

Vimlesh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Nov-03-1982

Reported in : 1982WLN(UC)280

Judge : S.C. Agrawal, J.

Appeal No. : S.B. Civil Writ Petition No. 599/1982

Appellant : Vimlesh

Respondent : State of Rajasthan and ors.

Advocate for Def. : Mr. M.M. Singhvi

Disposition : Petition dismissed

Judgement :

S.C. Agrawal, J.

1. In this petition, filed under Article 226 of the Constitution of India, petitioner has challenged the validity of the order dated March 8, 1982, passed by the Chairman, Rajasthan State Social Welfare Advisory Board, Respondent No. 3, whereby the petitioner has been transferred from the post of Mukhya Sewika (Chief Welfare Organiser) at Samaj Kalyan Yojana, Balotra, to the said post at Samaj Kalyan Yojana, Raisinghnagar.

2. After obtaining M.A. degree in Sanskrit from Sagar University in the year 1970, the petitioner joined as Chief Welfare Organiser in the Samaj Kalyan Pariwar and Bal kalyan Yojana at, Sikar in District Jaipur in the year 1976. The petitioner was sent for training to Baroda and after completing the said training, she was posted as Chief Welfare Organiser in Samaj Kalyan Pariyojan Samiti in the year 1978. While she was working on the said post the impugned order dated March 8, 1982 was passed whereby the petitioner was transferred from Samaj Kalyan Yajan Balotra to Samaj Kalyan Yojana Raisinghnagar.

3. By the impugned order 14 persons, including the petitioner, have been transferred. In the said order, it is stated that the transfers were being made on administrative grounds for the reason that a ceiling has been fixed for the budget of the Community Development Projects and that the Central social Welfare Board as well as the State Government had refused to increase the aforesaid ceiling in the Budget and that as a result of shortage of funds the salaries of the employees in the Community Development Projects were not being paid in time.

4. In the writ petition, the petitioner has challenged the aforesaid order for her transfer on the ground that it has been passed malafide. In this regard, the case of the petitioner is that staff of the Rajasthan State Social Welfare Advisory Board, at Balotra were not paid their salary regularly for the past many months and since the salary of the employees has not been paid for a number of months, the employees formed a Union on January 15, 1982. The petitioner was unanimously elected as the President of the said Union and she was authorised by the members of the Union to fight their Case for payment of salary, which was due from June to December 1981. At a meeting of the staff employees held on February 20, 1982 and it was decided that the 5 members of the staff, including the petitioner, would sit on hunger strike from February 25, 1982 to March 1, 1982. In pursuance of the aforesaid decision, the petitioner and four other employees, namely, Smt. Ayodhya Devi, Smt. Maya Devi, Smt Rukmani Devi and Smt. Gulab Kanwar sat on hunger strike on February 25, 26, 27, 28 and March 1, 1982, respectively. The afore said hunger strike created lot of public concern as it had received wide publicity. On February 27, 1982, it was decided that if salaries were not paid the petitioner would go on hunger strike till death on March 2, 1982 In pursuance of the said

decision, the petitioner commenced the hunger strike on March 2, 1982. On March 5, 1982, at about 6 p.m., Prashashak, Samaj Kalyan Pariyojana Samiti, Balotra, respondent No. 4, and Sub Divisional Officer Balotra, respondent No. 5, along with Shri K.B. Sharma, the representative of the Chairman, Rajasthan State Social Welfare advisory Board met the petitioner and the other employees of the Community Development Project, Balotra, and requested them to give up the hunger strike and assured her that salary for the period December, 1981 would be paid to the employes on March 5, 1982 and that the salary for the months of January and February would be paid by the middle of March, 1982. In view of the aforesaid assurance given by respondent No. 4 and 5 and Shri K.B Sharma, the petitioner and other employess gave up the hunger strike on March 5, 1982 at about 6 p. m. and salary for the period up to December 1981 was paid to the employees on the night of March 5, 1982. The case of the petitioner is that as a result of the aforesaid hunger strike resorted to by the petitioner and other employees, namely, Smt. Ayodhya Devi, Smt. Maya Devi, Smt. Rukmani Devi and Smt Gulab Kanwar, respondent Nos. 4 and 5 and Shri Krishan Bhagwan Sharma became seriously annoyed with the petitioner and her colleagues who had participated in the hunger strike and that respondent No. 4 and Shri K. B. Sharma told the petitioner on that very day that since the petitioner had annoyed the State Government by organising the Union and taking leadership in the matter of the hunger strike and taking the matter to the press and had publicly criticised the Government, she should be ready for the consequences. According to the petitioner shortly after the aforesaid threat the impugned order dated March 8, 1982, was passed where by the petitioner as well as Smt. Ahyodhya Devi, Smt. Maya Devi and Smt. Gulab Kanwar, who had gone on hunger strike, were transferred from Balotra to other places. The case of the petitioner is that the aforesaid transfers have been made with a view to penalise the petitioner and her other colleagues, who had taken part in the hunger strike and Union activities.

5. A notice was issued to the respondents requiring them to show cause as to why the writ petition should not be admitted. In response to the said notice, a reply has been filed on behalf of respondent No. 3, that is, the Chairman Rajasthan State Social Welfare Advisory Board. In the said reply, it has been stated that there are two types of projects undertaken by the Rajasthan State Social Welfare Advisory

Board. One is the Community Development Project and the other is the Border Area Project. In the case of the Community Development Projects the expenditure for each year is ear marked by the Central Social Welfare Board and it is, at present, Rs. 90,000/- per year per Project. Two-thirds of the aforesaid sum is paid by the Central Social Welfare Board and the remaining one third is paid by the State Government. In the said reply, it has also been stated that in view of the increase in expenditure in Community Development Projects beyond the sanctioned limit, there were arrears of liabilities in each Project and for this purpose respondent No. 3 made a recommendation to the Central Social Welfare Board and the State Government to increase the sanctioned limit of Rs. 90,000/- for the Community Development Projects but the said request was rejected by the Central Social Welfare Board as well as the State Government. The position with regard to the Border Area Projects is, however, different and their expenses are sanctioned according to the Budget estimate for each project which may vary according to the requirements of the project. In the said reply, it has also been stated that out of all the Community Development Projects the Project at Balotra had the maximum expenditure and that in order to reduce the expenditure at the aforesaid Community Development Project at Balotra some of the employees from that Project were transferred to various Border Area Projects by the order dated March 8, 1982. In the said reply, it has been denied that the transfer of the petitioner and her colleagues from Balotra to other places has been made with any ulterior motive and it has been asserted that the said transfer has been made only on account of financial difficulties, referred to above. With regard to the non-payment of the salary to the staff for the months of July 1981 to December 1982, it has been stated that the said salaries were not paid for the reason that funds were not available with respondent No. 3 and that funds were given by the Central Social Welfare Board and the State Government only in the first week of March 1982 and immediately thereafter the payment of the salaries was made on March 5, 1982. In the said reply, it has been denied that any threat was given by Shri K. B. Sharma to the petitioner and her colleagues and it has been stated that, on the contrary, an assurance was given to the petitioner and her colleagues that no action would be taken against them for going on strike and that the payment of salary for the months of January and February 1982 shall be paid immediately, In

the said reply, it has also been stated that Shri K.B. Sharma was the representative of the Central Social Welfare Board and had no say in the administration of the State Social Welfare Advisory Board. In the said reply, it has also been stated that out of 14 persons, who have been transferred by the impugned order 13 persons have been transferred from the Community Development Projects to the Border Area Projects according to the availability of the vacancies in the Border Area Project in the respective categories. Further the transfer has been made with the arrears of liability in terms of salary which shows that the transfers have been made with a view to reduce the financial burden in the Community Development Projects at various places by transferring said burden to the Border Area Projects. In the said reply, it has further been pointed out that the funds from one project cannot be transferred to another project and, therefore, the only alternative left with respondent No. 3 was to transfer the employees from the Community Development Project to the Border Area Project.

6. Along with the reply aforesaid, an affidavit of Shri K.B. Sharma has also been filed. In the affidavit aforesaid, Shri K.B. Sharma has stated that he never gave any threat to any body, what to say the petitioner, and that he never became annoyed with the petitioner or her colleagues and did not tell any thing to the petitioner or her colleagues. In the affidavit aforesaid, Shri K.B. Sharma has also stated that he did not tell the petitioner that she should be ready for consequences and that the allegations made by her in the writ petition on that point against him are false and frivolous that he has no enmity or grudge against the petitioner or her colleagues.

7. I have heard Mr. S.L. Mardia, the learned Counsel for the petitioner and Mr. M.M. Singhvi the learned Counsel for respondent No. 3.

8. The main contention urged by Shri Mardia was that in the impugned transfer of the petitioner has been made mala fide with a view to victimise the petitioner for her having organising the Union of the employees of the Community Development Project at Balotra and her having resorted to hunger strike for securing the payment of the salary of the employees of the said Project. In this regard, Mr. Mardia has disputed the correctness of the recital contained in the impugned order

as well as the averments contained in the reply filed on behalf of respondent No. 3 that the transfers of the employees referred to in the impugned order dated March 8, 1982, have been made on account of financial difficulty and administrative reasons. Shri Mardia has submitted that the sole object of the aforesaid transfers is to punish the petitioner and her colleagues, namely, Smt. Ayodhiya Devi, Smt. Maya Devi & Smt. Gulab Kanwar, who had gone on hunger strike with the petitioner. In this regard, Mr. Mardia has emphasised that the hunger strike was withdrawn on March 5, 1982, and the impugned order of transfer was passed three days thereafter on March 8, 1982. In support of his submissions aforesaid Shri Maradia has placed reliance on the observations of the Supreme Court in *Pannalal Binjraj v. Union of India* : [1957]1SCR233 that in cases where burden lies on the petitioner who challenges an order on the ground that the order is an abuse of power vested in the authority passing the order, the said burden is not by way of proof to the hilt.

9. In the present case, the impugned order of transfer dated March 8, 1982, containing a recital to the effect that since ceiling has been fixed on the budget of Community Development Project and is the Central Social Welfare Board and the State Government have refused to increase the said ceiling on the Budget it has not been possible to pay the salaries to the employees of the Community Development Project in time on account of shortage of funds and, therefore, for administrative reasons, the employees mentioned in the said order were being transferred. It is not disputed that 13 employees out of 14 employees who have been transferred by the impugned order have been transferred from Community Development Projects to Border Area Project and the only employee who has been transferred from one Community Development Project to another Community Development Project had voluntarily asked for such a transfer. The impugned order of transfer contains an endorsement to the effect that the arrears of salary of the employee which have been transferred to the Border Area Projects should be paid out and the Budget of the Border Area Project. From the aforesaid order it appears that the transfers that have been made by the said order have been made on account of shortage of funds at the Community Development Projects on account of the refusal on the part of the Central Social Welfare Board and the State Government to increase the Budget ceiling for the Community Development

Projects. The aforesaid reason given in the impugned order for transfer finds support from the letter (Annex. R/2A) of the Central Social Welfare Board and the letter (Annex. R/2B) of the State Government whereby the Central Social Welfare Board as well as State Government refused to increase the Budget ceiling of the Community Development Projects from 90,000/-. That there was shortage of funds at the Community Development Project, Balotra is also borne out from the figures given in Schedule 'A' to the reply filed on behalf of respondent No. 3. The said figures show that for the past three years ending with the year 1980-81 the arrears of liability of the Community Development Project, Balotra were Rs. 42, 959 93 P. and that the Budget estimate of the expenditure for the Community Development Project, Balotra for the year 1981-82 was Rs. 1,54, 126.00. The Statement of Affairs (Annex. R/2D) of the Community Development Project at Balotra for the year ending March 31, 1982, shows an excess of expenditure over income to the tune of Rs. 29,923.24 P. The said statement also shows outstanding liabilities of Rs. 18,207.40 P. towards the pay and allowances of the employees. The Said statement shows other outstanding towards office recurring expenses and medical reimbursement CPF Board's contribution to the tune of Rs. 9,401.60 P. The aforesaid material on record clearly shows that there was accurate shortage of funds at the community Development Project at Balotra and the recital in the impugned order of transfer that on account of the shortage of funds, it was not possible to pay the salaries of the staff regularly cannot be held to be false.

10. It is true that the impugned order for transfer was made soon after the hunger strike had been withdrawn by the petitioner and other employees of the Community Development Project at Balotra. But this circumstance, by itself, cannot lead to the inference that the impugned order of transfer has been passed with a view, to penalise the petitioner and the other employees who had gone on hunger strike. Once it is accepted that there was shortage of funds with the Community Development Project at Balotra, the transfer of some of the employees for the project soon after the hunger strike was withdrawn, can be said to be justified on the ground that the respondent No. 3 did not want the same situation namely, non-payment of salaries to the employees to be repeated and, therefore, immediate action was taken to transfer some employees from the Community Development Project to the Border Area Projects where funds were available. The

endorsement in the impugned order of transfer with regard to the shifting of the financial responsibility for the arrears of salary of the staff who were being transferred from the Community Development Project, Balotra to the Border Area Projects support this inference, it may also be observed that the order of transfer is not confined to the persons employed at the community Development Project at Balotra. It covers 14 persons out of which only five are employees of the Project at Balotra. This shows that employees of other Community Development Projects who had nothing to do with the strike have also been transferred to Border Area Projects. It cannot, therefore, be said that the impugned order of transfer was passed with in the ulterior motive to victimise the petitioner and other employees to the Community Development Project, Balotra for their organising the Union and having resorted to hunger strike. In this context, it may also be observed that the impugned order has been passed by the Chairman of the Rajasthan State Social Welfare Advisory Board. From the reply filed on behalf of respondent No. 3, it appears that Mrs. Nagendra Bala, who passed the impugned order, had taken over the charge, of the post of Chairman of Rajasthan State Social Welfare Advisory Board only on March 6, 1982, and prior to that she was not at all connected with the office (sic) at the said Board. No malice can thus be imputed to the Chairman herself. The petitioner has come forward with the case that Shri K.B. Sharma who had come to Balotra on March 5, 1982 as the representative of respondent No. 3, had become personally annoyed with the petitioner and her colleagues for their having organised the Union and their having resorted to hunger strike and that he had extended a threat to the petitioner and her colleagues and that the impugned order of transfer is a result of the aforesaid threat. From the reply filed on behalf of respondent No. 3, it appears that Shri K.B. Sharma has nothing to do with respondent No. 3, and as representative of the Central Social Welfare Board who had been sent to Balotra for the purpose of making the payment of salary to the employees at Balotra. Moreover, the averments in the petition is that Shri K.B. Sharma had expressed annoyance to the petitioner and had extended any threat to her and her colleagues has been specifically denied by Shri Sharma in his affidavit. In the circumstances, it is not possible to hold that the impugned order of transfer was passed at the instance of Shri Sharma with a view to penalise the petitioner and her colleagues

for their having organised the Union and their having resorted to hunger strike.

11. Shri Mardia has submitted that the order for transfer of Smt. Gulab Kanwar, one of the Gram S wakas, who had been transferred from Community Development Project Balotra to the Border Area Project, Barmer, has been cancelled by the order dated May 25, 1982. The submission of Shri Maradia was that the cancellation of the transfer of Smt. Gulab Kanwar shows that funds are available with the Community Development Project at Balotra and that reason given for the impugned transfer namely, shortage of funds, is not correct. I am unable to accept the aforesaid contention. The order dated May 25, 1972, whereby the transfer of Smt. Gulab Kanwar has been cancelled shows that Smt Gulab Kanwar had been transferred to Border Area Project, Barmer on the vacancy of Smt. Raj Kumari Balan, who had taken long leave but since the said Smt. Raj Kumari had re-joined duty. Smt. Gulab Kanwar could not be absorbed at Barmer and, therefore, the order of transfer of Smt Gulab Kanwar was cancelled. The aforesaid cancellation of the order of transfer of Smt. Gulab Kanwar does not, however, show that the reason given the transfer of the various employees in the impugned order dated March 8, 1982, namely, shortage of funds is not correct. In the aircumstances of the case, I am unable to accept the contention of Shri Mardia that the transfer of the petitioner from Community Development Project, Balotra to Border Area Project Raisingh Nagar is vitiated by mala fides.

12. No other contention was urged by shri Mardia.

13. The writ petition is thus devoid of any merit and is, therefore, dismissed. The interim order passed by this Court staying the operation of the order dated March 8, 1982, in so far as it relates to the transfer of the petitioner is vacated. But in the circumstances of the case, will be no order as to costs in this writ petition.