

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 165 of 2020

Date of Order: 23.07.2020

Shri. Berick R. Marak Vs. Meghalaya Power Transmission
Corporation Ltd, Tura & Ors.

Coram:

Hon'ble Mr. Justice Ranjit Vasantrao More, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. H.L.Shangreiso, Adv.

For the Respondent(s) : Dr. N.Mozika, Sr. Adv.

1. Heard Mr. H.L.Shangreiso, learned counsel for the petitioner and Dr. N.Mozika, learned Sr. counsel for the respondents.

2. By this petition filed under Article 226 of the Constitution, petitioner is challenging the respondent's order dated 21st May, 2020, whereby he is transferred from the post of Assistant Executive Engineer (Projects), Williamnagar Sub-Division, MePDCL, Williamnagar to the post of Assistant Executive Engineer, office of the Resident Engineer, MLHEP, Stage I Power Station, MePGCL, Nohkum.

3. The petitioner challenged the transfer order mainly on the ground that within a span of one year, he has been transferred thrice. Mr. H.L.Shangreiso, learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in *T.S.R. Subramanian & Ors. vrs. Union of India & Ors. (2013) 15 SCC 732*, *B.Varadha Rao vrs. State of Karnataka & Ors. (1986) 4 SCC 131* and the decision of the learned Single Judge of the Madhya Pradesh High Court in Writ Petition No. 21175 of 2019 (*Sanjay Upadhyay vrs. State of Madhya Pradesh & Ors.*) and contended that frequent transfer without sufficient reasons be held as mala fide.

4. Dr. N.Mozika, learned Sr. counsel for the respondents contested the petition by filing affidavit in reply of Smti. Aldea Nikhla, daughter of (L) A.B.Diengdoh, Chairman-cum-Managing Director, MeECL. Dr. N.Mozika contended that there is not much work in the place where petitioner is working namely, office of the Executive Engineer (Projects), Williamnagar. He further submitted that petitioner is a well experienced officer in Generation work and therefore his services were required to be placed and utilized at Myntdu Leshka Hydro Electric Project to strengthen the capacity of the personnel posted there. Dr. N.Mozika relied upon Section 9 of the Service Regulation of the Corporation related to Transfer and Posting and submitted that there is nothing in the regulation which stipulates that transfer of an employee cannot be effected within a short span of time. Dr. N. Mozika lastly submitted that petition is without any merit and deserves to be dismissed.

5. Having considered the rival submissions of the respective counsels and having gone through the petition, the affidavit in reply and the decisions cited above, I find no merit in the petition. The Hon'ble Apex Court in ***T.S.R. Subramanian (Supra)*** held that normally transfer should be in public interest or exigencies of service. The Apex Court in ***B.Varadha Rao (Supra)*** para 5 quoted the observation in ***E.P.Royappa vrs. State of Tamil Nadu (1974) 2 SCR 348*** to the effect that a transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in exigencies of service but for other purpose. The learned Single Judge of Madhya Pradesh High Court in ***Sanjay Upadhyay (Supra)*** in para 10 observed that if an employee is arbitrarily transferred frequently then that conduct of the authorities is considered to be a mala fide on their part.

6. In the above backdrop, let us consider whether petitioner's transfer under impugned order can said to be mala fide. It is settled principle of law that in public service transfer is an incident of service and unless it is shown to be mala fide, the High Court in exercise of Article 226 is not expected to interfere in the same. It is true that within a span of one year, petitioner was transferred thrice i.e. by orders dated 29th May, 2019, 27th November, 2019 and the impugned order in the petition. By first transfer order dated 29th May, 2019, petitioner was transferred from the post of Resident Engineer 132 KV

Grid Sub-Station, Nangalbibra to the office of Superintending Engineer East Garo Hills Distribution Circle, MePDCL, Williamnagar. By second transfer order dated 27th November, 2019, petitioner was transferred and posted as Assistant Executive Engineer, REC Sub-Division, MePDCL, Williamnagar. This order can hardly be considered as a transfer order inasmuch as by this order the department of the petitioner was changed and petitioner was kept at Williamnagar only. So far as the petitioner's transfer to the post of Assistant Executive Engineer, office of Resident Engineer, MLHEP, State I Power Station, MePGCL, Nohkum is concerned, same was in public interest inasmuch as the specific stand of the respondents that there is not much work in the office of the Executive Engineer (Projects), Williamnagar and petitioner being an expert in Generation work, his services are required at MLHEP Stage I Power Station, MePGCL, Nohkum, Jaintia Hills.

7. In the above circumstances, I am of the opinion that there is no substance in the petitioner's contention that he is being transferred frequently much less mala fide. Petitioner was transferred under impugned order considering his expertise in Generation work. Taking into consideration the totality of the facts and circumstances, I am of the view that no interference is required in the impugned order under Article 226. The petition is without any merit and same is accordingly dismissed. Interim order stands vacated.

Judge

Meghalaya
23.07.2020
"Samantha PS"