
(1987) 11 AHC CK 0056
In the Allahabad High Court
Case No : Writ Petition No. 6978 of 1987

Bhagwan Das Bhatia

APPELLANT

Vs

State of U.P. & Others

RESPONDENT

Date of Decision : 06-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) 11 AHC CK 0056

Hon'ble Judges : D.S.Bajpai, J and B.L.Loomba, J

Final Decision : Dismissed

Judgement

1. The petitioner is an Instructor in the department of Humanities in the Government Polytechnic, Lucknow. He is aggrieved by the order of his transfer dated 8.10.87 whereby he has been transferred from Lucknow to Faizabad.

2. We have heard the learned counsel for the petitioner. The first and the main ground submitted by the learned counsel is that the transfer order is mala fide having been passed only to accommodate opposite party no. 3 Ajai Kumar Sharma, who was transferred by the same order from Faizabad to Lucknow. A perusal of the impugned order would indicate that this order was passed with reference to a D.O. letter no. 5627 dated 11.8.87 received by the Director, Technical Education from the Government. The learned Standing Counsel was directed to produce a copy of this D.O. letter and he has placed the same for our perusal alongwith the relevant record pertaining to this transfer. A perusal of this record would show that the mother of opposite party No. 3 Ajai Kumar Sharma had submitted an application before the Government mentioning that her husband had recently died and Ajai Kumar Sharma who is her eldest son may be transferred to Lucknow to look after the family matters. On the basis of this application the matter was considered by the State Government and on compassionate grounds the Director of Technical Education was required to transfer Ajai Kumar Sharma to Lucknow. The Director submitted the factual position before the State Government and sought direction about transfer of the

present petitioner to any other district. It was also pointed out that both Sri Sharma and the petitioner are ordinary residents of Lucknow district. The matter was again considered in the Government and the Minister in charge formed the view that Lucknow being the home town of both these persons, neither of them was entitled to stay at Lucknow, according to the general orders of the Government. Orders of the Chief Minister were sought and keeping in view the difficulties of Ajai Kumar Sharma, particularly, the death of his father the Chief Minister passed the orders that Ajai Kumar Sharma be transferred to Lucknow and in his place the petitioner be transferred from Lucknow to Faizabad.

3. The learned counsel has placed reliance on two decisions, one of Madhya Pradesh High Court and the other of Patna High Court. In *Prakash Chandra Saxana v. State of Madhya Pradesh and others*, 1980 (1) SLR 789, the principle of law decided was that in the case where the transfer is made mala fide or for some ulterior purpose, like punishing an employee, then certainly the court has jurisdiction to interfere in the matter and set aside such order of transfer. On facts it was found that the order of transfer was not passed bona fide and it was issued on extraneous considerations and the petitioner of that case was subjected to transfer from place to place.

4. In *Ramanek Chaudhary v. State of Bihar and others* (1975 (2) SLR 67), the proposition of law decided was that where an order of transfer is passed for a collateral purpose in the garb of a legal purpose the courts can justifiably interfere in exercise of powers under Article 226 of the Constitution. In that case it was found that one Member of the Legislative Assembly has been dictating from time to time orders to the authority concerned, namely, the Administrator and that the order of transfer of the petitioner in that case was passed only on the wishes of the Member of the Legislative Assembly and that the concerned authority has surrendered his judgment. On the facts of that case the court considered it appropriate to interfere.

5. With respect we agree with the proposition of law decided in two cases referred to by the petitioner's learned counsel. On facts, however, the two decisions are inapplicable because in the present case the order of petitioner's transfer had not been passed arbitrarily and without due objective consideration. Simply because the request of opposite party no. 3 was accepted by the authority on humanitarian ground that does not by itself show that the order of transfer was passed against the petitioner arbitrarily and mala fide.

6. The petitioner had already stayed at Lucknow for three years upto July, 1987 and under the general orders of the government he was due for transfer. The petitioner's learned counsel argues that according to the guiding principles laid down in the circular letter of the government it was necessary for the authority concerned to have asked for preference of the petitioner in the event of his transfer proposed from Lucknow. In the present case even this aspect of the matter was considered and the Director of Technical Education had indicated that no other vacancy was available at Lucknow and in case Ajai Kumar Sharma was

required to be accommodated the petitioner had to be transferred.

7. Ajai Kumar Sharma had already put in about four years service at Faizabad and he was also due for transfer.

8. The next ground submitted by the learned counsel is that the petitioner was transferred in the midsession and as per the circular letters of the government transfers have to be made between the months of April and June. The circulars of the government referred to by the learned counsel only lay down guiding principles and do not create any legal right in favour of any government servant. Transfer is an exigency of service and any departure from the guiding principles laid down in the circular letter does not raise any legal ground justifying interference by the court in exercise of its power under Article 226 of the Constitution more so when it is found that the departure was not arbitrary or malafide. We are not inclined to interfere in the matter and the writ petition merits dismissal.

9. The writ petition is accordingly dismissed. Interim order, if any, shall stand discharged. No order as to costs.

(Petition Dismissed)