
(2011) 06 CHH CK 0025
In the Chhattisgarh High Court
Case No : Writ Petitions No. 3384 of 2011

Smt. Kamlesh Vanshkar

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Citation : (2011) 3 CG.L.R.W. 55

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Judgement

Satish K. Agnihotri, J.—Challenge in this petition is to the order dated 09.07.2010 (Annexure P-1), whereby, the Petitioner has been transferred from the office of the Director, Public Instructions to the office of District Education Officer, Raipur or Block Education Officer.

2. The main grievance of the Petitioner is that the Petitioner has been transferred on the basis of complaint made by some of the officials, as reported by the Director, Public Instructions, in his communication dated 29.06.2010 (Annexure P-2) to the Secretary Government of Chhattisgarh, School Education Department, Raipur.

3. Ms. Siddiqui, learned Counsel for the Petitioner, further submits that a copy of the complaint made by the officials dated -nil- (Annexure P-4) does not indicate that there was any complaint against the Petitioner. The Petitioner was simply a witness to the incident. Thus, the impugned order transferring the Petitioner on the basis of complaint (Annexure P-4) is bad and vitiated.

4. Having heard learned Counsel for the Petitioner and perused the pleadings and documents appended thereto, there is no dispute that there are serious complaint against the Petitioner, as reported by the Director, Public Instructions, in his communication dated 29.06.2010 (Annexure P-2). The submission of learned Counsel for the Petitioner that there is only one complaint, which is the basis of report submitted by the Director, Public Instructions i.e. Annexure P-4,

wherein there is no complaint against the Petitioner, cannot be accepted, as the communication dated 29.06.2010, does not refer to any particular complaint, but several complaints made against the Petitioner as well as other person also.

5. Law in this respect is well settled that, "if there is any complaint against an official, the State Government is certainly within its jurisdiction to transfer such an employee". On the similar issue, the Supreme Court, in *Union of India and Anr. v. Janardhan Debanath and Anr.*, held as under:

14. The allegations made against the Respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned Counsel for the Respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the Respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration.

(See also *Mohd. Masood Ahmad v. State of U.P. and Ors.*)

6. It is further well-settled that transfer is an incidence of service and it is for the employer to decide as to where a particular officer/employee be posted, keeping in view public interest as well as administrative exigency. This Court has limited jurisdiction to interfere with the transfer matter, except in the cases of proved mala fide, non-competence of authority passing the transfer order and not being in conformity with the rules and regulations. The Petitioner/employee cannot be permitted to remain at one place forever. Under the provisions of service rules, employer has all the powers to post an employee at a particular place in view of public interest and administrative exigency. (See *E.P. Royappa v. State of Tamil Nadu and Anr.*, *Shilpi Bose (Mrs.) and Ors. v. State of Bihar and Anr.*, *State of M.P. and Anr. v. S.S. Kourv and Ors.*, *Chief Commercial Manager, South Central Railway, Secunderabad and Ors. v. G. Ratnam and Ors.* and *Airports Authority of India v. Rajeev Ratan Pandey and Ors.*).

7. In case on hand, I do not find any reason to interfere with the transfer order, as the employer is fully competent to transfer an employee, if an atmosphere in the working place is vitiated on account of the conduct of some of the employees. The employer can choose either transferring the employee or taking steps against the employee, if the complaint is of serious nature.

8. Without going into the nature of the complaint, since the Government had chosen to transfer the Petitioner who has spoiled the working atmosphere in the

office, the Court should restrain from interfering when such discretion is exercise by the State Government, in the interest of proper working condition.

9. The next contention of the learned Counsel for the Petitioner is that the Petitioner has been posted at a place where no post of Assistant Grade-II is available, as is evident from the information received by the Petitioner under the Right to Information Act, 2005 (Annexure P-10). The State Government is directed to look into this grievance and post the Petitioner at a place where the equivalent post held by the Petitioner is available and for that the Petitioner is at liberty to make a representation. It is also open to the Petitioner to make a representation in respect of a complaint or report submitted by the Director, Public Instructions.

10. For the reasons mentioned hereinabove, the writ petition stands disposed of, with aforestated observation. No order asto costs.