

(2006) 09 GAU CK 0084
In the Gauhati High Court

Satyanarjan Debbarma

APPELLANT

Vs

Tripura Tribal Areas Autonomous District Council and Others

RESPONDENT

Date of Decision : 06-09-2006

Acts Referred:

Citation : (2007) 2 GLR 833 : (2006) GLT 149 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.B. Pal, J.—The challenge in the above two writ petitions is to the transfer order No. F.112(9)-ADC/EDN/ESTT/05/1805-1872 dated 12.8.2005 passed by the Principal Officer (Education), Tripura Tribal Areas Autonomous District Council (for short, the Autonomous District Council), an autonomous body of the tribals constituted under Sixth Schedule of the Constitution, whereby 61 Assistant Teachers and Kokbarak teachers including the two petitioners herein were transferred to the schools within the Autonomous District. Both the above noted cases having arisen against a same transfer order under similar circumstances are proposed to be disposed of by this common judgment.

2. In W.P. (C) No. 313 of 2005, the petitioner Sri Satyanarjan Debbarma was appointed Kokbarak teacher on 5.1.1993 by the Principal Officer (Education) of the Autonomous District Council, the second respondent herein. He joined on 15.1.1993 and was posted at Anantpara Junior Basic School under Inspectorate of Schools, Ambassa where he served for 7 years upto 7.2.2001. Thereafter, he was transferred to Dhangarbari Junior Basic school under Inspectorate of Schools, Teliamura on 8.2.2001. After about 4 years, he was again transferred to Hazari Tingharia Junior Basic school on 25.11.2004 followed by the impugned transfer order on 12.8.2005 to Briksha Dhar R.P. Junior Basic School under Inspectorate of Schools, Gandacherra.

The grievance of the petitioner is that the impugned transfer order, after a period

of only 9 months, suffers from the vice of mala fide which is apparent from the short spell and animus on the part of the respondents because of the fact that he was the Secretary of the Amarpur Unit of Tripura Tribal Employees' Association, a rival organization opposing the party in power in the Autonomous District Council. Frequent transfer orders in the backdrop of his rival position would, according to the petitioner, provide enough focus on the mala fide action by the respondent concerned. By means of this writ petition, he has prayed for quashing the said transfer order dated 12.8.2005.

3. In W.P.(C) No. 330 of 2005, the petitioner Sri Parimal Debbarma was initially appointed on 5.1.1993 as Kokbarak teacher by the same authority and posted initially at Gatia Chowmuhan para Junior Basic school under the Inspectorate of Schools, Amarpur. Thereafter, on 7.6.1994, he was transferred to Kalamajhi Junior Basic School under Inspectorate of Schools, Khowai followed by further transfer orders in 1995, 1999, 2000 and 2004 and finally on 12.8.2005 which has been impugned herein. The grievance of the petitioner is that such frequent transfers was actuated not by public interest but by mala fide intention, he being an active member of an Employees' Association which is rival to those in power of the Autonomous District Council. The impugned transfer order dated 12.8.2005 transferring him from Hrankhar Bari Junior Basic School under the Inspectorate of Schools, Harepkuwar, Khowai to Dalapati Para Junior Basic School under the Inspectorate of Schools, Gandacherra which is located in a remote place without good communication was, the petitioner felt, a measure to punish for his rival activity. The transfer order in question, according to the petitioner, put him under tremendous family dislocation particularly because his sons and daughter are studying at Khowai. He has pointed out that the pro forma-respondents under the same Inspectorate of Schools at Harepkuwar, though longest stayees were not transferred. Political animus being hands in glove actuating frequency in the order impugned, he has prayed for setting aside the same on ground of mala fide alone.

4. After filing the writ petitions both the petitioners obtained interim orders of stay on 6.10.2005 and 5.9.2005 by virtue of which they have been continuing till date in their respective places of posting.

5. The official respondents in both the cases have, however, strongly denied the allegation of mala fide intention behind the impugned orders of transfer and contended, inter alia, that the said transfer orders were issued out of extreme necessity in the public interest to increase the teacher-strength in those schools which were being run by a single teacher. Whenever the teacher was absent on leave or otherwise, all such single teacher schools were left with no other alternative but to suspend classes at the detriment to the interest of the pupils. The schools from where the petitioners were withdrawn had sufficient teacher strength and, therefore, transfer of the petitioners did not cause any dislocation there. It is further contended that the petitioners, in terms of the conditions of their appointment, are liable to serve in any place within the Autonomous District

and that they being Kokbarak teachers cannot be compared with other teachers who might have been longest stayee in the respective schools.

6. I have heard Mr. A.C. Bhowmik, learned Counsel for the petitioners and Mr. T.D. Majumder, learned Counsel for the respondents.

7. The first contention of Mr. Bhowmik that the impugned transfer order does not bear the signature of the competent authority and, therefore, is not sustainable in law has no merit as it is very much apparent from the body of the order that there are two places for the signature of the Principal Officer one of which bears his signature. Mr. Majumder, learned Counsel for the respondents has pointed out that nowhere in the writ petition this alleged flaw has been pleaded. It is the official practice that only in the original order, the issuing authority signs On both the places, one immediately below the main contents and the other next below the list of persons to whom copies of the order are forwarded. All copies bear only one signature of the issuing authority below the list of officials forwarded with. However, this issue need not further detain me.

8. As regards the issue regarding longest stayee who have not been transferred, there is no strait jacket formula that the authority has to act mechanically and transfer only the longest stayee in each and every case. The authority in charge of the school administration is only competent to take a decision in this regard and no court should make any attempt to substitute such decision by its own unless it can be shown that the same is mala fide. It is now well settled that mala fide when pleaded has to be strictly approved. The expression mala fide has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehension but there must be existing definite evidence of bias and action which cannot be attributed to be otherwise bona fide as held by the Apex court in *State of Punjab v. V.K Khanna* AIR 2001 SC 343 . Again, burden of establishing mala fide is very heavy in the persons who alleges it. The allegations of mala fide are often more easily made than proved and the very seriousness of such allegations demands proof of a high order as decided by the Supreme Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*,

9. Mr. Bhowmik has argued that transfer should not be on political ground. In support of such submission he has sought to derive strength from a decision of the Supreme Court in *Suresh Chandra Sarma v. Chairman UPSEB* AIR 2005 SC 1133. In support of his further contention that an employee should not be transferred before completion of 3 years in one station, he places reliance on two decisions of this Court in *Dr. Pranabjyoti Deka v. State of Assam* (1998) 2 GLR 169 and in *Tana Kay a Tara v. State of Arunachal Pradesh* 2005 (3) GLT 76 . He has argued that any transfer in mid academic session is always bad as held by the Supreme Court in *B. Varadha Rao Vs. State of Karnataka and Others*, In order to show that the petitioners were transferred because of political rivalry, Mr. Bhowmik has cited two decisions of this Court in *Patel Filters Ltd. Vs. Mohanlal N. Shah and Another*, and in *Jibeswar Thakuria v. State of Assam*

(2004) 3 GLR 146.

10. The decisions cited above have been rendered following the conclusion drawn in the facts and circumstances of each case which are not *pari materia* with the facts in hand for their unqualified application. A careful perusal of the facts pleaded would show the petitioners were allowed to stay in some station even more than 5 years. Transfers after short spell in some station were not objected to by them presumably because of their convenience. The last transfers being in Gandacherra, a remote and difficult area/have been assailed raising boisterous bogy of animosity and mala fide. No facts in support of the plea of mala fide, such as any personal enmity or for that matter frequent transfer could be pleaded or proved. Transfer after short spell by itself cannot be construed as mala fide, nor even political rivalry. It has been averred in the writ petitions that the petitioners are hostile to the authority in District Council. For such statement itself the petitioner? deserve strong dressing down. No employee has any right to hostility against his employer even if he may be a member of a rival employees association whose aim should only be welfare of the employees, not hostility towards the authority. There is nothing to doubt bona fide of the transfers impugned. By obtaining stay order from this court, the petitioners have been continuing in the same stations for more than a year after the order of transfer and, therefore, the question of transferring in the mid academic session cannot come to their rescue. There is also no ratio of universal application laid down in (1998) 2 GLR 169 that no employee can be transferred before completion of 3 years in the same station. The settled legal position even after the above decisions of this Court remains to be that plea of mala fide has to be strictly proved. When in these cases this allegation has been made against high officials of the Autonomous District Council, the standard of proof also must be high. But the same absolutely lacking in the case on hand.

11. From the discussions made above, it would be evident that the orders impugned if examined in the background of the facts pleaded do not appear to the result of any malice on the part of the respondents and, therefore, these writ petitions have no merit. Consequently, the same are dismissed leaving the parties to bear their own cost.