
(2009) 04 CHH CK 0020
In the Chhattisgarh High Court

Anand Prakash Ekka

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 2 MPHT 66

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner impugns the order dated 2-3-2009 (Annexure P-1) whereby the petitioner working as In-charge District Education Officer has been transferred from Ambikapur to Korea.

2. Shri Dangi, learned Counsel appearing on behalf of the petitioner, would submit that earlier by order dated 27-6-2008 (Annexure P-3) the petitioner was transferred from Korea to Ambikapur and thereafter without any rhyme or reason the petitioner, by the impugned order dated 2-3-2009, has again been transferred within a period of 8 months from Ambikapur to Korea. Learned Counsel challenges the validity of the transfer order on the following grounds:

--firstly, there is enforcement of code of conduct;

--secondly, it amounts to frequent transfers;

--thirdly, the transfer has been made only to accommodate the respondent No. 3; and

--fourthly, circular dated 12-6-2008 (Annexure P-2) provides that there should not be frequent transfers of an employee belonging to SC/ST category.

3. Law in case of transfer is well settled that the Court should interfere only in those cases wherein there is a complain of malafide exercise of power, infraction

of rules, regulations and competence of the officer concerned passing the impugned order. The petitioner is not alleging any malafide exercise of power except that this was done only to accommodate respondent No. 3. The reasons to establish malafide are not cogent and sufficient. Mere statement that the order has been passed only to accommodate the respondent No. 3 is not found proved, as by the impugned order 12 more officers have also been transferred. So far as the administrative exigency is concerned, the same cannot be a subject matter of judicial review unless the contrary is proved. The petitioner has failed to prove the malafide. Thus, the impugned transfer order is not vitiated on account of malafide exercise of power.

4. The Courts or Tribunals, which are Appellate Authorities should refrain from considering the niceties of the administrative needs and requirements of the situation concerned. [See : State of U.P. and Others Vs. Gobardhan Lal, .

5. The Hon''ble Supreme Court in Mohd. Masood Ahmad Vs. State of U.P. and Others, , summed up the scope of interference in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India, as under:

7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by Supreme Court in Rajendra Roy v. Union of India, National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan, State Bank of India v. Anjan Sanyal. Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh v. State of U.P. and Onkar Nath Tiwari v. Chief Engineer, Minor Irrigation Deptt., has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is malafide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.

6. Applying the well settled principles of law laid down by the Supreme Court in various cases to the facts of the case on hand, wherein the malafide alleged by the petitioner has not been proved and there is no challenge to the impugned transfer order on the ground of infraction of rules or non-competence of the officer passing the transfer order. The transfer policy/circular is mere guidelines to be observed by the officers while passing the orders. The transfer policy/circular is not mandatory in nature and does not attain the status of the service rules. Thus, this petition does not warrant any interference by this Court.

7. Thus, this writ petition being devoid of merit is accordingly dismissed at the motion stage itself.