
(2002) 03 AHC CK 0011
In the Allahabad High Court
Case No : C.M.W.P. No. 53596 of 2000

Bhagwan Verma

APPELLANT

Vs

Secretary, Board of High School and Intermediate Education,
U.P., Allahabad

RESPONDENT

Date of Decision : 16-03-2002

Acts Referred:

Citation : (2002) 2 AWC 1696 : (2002) 93 FLR 1169 : (2002) 3 UPLBEC 2383

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Madan Mohan Lal Srivastava, for the Appellant;

Judgement

Rakesh Tiwari, J.—Heard Sri Madan Mohan Lal Srivastava for the petitioner and the learned standing counsel for the respondent.

2. This writ petition has been filed by the petitioner on the ground that the impugned order of transfer is punitive and further on the ground that the petitioner being a Class IV employee cannot be transferred out of station.

3. The writ petition had been disposed off by judgment and order dated 20.12.2000. The Secretary, Board of High School and Intermediate Education U. P., Allahabad, preferred an appeal against the judgment and order dated 20.12.2000 passed by the learned single Judge in the aforesaid petition. The Division Bench of this Court presided over by Hon''ble the Chief Justice remanded the matter for consideration afresh as the State was not given any opportunity to file a counter-affidavit and the writ petition had been disposed off without such opportunity at the admission stage itself.

4. In these circumstances, the writ petition has come up for hearing before this Court today and is to be considered afresh, on the basis of the affidavits exchanged between the parties and the submissions made by them.

5. It is submitted on behalf of the petitioner that in view of the Government

order dated 17.6.1974 a Class IV employee should not be transferred out of station, that he is a lowly paid employee living in hardship and cannot be expected to maintain himself at two places and that the impugned order of transfer (Annexure-4 to the writ petition) which is said to have been passed on the ground of administrative exigency is punitive.

6. A bare perusal of the impugned order dated 4.12.2000, Annexure-4 to the writ petition, shows that the transfer order has been passed on the basis of complaints dated 20.8.2000 and 1.12.2000 by which the petitioner and two others had been transferred with immediate effect on the ground that they remained absent from duty without permission or sanctioned leave.

7. The petitioner has urged that he was attached to the care-taker and has worked on the post of Chaukidar diligently and honestly which had been assigned to him. It is submitted that as a Chaukidar, he was neither given weekly or any gazetted holidays and had to work on weekly as well as gazetted holidays : whereas the other employees of the department are getting compulsory holidays, local holidays and holidays in lieu of working on gazetted holidays. They also get compensatory leave etc. Explaining his absence, he has stated that while coming on duty on 2.10.2000 he met with an accident and was brought to the office and sent for treatment for multiple fracture that he had received in the accident. Due to some complications in the wounds, he could not go to the office on 1.12.2000 and there was no need to submit any application for grant of leave as 1.12.2000 was a gazetted holiday. In spite of all this he, has been harassed by levelling fictitious and sweeping allegations against him for transferring him to Regional Office, Meerut, which is at a distance of about 638 kilometres from Allahabad where he is posted. It has been vehemently argued that the order of transfer has been passed without affording any opportunity to the petitioner or ascertaining the allegations and this action of the respondents is illegal,, arbitrary, punitive and without any application of mind.

8. The standing counsel has submitted that there was no improvement in the behaviour of the petitioner and others who were transferred. They were warned and thereafter had been transferred on administrative ground in order to enable the office function smoothly. In the counter-affidavit, it has been categorically stated by the respondents that there is no question for granting any hearing or giving opportunity to the petitioner as It is merely a case of transfer. Para 18 of the counter-affidavit is in the following language :

^^18- ;g fd ;kfpdk ds izLrj&15 dk dFku vLohdkj gS A mi;qZDr izLrjksa esa of.kZr buds f?;kdykiksa ds dkj.k ;kph dk ek= LFkkukUrj.k fd;k x;k gS a vr% fdlh izdkj dh lquokbZ dk volj nsus dk iz"u gh ugha mBrk gS A**

9. I do not agree with the contention of the respondents that it is a simple order of transfer and not a punitive order. From the language used in the impugned order of transfer, it is evident that the transfer of the petitioner is punitive. The impugned order of transfer was passed without holding a preliminary enquiry and

the petitioner has been transferred on the basis of bald and sweeping allegations. There is force in the contention of the petitioner that the impugned order of transfer has been passed on the basis of complaints, levelling charges of habitual absentism against him without even verifying the facts. In any case, it is not proper to transfer a Class IV employee to a distant place as this would result in economic death of the lowly paid employee. A lowly paid employee cannot be expected to maintain himself and his family at two places. If according to the respondents, the petitioner has committed any misconduct, they are free to take necessary action against him but cannot transfer him out in punitive manner in the garbs of transfer simpliciter. The Impugned order of transfer dated 4.12.2000, is not so innocuous as suggested by the standing counsel.

10. In the result, the writ petition succeeds and is allowed. The impugned order dated 4.12.2000, Annexure-4 to the writ petition, is hereby quashed being punitive. It is, however, made clear that the concerned department is free to take necessary action against the petitioner for alleged misconduct, in accordance with law. The respondents are directed to permit the petitioner to join at Allahabad forthwith where he was working and he shall be paid arrears of salary w.e.f. 4.12.2000 with 12% Interest and future salary and benefits to which he is entitled to, month to month.

11. No order as to costs.