

(2019) 07 MP CK 0035
In the Madhya Pradesh High Court
Case No : Writ Petition No. 13127 Of 2019

Anil Bhargava

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 MP CK 0035

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : M.P.S. Raghuvanshi, Purshottam Rai

Final Decision : Dismissed

Judgement

This petition under Article 226 of the Constitution of India has been filed against the order dated 06.07.2019 passed by respondent No. 2 by which the petitioner has been transferred from the post of Reader to SDM (Collector, Shivpuri) to Tahsil Pichhor.

The transfer of the petitioner has been challenged on the solitary ground that since the wife of the petitioner is working as Adhyapak in Government,

M.S. Raishri, Shivpuri, therefore, in the light of the transfer policy, the transfer of the petitioner is bad.

Counsel for the respondents submitted that so far as the transfer policy is concerned, it is not enforceable and no malafides have been alleged against the respondents and thus, the transfer order may not be interfered with.

Heard the learned counsel for the parties.

Counsel for the petitioner has relied upon the Clause 11.9 of the Transfer Policy, which reads as under:-

11.9 -

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From the plain reading of this clause, it is clear that the State Government had clarified that it should not be inferred that if husband and wife are

posted in the same District / Headquarters then they cannot be transferred. Thus, there is no absolute bar in the transfer policy itself. Even otherwise,

it is well established principle of law that the transfer policy is not enforceable by law.

The Supreme Court in the case of Union of India and Others vs. S. L. Abbas reported in AIR 1993 SC 2444 has held as under:-

6. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the

disposal of the Government which pays him and he may be employed in any manner required by proper authority." Fundamental Rule 15 says that "the

President may transfer a Government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It

is not the case of the respondent that order of his transfer is vitiated by mala fides on the part of the authority making the order, - though the Tribunal

does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The

respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred

because his wife is working at Shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies

upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have

statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made

in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind

the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate

authority must consider the same having regard to the exigencies of

administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."

The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in *Rajendra Roy v.*

Union of India [(1993) 1 SCC 148], *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan* [(2001) 8 SCC 574], *State Bank of India v. Anjan*

Sanyal [(2001) 5 SCC 508] and it has been held that the 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 mala fide or that

the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.

The Supreme Court in the case of *Gujarat Electricity Board v. Atmaram Sungomal Poshani*, reported in (1989) 2 SCC 602 has held as under :

4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No

government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is

generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and

efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in

proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If

the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay

of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or

on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would

expose himself to disciplinary action under the relevant rules.....

The Supreme Court in the case of *Rajendra Singh v. State of U.P.*, reported in (2009) 15 SCC 178, has held as under :

8. A government servant has no vested right to remain posted at a place of his

choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.

The Supreme Court in the case of *Airports Authority of India v. Rajeev Ratan Pandey*, reported in (2009) 8 SCC 337, has held as under :

10. In the writ petition, the transfer order has been assailed by the present Respondent 1 on the sole ground that it was violative of transfer policy framed by the appellant. The High Court, did not even find any contravention of transfer policy in transferring Respondent 1 from Lucknow to Calicut.

In a matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.

11. In the present case, the High Court fell into a grave error in staying the transfer order which, if allowed to stand, may cause prejudice to the administrative functioning of the appellant.

The Supreme Court in the case of *State of U.P. v. Gobardhan Lal*, reported in (2004) 11 SCC 402 has held as under :

7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or

servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are

Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This

is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State

and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to

be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no

interference could ordinarily be made with an order of transfer.

Thus, considering the contentions made by the counsel for the petitioner and in the light of the law, laid down by the Supreme Court, this Court is of

the considered opinion, that no case is made out warranting any interference in the matter.

Accordingly, the petition fails and is hereby Dismissed.