
(2019) 03 MP CK 0124

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6119 Of 2019

Bhagwat Singh Kotiya

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 03 MP CK 0124

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

Bench : Single Bench

Advocate : Alok Bandhu Shrivastava, Anand V. Bhardwaj

Final Decision : Dismissed

Judgement

1. This petition under Article 226 of the Constitution of India has been filed against the order dated 10/3/2019, by which the petitioner has been posted in Sector Kumbhraj, Community Health Center Beenaganj.

2. The necessary facts for disposal of the present petition in short are that the petitioner is working on the post of Male Multipurpose Supervisor. Earlier he was posted at Sector Kumbhraj, Community Health Center, Beenaganj and at the personal request of the petitioner, he was transferred to Sector Markimahu, Primary Health Center, Bhadora by order dated 16/7/2017.

3. It is submitted by the counsel for the petitioner that the petitioner has been transferred within a short span of less than two years, therefore, the present transfer order is bad because of frequent transfers. It is further submitted that the order under challenge has been passed by the Collector, Guna, whereas the Chief Medical & Health Officer is the administrative officer of the petitioner and, therefore, the transfer order should have been passed by the Chief Medical & Health Officer and not by the Collector. Further, by referring to Clause 8.20 of the transfer policy, it is submitted that rationalization of the Doctors / Nurses / Staff posted in Hospitals / Dispensaries functioning under the control of Public Health

and Family Welfare Department has to be made and thus, the petitioner has been transferred in violation of the transfer policy. Furthermore, it is submitted that as the model code of conduct has been made applicable, therefore, the transfer order is bad and the petitioner has also made a representation against his transfer order.

4. Heard learned counsel for the petitioner.

5. So far as the question of frequent transfer is concerned, it is clear that by order dated 16/7/2017 the petitioner was transferred to Sector Markimahu (Primary Health Center, Bhadora) on his own request and thus, his previous transfer was not because of any administrative exigency, but it was the accommodation by the respondents. Therefore, the last transfer order dated 16/7/2017 cannot be taken into consideration for considering that whether the impugned transfer order suffers from frequent transfer or not. Thus, the submission made by the counsel for the petitioner with regard to his frequent transfer is rejected.

6. So far as the model code of conduct is concerned, the same was made applicable from 10/3/2019 and the impugned order was also passed on 10/3/2019. It is not the case of the petitioner that the impugned order was passed after the model code of conduct was made applicable. Thus, the contention of the petitioner that after declaration of the elections no employee can be transferred without the permission of the Election Commission, cannot be accepted.

7. It is further submitted by the counsel for the petitioner that the transfer of the petitioner is violative of the conditions of the transfer policy. It is further submitted that petitioner's administrative head is the Chief Medical & Health Officer, therefore, the Collector could not have transferred him, is also misconceived, because so far as the authority to post / transfer an employee within the district is concerned, as per the transfer policy, Collector is also competent, although the Chief Medical & Health Officer is the administrative head of the Paramedical Staff. Under these circumstances, it cannot be said that the transfer of the petitioner is without authority. Furthermore, it is well established principle of law that the transfer policy is an executive guidelines and is not enforceable.

8. 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 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."

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."

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."

9. Thus, considering the contentions made by the Counsel for the petitioner 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.

10. It is next submitted by the counsel for the petitioner that the petitioner has made a representation, therefore, the respondents be directed to decide his representation and till then, the petitioner may be allowed to continue at his original place of posting.

11. The petitioner has admittedly not joined at his transferred place. The Division Bench of this Court in the case of Mridul Kumar Sharma Vs. State of M.P.

reported in ILR [2015] MP, 2556 has held as under:-

"6. Accordingly, this appeal is devoid of merit. We, however, make it clear that it is for the appropriate Authority to entertain the representation filed by the appellant and including to consider the request of the appellant to allow him to continue at the same place or otherwise. The appellant must, as per the settled legal position, report to the transferred place and pursue his remedy of representation, particularly when the appropriate Authority before whom the representation is pending has so far not favoured the appellant by allowing him to continue at the same place. At best, we may only observe that the appropriate Authority must decide the representation expeditiously, preferably within two weeks.

7. Accordingly, the writ appeal is rejected with the above observations."

12. Thus, unless and until the employee joins at the transferred place, no direction can be issued to the respondents to consider his representation. Furthermore, mere filing of representation does not give any right to the employee to stay on a particular place. Accordingly, as the petitioner has not joined at his transferred place, therefore, no direction can be issued to the respondents for deciding his representation and in the light of the judgment passed by the Division Bench of this Court in the case of Mridul Kumar Sharma (supra), the transfer order cannot be kept in abeyance till the decision of the representation.

13. Consequently, this petition fails and is hereby dismissed.