
(2011) 01 GAU CK 0013

Gauhati High Court (Agartala Bench)

Case No: Writ Petition (C) No. 10 of 2011

Krishna Gopal Debnath

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision: Jan. 13, 2011

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 14(5)(C)

Citation: (2011) 2 GLT 176

Hon'ble Judges: Utpalendu Bikas Saha, J

Bench: Single Bench

Advocate: D.K. Biswas, for the Appellant; S. Chakraborty, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

U.B. Saha, J.

In the present writ petition, the Petitioner, a Superintendent of Handloom, working under the Department of Handloom, Handicrafts and Sericulture, Government of Tripura has challenged the order of transfer dated 6th July, 2010 (Annexure 1 to the writ petition) whereby and whereunder the Petitioner has been transferred from marketing Complex, Agartala to Deocherra Handloom Cluster, Dharmanagar and the release order dated 13th July, 2010 (Annexure 2 to the writ petition) by which the Petitioner is released consequent upon the aforesaid order of transfer.

2. Heard Mr. D.K. Biswas, learned Counsel for the Petitioner as well as Mr. S. Chakraborty, learned Addl. GA who appears at this motion stage for the State Respondents.

3. The Petitioner earlier also challenged the transfer order impugned herein by way of filing a writ petition which was registered as WP (C) 316/2010 and while the matter was taken up for admission hearing on 21.12.2010 on some question put by this Court regarding the pleadings of the Petitioner the learned Counsel for the

Petitioner prayed for time till 5.1.2011. While opposing the prayer for time Mr. Chakraborty, learned Addl. GA submits that there no interim order passed by this Court and the concerned authority has by this time issued notice upon the Petitioner to show cause as to why action should not be taken against him for non-joining to the place of transfer. In the said order, this Court has also noted as to whether the Respondent authority will take action against the Petitioner or not is up to the Respondent-authority employer. However, ultimately prayer for time was allowed and the matter was fixed for admission hearing on 3.1.2011, On 5.1.2011 the Petitioner made a prayer for withdrawal of the case with liberty to file afresh, which was allowed. After withdrawal of the earlier petition the Petitioner, for the second time challenged the transfer order before this Court by way of filing the instant writ petition.

4. Taking note of the earlier writ proceeding, the matter is taken up for final disposal at the motion stage itself as Mr. Chakraborty on request of this Court obtained necessary instruction regarding the allegation of the Petitioner made in this writ petition.

5. The facts needed to be pleaded are hereunder:

The Petitioner joined in the service under the Department of Industries, Government of Tripura as Inspector in the year 1979 and since then he has served at various places on frequent transfer, unlike his equals in the department. The Department of Industries has subsequently been bifurcated and the Petitioner's Service has been placed under the newly bifurcated Handloom, Handicrafts and Sericulture Department, Government of Tripura where he was serving as Inspector. On 26.9.1995 the Petitioner was transferred from Jibika Tant Shilpa Samabai Samity, Jogendranagar, Agartala to Charilam Handloom Cluster under Bishalgarh P.S. as Inspector. While he was serving as Inspector at Charilam Handloom Cluster he was appointed as an Administrator for Sukanta Tant Shilpa Samabai Samity Ltd., Barjala Tant Shilpa Samabai Samity and Dakshin Charilam Tant Shilpa Samabai Samity. In the last part of February 2000 the Petitioner started performing the works as one of the Board of Directors of the Managing Committee of the aforesaid Sukanta Tant Shilpa Samabai Samity Ltd. from where he was again transferred to Shilghati Handloom Cluster, in a tribal area at Udaipur. Thereafter the Petitioner was transferred from one place to another and while he was acting as Inspector as well as a Superintendent, a notice was issued to him to recover an amount of Rs. 60.880.20 as allegedly the same amount was mis-appropriated by him and ultimately while he was holding the post of Superintendent at Marketing Complex, Agartala he was transferred by the impugned order and also subsequently released on 13th July, 2010 wherein he was directed to join his new place of posting at Deocherra Handloom Cluster, Dharmanagar with immediate effect.

6. As the writ petition has taken up for disposal at this motion stage, the Respondent could not get the opportunity to file the affidavit. However, on request of this Court

Mr. Chakraborty placed brief para-wise comments which would help this Court to take a decision in the instant case. In the said para-wise comments it is mentioned that a superintendent can be transferred to a cluster and the Petitioner has been transferred in the Deocherra Handloom Cluster in the interest of public service and with a view to monitoring and supervising the works of the Handloom activities therein.

7. Mr. Biswas in his usual fairness submits that being a government employee, the Petitioner is bound to serve his employer anywhere in the State subject to he is transferred for public interest but according to him, in the instant case the Petitioner has not been transferred for public interest. Rather he was transferred with some malice. He further contended that there are 42 clusters in the State of Tripura and none of the other superintendents have been transferred to a cluster at any time except the Petitioner. His further contention, inter alia, is that the release order as impugned in the writ petition, was issued on 13th July, 2010 and on 19th August, 2010 while the Respondents modified the earlier order dated 21.6.2010 relating to departmental proceeding, have shown the Petitioner as posted as Handloom marketing Complex, Agartala. Therefore, according to Mr. Biswas, the release order issued on 18th July, 2010 has no force. And as the Petitioner was not released by the 13th July, 2010 order, this Court has the power to pass an interim order staying the impugned transfer order. To show malice on the part of the Respondents Mr. Biswas took us to memorandum dated 8.12.2010 which was published in a local daily newspaper (Annexure 5 to the writ petition) wherein it is mentioned that the Petitioner was transferred to Deocharra Handloom Cluster and subsequent to the transfer order he was also released on 13.7.2010 but he did not carry out the order which is unbecoming of a government employee. In the said memorandum, it is also stated that the Petitioner neither submitted any leave prayer nor responded to the memo dated 21.10.2010, i.e., Annexure 5 to the writ petition and ultimately he was asked to show cause as to why appropriate action shall not be taken against him as per the rules. Such document though does not prove, but makes out a prima facie case of malice.

8. He further contended that malice cannot be directly proved but it has to be presumed by the Court from the attending circumstances and the attending circumstances in the case are unequal and unreasonable treatment of the Petitioner with the other Superintendents for which itself the impugned transfer order is liable to be set aside, and if not, the authority is bound to issue a second release order as the earlier release order no longer remains after the issuance of order dated 19th August, 2010 (Annexure 4 to the writ petition).

9. Mr. Chakraborty submits that a government servant has no legal right to insist for being posted at any particular place and a transfer order cannot be impugned when the same is issued for the administrative exigency or in the public interest. He further contended that by raising the question of frequent transfer a valid transfer

order cannot be faulted on the mere plea of malice. He also contended that though in the instant writ petition the Petitioner made an allegation of malice against the Respondent but nowhere stated how and why he is making such allegation. He again contended that whether on any earlier occasion any Superintendent was transferred or not cannot be the issue herein as the government, exercising its own wisdom decided to transfer the Petitioner in the interest of public service and with a view to monitor and supervise the works of handloom activities at Deocherra for betterment of the weavers of that area. He contended that the Petitioner was released from Handloom Marketing Complex Agartala w.e.f 20th July, 2010, vide release order dated 13th July, 2010 (Annexure 2 to the writ petition) and the authority exercised its power conferred by Sub-rule (5)(C) of Rule 14 of the CCS (CCA) Rules 1965 on 19th August, 2010 meaning thereby before the order of release taking effect and the said order is not under challenge in the instant proceeding. He finally contended that the earlier orders of this Court including order dated 21.12.2010 in WP (C) 316/2010 wherein this Court noted as to whether the Respondent authority will take action against the Petitioner or not is up to the authority employer still remains as the said order has not been challenged by the Petitioner in any forum i.e., either the writ Court or the appellate Court.

10. Having heard the learned Counsel for the parties and on going through the pleadings of the Petitioner this Court is of the considered opinion that frequent transfer of an employee cannot be a ground for faulting a valid order of transfer unless the Petitioner shows that the order of frequent transfer is made by the employer with certain intention or oblique motive to harass the Petitioner-employee. Service of a government employee is to be utilised by the government for the purpose of public interest. In para 8 of the instant writ petition, the Petitioner pleaded, inter alia, that the Petitioner has been facing continual harassments and on an allegation of financial indiscipline the authority started making deduction from his monthly salary without any respect for law and such recovery can be made only after proof of misconduct by a regular proceeding and after deduction of a good amount, the Petitioner approached this Court and after interference of this Court, such deduction was stopped. Even if we took note of the aforesaid facts then also according to this Court, no case of malice is made out. Mere allegation of malice is not enough; that has to be proved by showing certain actions which prejudiced the Petitioner. In the instant case, regarding the financial irregularities allegedly committed by the Petitioner, show cause notice was issued and ultimately disciplinary proceeding was initiated which is not challenged. Therefore, regarding the deduction from the salary of the Petitioner, which was done earlier and subsequently stopped by the Court, cannot also be an issue for deciding the impugned transfer order.

11. Upon perusal of the release order dated 13th July, 2010 coupled with order dated 19th August, 2010 it can be easily presumed that even after the issuance of the release order, as impugned, the Petitioner has been shown as posted at

Handloom Marketing Complex, Agartala.

12. At this moment, Mr. Chakraborty submits that probably in order dated 19th August, 2010 Which is an order relating to disciplinary proceeding initiated earlier than the transfer and release orders Petitioner was wrongly shown posted at Handloom Marketing Complex, Agartala. As the Court has disposed of the writ petition at the motion stage it would not be proper to express any firm view whether the Petitioner was allowed to work after 20th July, 2010. Therefore, it would be proper for this Court to leave the matter with the Respondent-authority to see whether Petitioner really worked after 20th July, 2010 at the Handloom Marketing Complex, Agartala and if it is found that he had worked there after 20th July, 2010 then the authority should issue subsequent release order, if so advised.

13. As this Court is not interfering with the transfer order on the ground that on earlier occasion though the Petitioner withdrew the writ petition with liberty to file afresh but this Court did not debar the authority from taking any action against the Petitioner for non-joining in the place of posting at Deocherra Cluster, meaning thereby, the Court had put a seal so far the order of transfer is concerned. More so, when the specific case of the Respondent is that the Petitioner was transferred and posted at Deocherra Cluster for public interest with a view to monitor and supervise the works of Handloom Cluster at Deocherra and for the betterment of the weavers of that area. It is the employer who decides where the service of the employee is required being they are the best Judge and in the instant case the employer consciously took the decision for transferring the Petitioner from Agartala to Deocherra for public interest including the interest of the weavers of that area for whom the cluster is constituted.

14. This Court is of the opinion that when in the transfer order itself it is mentioned that the Petitioner was transferred for public interest then the Court cannot presume that while the authority transferred him, there was any reason for such transfer, as out of three superintendents who will be transferred for monitoring a particular cluster is also with the employer, Therefore, out of the three Superintendents, the Petitioner's transfer cannot be treated as discriminatory.

15. Therefore, according to this Court the order of transfer as well as the release order is valid but if the Petitioner was allowed to work subsequent to release order dated 13th July, 2010 at the Handloom Marketing Complex, Agartala then the Authority is at liberty to issue a fresh release order, if so advised.

16. With the aforesaid order, the writ petition is disposed of No order as to costs.