
(2004) 09 AHC CK 0049
In the Allahabad High Court
Case No : C.M.W.P. No. 26161 of 2002

Ambud Shyam Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 5 AWC 4510

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare, V.D. Chauhan and Mukesh Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The Petitioner has been transferred from Siddarthnagar to Mahrajganj vide order dated 14.6.2002.

3. This writ petition has been filed for issuance of a writ, order or direction in the nature of certiorari for quashing the impugned order dated 22.5.2002 issued by the State Government as also the order dated 14.6.2002 passed by the Director (Administration), Directorate General, Medical and Health Services, U.P., Lucknow.

4. The Petitioner was appointed as Store Keeper in Medical Health Department of the State in 1969. He was posted as Store Keeper under the Chief Medical Officer, Siddarthnagar in 1989. He had been working there for about 11 years before he was transferred to Fatehpur by the Director (Administration) vide order dated 8.5.2000. On the recommendation of the Chief Medical Officer, Siddarthnagar, the order of transfer of the Petitioner was cancelled by the Director (Administration).

5. It is alleged that one Parmatma Prasad Pandey, President of the Unit of the B.J.P. at Siddarthnagar made a representation to the Director General Medical

and Health Services, U.P., Lucknow vide letter dated 26.7.2000 regarding some financial irregularities committed by the Petitioner as well as concealment of facts. Another complaint also appears to have been made by one Hanuman Prasad.

6. Two members of the Legislative Assembly raised the questions in the Assembly regarding some financial irregularities committed by the Petitioner as well as concealment of facts which read as under:

7. The representation against the Petitioner was forwarded to the State Minister of Health.

8. In the meantime, the Petitioner was transferred by the Director (Administration) to Mahrajganj, vide order dated 18.10.2000, a copy of the order was also sent by fax to the Chief Medical Officer, Siddarthnagar. The Chief Medical Officer sought verification of the order received by him through fax, by means of his letter dated 21.10.2000. The Chief Medical Officer, Siddarthnagar vide communication dated 24.10.2000 again tried to interfere in the order of transfer of the Petitioner for the reasons best known to him, and requested the Director (Administration) for cancellation of the order. In the meantime, the State Minister of Health directed that status quo be maintained, hence the Chief Medical Officer vide order dated 6.2.2001 directed the Petitioner to handover the charge.

9. It is alleged that the Health Minister permitted the Petitioner to continue at Siddarthnagar. The Petitioner filed Writ Petition No. 7149 of 2001 challenging the validity and correctness of order of transfer on the ground that instead of taking decision in the matter, the Director had referred the matter to the Minister, who passed order of status quo. The Court held that:

The concerned Minister, it appears, passed certain order directing status quo to be maintained in the matter. A perusal of the document on record of the writ petition would indicate that there has been certain political interference both for and against the Petitioner. In my opinion, the Director ought to have taken the decision himself instead of referring the matter to the concerned Minister and in any case the Director ought to have referred the matter to the Secretary of the concerned department if in his opinion a decision by Government was called for. I am, therefore, of the view that it would meet the ends of justice if the writ petition is disposed of with the direction upon party Respondent No. 1 to look into the matter and take appropriate decision within a period of one month. It goes without saying that the decision in this regard shall be taken in public interest independently and without being influenced by letters written either by the M.L.A. or the President of the Bhartiya Janta Party for or against the Petitioner. In the meanwhile direction issued by the Chief Medical Officer, Siddarthnagar, to the Petitioner to handover the charge to Sri B. P. Srivastava, Senior Accounts Clerk shall be kept in abeyance provided the charge has not already been taken by the Chief Medical Officer. The petition is disposed of

accordingly. Sd. S.R. Singh, J.

10. Pursuant to aforesaid judgment in W.P. No. 7149 of 2001 the order of transfer of the Petitioner dated 18.10.2000 was made ineffective vide order dated 29.3.2001.

11. It appears that in pursuance of the complaints made by one Hanuman Prasad and Parmata Prasad enquiries were also set up by the Vice Chairman, Nagar Palika Parishad and the Petitioner was exonerated from the charges levelled against him. It further appears that after raising the questions by the two members of the Legislative Assembly in the assembly with regard to concealment of facts and the financial irregularities committed by the Petitioner he was thereafter transferred by the Director (Administration) Medical and Health Services, U.P., Lucknow vide order dated 14.6.2002 in pursuance of the communication made by the State Government dated 22.5.2002. The aforesaid two orders dated 14.6.2002 and 22.5.2002 are impugned in the present writ petition.

12. The counsel for the Petitioner submits that since the Petitioner has been exonerated from the charges the same cannot be made the basis of his subsequent transfer and that such transfer would amount to punishment. He further submits that the fresh transfer order also suffers from the same vice of being initiated in pursuance of political persuasion.

13. The standing counsel for the Respondents submits that the Petitioner is working as Store Keeper at Siddarthnagar since 1989. He was transferred to Fatehpur in 2000 after about 11 years. He has developed deep roots there. He states that for this reason the Petitioner has good hold over his Chief Medical Officer and has also developed strong political relationship which is apparent from the fact that he got the order of transfer made by the Director (Administration) Medical and Health Services, U.P., Lucknow stayed by the Minister, himself and in spite of order of status quo, he filed W.P. No. 7149 of 2001 to pressurise the Government to make the order of transfer dated 18.10.2000 in-effective.

14. The Petitioner has been at Siddarthnagar now for about 14 years. He holds a transferable post. By the impugned order of transfer he has been transferred in neighbouring district of Maharajganj on the same post. From the impugned order (Annexure-12 to the writ petition) it is apparent that the Director (Administration) Medical and Health Services, U.P., has transferred the Petitioner in public interest on a vacant post.

15. It is not denied by the counsel for the Petitioner that the services of the Petitioner are transferable. When the Petitioner did not succeed to get his order of transfer cancelled, he has filed writ petition challenging the correctness and validity of the order of transfer. Transfer is an exigency of service. The Government servant cannot choose his place of posting. He has already stayed for more than 14 years at one place. He is liable to be transferred to another

place.

16. Moreover, the impugned order is a fresh order of transfer posting the Petitioner in the neighbouring district on a vacant post. Neither any political mala fide nor any legal mala fide is apparent from the impugned order. It cannot be inferred from the impugned order that the Petitioner has been transferred under any political influence. Merely because earlier there were some complaints made by some political person, they would not make any subsequent order of transfer tainted with political mala fide. The Minister of the department is its head. He has all rights and powers to pass appropriate orders on any complaint made to him by the public or any matter which may be referred to him; though it is desirable that such matter may come to him through the Secretary of the department. Bypassing the channel and making complaints to the Minister or reference of the same matter directly to him by his subordinates would not make any order passed by him, illegal.

17. In the facts and circumstances of the case, the impugned order of transfer cannot be said to be illegal or arbitrary. There is no indefeasible legal right of the Petitioner to remain at a particular place. No interference is called for in the impugned order of transfer under Article 226 of the Constitution of India.

18. The writ petition is accordingly, dismissed. No order as to costs.