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State of Assam and ors. Vs. Dilip Kumar Das and anr.

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Court : Guwahati

Decided On : Feb-07-2003

Judge : P.P. Naolekar, C.J. and Ranjan Gogoi, J.

Appeal No. : Writ Appeal No. 37 of 2003 in WP(C) No. 8323 of 2002

Appellant : State of Assam and ors.

Respondent : Dilip Kumar Das and anr.

Advocate for Def. : K.N. Choudhury, J. Choudhury and J. Phukan, Advs.

Advocate for Pet/Ap. : J. Roy, S. Sharma, S. Manir and S. Paul, Advs.

Judgement :

P.P. Naolekar, C.J.

1. Heard Mr. J. Roy, learned counsel appearing for the appellants and Mr. K.N. Choudhury, learned senior counsel appearing for the respondent/writ petitioner.

2. The respondent/writ petitioner filed a writ petition registered as WP(C) No. 8323/2002 wherein he has challenged the order of his transfer from PCC Sub-Division (PWD) to Guwahati Building Sub-Division issued on 18.12.2002. The effect of the transfer order has been stayed by an interim order passed by the learned Single Judge on 20.12.2002. The interim order passed by the learned Single Judge staying the transfer order of the respondent/writ petitioner was

challenged by the Government by filing an application for vacating the same and by order dated 28.1.2003 the order of stay was confirmed. That is how the Government is before us on appeal.

3. At the time of hearing of the appeal against the order dated 28.2.2003 we have made it clear to the counsel appearing for the respective parties that we shall dispose of the writ petition itself after hearing the arguments. It is clear from the record that the respondent/writ petition who was working as Assistant Executive Engineer, PWD at Haflong was transferred on 16.12.2002 to PCC Sub-Division, Guwahati under the PWD department. The writ petition joined duties on 17.12.2002. On 18.12.2002 he received an order of transfer whereby his Sub-Division has been changed from PCC Sub-Division to Guwahati Building Sub-Division and in his place on Jyotish Sarma, Assistant Executive Engineer has been transferred to PCC Sub-Division. This order of transfer of the petitioner from one Sub-Division to another Sub-Division in the city of Guwahati was the subject-matter of the writ petition on the ground that the petitioner's transfer and his place posting of Jyotish Sarma was the result of the orders issued by the Minister, PWD without any rhyme or season. There was no administrative exigency under which the Minister concerned was compelled to act and issue orders of transfer from Sub-Division to another Sub-Division in Guwahati within few hours of the petitioner's joining his duty in Guwahati.

4. There is no manner of doubt that the Minister, PWD concerned is competent authority to direct the transfer of Executive Engineers within the State of Assam. The settled principle is that the competent authority has jurisdiction to transfer the employees, if it found the necessity that a particular officer be placed at a particular place, considering the exigency of business and in public interest. The main bone of contention of the respondent/writ petitioner is that his transfer is being effected without there bring any administrative exigency and thus it takes the shape of favour, given to a particular individual without there being any rhyme or reason. To get over our doubts about the exercise of the powers of transfer of the petitioner we directed the counsel for the appellants to produce the record wherein the decision for transfer has been taken. The record shows that the PC Sub-Division is carrying on the permanent Capital construction in the city of Guwahati

and the Minister found that one Jyotish Sarma, Assistant Executive Engineer is a competent officer to carry that job and having considering his performance records, in the interest of the public he is to be put to that post. It is for the Minister to assess the capability and capacity of a particular officer to a carry on a particular job and the courts are normally not called upon to sit over the judgment of the authority concerned. The Minister, if has thought, that a particular employee is suitable to carry on a particular nature of job and in accordance therewith if he has directed the officer to hold the particular post and as a necessary corollary the person holding that post is required to be shifted to some other place, the act by which such a thing is done cannot be said to be an act done with mala fide intent or to favour a particular individual. The authority who is to see that the work, which is to be carried out of by a particular department, is done expeditiously and in a proper manner can certainly exercise his discretion to put a particular individual in a particular job. The court will be extremely slow in interfering with the discretion exercised by the authority who is supposed to know his job and the employees in a better manner. Under the circumstances, there is no case made out for interfering with the order of transfer and as a result thereof we dismiss the writ petition (C) No. 8323/2002 itself. Consequent thereof, the order passed by the learned Single Judge is set aside and the Writ Appeal also stand disposed of.

Connected Misc cases also stand disposed of.

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