

Ganesh Ram and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-19-1994

Judge : K. Venkataswami, C.J. and B.P. Singh, J.

Appeal No. : Civil Writ Jurisdiction Case No. 1552 of 1994

Appellant : Ganesh Ram and ors.

Respondent : The State of Bihar and ors.

Advocate for Pet/Ap. : Dr. S.N. Jha

Prior history : B.P. Singh, J. 1. The petitioners herein, 18 in number, have prayed for quashing of the order No. 11 dated 13-1-1994, the (Annexure-7) whereby the head-quarters of the petitioners have been changed during the period of their suspension. They have also prayed for a direction or order to the respondents not to compel the petitioners to sign the attendance register at their respective head-quarters during the period of suspension. 2. The facts as appear from the writ petition are as follows: Peti

Judgement :

B.P. Singh, J.

1. The petitioners herein, 18 in number, have prayed for quashing of the order No. 11 dated 13-1-1994, the (Annexure-7) whereby the head-quarters of the

petitioners have been changed during the period of their suspension. They have also prayed for a direction or order to the respondents not to compel the petitioners to sign the attendance register at their respective head-quarters during the period of suspension.

2. The facts as appear from the writ petition are as follows:

Petitioners 1 and 2 were working as Forester, petitioner No. 18 as Tractor Khalasi and the other petitioners as Forest Guard, and were posted at various stations in the Champaran Forest Project Division-2, Bettiah. The different stations at which the petitioners were posted fall within the jurisdiction of four police stations. The petitioners have been placed under suspension in connection with criminal cases and disciplinary proceedings initiated against them. The case against them is that rather than protecting the forest they indulged in illegal activities in collusion with the local population and other Government officials in illegally transporting the fallen timber from the forest in question. The allegations disclose that large scale felling of trees has taken place within their jurisdictions, and they had failed to report the matter to higher authorities. It is alleged that the facts discovered in the course of inquiry point to their complicity in the illegal felling of trees in collusion with others. It is also not disputed that criminal cases have been registered against them for various offences under the Indian Penal Code and the Forest Act. It is also not in dispute that disciplinary proceedings have been initiated against the petitioners for the misconduct alleged. The respondents assert that their illegal activities have resulted in severe loss to the State Exchequer, apart from denuding the forest.

3. In those circumstance the petitioners were placed under suspension, and separate orders were passed placing them under suspension. These orders have been annexed as Annexure-6 series, the Project Director while placing the petitioners under suspension fixed their head-quarters at the office of the Project Deputy Director, Champaran, Forest Project Division-1, Bettiah. The case of the petitioners is that Bettiah is at a distance of about 100 K.M. from the places where the petitioners were posted before they were placed under suspension. In obedience to the orders of suspension, the petitioners reported to the head-

quarters fixed in the suspension orders and were being paid their subsistence allowance according to rules. However, the Chief Conservator of Forest-cum-Managing Director, of the respondent Bihar State Forest Development Corporation Ltd, a Government Company, issued the impugned office order No. 11 dated 13, 1.1994, changing the head-quarters of the petitioners during the period of their suspension. The head-quarters of the petitioners have been sought to be fixed at different places such as Patna, Muzaffarpur, Purnea, Deoghar, Bhagalpur and Gaya which are more than 300 K.M. away from Bettiah. The petitioners are required to sign attendance register everyday at their respective head-quarters even though they are under suspension. The petitioners contend that the change of head-quarters during the period of their suspension amounts to an order of transfer and is not permissible. They also contend that they will have to incur heavy expenditure in attending the departmental proceeding as also the criminal proceedings pending against them, if they have to travel all the distance to take part in these proceedings. On these facts the petitioners have prayed that the order changing their head-quarters-Annexure 7, as also the direction to them to mark their attendance at the head-quarters be quashed.

4. A counter-affidavit has been filed on behalf of, respondent Nos. 2, 3 and 4. In the counter-affidavit it is asserted that disciplinary proceedings have been initiated against the petitioners, and they were placed under suspension in connection with the illegal falling of large number of trees numbering over fifty thousand (50, 000) valued at more than Rs. 1, 00, 00, 000/- (one crore). Criminal cases have also been lodged against them. Initially the head-quarters of the petitioners were fixed at Bettiah, but the petitioners who continued to occupy the official residence provided to them at Balmikinagar, started creating a law and order problem and tried to tamper with the evidence resulting in unnecessary disturbance in the fair investigation of the criminal cases. The Project Director by letter dated 3.11.93 addressed to the Chief Conservator of Forest-cum-Managing Director of the respondent-Corporation reported that though the head-quarters of the employee was fixed at Bettiah, they were remaining at Balmikmagar occupying the Government quarters and creating law and order problem and also tampering with the evidence. Their continuance at Bettiah was not in public interest. He, therefore, suggested that they be transferred to Muzaffarpur office. A high level meeting of

high officials was held on 28.12.1993 which considered the matter in all respects and several decisions were taken in that meeting. Accordingly, having regard to the exigency of the situation, and also having regard to the fact that the continuance of the petitioners at Bettiah would adversely affect the investigation of the cases against them, and it would become difficult to protect the forest in view of the law and order situation created by the petitioners, it was decided to change their head quarters. It is further stated that in accordance with the prevailing practice in the Corporation, the petitioners were required to put their signature on the attendance register at the head-quarters. This was done to ensure that the petitioners remain present at the head-quarters as they are required to be to enable them to get subsistence allowance. At the same time this was necessary to ensure that the petitioners did not absent themselves from the head-quarters and indulge in illegal activities at Bettiah and at other places when they were originally posted. The change of head-quarters and requirement to mark attendance has been justified on such grounds. The respondents have asserted in the counter-affidavit that if the petitioners are required to attend the disciplinary proceedings they will be at liberty to claim travelling allowance. In the supplementary affidavit filed on behalf of the respondents, notice of this Court has been invited to the instruction issued by the Government of Bihar in the Personal and Administrative Department dated 2.8.1985 requiring suspended employees to mark their attendance at the head-quarters every day.

5. In their rejoinder, the petitioners have asserted that even though the petitioners are under suspension they continue to be Government servants having a lien on the post held by them; as such they were entitled to occupy the quarters which were duly allotted to them prior to their suspension. So far as the allegations regarding their indulging in illegal activities by tampering with the evidence and creating law and order problem is concerned, the same have been denied as totally false and baseless and that the allegations are not supported by any material. Such statements have been made only to create prejudice against the petitioners. They have further stated that even if some reports have been received against some of the suspended employees, that by itself would not be a justification for transferring all the suspended employees to far away stations. They have further contended that in view of a Division Bench judgment of this

Court in C.W.J.C. No. 10106 of 1992 the respondents cannot insist that the petitioners who are suspended employees must mark their attendance each day at the head-quarters.

6. The question as to whether a suspended employee can be asked to mark his attendance every day at the head-quarters fixed for him, is a question which is not res Integra so far as this Court is concerned, because, as submitted on behalf of the petitioners, a Division Bench of this Court in C.W.J.C. No. 10106 of 1992 by its judgment dated 24.1.1994 has held that a suspended employee cannot be denied his subsistence allowance if he fails to mark his attendance. Relying upon provisions of the Bihar Service Code, it was held that it was not the requirement of the rules that a suspended employee should mark his attendance at the head-quarters. A suspended employee was entitled to his subsistence allowance only upon production of a certificate to the effect that he was not gainfully employed at any other place. No doubt, the rules referred to do not provide for marking of attendance by a suspended employee. There is, however, nothing in the rules prohibiting the concerned authority from requiring the suspended employee to mark his presence every day. Be that as it may, the aforesaid decision certainly supports the case of the petitioners, Unless the matter is reconsidered by a larger Bench of this Court, or the Supreme Court and it is held to the contrary, the principle laid down in the aforesaid judgment must be followed. No doubt, as contended by the respondents, the mere suspension of an employee does not amount to termination of master and servant relationship. The suspended employee is entitled to subsistence allowance which is a substantial amount, and in case of prolonged suspension only a fraction of the pay is withheld because of the increase in the subsistence allowance as provided by rules. In the instant case as well, in view of the pendency of the criminal cases, it may be difficult to conclude the departmental proceeding within reasonable time. In fact the petitioners themselves claim that they are entitled to retain the official accommodation provided to them and which they were occupying at the time of their suspension. A suspended employee is required to be present at the head quarters, and if he is absent from the head-quarters he may not be entitled to subsistence allowance for the period during which he was absent. The requirement to mark the attendance each day is only to ensure that the suspended

employee is present at the head-quarters. Mere making of attendance k different than requiring a suspended employee to work during the period of suspension. Counsel for the corporation, therefore, submitted that though it is possible to urge that the requirement to sign the attendance register is not illegal, in the facts of the instant case, and having regard to the earlier judgment of this Court, he does not wish to pursue the point any further. He stated that the respondents will not enforce the direction requiring the petitioners to mark their presence in the attendance register at their respective head-quarters each day, but in case any dispute arises as to whether they were present or not on any day, they will have to establish their presence to the satisfaction of the authority concerned. The petitioners have no objection to this course being followed. This grievance of the petitioners, therefore, stands redressed.

7. The question which survives consideration is whether an employer can fix the head-quarter of a suspended employee at a station other than the station where the employee was posted at the time of his suspension. Further, whether the head-quarters once fixed cannot be changed. Dr. S.N. Jha, counsel for the petitioners very fairly submitted that he will not urge that the head-quarters of a suspended employee cannot be fixed at a station other than the station where he was working of the time of his suspension. He, however, submitted that if the change of head-quarters is actuated by malice and is calculated to harass a suspended employee, or to cause hardship to him because of vendatta or as a measure of victimisation, then such an order changing the head-quarters can be challenged as arbitrary or unreasonable, and if the material so justify, as mala fide. On the other hand, counsel for the corporation also did not challenge this proposition of law but submitted that the exigency of the situation, the nature of the misconduct or offence alleged, the subsequent conduct of the suspended employee and several other factors must be taken into account while judging the reasonableness of any order passed changing the head-quarters. If such an order is passed bona fide and reasonably, it cannot be assailed.

8. It has not been disputed, and cannot be disputed, that while placing an employee under suspension it is open to the employer to change the head-quarters. In the absence of specific rule, this power may be considered as inherent

in the disciplinary authority with a view to conduct a fair inquiry. Having regard to the nature and gravity of the misconduct alleged, the employer may have reasons to believe that if the head-quarters of the suspended employee is not changed he may tamper with the records or evidence, or may put impediments in the smooth conduct of the departmental inquiry. It may be that where oral evidence is required, having regard to the position occupied by the suspended employee, he may be in a position to threaten the witnesses or to win them over so that the departmental proceeding may not result in a fair decision. Dr. Jha also does not dispute that the employer has the right to fix the head-quarters of a suspended employee at a place which may be different from the place where he was posted when placed under suspension. In the instant case, according to him, the petitioners were posted at various stations in Champaran and even the head-quarters fixed, namely, Bettiah, was at a distance of about 100 KM. from their places of posting. That was a sufficient-safe-guard against the petitioners indulging in any sort of undesirable activity. The further change of their head-quarters to stations which are more than 300 to 400 K.M. away from Bettiah, however, has been characterised as mala fide, vindictive, and amounts to victimisation.

9. Once it is held that the employer has the right to fix the head-quarters of a suspended employee at a station different from the station he was working who placed under suspension, the right of the employer to change the head-quarters cannot, be denied. However, since the employer in the instant case is 'State' within the meaning of Article 12 of the Constitution of India, it cannot Act arbitrarily and unreasonably. If the head-quarters of a suspended employee is changed and it appears to the court that the action is arbitrary, unreasonable, mala fide or vindictive, it is open to the court to quash such an order. In determining whether such an order is arbitrary or unreasonable, several factors have to be taken into account. In the instant case for instance, the respondents contend that while at Bettiah the petitioners have been indulging in activities prejudicial to a fair conclusion of the departmental proceedings and the criminal trials. They have been tampering with the evidence and creating a law and order problem. Therefore, their head-quarters have been fixed at distant places which is justified by the circumstances and cannot be characterised as arbitrary or unreasonable or

mala fide. On the other hand, Dr. Jha contends that the mere ipse dixit of the respondents is not sufficient. He submits that there may be variety of situations, and it may be that in given circumstances the employer may be compelled to take the harsh step of changing the head-quarters of a suspended employee so as to send him to a far away place from where it may be impossible for him to interfere with the disciplinary proceeding or the investigation of the criminal trial. However, when such an action is challenged as vindictive and arbitrary, the respondents must be able to place material before the court to satisfy the court that the decision of the employer to change the head-quarters of the employee was not on extraneous consideration, but on the basis of cogent material on record which justify such action. In my view, Dr. Jha is correct in his submission, and I am persuaded to hold that where the action is characterised as vindictive or mala fide, the employer must be able to produce material before the Court to satisfy the Court that its action is bona fide, and based on relevant material. If relevant material exists, interference by Court is not warranted.

10. Applying the above principles to the facts of the instant case, I find that there is only one letter placed on record which is written by the Project Director to the Managing Director of the respondent-Corporation. In the said report the names of four suspended employees have been mentioned, out of whom two are petitioners before this Court. It is stated in the letter that despite the fact that Bettiah was fixed as their head-quarters they have been residing at their residence at Balmikinagar and have been indulging in disturbing the peace, obliterating the evidence etc. which has also an adverse effect on the protection of the forest in that area. He, therefore, suggested that the head-quarters be changed to Muzaffarpur. If this be the only material on the basis of which the head-quarters of all the petitioners have been changed, it would be difficult to sustain the order changing the head quarters. The mere allegation, without anything more, is not sufficient. No particulars have been mentioned in the aforesaid complaint, nor is there any indication as to the action if any taken by the authorities, either by lodging complaints before the concerned authorities or by calling upon the employees concerned to justify their conduct. Even assuming that some of the suspended employees may have indulged in activities prejudicial to the public interest, and to the fair disposal of the departmental proceedings and the criminal trials, that would

not justify an action against all the suspended employees. It is difficult for the Court to make an inquiry into the allegations against each of the petitioners in a writ proceeding. Having regard to the nature and gravity of the offences alleged against the petitioners, and taking special note of the law and order situation as it prevails in the district to which the petitioners belong, I am not persuaded to forthwith quash the order Annexure-7 series, changing the head-quarters of the petitioners. However, the Managing Director of the respondent-Corporation is directed to reconsider the matter in the light of the above observation, within a period of six weeks from the date on which a copy of this order is produced before him by any of the parties, and to pass fresh order in respect of each or the petitioners with regard to fixing of their head-quarters.

If the Managing Director on an appreciation of the material placed before him is satisfied that the exigency of the situation requires that the head-quarters of the concerned petitioner must be changed, he may not disturb the impugned order Annexure-7 in so far as it relates to that petitioner. However, If the Managing Director come to the conclusion that there is no material, or that the material does not disclose facts which justify that change of head-quarters of any of the petitioners, he may recall his order Annexure-7 to the extent it relate to such petitioners. The Managing Director must pass reasoned orders, even if brief in each case discussing the material placed before him so that if challenged, the reason for the change of head-quarters and the material in support thereof may be found in the order of the Managing Director, enabling the Court to take a fair decision. This Writ petition is disposed of accordingly.