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Anil N. Bugde Vs. State of Maharashtra Through Department of General Administration and Home and ors.

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Court : Mumbai

Decided On : Mar-10-2004

Reported in : 2004(3)ALLMR592; [2004(102)FLR878]; 2004(3)MhLj254

Judge : C.K. Thakker, C.J. and ;S.A. Bobde, J.

Acts : Constitution of India - Articles 32 and 226; Indian Police Service (Cadre) Rules, 1954 - Rule 9; Pay Rules

Appeal No. : Public Interest Litiotion No. 20 of 2004

Appellant : Anil N. Bugde;shri Prashant Surve;satishkumar Laxmandas Agarwal

Respondent : State of Maharashtra Through Department of General Administration and Home and ors.;The State of Ma

Advocate for Def. : G.E. Vashanvati, Adv. General, ;Roi Rodrigues, Special Counsel, ;R.M. Rathe, Assistant Government Pleader, for Respondent No. 1, ;G.E. Vahanvati, Adv. General, ; ;B.R. Patil, Public Procecutor, for re

Advocate for Pet/Ap. : Anil N. Bugde, Petitioner-in-person, ;Y.S. Jahagirdar, Senior Adv., ;Ashvin S. Bhalekar and ;P.M. Havnur, Advs.

Disposition : PIL dismissed

Judgement :

C.K. Thakker, C.J.

1. All these petitions have been filed in public interest litigation making grievance against transferring Dr. Parwinder Singh Pasricha. Commissioner of Police, Mumbai (Respondent No. 5 in PIL No. 20 of 2004), and appointing Mr. A.N. Roy (Respondent No. 6 in PIL No. 20 of 2004), as Commissioner of Police, Mumbai.

2. The case of the petitioner in Public Interest Litigation No. 20 of 2004 is that he is a citizen of India and an Advocate by profession. He is thus vitally interested in good governance in the State of Maharashtra. he is also a taxpayer. He has invoked the jurisdiction of this Court under Article 226 of the Constitution contending therein that an illegal action has been taken by respondent-authorities in disturbing Dr. Pasricha by transferring him from the post which he was holding as Commissioner of Police, Mumbai and by appointing Mr. A.N. Roy at his place. The said action, according to the petitioner, is illegal, unlawful, contrary to law, politically motivated and mala fide. The action, therefore, deserves to be quashed and set aside.

3. It is stated by the petitioner that one Mr. R.S. Sharma was Commissioner of Police, Mumbai. He however, retired from the said post on 31st October, 2003. The petitioner alleged that it was widely said and openly discussed and also reported in newspapers that the post of Commissioner of Police, Mumbai, is virtually auctioned and an Officer who is in a position to pay highest amount will be able to get the said post. He further alleged that it was said that at the time of appointment of Mr. Sharma, crores of rupees had been said. The Government, therefore, took sufficient care and caution to appoint an honest, impartial and upright Commissioner of Police after the retirement of Mr. Sharma. It was all the more necessary in the light of the fact that image of police force in Maharashtra had been badly damaged after Telgi's Stamp Scam. Respondent No. 3 was, therefore, selected by the Government. Moreover, he was the senior most Additional Director General of Police having sufficient tenure to go and was also an upright, honest and impartial officer. Accordingly, his appointment came to be made on 18th November, 2003 and he took charge of his new assignment on the

nest day i.e. on 19th November, 2003. The citizens of Mumbai as also of the State of Maharashtra whole heartedly welcomed the appointment of Dr. Pasricha. Unfortunately, however, within a period of about two months, he was disturbed and was appointed as Director General of Police and was asked to take new assignment. The allegations of the petitioner is that it is merely an eye-wash and as Dr. Pasricha did not oblige politicians and took several steps by transferring many police officials, the impugned action has been taken. The action is thus illegal, improper arbitrary and it has been taken at the behest of politicians and the same deserves to be set aside. It was also contended that when Dr. Pasricha was appointed as the Commissioner of Police, Mumbai, the respondent-authorities were well aware that a post of Director General of Police was likely to be vacant in near future whereon Dr. Pasricha could be appointed and yet he was appointed as Commissioner of police. It was also contended by the petitioner that in past, many Police Commissioners were allowed to function as Commissioner of Police inspite of they being promoted to the post of Director General of Police. It was, therefore, not necessary to take impugned action of disturbing Dr. Pasricha and the said action has been taken with a view to punish him or to disapprove corrective measures taken by him.

4. The petitioner has also stated in the petition that it is high time that the Government should be directed to have transparency in the appointment on sensitive posts and honest police officers are protected. According to him, judicial interference is called for as morale of entire police force is at stake and citizens of the State favour clean and good governance and the police force being a part of system of public necessity, it must gain public confidence so that rule of law is maintained. Transfer of Dr. Pasricha has demoralised police force and is likely to convey a wrong message that if an honest and upright officer does not listen to illegal commands of high-ranking politicians, he must be ready for the consequences.

5. It was also stated that so far, i.e. the day on which the petition was filed, Dr. Roy had not taken over the charge. A prayer was, therefore, made restraining the respondent authorities from implementing the order of transfer passed against Dr. Pasricha and also by restraining Mr. Roy from taking over as Commissioner of

Police, Mumbai.

6. So far as Criminal Writ Petition No. 224 of 2004 is concerned, it is also filed by the petitioner, who is practising Advocate. He also reiterated all the facts stated by the petitioner of PIL No. 20 of 2004. By seeking amendment, he challenged the order also on the ground that Dr. Pasricha was a Cadre Officer and in accordance with the Indian Police Service (Cadre) Rules, 1954 (hereinafter referred to as the 'Cadre Rules'), a Cadre Officer cannot be posted to a non-cadre post. Since Dr. Pasricha was transferred to a non-cadre post, the action was contrary to the Cadre Rules. According to the petitioner, only in certain circumstances, such transfer or posting is permissible as laid down in the Cadre Rules, and that too with the permission of the Central Government, which has not been obtained in the instant case. The action of the respondents is, therefore, illegal and uncalled for.

7. Writ Petition (PIL) Lodging No. 365 of 2004 is instituted by a senior citizen who is living a retired life. His main grievance in the petition is against insecurity of citizens in Mumbai. According to him, for safety and security of residents of Mumbai, Dr. Pasricha ought not to have been transferred. He has made reference of bomb blasts in 1993 and recently in 2003 and contended that for well being of citizens of Mumbai, the impugned action of the respondent authorities deserves interference by directing them to retain Dr. Pasricha as Commissioner of Police, Mumbai.

8. It may be stated that PIL No. 20 of 2004 was filed on 4th February, 2004. The matter was not on Board. A prayer was, therefore, made to take the matter on Board showing the urgency. The prayer was granted and the matter was taken up for admission hearing at the request of the learned counsel for the petitioner. It may also be stated that on that day, Mr. A.Y. Sakhare, Senior Advocate, appeared for the petitioner with Mr. Aradhye, advocate on record. Notice was issued by us for admission as well as final hearing returnable on 12hth February, 2004. A prayer for interim relief was made at that stage. The court heard the learned counsel for the petitioner and also learned Advocate General who appeared and waived service on behalf of respondent Nos. 1 to 3 (State authorities). Interim relief as prayed for by the petitioner was not granted and the Court, inter alia,

observed as under:

'Any action which will be taken will be subject to final outcome and further orders in the matter.'

9. In Criminal Writ Petition No. 224 of 2004 as well as Writ Petition (PIL) Lodging No. 365 of 2004, notices were issued and they were ordered to be heard with PIL No. 20 of 2004.

10. An affidavit in reply was filed by Deputy Secretary to the Government of Maharashtra, Home Department, on 12th February, 2004 in PIL No. 20 of 2004. In paragraph 2 of the affidavit, the deponent has made a complaint against the conduct of the petitioner. It was stated that the petitioner moved this Court on urgent basis on 4th February, 2004 on a short notice to the respondents. After hearing the matter for some time, the Court issued notice by making it returnable on 12th February, 2004. The Court, however, made it clear that there would be no stay of the impugned order and directed that any implementation would be subject to further orders in the petition. There was, therefore, (SIC) impediment in the way of respondent No. 5 in handing over charge or for respondent No. 6 in taking over charge as Commissioner of Police, Mumbai.

11. The deponent then stated;

'However, it appears from Press Report that the Petitioner personally called the Respondent No. 5 and misrepresented to him that there was a stay order granted by this Hon'ble Court. Respondent No.5 is reported to have said that the Petitioner even personally threatened respondent No. 5 with Contempt of Court if he hands over charge, as according to the Petitioner this would amount to breach of the order passed by this Hon'ble Court. As a result, respondent No. 5 did not hand over charge at that point of time and the matter was extensively reported in the newspapers. This has caused considerable embarrassment to all concerned, and more importantly, if the reports are correct, this clearly amounts to misrepresentation of the order of the Court by the Petitioner. It is respectfully submitted that such misrepresentation, if any, would amount to gross criminal contempt of this Hon'ble Court.'

12. It was also stated that the petitioner himself, who is an Advocate, went to the extent of misrepresenting the order of the Court for the reasons best known to him. Such conduct of the petitioner including his visiting personally the office of the commissioner of Police later in the evening which had been reported in various sections of the press demonstrated that the petitioner had filed petition for collateral purposes and it was not a bona fide public interest litigation. According to the affidavit, the conduct of the petitioner is 'unbecoming of an Advocate'. A prayer was, hence, made to this Court to take very serious view by taking cognizance of the conduct of the petitioner.

13. It was denied that transfer of respondent No. 5 was illegal, arbitrary, mala fide or motivated. According to the authorities, it was a case of promotion of respondent No. 5. He had been elevated to the rank of Director General from the rank of Additional Director General and he had been posted to the new assignment with higher pay scale. It was also stated that respondent No. 5 had taken over the charge of new assignment on 6th February, 2004. It was denied that respondent No. 5 was transferred or 'shunted out' as he was inconvenient to politicians of the ruling party.

14. It was also stated that after the post of Commissioner of Police, Mumbai, became vacant due to transfer of Mr. Sharma, there were several officers in the rank of Additional Director General of Police who were eligible for appointment to the said post. One Mr. K.K. Kashyap, was the Senior most Additional Director General of Police (1969 batch) and Dr. Pasricha, respondent No. 5, was the next one (1970 batch). Since Mr. K.K. Kashyap was due for promotion as Director General of Police, Government promoted him to the said cadre and posted him as Commandant General, Home Guards & Director, Civil Defence, in the rank of Director General. It was further stated that the Government was aware that respondent No. 5 was due for promotion on 1st February, 2004 as Mr. T.K. Choudhary who was holding the rank of Director General of Police was to retire. Dr. Pasricha was considered and posted as Commissioner of Police as he was in the rank of additional Director General of Police and was found fit and suitable for the post. In due course of time, however, an action of promoting respondent No. 5 was taken and he was actually promoted. Thus, there was nothing wrong or mala

fide in the said action. It was a case of promotion and not of demotion.

15. The deponent has also given instances wherein such action was taken in past which included cases of M/s. K.J. Nanavati, K.P. Medekar, S.V. Bhave, A.S. Samra, Satish Sahney and R.D. Tyagi. The deponent has also candidly stated that there were exceptions and certain Officers of the rank of Director General of Police who were holding the post of Commissioner of Police were retained as such which included M/s. S. Ramamurthy, S.C.Malhotra, R.H. Mendonca and M.N. Singh.

16. In an affidavit filed in Criminal Writ Petition No. 224 of 2004, the deponent had denied that there was contravention of the provisions of the Cadre Rules or that the action of transferring Dr. Pasricha was illegal or contrary to law. It was stated that as per Government of India's notification dated 5th November, 2003, there are two cadre posts in the pay scale of Director General of Police, (i) Director General of Police, Maharashtra State and (ii) Director General, Anti Corruption Bureau. Under Rule 9 of Indian Police Service (Pay) Rules, 1954 (hereinafter referred to as the 'Pay Rules'), the Government can appoint a member of the service to hold ex-cadre post not exceeding the number of cadre posts in the scale of Director General of Police. Accordingly, two ex-cadre posts in the scale of Director General were available to the Government. Since Dr. Pasricha was due to promotion in the pay scale of Director General of Police, he was posted against an ex-cadre post as both cadre posts were already occupied by officers senior to Dr. Pasricha. The action, therefore, cannot be said to be contrary to law. It was also stated that Dr. Pasricha was promoted to a higher post inasmuch as 'the Director General of Police is the overall in charge of policing the State of Magarashtra'. In the reply it was stated that Mr. Roy was holding rank of Additional Director General of Police and Government took a conscious decision to appoint him as the Commissioner of Police, Mumbai, considering all relevant aspects. The order, therefore, cannot be objected.

17. At the time of hearing of the petition, Mr. Sarang Aradhya who had filed vakalatnama for Mr. Anil N. Bugde (PIL No. 20 of 2004) made a prayer to permit him to withdraw his appearance as the petitioner wanted to appear as 'party in person'. The petitioner was present in the Court and requested the Court to permit

him to argue the case as party in person and to allow withdrawal of appearance by Mr. Aradhye. An order was, therefore, passed granting the prayer of the learned Advocate for the petitioner and also allowing the petitioner, party-in-person, to argue his case.

18. The party-in-person contended that the action of the respondent-authorities of transferring respondent No. 5 and bringing at his place respondent No. 6 is illegal, arbitrary, malicious and politically motivated. He also contended that the action has been taken with a view to teach a lesson to respondent No. 5 and bringing at his place respondent No. 6 is illegal, arbitrary, malicious and politically motivated. He also contended that the action has been taken with a view to teach a lesson to respondent No. 5 as he had taken effective steps to correct police force without obliging politicians and party in power. According to him, the action was also contrary to the Cadre Rules and ought not to have been taken. Relying on the instances in past, the petitioner submitted that there was no earthly reason to transfer respondent No. 5 as he also could have been continued as Commissioner of Police like several case wherein those officials were allowed to continue as Commissioner of Police even after promotion. He, therefore, prayed to quash and set aside the impugned action. He also prayed for issuing appropriate directions to the State authorities so that appointment, promotion and transfer of high ranking police officials be made transparent. According to the petitioner, it is in the larger interest of citizens and for preservation of rule of law which should be the paramount consideration.

19. When asked by the Court about the affidavit is reply filed on behalf of the State authorities, his conduct of informing respondent No. 5 that an order of transfer against him was stayed and that he should not hand over charge to respondent No. 6 the petitioner submitted that the facts were not correctly stated. In affidavit in rejoinder, he denied the facts stated, averments made and contentions raised by the Deputy Secretary in paragraph 2 of his affidavit. He then stated that he had filed the petition on account of social cause and be being 'social activist lawyer', had taken professional training in the field of social science and had appeared in several matters relating to various institutions. According to him, it is totally wrong to that the petitioner had called upon respondent No. 5 and informed him about the

order of the Court in a distorted form. It was also false and wrong that the petitioner had threatened respondent No. 5 in case he handed over charge of Commissioner of Police, Mumbai to the new incumbent.

20. Mr. Jahagirdar, learned counsel appearing in Criminal Writ Petition No. 224 of 2004, supported the contentions raised by Mr. Bugde, party-in-person in PIL No. 20 of 2004. He further contended that the action was clearly in breach of the Cadre Rules.

21. Mr. P.M. Havnur, learned counsel appearing in Original Side Writ Petition (PIL) Lodging No. 365 of 2004, also adopted the arguments of petitioner, party-in-person of PIL No. 20 of 2004 and Mr. Jahagirdar. He further urged that keeping in view the larger interest of citizens of Mumbai and mindful of bomb blasts of 1993 and 2003, this Court may exercise extraordinary jurisdiction so that honest and upright police officers do not get frustrated.

22. Mr. Vahanvati, learned Advocate General, raised a preliminary objection as to maintainability of the petitions. So far as PIL No. 20 of 2004 is concerned, he submitted that the said petition should be dismissed at the threshold on two preliminary grounds. Firstly, as held by the Supreme Court in Ashok Kumar Pandey v. State of West Bengal and Ors., : AIR 2004 SC280 , public interest litigations should not be entertained in service matters. This ground will apply to all the three petitions. Over and above the said ground, PIL No. 20 of 2004 is liable to be dismissed also on the ground that the conduct of the petitioner is such that he did not deserve locus standi. The learned Advocate General fairly stated that he would not be praying to the Court to initiate contempt proceedings against the petitioner. He, however, submitted that the conduct of the petitioner embarrassed not only the respondent No. 5, Dr. Pasricha, who was transferred to another post and Mr. Roy, respondent No. 6, who was posted vice respondent No. 5 but also the Government. He therefore, submitted that the petition deserves to be dismissed without entering into merits.

23. The learned Advocate General, however, stated that even on merits, no case has been made out by any of the petitioners. The action has been taken in accordance with law. Respondent No. 5 was appointed as Commissioner of

Police, Mumbai, as he was holding the post of Additional Director General of Police and accordingly he took over the charge of his new assignment as Commissioner of Police in November, 2003. After the retirement of Mr. T.K. Choudhary, respondent No. 5 was promoted to the post of Director General of Police and accordingly he was asked to take over the said assignment which was a promotional post having higher pay scale. It was thus not a case of demotion but promotion. He further submitted that there was no violation of either the Cadre Rules or the Pay Rules. Moreover, Dr. Pasricha has never made a complaint either to this Court or to the Government. Even in the present proceedings, though he was joined as a party respondent, he has not appeared either in person or through a counsel. He, therefore, submitted that all the petitions deserved to be dismissed.

24. Having heard the learned counsel for the parties, in our opinion, all the petitions are liable to be dismissed. So far as locus standi of the petitioners is concerned, the learned Advocate General placed reliance on a recent decision in Ashok Kumar Panday. In that case a petition was filed under Article 32 of the Constitution with a prayer that the death sentence imposed on one Dhananjay Chatterjee @ Dhana by the Sessions Court, Alipur, West Bengal, affirmed by the High Court of Calcutta and also by the Supreme Court should be concerted to life imprisonment.

25. Dismissing the petition and referring to leading decisions on the point, the Apex Court observed that locus standi of the petitioner in public interest litigation should not be used for personal gain, political motivation or oblige considerations. An important weapon in the armory of the court should not be permitted to be converted as 'publicity interest litigation', or 'private interest litigation' or 'politics interest litigation' or 'poise interest litigation'. So far as service matters are concerned, referring to an earlier decision in Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors. : (1998)IILLJ 1013 SC , the Court observed that in that case (Dr. Duryodhan Sahu), the Supreme Court held that 'in service matters PILs should not be entertained.'

26. In our opinion, considering the facts and circumstances of the case in its entirety, it cannot be said that ex facie illegal, arbitrary or mala fide action has been taken by the respondent authorities which calls for interference by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution in public interest litigation. So far as respondent No. 5 is concerned, admittedly, in November, 2003, he was holding the post of Additional Director General of Police. Keeping in view the post held by him, his case could have been considered for appointment to the post of Commissioner of Police, Mumbai. From the affidavit in reply of the State Government, it is clear that one Mr. K.K. Kashyap was senior to respondent No. 5 as he was of 1969 batch, whereas respondent No. 5 belonged to 1970 batch. Mr. K.K. Kashyap was not appointed as Commissioner of Police as he was eligible and qualified to be promoted to the post of Director General of Police. He was actually promoted as Director General of Police and was appointed as Commandant, Home Guards and Director, Civil Defence. The case of respondent No. 5 was considered as he was holding the post of Additional Director General of Police and was found fit and suitable. He was, therefore, appointed as Commissioner of Police Mumbai. After the retirement of Mr. J.K. Choudhary with effect from 1st February, 2004 the case of respondent No. 5 was considered for promotion to the post of Director General of Police and he was promoted to the said post. It, therefore, cannot be said that there is arbitrariness in promoting respondent No. 5 or in placing him as Director General of Police. There is neither violation of the Cadre Rules nor of the Pay Rules.

27. From the affidavit, it is also clear that in many cases, such an action has been taken by the State Government and incumbents holding the post of Commissioner of Police, Mumbai, have been shifted to their promotional post after they were promoted to the post of Director General of Police. It is no doubt true that in certain cases, the incumbents were allowed to continue as Commissioner of Police, Mumbai, but from that it cannot be concluded that the action taken by the respondent authorities is arbitrary, mala fide, or otherwise politically motivated.

28. So far as suitability of respondent No. 5 is concerned, the learned Advocate General stated that respondent No. 5 is honest, upright and impartial officer, but he stated that considering all his virtues, he was promoted to the higher post. It is

thus not a case of demotion but of promotion. According to the learned Advocate General, there was misconception on the part of the petitioners in approaching this Court and contending that it was a punitive action. He also submitted that as Director General of Police, respondent No. 5 would be in charge of the police force of the entire State of Maharashtra. In our opinion, therefore, it cannot be said that the action is mala fide, malicious or unreasonable.

29. So far as allegation as to interference by politicians, we may only state that, apart from the fact that no sufficient materials have been placed on record, there is nothing even prima facie to show as to how such political interference had played any part whatsoever in getting respondent No. 5 transferred from the post of Commissioner of Police, Mumbai. It is well settled that allegations of mala fide must be based on sufficient materials and particulars. Except bald assertion and bare allegation, no circumstance has been brought on record to show on what basis such inference can be drawn that the action has been taken in colorable exercise of power or has been politically motivated. We, therefore, see no substance in the said allegation.

30. For the aforesaid reasons, in our opinion, all the petitions deserve to be dismissed and are accordingly dismissed.

31. So far as Criminal Writ Petition No. 224 of 2004 and Writ Petition (PIL) Lodging No. 365 of 2004 are concerned, both the petitions are ordered to be dismissed with no order as to costs.

32. As far as PIL No. 20 of 2004 is concerned, keeping in view the affidavit in reply filed by the Deputy Secretary, Home Department and particularly the facts stated in paragraph 2, a part of which has been extracted hereinabove, we are of the view that the petitioner, who is practising Advocate, a member of noble profession and an 'Officer' of the court ought to have been much more careful. Even though the affidavit in rejoinder is filed, except bare denial, nothing more has been stated. The deponent, Deputy Secretary, therefore, in our considered opinion, is right in stating that the conduct of the petitioner has caused 'considerable embarrassment to all concerned'. Keeping in view the above circumstance, it would be appropriate, if we dismiss PIL No. 20 of 2004 with costs, which is quantified at Rs. 1,000/-, to

be paid by the petitioner to respondent No. 1.

Parties be given copies of this order duly authenticated by the Sheristedar/Private Secretary.

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