



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 840 OF 2018
AND
MISC. CIVIL APPLICATION NO. 381 OF 2024
IN
WRIT PETITION NO.840 OF 2018

Rishiraj Janardhan Kamble, Working as Assistant Hydrologist, Water Resources Department, R/o. A5, Pradnya Sheel, ... Petitioners Housing Board, Mapusa, Goa.

V e r s u s

1. State of Goa, through the Chief Secretary
 2. Chief Engineer, Water Resources Department Having Office at Sinchai Bhawan, Porvorim, Goa.
 3. Director (Administration), Water Resources Department
 4. Superintending Engineer Circle V, Water Resources Department Having office at Margao, Goa.
 5. Executive Engineer, Works Division III, Water Resources Department Ponda Goa.
- ... Respondents.
All above are registered addresses

Petitioner in person.

Mr Pravin Faldessai, Additional Government Advocate for Respondents.

**CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

**RESERVED ON: 11th November , 2024
PRONOUNCED ON : 13th November , 2024**

JUDGMENT (*Per M. S. Karnik, J.J.*)

1. This is a petition under Article 226 of the Constitution of India. The petitioner alleges repeated transfer orders in a span of one year. He submits that as many as three transfers are effected which are illegal and malafide. His further grievance is as regards non-disbursement of salary for one year.
2. The Goa Public Service Commission (GPSC, for short), issued an Advertisement no. 10 of 2011 for filling in various posts. At item 8 and 9, were listed two posts each as Assistant Geologist and Assistant Hydrologist. The petitioner applied as he fulfilled the eligibility criteria. By order dated 14.03.2012, his name was recommended for appointment to the post of Assistant Hydrologist. The memorandum dated 14.03.2012, offering a temporary post of Assistant Hydrologist, Group 'B' Non-Gazetted in Water Resources Department, provided various terms and conditions. Clause (iv) therein stipulated that the appointment carries with it the liability to serve in any part of Goa. The petitioner joined the post of Assistant Hydrologist in Senior Hydrogeologist circle office I, Porvorim with effect from 11.06.2012 before noon.

3. The order dated 24.10.2013 records that Government of India's Hydrology Phase-II with the financial assistance of World Bank is being implemented in the State. For the administrative reasons and smooth functioning of Data Centre and Laboratory Leave-II, various works were assigned to the Hydrogeologist, Assistant Hydrogeologist and Assistant Hydrologist in addition to their existing duties.

4. On 28.01.2016, the petitioner made a representation to the Chief Engineer, WRD, that Mr. Gaurish Gude (work assistant) is using abusive language and not maintaining decorum in office. It was further informed that he was not doing any work assigned by the petitioner to him and back answered in abusive way. The petitioner complained that Mr. Gaurish Gude was doing this repetitively even after conveying to him to change his behaviour against the higher ups. The petitioner requested stringent action be taken against him to maintain the decorum in the office.

5. It is averred that Mr. Gaurish Gude was the blue-eyed boy of the Chief Engineer and no action was ever taken against him even after the complaint made in 2016. By order dated 24.03.2017 issued by the Chief Engineer, the petitioner was assigned to the office of the Superintending Engineer, Central Planning Organization with

immediate effect. The petitioner reported for duties in the office of the Superintendent Engineer on 30.03.2017.

6. It is the grievance of the petitioner that the petitioner was transferred outside his cadre. By this order, the petitioner was made to occupy a different office. The order was styled as ‘Order assigning duties’ was in fact a transfer order. Secondly, there was no equivalent post of Assistant Hydrologist in the office of Superintending Engineer, Central Planning Organization, Water Resources Department, Alto-Porvorim. Thirdly, the work assigned to the petitioner as a Assistant Hydrologist was completely technical in nature whereas the works undertaken by the office of the Central Planning Office were completely civil works and as such all the training and expertise gained by the petitioner in service was put to a waste by such assigning order. Fourthly, the transfer was malafide because the petitioner was moved from a very crucial division which was under-manned to a division which had surplus staff. Fifthly, the order was malafide and punitive in nature, vindictive only because a complaint was made by the petitioner against the blue eyed boy of the Chief Engineer.

7. After a period of three months, in the month of July 2017, the petitioner was again transferred vide order dated 05.07.2017 from the office of Superintending Engineer Circle-I to Office of the

Superintending Engineer, Circle V. The said Order was refused by the petitioner as, according to him, vide order dated 24.03.2017, the petitioner had already been transferred to the Office of the Superintending Engineer and there was no question of transferring the petitioner out of Circle I. The petitioner also questioned the competency of the authority which issued such relieving order, as according to him, it had to be issued by the Superintending Engineer, Circle I and not Superintending Engineer, Central Planning Organization. A memorandum dated 12.07.2017 came to be issued against the petitioner seeking to initiate disciplinary action against him for refusing to obey the transfer and relieving order. The petitioner made representations indicating the reason why such transfer was unjustified. The petitioner was informed that since he was transferred, there was no question of him attending the office of the Superintending Engineer, CPO and signing the Muster Roll. A show cause notice dated 17.07.2017 was issued to the petitioner by the Director (Administration) seeking his explanation for refusing to abide by the transfer orders. The petitioner reiterated that such transfer is unjustified as the same was outside his cadre.

8. The petitioner preferred a Writ Petition no. 749 of 2017 before this Court for withdrawing the order dated 24.03.2017 transferring the petitioner. It was also averred that the petitioner was not paid the

salary for the month of July, 2017 which caused great prejudice to him as his parents used to live with him who were facing medical complications for which substantial financial assistance from his side was necessary. During the course of the hearing of the Writ Petition, on 25.09.2017, the petitioner withdrew the said Writ Petition with liberty to make representation against the impugned order. The order dated 25.09.2017 passed by this Court reads thus :

- “1. On instructions, Mr. Lotlikar states that he will make a representation for reconsideration of the impugned orders. Mr. Lawande states that the representation will be considered on merits within four weeks from the time it is made.
 2. We note that the Petitioner has in the meantime, pursuant to the transfer order joined the department to which he was transferred.
 3. In this view of the matter, the Petition is dismissed as withdrawn.
 4. No costs.”
- 9.** In this petition, it is averred that he chose not to make any representation against the transfer order as he did not desire to assail the transfer orders to avoid any acrimony being aggravated with his superior officers. The petitioner joined his duties with effect from

24.08.2017. It is his grievance that despite joining back and resuming his services, his salary was not disbursed by the Department. By a letter dated 11.10.2017 to the Chief Engineer, WRD, the petitioner requested to release his salary from 24.08.2017 and also requested that his absence from July to 23.08.2017 be considered as extraordinary leave. Having completed two years of probation period, according to the petitioner, he was eligible to be confirmed in the post of Assistant Hydrologist. However, Department failed to confirm the petitioner. The petitioner time and again requested for releasing his salary. However, the respondents did not oblige. It is then alleged that merely within ten months of the earlier transfer, the petitioner received a transfer order dated 11.05.2018 issued by the Chief Engineer (W.R.) & Ex-Officio Additional Secretary, transferring the petitioner from the Office of the Superintending Officer, Circle-V, Water Resources Department to the Office of the Executive Engineer, Works Division III, WRD, Ponda, Goa.

10. The petitioner appearing in person submitted that in accordance with the order dated 11.05.2018, he joined services from 17.05.2018. However, while submitting his joining report the same day, he reiterated his plea for disbursement of his lawful salary and that he had no means to cover travel expenses to the Work Division III at Ponda and also that his attendance be marked as ‘present’. Vide

communication dated 25.05.2018, the Executive Engineer Works Division III responded that since the petitioner has not attended services, he would be considered absent from duty. The petitioner again pointed out that he is entitled to salary and pending dues from 01.07.2017 which should be paid at the earliest. By communication dated 20.06.2018, the Executive Engineer passed an order releasing the petitioner's salary from 11.07.2017 to 30.04.2018 after regularizing his absence as per the appendix attached thereto. It is the contention of the petitioner that the post of Assistant Hydrogeologist did not even exist in the Work Division III and apparently was created only to facilitate the malafide transfer of the petitioner. The petitioner then relied upon the report dated 16.04.2018, which was placed by the Department before the Goa State Human Rights Commission indicating that the department has not been able to allot any work to the petitioner since his joining and he is totally idle. The petitioner submitted that he continues to be harassed so that he is driven to a situation which leaves him with no other option but to quit his job.

11. The petitioner, therefore, prayed that the orders dated 24.03.2017 and 05.07.2017 transferring the petitioner be quashed and set aside. It is further prayed that the order dated 11.05.2018 transferring the petitioner to the Office of the Executive Engineer Works Division III, Ponda, Goa, be set aside. It is further prayed that

the respondents confirm the petitioner to the post of Assistant Hydrologist in the Water Resources Department. The petitioner prayed to treat the period from 01.05.2018 to the date of disbursement of his entire pending salary as on duty. The petitioner has further prayed that the order of suspension dated 03.07.2018 be revoked consequently permitting the petitioner to resume his services.

12. At this stage itself, so far as the challenge to the transfer orders dated 24.03.2017 and 05.07.2017 are concerned, we see no reason to entertain such challenge in view of the order dated 25.09.2017 passed by this Court. The Writ Petition challenging these orders came to be withdrawn granting liberty to make representation. The petitioner has himself stated in this petition that he did not chose to make any such representation as he wanted to avoid confrontation with the respondents. Now it is orally submitted by the petitioner that as he has ample materials to indicate that the orders dated 24.03.2017 and 05.07.2017 are unjustified, which material was not in possession when the earlier Writ Petition was filed, that this petition be entertained. According to the petitioner, the order dated 25.09.2017 passed by this Court cannot come in the way of the present petition. We are afraid that this stand of the petitioner cannot be countenanced. Having withdrawn the petition with a liberty to make a representation, even without preferring any representation in compliance with the liberty

granted, we are not inclined to entertain the challenge to the orders dated 24.03.2017 and 05.07.2017. The relief in terms of prayer clause (i) is rejected. In terms of the earlier order dated 25.09.2017 passed by this Court, we still keep open the liberty of the petitioner to make a representation and seek redressal.

13. Let us see the response of the respondents from the affidavit in reply filed by Mr. Subrai T. Nadkarni, Chief Engineer, Water Resource Department, Government of Goa. The plea of malafides is denied. As the 2018 order is under challenge, it is material to look at the respondent's stand which is as under :

“ The World Bank funded Hydrology Project and National Cyclone Risk Mitigation Project are monitored by Works Division III, Ponda under Circle office I and by Circle Office V, Margao. The petitioner, who is holding the post of Assistant Hydrologist is in no way connected with the work of ground water and is mainly connected with the work of surface water for which he is holding the post of Hydrologist. The petitioner was not directly working under the Chief Engineer and as per the C.C.S. (Conduct) Rules, 1964, the communications ought to have been addressed to the next higher officer of Head of the office under whom he was working and not directly to the Chief Engineer i.e. Head of the

Department. That Mr. Gaurish Gude was the blue eyed boy of the Chief Engineer, is denied. The transfer of the petitioner in CPO was purely a requirement of service and has got nothing to do with any complaint against any other officer by the petitioner. The Senior Hydrogeologist, Hydrogeologist, Assistant Hydrogeologist, Assistant Hydrologist are under the supervisory control of the Superintending Engineer, Circle I and hence the petitioner was directly relieved by the Superintending Engineer, Circle I to join the office of CPO under the exigencies of services and hence it cannot be termed as transfer outside his cadre. It can maximum be termed as working arrangement. Since the assignment was only on working arrangement basis, there was absolutely no need of having a post in CPO equivalent to the post held by the petitioner. The qualification possessed by the petitioner is commensurate to the civil works undertaken by the office of CPO. The petitioner was selected for the post of Asst. Hydrologist, the work of which relates to the surface water and civil works. The assignment of the petitioner in CPO was purely in administrative exigencies.

The transfer of the petitioner from Circle I to Circle V was purely in administrative exigencies as the work of Hydrology Project hitherto being looked after by Circle I was transferred to

Circle V. Depending upon the requirement of his services in the respective divisions/circles where the works commensurate to the duties undertaken, the petitioner had to be shifted from one circle/division to another. There was no malafide intention of the respondent against the petitioner in transferring from one circle/division to another.

The memorandum dated 12.07.2017 seeking to initiate disciplinary action was taken against the petitioner. The petitioner exhibited insubordination thereby violating the provisions of CCS (Conduct) Rules, 1964. The petitioner was refusing to comply with the transfer order.

Due to the winding up of the Hydrology Project-II which was under Circle Office-I and implementation of National Hydrology Project under Circle Office-V in Margao, that the petitioner along with the post had to be transferred to Circle Office V, Margao, for the effective implementation of the national Hydrology Project which the petitioner refused to accept thereby violating the provision of CCS (Conduct) Rules, 1964. The petitioner's appointment is against the post of Asst. Hydrologist and not Asst. Hydrogeologist. The contention of the petitioner that as the Hydrology Project II was wound up, it would not justify the transfer of the petitioner outside his cadre is erroneous

contention. The petitioner along with the post was required to be transferred in the exigencies of service.

The petitioner's salary from July 2017 till 23.08.2017, was not released due to non-regularization of his unauthorised absence. The petitioner has not made any representation pursuant to the withdrawal of Writ Petition no. 749 of 2017. It is not open for the petitioner to challenge the same transfer order again in the present petition.

The proposal for lifting of probation period and confirmation of the petitioner is under examination of the Government. The petitioner had practically not joined pursuant to the Order dated 11.05.2018 but sent his joining report through post requesting to consider as if he has joined his duties in WD-III. Such letter cannot be treated as a joining letter. The petitioner was issued various memos/notes requesting him to maintain the office discipline and strictly adhere to rules failing which disciplinary action would be initiated. The petitioner vide note dated 24.08.2018 was directed to comply with the instructions and mark attendance in the biometric system. The petitioner never presented himself to the office to mark his presence.

The Works Division III Circle Office-I and Circle Office V are interrelated offices for implementation of the Hydrology Project associated with World Bank, Ministry of Water Resources, River Development and Ganga Rejuvenation and National Disaster Management Authority (NDMA). The transfer of the petitioner from one office to another is required for smooth implementation of the Hydrology Project. The duties of the petitioner required him to undertake periodic inspection of surface water, gauging sites and physical checking of instrument. The reason given by the petitioner that it is impossible for him to report to work for his salary is not paid is completely untenable. The petitioner is not attending services, hence he will be considered as absent from duty.

Though the post of Asst. Hydrology is not existing in Works Division-II, for better implementation of the National Hydrology Project it was incumbent upon the respondent to transfer the petitioner along with the post to the Work Division-II, Ponda, as the Work Division III, Ponda, Circle Office I and Circle Office V are interrelated offices for implementation of the Hydrology Project.”

14. Having carefully perused the averments in the petition and the stand of the respondents, it is not possible for us to arrive at any conclusion that the petitioner's cadre has been changed. So far as the malafides are concerned, the only averment is that the transfer order is malafide, apparently because he chose to file a complaint against a subordinate officer who happened to be a blue eyed boy of the Chief Engineer. Furthermore, though the petitioner has alleged malafides as according to him the Chief Engineer was upset with the petitioner for having filed a complaint against his blue eyed boy, the Chief Engineer is not arrayed as party respondent in his personal capacity. We had granted an opportunity to the petitioner to implead the Chief Engineer in his personal capacity, however the petitioner insisted that the manner in which the petitioner was transferred thrice in a short span is sufficient to infer malafides. The respondents have termed the orders of transfer/posting as a working arrangement. In the absence of there being any material to indicate that such a transfer/arrangement is in breach of the statutory provisions or malafide, it is not possible for us to entertain this petition on the plea that is set up by the petitioner. During the pendency of the petition the petitioner has been paid salary for certain period. It is however the stand of the respondents that the petitioner did not join duties and hence disciplinary proceedings are initiated against him. The present petition involves several disputed questions of fact. On the basis of the materials it is not possible for us

to come to a definite conclusion that the impugned order is malafide or is in violation of any statutory provisions governing the service conditions of the petitioner. This Court on the previous occasion had allowed the petitioner to withdraw the Writ Petition with liberty to file representation against the impugned orders. We have already indicated that even without making representation the petitioner has again challenged in this petition those orders apart from the 2018 order. Moreover, the respondents have taken a stand that the proposal for confirmation of the petitioner is under the examination of the Government. The same be dealt with expeditiously.

15. We are therefore not inclined to entertain the present petition. The petition is dismissed. Liberty of the petitioner to make representation to the respondents is kept open. Consequently, the petition is dismissed with no orders as to cost.

16. Civil Application, if any, stands disposed of.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.