

OD-4

ORDER SHEET

WPO/15/2021

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SOMJIT BANERJEE
Versus
UNION OF INDIA & ORS.

BEFORE:

The Hon'ble JUSTICE SAUGATA BHATTACHARYYA

Date : 24th August, 2022.

Appearance :

Mr. Arkadipta Sengupta, Adv.

Mr. Prisanka Ganguly, Adv.

For the petitioner.

Mr. Sauvik Nandy, Adv.

For the respondent nos. 2&3/BOPT

The Court:- The present writ petition centers around order of transfer dated 5th January, 2021 issued by the Director, Board of Practical Training (Eastern Region). The petitioner is primarily aggrieved by this order of transfer whereby the petitioner has been transferred to the post of Analyst in the Extension Centre, Patna with effect from 18th January, 2021.

The petitioner has another grievance relating to non-payment of salary for the following days in the year 2020:

- i) May, 2020 – 4 days;
- ii) June, 2020 – 30 days;
- iii) July, 2020 – 19 days.

With regard to non-payment of salary for the aforesaid period it has been submitted on behalf of the petitioner that due to covid pandemic during the said period petitioner could not attend the office at Kolkata and he performed his duty from home online. It has further been submitted since the petitioner performed his job online from home same was wrongly not accepted by the respondent authorities, and, accordingly, the salary for the aforesaid period was not paid. It has also been submitted that the petitioner was entitled to receive the salary for the aforesaid period.

Today, primarily the grievance of the petitioner is against the order of transfer dated 5th January, 2021. Attempt has been made on the part of the petitioner to question such order of transfer dated 5th January, 2021 on the ground of mala fide. According to the petitioner, the said order of transfer should not be considered in isolated manner rather it should be examined keeping in mind denial of the respondent authorities to pay the salary for the aforesaid period. It has been submitted that the impugned order of transfer dated 5th January, 2021 is sequel to the non-payment of salary which the petitioner suffered during the aforesaid period. In addition thereto it has also been submitted that in the transferred post of Analyst in Patna, there is no atmosphere and

infrastructural arrangement which would facilitate the petitioner to discharge his duties as Analyst which should also be taken into consideration while adjudicating the validity of the transfer order dated 5th January, 2021.

On the contrary Mr. Sauvik Nandy, learned advocate representing the Board of Practical Training (Eastern Region) being the respondent nos. 2 and 3, has opposed the prayer of the writ petitioner and has defended the said transfer order. According to the respondent authorities the job of the petitioner is transferable and the Director who issued the order of transfer is empowered to issue such order of transfer in terms of the relevant service conditions. In addition thereto, the plea of the petitioner that the transfer order is mala fide has also been opposed on behalf of the respondent authorities on the ground that the petitioner has failed to demonstrate before this Court any aspect which goes against the order of transfer and lead to a situation based on which Court may come to a conclusion that there is malice in the order of transfer.

This Court has considered the submissions made by the learned advocates representing the parties. Before adverting to the order of transfer based on the submissions made by the learned advocates it needs to be recorded that it has been brought to the notice of the Court that the salary for the month of May, 2022 was not paid to the petitioner though the petitioner has joined the transferred post pursuant to the

said order of transfer. In terms of the direction issued by this Court the salary for the month of May, 2022 has already been released in favour of the petitioner.

In order to question the validity of the order of transfer the only point it has been urged on behalf of the petitioner is mala fide. This Court has considered the submissions and the facts which have been pleaded that there is non-payment of salary for certain dates during the months of May, June and July in the year 2020, but at the same time this Court has also been apprised of the facts that from the month of August, 2020 till the date of issuance of transfer order dated 5th January, 2021, petitioner has been regularly paid his salary. Therefore, the argument of the petitioner that non-payment of salary for the aforesaid period in the year 2020 ought to be taken into consideration in order to find out whether the transfer order is mala fide or not cannot be accepted. With regard to malice relating to the order of transfer this Court is inclined to rely upon a judgment of the Hon'ble Apex Court reported in **(2020) 3 Supreme Court Cases 86; paragraphs 16, 17 and 18 (Rajneesh Khajuria-Versus-Wockhardt Limited And Another)** wherein it has been succinctly held by the Hon'ble Apex Court that the plea of mala fides involves two questions, namely whether there is a personal bias or an oblique motive and whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. Therefore, the action complained of must be

proved to have been made mala fide on the anvil of such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

In view of enunciation of law on the point of malice as contained in ***Rajneesh Khajuria (supra)***, this Court does not find any element of malice in the order of transfer dated 5th January, 2021. The petitioner has not been able to demonstrate before this Court that such order of transfer is a mala fide action on the part of the Director of Board of Practical Training (Eastern Region).

Accordingly, in view of the above consideration, the present writ petition does not merit consideration and the same stands dismissed.

However, this order shall not preclude the petitioner to make a representation before the concerned authority of the Board of Practical Training (Eastern Region) for payment of his salary for the aforesaid period in the year 2020. If such representation is made by the petitioner within a fortnight from date, the concerned respondent authority shall take a decision, in accordance with law within a period of eight weeks thereafter and the decision to be communicated to the petitioner within one week.

There shall, however, be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties upon compliance with all formalities.

(SAUGATA BHATTACHARYYA, J.)

snn.