

02.08.2024
Item No.13
Court No.11
Avijit Mitra

WP.ST 141 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Sankar Prasad Dey

- Versus -

State of West Bengal & ors.

Mr. Samim Ahmed,
Mr. Arka Maity,
Ms. Ambiya Khatun,
Mr. Danishuddin Abbasi
...for the petitioner
Mr. Biswabrata Basu Mallick, Ld. A.G.P.,
Mr. Shayak Chakraborty
...for the State respondents

Although this writ petition challenges the orders dated March 14, 2024, and June 25, 2024, passed by the learned Tribunal in Original Application (OA) No. 773 of 2023 and in the Miscellaneous Application (MA) No. 23 of 2023 respectively, as well as a transfer order dated October 9, 2023, the pivotal issue is the transfer order directing the petitioner, a Lecturer in Mechanical Engineering, to join Hilli Government Polytechnic, Dakshin Dinajpur, from Calcutta Technical School, Kolkata.

However, before addressing the issue, it is necessary to outline the relevant facts for clarity and convenience.

The petitioner started his career as a Workshop Instructor at Jalpaiguri Polytechnic Institute in 1987. After serving from 1992 to 2004 at Central Calcutta Polytechnic

Institute, he was promoted to the position of Junior Lecturer and joined Howrah Engineering Institute. In 2006, he was transferred to Calcutta Technical School. In July 2012, he was promoted to Lecturer in Mechanical Engineering. After spending a decade at Calcutta Technical School, he was transferred to Sheikpara ARM Polytechnic, Murshidabad, in 2018. In 2022, he was reassigned to Calcutta Technical School. By a transfer order dated October 9, 2023, he was transferred to Hilli Government Polytechnic, Dakshin Dinajpur. The petitioner questioned the justifiability of the transfer order before the learned Tribunal in OA 773 of 2023. The record shows that, by an order dated December 6, 2023, he has been released from Calcutta Technical School.

Mr. Samim, learned advocate representing the petitioner, argues that on March 7, 2024, when the OA was taken up for hearing, a prayer for adjournment was made on behalf of the petitioner. However, on that date, the hearing was concluded, and judgment was reserved. He contends that the order dated March 7, 2024, does not reflect that an adjournment was requested. Subsequently, by an order dated March 14, 2024, the learned Tribunal dismissed the OA. Aggrieved by this decision, the petitioner filed a Miscellaneous Application, MA No. 23 of 2024, but the Tribunal did not accept the contentions raised in that application and rejected the application, being MA 23 of 2024.

Mr. Samim argues that the learned Tribunal passed the orders on March 7, 2024 and also on March 14, 2024 in OA

773 of 2024 in contravention of elementary principles of justice. Referring to certain orders passed by the learned Tribunal in OA 773 of 2023 in different stages, Mr. Samim argues that the learned Tribunal proceeded in a mechanical manner by employing 'copy-paste' method and paraphrasing certain portions of one order into another.

Quite apart from that, Mr. Samim criticizes the transfer order, alleging that it is expressly *mala fide*. He explains this claim by contending that the petitioner had lodged a complaint regarding certain illegalities in the tampering of marks awarded to 3rd Semester DME students and 1st Semester DCE students at Calcutta Technical School. According to him, this complaint enraged high officials of the school and led them to issue the transfer order. Therefore, the transfer order is alleged to be *mala fide*.

In response, Mr. Basu Mallick, the learned Additional Government Pleader representing the State Respondents, argues that the transfer order was issued in accordance with the existing transfer policy. Drawing our attention to a clause in the notification dated July 18, 2011, which stipulates that every Grade-A officer must serve at least once in Zone 'E', he contends that since being promoted to the Grade-A cadre, the petitioner has never served in Zone 'E'. Mr. Basu Mallick asserts that the transfer order was issued due to administrative exigencies and therefore, cannot be considered *mala fide*.

In the given case, admittedly, there was no reflection in the order dated 7.3.2024, that an adjournment was sought for on behalf of the petitioner. In the order dated 7.3.24, it was recorded that one learned advocate, Mr. Danishuddin Abbasi represented the petitioner before the learned Tribunal on 7.3.24. In that order, it was recorded that on consent of the learned counsels the case was taken up for consideration sitting singly and after hearing the learned counsels, the order was reserved.

Record reveals that a Miscellaneous application, being MA 23 of 2024 was taken out with a prayer for correction and modification of the order dated 7.3.2024. On 14.03.2024, by passing an order, OA 773 of 2024 was dismissed.

At the interlocutory stage, after being denied an interim order to stay the operation of the transfer order, the petitioner sought intervention of this Court in WPST 201 of 2023. By an order dated January 5, 2024, a coordinate Bench of this Court disposed of the writ petition, being WPST 201 of 2023, restraining the respondents from implementing the transfer order and the release order until the disposal of the OA with a further direction upon the respondents to allow the petitioner to continue in the post of Lecturer at Calcutta Technical School until the OA is disposed of. The Bench directed the learned Tribunal to dispose of the OA as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

Record reveals that challenging the order dated 14.3.2024 passed in OA 773 of 2024, the petitioner previously filed a Writ Petition, being WPST 57 of 2024, which was disposed of by directing the learned Tribunal to pre-pone the date of hearing of the MA 23 of 2024 and disposed of the same within a specific time frame. Record postulates that by an order dated June 25, 2024, the learned Tribunal refused to endorse the allegation raised in that application and dispose of the same without passing any order.

In the order dated June 25, 2024, the learned Tribunal noted that on March 7, 2024, the matter was heard, and the petitioner was represented by Mr. Abbasi, learned advocate. Mrs. Agarwal, who represented the State Respondents, confirmed these facts in her submission. The Tribunal further noted that it found no evidence indicating that an adjournment had been requested. Describing the procedure normally followed in the Tribunal, it observed that matters are generally heard when both parties are represented. Adjournments are granted only when the counsel for one side is unrepresented, and an advocate on his behalf prays for an adjournment with a specific reason. The Tribunal reiterated that the petitioner was adequately represented by Mr. Abbasi, who participated in the proceedings.

Indisputably, day to day proceedings in any judicial or quasi-judicial *fora* are based on mutual trust and respect inherent in legal fraternity, particularly between the bar and the bench. Everyone must ensure that this trust is not

compromised. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice.

There must be a presumption of regularity regarding official and judicial acts. Factual recitals or observations in any judgment or order are presumed to be correct unless rebutted. If any event is incorrectly recorded or if the sequence of events is not accurately reflected in a judgment or order, the matter should be promptly brought to the attention of the court by making an appropriate application while the case is still fresh in the judge's mind. After a long gap of several months, if no compelling evidence is presented to rebut this presumption, it becomes challenging for a higher forum to resolve such disputed questions of fact.

However, since both Mr. Samim and Mr. Basu Mallick argues on merit, ignoring such sorts of technical issues, we are inclined to delve into primal issue that has led to present dispute. Therefore, let us examine as to whether the transfer order can withstand the judicial scrutiny or not.

Admittedly, scope of judicial review of a transfer order is very limited. A Court should loathe to interfere with a transfer order unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of *mala fide* or on the ground of its being punitive in nature. It is undeniable that continued officiating in a particular post is not conducive to a good, effective and transparent administration. Therefore,

transferability in public service is conceived in public interest. In a transferable job, transfer is not only an incident but an essential condition of service. An employee holding a transferable post cannot claim to have a vested right to be posted at a particular post for an indefinite period. Similarly, power to issue transfer order must be exercised in accordance with the statutory rules, in a *bona fide* manner and due to administrative exigencies i.e. to maintain a good, effective and transparent administration.

A transfer order can be impeached as punitive in nature if it is issued in lieu of taking any departmental action against an employee despite the circumstances justifying such action. Similarly, a transfer order can be condemned as *mala fide* if sufficient materials are available to demonstrate that the power to issue transfer order is based on extraneous consideration or for achieving any alien purpose or it was issued with an oblique motive.

The expression 'mala fide', 'motive' and similar terms involve certain mental elements. One can infer whether a transfer order is mala fide based on the previous or subsequent conduct of the employer, the language or wording used in the transfer order itself, or in any other order or order issued in close proximity to the time.

Indisputably, the petitioner's service is transferable. As noticed previously, Mr. Samim argues that lodging of the complaint was consideration and/or motivation behind issuance of the transfer order. From an office order dated

22.8.2023, it is reflected that upon receipt of the complaint, a committee was formed to find out the culprit who attempted to tamper the marks and the petitioner was a member of that committee. The petitioner claims that the transfer order dated 9.10.2023 was served upon him on 21.10.2023. Given the nearly two months gap between two incidents, there is an attempt to connect the two incidents.

Undoubtedly, the language used in the transfer order does not suggest that it was issued for any purpose other than administrative exigencies. Apart from the brief gap of approximately two months between the lodging of the complaint and the issuance of the transfer order, there are no other materials that would lead a reasonable person to connect these two events and conclude that the transfer order was a direct result of the complaint. Therefore, due to lack of sufficient materials, it would be iniquitous to condemn the transfer order *mala fide*.

The transfer policy, as produced by the parties, indicates that for the purpose of transferring officers or staff, the State of West Bengal is divided into five zones. The district of Dakshin Dinajpur falls within Zone 'E'. According to the policy, every Grade-A officer must serve at least once in Zone 'E' during his total service period. It is an admitted fact that, after being promoted to the Grade-A cadre, the petitioner has not served in Zone 'E'. From 1987 to 2023, during his nearly 36 years of service, the petitioner spent only 5 years at Jalpaiguri as a Workshop Instructor, 2 years as a Junior

Lecturer in Howrah, and 4 years as a Lecturer in Murshidabad. The remaining 25 years were spent at two different educational institutions in Calcutta. Therefore, there is no evidence to suggest that the transfer order was issued in contravention of the transfer policy or with a vindictive motive.

In view of this above discussion, we have not found any justification to infer that the transfer order was mala fide or punitive in nature or it was issued in disregard of the transfer policy. Consequently, we are of the view that the learned Tribunal did not err in not interfering with the order of transfer. Therefore, we do not find any infirmity or any substantial miscarriage of justice or any error, least to say any patent error or jurisdictional error in the order impugned in the writ petition warranting interference with the same.

Accordingly, the present writ petition is dismissed.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)