
(1987) 03 AHC CK 0071

In the Allahabad High Court

Case No : Writ Petition No. 1880 of 1987

Ambika Prasad Misra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-03-1987

Acts Referred:

Citation : (1987) 03 AHC CK 0071

Hon'ble Judges : D.N.Jha, J and Brijesh Kumar, J

Final Decision : Disposed Of

Judgement

D. N. Jha, J.—The petitioner has directed this writ petition under Article 226 of the Constitution of India aggrieved by the order of transfer from Faizabad to Hamirpur.

2. On motion being presented on 24th March, 1987 we had directed the learned Standing Counsel to produce the relevant record relating to the transfer of the petitioner. In pursuance of our direction, the record was produced before the Court and we perused the relevant instructions.

3. The submission of the learned counsel for the petitioner is that he should have been provided an opportunity in case anything adverse to his conduct had been reported to the authorities and that having not been done, the transfer suffers from vice of malafide. He has also alleged that the sheetanchor behind his transfer is the Subdivisional Magistrate, Tahsil Sadar, District Sultanpur, who poisoned the ears of District Magistrate, Sultanpur and in turn, the District Magistrate was misguided for reporting against the petitioner to the Government and the facts mentioned in his report were without any foundation, therefore, the transfer was with a male fide intention. He urged before us that the District Magistrate, Faizabad had not made any report against the conduct or working of the petitioner and, therefore, the Government had no reason to transfer the petitioner to Hamirpur. We have given our anxious consideration to the entire facts and circumstances urged by the learned counsel for the petitioner and we have no hesitation in observing that so far as the present transfer is concerned,

none of these arguments are available to the petitioner. The transfer is made on administrative ground and in our opinion, there was ample material before the Government to order for the transfer of the petitioner from Faizabad. We are not inclined to accept the submission of the learned counsel for the petitioner that the transfer order suffers from vice of malafide. The District Magistrate is supposed to be the custodian of law and order. If the petitioner had any trouble with respect to his property in his home village, he could have well referred it to the authorities and we are confident, his request would not have been treated lightly and the District Magistrate would not have looked into the whole affair dispassionately. There is not an iota of averment in the writ petition to indicate that the petitioner acted with prudence as is expected from a respectable Government servant. Further, it is not necessary to dwell at length upon the conduct of the respective parties and it would suffice to say that the order is not a mala fide one which, may call for interference of this Court.

4. Lastly, the learned counsel for the petitioner pointed out that his son is appearing at the Intermediate examination and the daughter is appearing at the High School examination. These examinations are conducted by Board and in case the petitioner is directed to take over charge at Hamirpur while¹ his children are appearing at the examinations, it is likely that their Career might be seriously hampered. In this view of the matter we are inclined to accept this prayer and the petitioner is allowed to stay at Faizabad till 15th of April, 1987 in order to ensure that his children are able to take up their examinations without any mental tension. The petitioner thereafter will immediately take over charge" at his new assignment at Hamirpur.

5. Before parting with the case we would like to make art observation that in the circumstances reported by the Sub Divisional Magistrate, Tahsil Sadar, District Sultanpur, it would not be desirable for him to decide the ease pending before him under Section 107/117 Cr. P. C. against the petitioner and we direct the District Magistrate, Sultanpur to transfer this case to any other Sub Divisional Magistrate.

6. The petition in the light of observations made above is finally disposed of.

(Petition disposed of accordingly)