

WP(C) 235/2010

BEFORE

HON'BLE MR JUSTICE B K SHARMA

Heard Mr A K Goswami, learned senior counsel, assisted by Mr D K Sarma, learned counsel for the petitioner. Also heard Ms A Verma, learned Standing Counsel, Health Department. I have also gone through the records produced by her.

This writ petition has been filed challenging the order dated 05.01.2010 (Annexure - P-II), by which the petitioner has been reverted from Home (B) Department and posted at the particular Public Health Centre (PHC) in the district of Barpeta. According to the petitioner, the said order having been issued as an order of penalty is not sustainable in law. It is the case of the petitioner that a signature campaign was made against him at the behest of the respondent No. 6 seeking his transfer to some other place. It is alleged that such a course of action was adopted by the said respondent No. 6 as he was made to work at night.

I have perused the records produced by the learned Standing Counsel, Health Department. On perusal of the same it is revealed that the authority took decision to transfer the petitioner from the present place of posting in consideration of the fact that the petitioner has already completed the period of deputation under Home (B) Department. As against the formal tenure of 3 (three) years extendable to 5 (five) years the petitioner is on deputation for about 8 (eight) years.

The petitioner having already completed more than 8 (eight) years of service at the particular place, it was felt necessary to transfer him to the particular Public Health Centre (PHC) in the district of Barpeta. It is true that a public petition was filed to the departmental Minister alleging that the petitioner works for about an hour as against 8 (eight) working hours day. When the matter was brought to the notice of the authorities, the case was processed and it was found that the petitioner has already rendered more than 8 (eight) years of service in the particular Health Centre and has also completed permissible period of deputation. In fact, as against the permissible deputation period of 5 (five) years he has already completed more than 8 (eight) years.

Mr Goswami, learned senior counsel for the petitioner submits that since the process of transfer which has been initiated on the basis of the aforesaid complaint, the impugned order is in the nature of a penal order. On the other hand, Ms A Verma, learned Standing Counsel, Health Department, submits that merely because the aforesaid complaint was lodged the petitioner cannot claim that the impugned order is not sustainable in law, more so, when it came to the notice of the authority that the petitioner has already completed more than 8 (eight) years of service as against the formal tenure of 3 (three) years.

If the authority has decided to transfer the petitioner from the present place on completion of the deputation period and the normal posting period, no fault can be attributed in issuing the impugned order. As regards the complaint filed against the petitioner it was open for the authority to make an enquiry into the same even to the extent of initiating departmental proceedings. However, instead of that if the authority decided to transfer him, the same cannot be said to be a punitive action since the petitioner has already completed the period of deputation and the tenure of posting being at the same place of posting for more than 8 (eight) years, his transfer to the particular Public Health Centre (PHC) in another District cannot be said to be unjustified, more so, when he is in a transferable job.

For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, it is dismissed.

The interim order passed on 11.1.2010 stands vacated.