

(2019) 03 MP CK 0137

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6310 Of 2019

Bhagwan Singh Lodhi

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 03 MP CK 0137

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

Bench : Single Bench

Advocate : Raj Shrivastava, Pawan Singh Raghuvanshi

Final Decision : Dismissed

Judgement

This petition under Article 226 of the Constitution of India has been filed challenging the transfer order dated 8th March, 2019 (Annexure P1) by which the petitioner has been transferred from Gram Panchayat Bukarra, Janpad Panchayat Khaniadhana, District Shivpuri to Gram Panchayat Mamrouni, Janpad Panchayat Khaniadhana, District Shivpuri.

It is submitted by the counsel for the petitioner that the petitioner is working on the post of Panchayat Secretary and because of political reasons, he has been transferred to Gram Panchayat Mamrouni, Janpad Panchayat Khaniadhana, District Shivpuri. The transfer of the petitioner is in violation of the transfer policy. Although the transfer order was signed by the Collector on 07th March, 2019, but it was issued on 08th March, 2019, which clearly shows that the transfer order is manipulated and an ante-dated document.

Considered the submission made by the counsel for the petitioner.

From the order dated 08th March, 2019, it is clear that the said order was signed by the Collector on 07th March, 2019, whereas it was dispatched on 08th March, 2019. Thus, it is clear that mere dispatch of the letter on the next day would not make the order of the Collector vulnerable. So far as the violation of transfer

policy is concerned, the petitioner could not point out as to how the transfer policy has been violated. Furthermore, the transfer policy being an executive instruction, is not enforceable. So far as the transfer of the petitioner because of political interference is concerned, the Supreme Court in the case of Mohd. Masood Ahmad vs. State of U.P. & Ors. reported in (2007) 8 SCC 150 has held as under:-

"8. Learned counsel for the appellant submitted that the impugned transfer order of the appellant from Muzaffarnagar to Mawana, District Meerut was made at the instance of an MLA. On the other hand, it has been stated in the counter-affidavit filed on behalf of Respondents 1 and 2 that the appellant has been transferred due to complaints against him. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order."

Further, it is well-established principle of law that the transfer policy is nothing, but it is only an executive instruction/guidelines and the guidelines do not confer upon the Government employee legally enforceable right. The scope of judicial review of transfer under Article 226 of 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."

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:-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides 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."

Thus, in the light of the law laid down by the Supreme Court in the aforesaid judgments, this Court is of the considered opinion that no case is made out warranting any interference in the matter.

Resultantly, this petition fails and is hereby dismissed.