
(2009) 08 OHC CK 0075
In the Orissa High Court
Case No : Writ Petition (C) No. 17208 of 2008

Sri Ramanath Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Citation : (2009) 2 ILR (Ori) 295

Hon'ble Judges : L. Mohapatra, J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—The Petitioner in this writ application assails the order dated 19.11.2008 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1927(C) of 2008.

2. The Petitioner approached the Tribunal challenging the order in Annexure-5 to the writ application transferring him from the post of Deputy Controller of Civil Defence, Bhubaneswar and posting him as such in the district of Koraput by order dated 12.8.2008. Case of the Petitioner is that he is continuing as Deputy Controller of Civil Defence on being promoted to the said post with effect from 8.11.2006. Before completion of one and half years in the present place of posting, he has been transferred to Koraput only to accommodate opposite party No. 4, who had been transferred to Koraput after serving at Bhubaneswar for about ten years as Deputy Controller of Civil Defence. It was alleged in the Original Application before the Tribunal that opposite party No. 4 being envious of the Petitioner receiving President's Home Guards and Civil Defence Medal for meritorious service in the year 2007, filed a Public Interest Litigation by influencing CD Volunteers alleging sexual harassment by the Petitioner to the lady volunteers. Against the order passed in that Public Interest Litigation, the Petitioner had filed a review, which was disposed of with an observation that no adverse publication of the said order should be given before the enquiry by the Home Secretary is over. It was further directed that if the Home Secretary so

desires, he may also summon the Review Petitioner for the purpose of answering any query about him and the Principal Secretary, Home Department was directed to conclude the enquiry within two months. However, the Petitioner was not called for the inquiry though five months elapsed from the date of order passed by the High Court and before completion of three years of service as Deputy Controller of Civil Defence, he has been transferred to the district of Koraput in order to accommodate opposite party No. 4. The order of transfer is challenged on the ground of mala fide exercise of power.

3. A counter affidavit was filed by the department before the Tribunal and a similar counter has also been filed in this case. It is contended in the counter affidavit that in the Public Interest Litigation vide W.P.(C) No. 572 of 2008, this Court directed the Principal Secretary, Home Department to consider the representation of the Petitioner therein and conduct an inquiry into the matter by a competent person or by himself and dispose of the representation in accordance with law within a period of two months. It was also observed in the said order that if upon enquiry any sexual harassment against any lady volunteer is made out, the Home Secretary must initiate appropriate proceeding both criminal and departmental against the wrong doer. In compliance of the said order, the Principal Secretary, Home Department entrusted the enquiry to the Special Secretary of the same Department and after due enquiry, the Special Secretary not only submitted the report to the Home Department on 26.9.2008 but also recommended that the present Petitioner should be transferred from the present post on administrative ground. On the basis of such recommendation, the Petitioner has been transferred from Bhubaneswar to Koraput.

Opposite party No. 4 also filed a counter affidavit stating therein that he has not filed any Public Interest Litigation against the Petitioner at the instance of some CD. volunteers and there is no material to show that in order to accommodate him at Bhubaneswar, the transfer has been made.

4. The Tribunal on consideration of the pleadings of the parties found that before transfer, the Petitioner had already continued at Bhubaneswar for about nine years and the transfer was on administrative ground. The allegation of mala fide having not been established by any material whatsoever, the Tribunal declined to interfere with the order of transfer and dismissed the Original Application.

5. The learned Counsel for the Petitioner assailing the impugned judgment submitted that the Petitioner was promoted to the post of Deputy Controller of Civil Defence with effect from 8.11.2006 and normally should not have been transferred before completion of three years. However in order to accommodate the opposite party No. 4 at Bhubaneswar before completion of even two years of service as Deputy Controller of Civil Defence, the Petitioner has been transferred to Koraput. It was further contended by the learned Counsel that opposite party No. 4 being jealous of award received by the Petitioner persuaded some CD. volunteers to file a Public Interest Litigation before this Court against the Petitioner and on the basis of an inquiry report submitted by the Special

Secretary and also on recommendation of the Special Secretary, the Petitioner has been illegally transferred. It was also contended by the learned Counsel that at the instance of opposite party No. 4 steps have also been taken for withdrawal of the award given to the Petitioner in the year 2007. According to the learned Counsel, these facts clearly establish the mala fide on the part of the department as well as opposite party No. 4 in transferring the Petitioner from Bhubaneswar to Koraput.

Learned Counsel for the State submitted that before the Petitioner was promoted to the post of Deputy Controller of Civil Defence, he worked as Civil Defence Instructor at Bhubaneswar from 30.7.1999 to 8.11.2006 and on being promoted to the post of Deputy Controller of Civil Defence, he again continued at Bhubaneswar from 9.11.2006 till the order of transfer was passed. Therefore, the Petitioner had served for more than nine years at Bhubaneswar in different capacities. It was also contended by the learned Counsel for the State that on the recommendation of the Principal Secretary in pursuance of an inquiry conducted by him, the Petitioner has been transferred on administrative ground and there is no mala fide in issuing the said order of transfer.

Learned Counsel for opposite party No. 4 submitted that the allegation with regard to involvement of opposite party No. 4 in filing the Public Interest Litigation against the Petitioner is based on no material and, therefore the allegation of mala fide is not established.

6. It is not in dispute that the Petitioner was working as Civil Defence Instructor in the Bhubaneswar Office from 30.7.1999 to 8.11.2006. On being promoted to the post of Deputy Controller of Civil Defence, he again continued in the very same office from 9.11.2006 till the order of transfer was passed on 12.8.2008. In this process, he had continued in Bhubaneswar Office for about nine years whereas he took the stand before the Tribunal that he has been working in the Bhubaneswar Office for only one and half years. Law is well settled that transfer is an incident of service and having continued at Bhubaneswar for about nine years, the Petitioner cannot challenge the order of transfer except only on the ground of infraction of any statutory Rule or mala fides. In this case, the Petitioner challenges the order of transfer on the ground of malafide. Law is well settled that the ground of mala fide is not only to be pleaded specifically but also has to be established. So far as the allegation of mala fide is concerned, the same relates to a Public Interest Litigation filed by some C.D. volunteers against the Petitioner alleging sexual harassment to lady volunteers. This Court not only entertained the writ application but also directed enquiry to be conducted either by the Principal Secretary or by the Special Secretary and in compliance of the said order and inquiry has been conducted and on the basis of an inquiry report, a departmental proceeding has been initiated against the Petitioner. There is absolutely no material on record to show that the opposite party has anything to do with filing of the Public Interest Litigation before this Court. Learned Counsel for the Petitioner submitted that the counsel, who was appearing in the Public

Interest Litigation, is the very same counsel appearing for opposite party No. 4 in this case. We fail to understand as to how appearance of the same counsel establishes the involvement of opposite party No. 4 in filing the Public Interest Litigation. We are, therefore of the view that the allegation of mala fide, which has been taken as a ground is vague and has also not been established. Reliance was placed by the learned for the Petitioner in the case of Mamta Shariff Vs. United Bank of India and Another, . In the facts and circumstances of the said case, the Court held that the order of transfer is punitive and accordingly quashed the same. This decision has no relevance so far as the ground of mala fide is concerned. Reliance was also placed on another decision of the Hon''ble Supreme Court in the case of Somesh Tiwari Vs. Union of India (UOI) and Others, . In the said case there was an anonymous complaint against the Appellant before the Court, which was investigated by departmental authorities but nothing adverse was found against him, yet he was transferred from Bhopal to Shillong. The Appellant therein resisted his transfer and did not move out of Bhopal and subsequently by another order, he was transferred to Ahmedabad. Challenging the said order, he approached the Tribunal but the Original Application was dismissed by the Tribunal. The Hon''ble High Court before which the order of transfer was challenged found that the transfer order was not in bona fide exercise of power and, accordingly declared the same to be invalid. The Hon''ble Supreme Court held that the order of transfer is an administrative order. Transfer, which is ordinarily an incident of service, should not be interfered with, save in cases where inter alia mala fides on the part of the authority is proved. There is no quarrel over the ratio laid down by the Hon''ble Supreme Court in the case as stated earlier. The Petitioner has only alleged mala fide in the Original Application without giving any detail thereof and also could not establish the allegation of mala fide by any material. Therefore, there is no scope for this Court to interfere with the order of transfer in absence of specific pleading with regard to mala fides and materials establishing the same.

7. The learned Counsel for the Petitioner though has not taken such ground before the Tribunal submitted that the order of transfer is punitive, the same having been passed as a measure punishment on the basis of inquiry report. In this connection, the judgment in the case of Mamta Shariff v. United Bank of India and Anr. (supra) may have some relevance with regard to principles laid down therein. Here is a case where in pursuance of the order passed by the High Court in the Public Interest Litigation, an inquiry was conducted and on the basis of the inquiry report, a departmental proceeding has been initiated. Charge No. 2 in the departmental proceeding relates to misbehavior with the lady CD. Volunteers at Krusak Bhavan, Bhubaneswar, who had participated in the Independence Day Celebration from 10.8.1994 to 15.8.1994 in which the Petitioner was in-charge of the team. Further allegation in the said Charge that he was often using vulgar and unparliamentary language before the lady volunteers.

8. In view of such nature of Charge, it cannot be said that there is no truth in the

allegation made by the CD. Volunteers in the Public Interest Litigation. There being prima facie materials available in this regard, Charge has been framed in the departmental proceeding. There is no law, which prohibits transfer of an employee when a departmental proceeding is pending against him. Merely because the Petitioner has been transferred pending the departmental proceeding against him, it cannot be said that the order of transfer is punitive in nature. The decision relied upon by the learned Counsel for the Petitioner in this regard is distinguishable on facts and has no application to the present case.

9. For the reasons stated above, we do not find any infirmity in the order of transfer impugned before us and, accordingly the writ application being devoid of any merit is dismissed.