th April, 2010, has also been enclosed. Clause (5) of the transfer policy states that an employee of Gram Panchayat or a Panchayat Samiti may be transferred, as far as practicable, to such Block which is nearer to his residing Block. Clause (10) of the said transfer policy further states that an employee may be transferred anywhere in the district on administrative ground or on an emergency basis.

3. Learned advocate appearing on behalf of the petitioner prays for leave to file an affidavit to counter what has been stated in the report in the form of an affidavit filed in Court today. The facts and circumstances of the case, as stated above, however, do not warrant such leave to be granted in favour of the writ petitioner, since the relevant notification governing the transfer policy dated 19th April, 2010, has been annexed to the report in the form of an affidavit and the material facts for adjudication of the instant matter are undisputed.

4. There is no iota of doubt whatsoever that the writ petitioner has embarked on an exercise to somehow have the transfer order reversed by invoking the Constitutional writ jurisdiction - which is essentially a discretionary jurisdiction - in a case where it is apparent from the face of record that there is not even a shred of mala fide motive on the part of the concerned authorities behind such transfer, which was effected vide memo dated 9th April, 2012, whereby the writ petitioner and three other Job Assistants were transferred in the interest of public service. Significantly, in paragraph 12 of the writ petition, it has been stated by the writ petitioner that he is aged about 54 years and is suffering from various ailments for which he has been under continuous treatment and restrictions prescribed by the doctors. This very averment is wholly irrelevant in the fact situation of the present case and it is also apparent therefrom that the writ petitioner has tried to project a medical situation only in order to obliquely obtain some kind of sympathy from the Writ Court, which essentially exercises discretionary jurisdiction under Article 226 of the Constitution of India.

5. For reasons stated above, this Court does not find any merit in the instant writ petition, which is liable to be dismissed with costs and is accordingly dismissed with costs assessed at 50 G.Ms. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.