

Party Name : BHARGAB SARKAR Vs THE STATE OF TRIPURA & ORS

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. R. Dutta, learned counsel appearing for the petitioner as well as Mr. T. D. Majumder, learned Govt. Advocate appearing for the respondents.

By means of this writ petition, the petitioner has challenged the Office Order dated 10.08.2015 under No.F.6(40)-PWD(E)/2014(Part-III), Annexure-P/2 to the writ petition, as by the said order, the petitioner has been transferred from his present place of posting in the Office of the Sr. Manager Power House Sub-Division under D.G.M. Electrical Division No.1, Tripura State Electricity Corporation Ltd. to the Office of the Executive Engineer, DWS Division, Ambassa.

The grievance that the petitioner has canvassed in this writ petition is that, his wife had undergone a critical operation and if he is moved out she would loss the care of the petitioner. After he received the said transfer order dated 10.08.2015, the petitioner had made a representation to the Engineer-in-Chief PWD (R&B) on 11.08.2015, Annexure-P/3 to the writ petition.

Mr. R. Dutta, learned counsel appearing for the petitioner has submitted that the said representation has not been disposed of on considering the mitigating circumstances that the petitioner has narrated in his representation.

Mr. T.D. Majumder, learned Govt. Advocate appearing for the respondent Nos. 1, 3 and 4 has submitted that in this writ petition the petitioner has not alleged infraction of any statutory rule or mala fide against the transferring authority. As such, this court should be loath in exercising its plenary jurisdiction under Article 226 of the Constitution of India, inasmuch as, where an employee has to be posted or deployed or how his service are to be utilised lies in the exclusive domain of the administrative authority.

Having regard to the rival contentions as projected by the learned counsel for the parties, this court is of the view that from the law as laid down by the apex court in Shilpi Bose & Ors. vs. State of Bihar & Ors., reported in AIR 1991 SC 532, the petitioner does not have any indefeasible right to challenge the transfer order. In Shilpi Bose & Ors. vs. State of Bihar, the apex court has laid down the law as under:

4. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. 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 the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer Orders.

5. We accordingly allow the appeal, set aside the order of the High Court and dismiss the petition filed by the respondents. The appellants should be posted to the places to which they had been transferred under the orders impugned before the High Court. There will be no order as to costs.

[Emphasis added]

As this court on scrutiny of the averments, does not find that the petitioner has levelled any allegation of infraction of any statutory rules or mala fide against the transferring authority.

However, having regard to the circumstances, the Chief Engineer, PWD(R&B) is directed to consider the representation of the petitioner dated 11.08.2015, Annexure-P/3 to the writ petition and dispose the same by a reasoned order. Till such consideration is made by the Chief Engineer, Public Works Department (R&B), Government of Tripura, the Office Order dated 10.08.2015, Annexure-P/2 to the writ petition, shall not be given effect in respect of the petitioner herein, whose name appears at Sl.No.5 of the said Office Order dated 10.08.2015.

With this observation and direction, this petition stands disposed of.

A copy of this order furnished Mr. T.D. Majumder, learned Govt. Advocate for onward transmission.