

(1997) 11 CAL CK 0023

Calcutta High Court

Case No: Writ Petition No"s. 466 and 1511 of 1996

Kiriti Majumdar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Nov. 25, 1997

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: (1997) 2 ILR (Cal) 555

Hon'ble Judges: Satyabrata Sinha, J; Ronojit Kumar Mitra, J

Bench: Division Bench

Advocate: Hirak Miter, for the Appellant; Ranjan Bhattacharya, for the Respondent

Final Decision: Dismissed

Judgement

Satyabrata Sinha J.

1. This appeal is directed against a judgment and order dated October 7, 1996 passed by a learned Single Judge of this Court in Writ petition No. 1511 of 1996 whereby and where under the writ petition filed by the Petitioner questioning an order dated December 14, 1994 as contained in annexure "C to the affidavit-in-reply, and annexure "B" to the writ application were quashed. By reason of the said order several changes had been made in the organisational set up with effect from December 15, 1994 allegedly in the best interest of the organisation. By reason of the said order the designation of 14 persons were redesigned. The name of the Petitioner appears at serial No. (a) of the said order which reads thus:

Sri K. Mazumdar shall be re-designated as Minister (Technology Divisional He will shoulder the responsibility of the Technological up gradation of company's products and will look after Drawing and Design and R&D Department. He will also be responsible for identification of product diversification opportunities for the company. He will report to Dy. Genl. Manager.

2. The fact of the matter lies in a very narrow compass. An advertisement was issued for filling up of the post of a works manager, the material portion whereof reads thus:

The candidate should have a degree in mechanical engineering from any recognised University/Institution with at least 15 years experience in Production Planning & Control. Production (including Foundry, Machining, Fabrication & Assembly), Productivity, Plant Maintenance Quality Control, Materials Management etc. The incumbent should have thorough knowledge of works management including personnel administration and industrial relations and should have worked at least 5 years as Works Manager/ Deputy Works Manager.

3. Pursuant to the said advertisement, the Petitioner submitted his bio-data which includes his experience in research and development more specifically production, design and development. The Petitioner was asked to appear before the standing selection board by a letter dated June 27, 1991 and ultimately he was appointed by order dated August 6, 1991. By reason of an offer of appointment the Petitioner was put on probation for a period of six months from the date of joining, the material portion whereof reads thus:

You are assigned as a Probationer to the above post. You may however, during such period be put on probation on any other post/posts as the management may decide upon.

You will be posted at our Titagarh Works. You are liable to be transferred to any of the Company's office or site or unit or subsidiary or Associate Company or unit at any time without change of conditions or with such change of conditions the management may decide upon.

4. The services of the Petitioner was confirmed by an order dated August 10, 1993 wherein it was stated:

You are at present posted at the company's works at Titagarh and may be posted at any other place and/or assigned in any other post as the Company may at its absolute discretion so decided upon with or without change of designation and condition of employment. You are liable to be transferred to any of the company's offices or units or subsidiary or associate Company or unit at any time without change of conditions with such change of conditions the management may decide upon "in addition to your service to the company, you shall render your services at such place or places for the Company or its" associate concern or concerns that the company may require and/or in such other capacity as the company may determine.

5. According to the Petitioner he, having been appointed as a Works Manager, could not have been posted in the research and development department. It has been contended that the then incumbent of the post of Managing Director Sri Jyotirmoy Maiti was biased against the Petitioner. By way of illustration, it has been contended

that the Petitioner intended to resign twice but on both such occasions his offer of resignation has been turned down. It has further been contended that" the performance of the Petitioner was rated very highly and the company earned a huge profit because of the performance of the Petitioner and others.

6. According to Mr. Hirak Mitter, learned Counsel appearing for the Appellant at no point of time any grievance was raised as against the Petitioner and as it appears from the records that his performance had all along been found above average. Learned Counsel, however, contends that friction between the Appellant and the Managing Director arose sometime in 1994, inter alia, relating to passing of bills for repair of cars. In view of the audit objection according to the learned Counsel the Petitioner as Works Manager could not pass the bill, as a result whereof the Managing Director become biased against him and passed the impugned order. The learned Counsel contends that the malice on the part of the concerned Respondents would also be evident from the fact that the Appellant had been stripped off all his powers and in fact the persons who were reporting to him had now been promoted and they are to report to the superior officer of the Petitioner. He further contended that the Petitioner is no longer a member of any of the committees and in that view of the matter there cannot be any doubt that the impugned order of transfer dated December 14, 1994 was not justified.

7. Mr. Bikash Ranjan Bhattacharya, learned Counsel appearing on behalf of the Respondents on the other hand relying on and on the basis of the advertisement and bio-data submitted by the Petitioner, appointment of the Petitioner, his letter of appointment and confirmation, which have been noticed hereinbefore inter alia, submitted that in fact in view of the stiff competition in the business the company had to find out a suitable person who could work in its research wing so as to maintain the quality of its products and it is not a case where the Petitioner has been transferred either by way of or in lieu of punishment. Learned Counsel has pointed out that from a perusal of the impugned order dated December 14, 1994 it would be evident that as many as 14 persons have been redesigned thereby but nobody has come up before this Court nor has any complaint as regard thereto. Learned Counsel submits that re-designation of the post has been done in the best interest of the company and this Court in exercise of its jurisdiction under Article 226 of the Constitution cannot interfere therewith.

8. Although we heard Mr. Mitter at length as regards the charge of bias as against the Managing Director, we find from records that the Managing Director had not been impleaded in the writ application in his personal capacity. Even in the original writ application the Managing Director of the Respondent Corporation was not impleaded but the said office was impleaded subsequently.

9. It, however, stands admitted that at no point of time the incumbent of the post of Managing Director namely Sri Jyotirmoy Maiti had been impleaded as a party in the writ application. In that view of the matter we are constrained to hold that keeping

in view the fact that he was not impleaded as a party, the question of malafide personally as against him cannot be gone into by this Court. In [I.K. Mishra Vs. Union of India and Others](#), (per V.N. Khare, J.), the Apex Court has observed as follows:

Lastly it was urged that the order compulsorily retiring the Appellant was a malafide order as the same was passed at the instance of Sri Manazure Mustafa Siddiqui, Accountant General, M.P. who bore grudge against the Appellant. This argument is being noted only to be rejected. It may be noticed that the record before us does not show that Sri Manazure Mustafa Siddiqui was party to the suit. In fact he was not impleaded by name in the suit. Further, the allegations against Sri Siddiqui were totally vague. No inference of malafide could be drawn from such allegations. In the absence of full facts and particulars the plaint in respect of allegation of malafide the order compulsorily retiring the Appellant cannot be held to be a mala fide Order.

10. It is now well settled principle of law that normally this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot interfere with an order of transfer. An order of transfer can inter alia be interfered with in a case of malice or if such order of transfer is passed in gross violation of mandatory provision of a statute. The Supreme Court again and again has reiterated that even if the order of transfer has been passed in violation of directory provisions of a statute or guidelines, the same cannot be interfered with. Reference in this connection may be made to [Union of India and Others Vs. S.L. Abbas](#), which decision has recently been followed by Gujarat High Court in 1997 Lab. I.C. 1982. Keeping in view the factual backdrop of the case viz., experience of the Petitioner in the research wing, the right of the employer to transfer him in any department and give additional work to him and further in view of the fact that by reason of the order dated December 14, 1994 the Petitioner had not been singled out, we are of the opinion that it cannot be said that by reason thereof any stigma has been cast as against the Petitioner. It is now well known that it is for the employer to consider as to how and in what manner the services of the employee can be best utilised. If according to the employer in view of the changed scenario the Petitioner would be best suited in the Design and Research Bureau no exception thereto can be taken unless it is shown that the policy decision adopted by the employer is wholly arbitrary so as to attract the wrath of Article 14 of the Constitution of India. No such contention has been raised before us.

11. This Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India cannot embark upon the question as to whether the order of transfer is justified or not in view of the parameters of the judicial review set out by the Supreme Court in various decisions. By way of illustration reference can be made to the case of [Tata Cellular Vs. Union of India](#), wherein the Apex Court has categorically held that the High Court can exercise the power of judicial review only when an illegality, irrationality or procedural irregularity has been committed by an authority in its decision making process. The High Court while exercising its jurisdiction under

Article 226 of the Constitution of India is not concerned with the merits of the decision but only with the decision making process.

12. If the Petitioner had been placed in the Research Bureau in the best interest of the company, in our opinion no interference with the impugned order is called for.

13. However, we are informed at the Bar that at present Mr. Maity does not hold the post of Managing Director. It is further stated that the Board of Directors can take into consideration the grievances of the Petitioner keeping in view the need of the company.

14. The impugned order had been passed as far back on December 14, 1994 and thus a period of about 3 years has lapsed.

15. In that view of the matter we have no doubt in our mind that in the event the Board of Directors of the Respondent company so feels it can review its decision and place the Petitioner in a suitable post keeping in view the exigency of his services, his past records as also the need of the company.

16. However, we do not find any merits in the appeal. Accordingly, the appeal is dismissed.

17. There will be no order as to costs.

Ronojit Kumar Mitra, J.

18. I agree.