
(2007) 05 OHC CK 0061
In the Orissa High Court

Saudamini Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 104 CLT 228 : (2007) 1 OLR 1007 Supp

Hon'ble Judges : S. Panda, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Panda, J.—Petitioner in this Writ Petition challenges the Order dated 19.9.2006 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack (hereinafter referred to as the "Tribunal") in OA No. 2015(C) of 2006 as illegal, arbitrary and erroneous.

2. The Petitioner's case in short is as follows;

Petitioner was appointed as Supervisor ICDS Project in the year 1986 and posted at Cuttack Sadar ICDS Project and was promoted to the post of CDPO in the year 1992. While Petitioner was continuing as such, she was suspended on 7.3.2003 pending drawal of a departmental proceeding. On 27.7.2005 the Government reinstated her in service pending finalization of disciplinary proceeding and posted her as CDPO, Baljguda ICDS Project in the district of Kandhamal. Thereafter Petitioner filed a representation to modify the order of reinstatement. On consideration of her representation, the Order dated 27.7.2005 was modified on 29.9.2005 and Petitioner was transferred and posted as CDPO, Badamba ICDS Project. She submitted her joining report on 4.10.2005 before the Sub-Collector, Athagarh but one Kumudini Sahu, CDPO, Badamba challenged the aforesaid order of transfer in OA No. 1968(C) of 2005 before the Tribunal and obtained a stay order on 10.10.2005. Due to the said stay order, the order of transfer could not be implemented. Therefore, the order of transfer of the

Petitioner was cancelled by Order dated 20.10.2005 and the earlier transfer Order dated 27.7.2005 was restored as a result of which Petitioner was posted at Baliguda again. Being aggrieved by the said order, Petitioner challenged the same in OA No. 2073(C) of 2005. On 28.10.2005 the Tribunal disposed of the original application with a direction that if the post of CDPO, Raghunathpur in the district of Jagatsinghpur falls vacant, the Petitioner may be adjusted at Raghunathpur and in pursuance of the said order of the Tribunal, Petitioner was posted at Mahakalapada ICDS Project on 16.12.2005.

3. Opposite Party No. 5 was in additional charge of CDPO Mahakalapada besides her own post as CDPO, Marsaghai and as she did not hand over the charge to the Petitioner, the Petitioner submitted her joining report before the Sub-Collector, Kendrapara on 27.12.2005 but the Collector, Kendrapara made some query with regard to submission of relieve order of the Petitioner along with some related papers in connection with previous incumbency as CDPO, Tirtol. Petitioner submitted her reply in accordance with terms and conditions as engrafted under the provision of O.G.F.R. The Collector, Kendrapara after receiving all the documents on 8.2.2006 allowed the Petitioner to discharge her duties as CDPO, Mahakalapada. As she was not getting her monthly salary, Petitioner again approached the State Tribunal in OA No. 1212 of 2006 which was disposed of on 29.5.2006 with a direction to the Collector, Kendrapara to verify the date of joining and ensure that the charges are handed over to her and she is paid arrear salary from the date of joining and current salary and also cause an investigation into the circumstances in which a regularly appointed Government servant who joined her post was not allowed to function and was not paid her salary, within a period of three weeks from the date of receipt of the order.

4. While the matter stood thus, Opposite Party No. 5 in order to get rid of the accusation made against the Petitioner tried her level best by influencing Opposite Party No. 1 to be posted at Mahakalapada and ultimately Opposite Party No. 5 was succeeded and posted at Mahakalapada by disturbing the Petitioner even though she had not completed a period of one month in the said post. A transfer order was passed on 7.9.2006 and the Petitioner was posted at Marsaghai ICDS Project in place of Opposite Party No. 5. The said order of transfer is a clear case of accommodation and tainted with mala fide. Petitioner challenged the said order before the Tribunal in OA No. 2015(C) of 2006 on the above ground and after hearing the parties, the Tribunal disposed of the same on 19.9.2006 with the observation that since the applicant has already been relieved and her reliever has already joined there subsists no material for adjudication. Thus we do not interfere into the order of transfer. She may make a representation to the Respondents raising the contention she has raised in the application.

5. On the above factual background, the Petitioner has summed up her case as follows;

(i) She is discharging her duty from her initial appointment and she has spotless

and unblemished career all through;

(ii) she has been transferred five times within nine months. which is based on mala fide;

(iii) the transfer was made at the instance of Opposite Party No. 5 and the Government put her in trouble in order to accommodate Opposite Party No. 5, and

(iv) Opposite Party No. 5 did not hand over the charge to the Petitioner which was in violation of Rule 63 of O.G.F.R.

6. The case of Opposite Party No. 1 is that the Petitioner while continuing as CDPO, Tirtol, following charges were framed against her;

(a) violation of Government orders;

(b) creation of impediments in smooth implementation of ICDS Programme;

(c) gross misconduct and indiscipline and

(d) negligence in duty

and she was put under suspension pending drawal of departmental proceeding. She was paid subsistence allowance for a long period without doing any work. On her representation to the Department for reinstatement in service, she was reinstated on 27.7.2005 pending finalization of the disciplinary proceeding and she was posted as CDPO, Baliguda ICDS Project in the district of Kandhamal. The said order of posting was modified by Order dated 29.9.2005 on the representation of the Petitioner and she was posted at Badamba and the said posting was stayed by the Tribunal. Thus, the aforesaid two transfers were made on the representation of the Petitioner. Thereafter, Petitioner was posted at Mahakalapada ICDS Project on 16.12.2005. Steps are being taken for payment of salary and regularization of service of the Petitioner. Further they have averred that even though there is a ban on transfer before completion of three years as per Finance Department Resolution, there is a provision that transfer can be made during ban period with the approval of the next prescribed authority which has been followed in this case and since transfer order had already been implemented before filing of the Original Application, the Tribunal rightly directed the Petitioner to move before the competent authority for her grievance.

7. Opposite Party No. 5 has also filed her counter affidavit traversing all the allegations made by the Petitioner and she has specifically averred that on the report of the Sub-Collector, Jagatsinghpur dated 9.1.2006 the Petitioner had not handed over charges in OGFR Form and cash balance from her previous station as CDPO, Tirtol and it reveals that outstanding Government dues of Rs. 31,800/- under SGRY infrastructure and Rs. 21,900/- towards sale proceeds of SRG Registers are lying against her and as she is in the habit of making financial irregularities, Government may be pleased not to allow her any financial process. After receiving the said information the Government vide his letter No. 7614

instructed the Collector, Jagatsinghpur for recovery of outstanding dues pending against the Petitioner while she was working as CDPO, Tirtol and she was directed to hand over charges in QGFR Form. The Collector, Jagatsinghpur vide his letter dated" 12.4.2006 intimated the Collector, Kendrapara that since the Petitioner had not complied the aforesaid instructions, her IPC could not be sent to the proper quarter. Opposite Party No. 5 has further stated that she had an additional charge of CDPO, Mahakalapara besides her own post as CDPO, Marsaghai. Thus as per the instruction of the authority, she handed over the relevant documents of the ICDS Project. Mahakalapada to the concerned authority for inspection and verification and she handed over the charge of CDPO, Marsaghai while she was continuing as CDPO, Mahakalapada.

8. The facts enumerated above show that the transfer was made for administrative exigency and smooth running of the Administration, the Petitioner faced five transfers during a period of nine months are not correct.

9. Before adverting to the submissions made by the learned Counsel for the Petitioner, it will be useful to take note of the law relating to the scope of interference in a Writ Petition filed under Articles 226 and 227 of the Constitution assailing an order of transfer. The Court should not interfere with the orders of transfer, which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory/statutory rule on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred from one place to other and transfer orders issued by the competent authority do not vary any of the legal rights even if a transfer order is passed in violation of executive instruction or orders. The Court ordinarily should not interfere with the order of transfer and the affected party should approach before the higher authority of his Department See Mrs. Shilpi Bose and others Vs. State of Bihar and others, .

10. The Petitioner has not proved any mala fide intention on the part of the Opposite Parties in passing the order of transfer. The Petitioner's allegation of five transfers in nine months is not correct. Applying the ratio decided in Mrs. Shilpi Bose and others Vs. State of Bihar and others, this Court is of the view that there is no scope to interfere with the order of transfer of the Petitioner since transfer is an incident of service and is well within the domain of the Administration.

11. Considering the facts and circumstances of the present case, this Court finds that the Tribunal has not committed any illegality or manifest error in passing the impugned Order dated 19.9.2006. Hence we are not inclined to interfere with the said order in exercise the extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

The Writ Petition is accordingly dismissed.

There shall be no order as to cost.

I.M. Quddusi, J.

12. I agree