

(1992) 01 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27462 of 1991

Brijesh Narain Tewari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-01-1992

Acts Referred:

Constitution of India, 1950 — Article 162, 226

Citation : (1992) 2 AWC 838

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : S.P. Singh, for the Appellant;

Judgement

N.L. Ganguly, J.—The Petitioner is a Junior Engineer in Flood Division, Irrigation Department posted at Allahabad. This petition under Article 226 of the Constitution is directed against the transfer order dated 29 -7-91 Annexure 3 by which Petitioner was transferred from Allahabad to Bareilly Investigation Planning and Water Resources Division. Another order dated 3rd September, 1991 Annexure 4 by which the earlier transfer order was modified and Petitioner was attached to Irrigation Division, Allahabad.

2. The Petitioner averred in the writ petition that there are Zones in the Irrigation Department, namely Restricted Zone and General Zone. The Restricted Zones are classified in four categories : (i) Hill Division of U.P. (Kumaun and Garhwal area), (ii) Hill Division of Sonbhadra (Kaimur range of Vindhachal), (iii) Design Directorate Lucknow & Roorkee, and (iv) Attached posts in Divisions and Offices. The Petitioner stated that according to the G. O. and norms issued by the State Government, an employee in the Irrigation Department has to work for atleast six years in Restricted Zones. The Petitioner claims to have worked in Restricted area thereafter Petitioner was posted in plain area zone known as General Area. The State Government issued G. O dated 8th July 1991 by which the State Government issued guide-lines in the matter of transfer of the Government employees in the State. A copy of the G. O. is annexed as Annexure 1.

3. The Petitioner stated that the order for his transfer to Bareilly is in utter violation of the Government Order dated 9th July 1991 and 18th July 1991. The Petitioner further urged that he cannot be transferred outside the Allahabad Circle and also cannot be transferred from Restricted Zone area to General Area in view of Government Order aforementioned. The Petitioner stated that the order of transfer was nothing but a punishment. The result of such transfer from Working area to non working area (Restricted Zone) Petitioner would be suffering loss of Rs 450/- per month. Petitioner further stated that at the instance of some influential person working at Bareilly, who wanted to remain there pressurised the Government to change the transfer order and by another order dated 3-9-91 Petitioner has been directed to be transferred and attached in the Irrigation Division II, Allahabad. The Petitioner stated that the transfer of an employee from working area to non-working area is considered to be reduction and humiliation, by the Department The present writ petition was filed on 24-9-91 and this Court was pleased to call for the counter affidavit from the State Government. No interim order was granted staying the operation of the transfer order. The court was pleased to direct the Petitioner to submit his representation to the Respondent No. 2 and it was observed that in case any representation is made by the Petitioner, the Respondent no 2 shall consider the same and pass a reasoned order within a period of one month

4. The Petitioner submitted another application on 29-10-91 for a direction that the Respondent may pay the salary of the Petitioner from August 1991 to October 1991 and continue paying future salary. The Petitioner stated that after the orders dated 24-9-91 passed by this Court, a representation was submitted on 27-9-1991 to the Chief Engineer, Irrigation, Investigation and Planning. It was said that although the representation was filed and received by the opposite party No. 2, still no orders have been passed on the representation and the period of one month had already expired. The Petitioner was also not paid salary. Again an application dated 23-11-91 was submitted with a prayer that the Respondent No. 2 was directed to appear before the Court on 22-11-91 and he flouted the orders of the court dated 16-11-91. The Petitioner submitted an application with an affidavit before the court on 20-12-91 complaining that the Petitioner submitted his representation and the Respondent No. 2 Chief Engineer did not decide the representation and did not consider the contents of the Petitioner's representation within one month nor paid the salary to him. Thus, prayer was again made for staying the operation of the transfer order and direction for payment of salary.

5. A counter affidavit has been filed by the Chief Engineer Sri Majid Ali Siddiqui personally. It has been categorically stated that the Petitioner comes under the cadre "C which is a State Cadre and he can be transferred any where in the State of U.P. The factual aspect as stated by the Petitioner in para 8 of the affidavit was dented. It was pointed out the Petitioner remained at Basti from 20-12-77 to 30-6-83, Flood Division, Faizabad from 1-7-83 to 26-10-87 and at the time of passing of the transfer order, he had been working in Flood Division

Allahabad since 3-11-87. Thus, it is clear that Petitioner was not posted in Restricted area so far. The allegation of the Petitioner that his transfer order to Bareilly was modified and cancelled at the instance of some influential person there, who wanted to stay at Bareilly, is wrong. The Petitioner's wife Smt. Ratan Tewari submitted a representation against the transfer order and on her request, the transfer order passed earlier was modified and Petitioner was transferred and posted to another Division of Allahabad. As such, it is a local transfer only. The Petitioner without working in Restricted Zone has already completed 13 years of working in working Zone. As such, it was considered necessary to transfer him from the last posting. The Petitioner's representation was considered by the Chief Engineer, Irrigation, U.P. by order dated 19th November, 1991. A copy of the order passed on the representation has been annexed as Annexure 1 with the counter affidavit. The reason, facts and circumstances are fully considered in the order rejecting the representation

6. After hearing the learned Counsel for the Petitioner at length and learned Standing Counsel, I would like to make it clear that this Court is very reluctant in interfering with the transfer orders passed by the Departments of the Government unless it is shown that transfer order was passed by way of punishment, or it was passed on account of malice or ill will. The Petitioner has not been able to show that there was any malice or ill will against the Petitioner in passing the transfer order. The Petitioner had already worked for about 13 years in working area and had not worked in Restricted Zone. Thus," he was correctly transferred to another place in accordance with the Departmental directions and State Government Policy in the matters of transfer

7. The learned Counsel for the Petitioner Sri S.P. Singh strenuously urged that the transfer order is bad in law in the teeth of the Government order, referred above. It is evident that in view of the version given in the counter affidavit, that the order of transfer is bad in law in violation of the Government Order thus it is nullified. The Government orders, Executive instructions issued by the Executive or Administration of the State have no force of law and they are not to be enforced as law, in proceedings under Article 226 of the Constitution. They are merely Executive directions for following the same by the concerned Department.

8. In *G.J. Fernandez Vs. State of Mysore and Others*, , it was observed by the Hon"ble Supreme Court that

Under Article 162 of the Constitution does not confer any power on the State Government to frame rules and it only indicates the scope of the Executive power of the State. Of course under such Executive powers, the State can give Administrative instructions to its servants. How to act in certain circumstances but that will not make such instructions statutory rule which are justiciable in certain circumstances. In order that such Executive instructions have the force of statutory rule, it must be shown that they have been issued either under the authority conferred on the State Government by some Statute or some provision of the Constitution providing therefor.

9. In a Full Bench case of Mahabir Prasad Sharma v. S.T.A.T. 1971 ALJ 293 it was observed that:

It is true that Article 226 of the Constitution has conferred very wide power on the High Courts but it has not been recognized by Courts that wide power has its limitation. A High Court cannot assume the functions of Administrative Bodies. All that the High Courts can do is to ensure that the Administrative Bodies do not commit patent error of law. This Court cannot itself depose of matters which are in the discretion of such Administrative Authorities.

It is, thus, clear that the scope and powers under Article 226 of the Constitution are to be exercised rationally and within the specified jurisdiction.

10. Recently in Mrs. Shilpi Bose and others Vs. State of Bihar and others, , the Hon"ble Supreme Court affirming the transfer order observed that:

A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest.

In view of the law laid down by the Supreme Court, I am of the clear view that the present case is not a fit case for interference under Article 226 of the Constitution and the writ petition is liable to be dismissed.

11. Before concluding, I would like to make certain observations in respect to the applications for direction for making payment of salary, as claimed by the Petitioner and also in respect to the allegations that the Chief Engineer of the Department had failed to appear and comply with the orders of the Court. It is a common knowlege that certain Government Servants now-a-days prefer to litigate and dealy the compliance of the orders of the Department when they are transferred. They prefer to remain idle and not work rather comply with the transfer order. They would prefer to litigate, move writ petition, delay the compliance of transfer order to best of their capacity even then they "expect that the court should pass orders directing for payment of salary to them for the period which they have not worked. Admittedly there was no stay order passed when the writ petition was filed on 24-9-90 Instead of complying with the transfer order, it appears that without working in the Department after the transfer order was passed, an application for direction for payment of salary was moved before this Court. It is not for this Court to pass any such direction if Petitioner has not complied with the transfer order passed and remained absent from the duties, it is for the Department concerned to consider whether the person is entitled to receive salary for the period of absence. It is, thus, made

clear that in case the Petitioner is entitled for any emoluments, the same may be paid to him according to law by the Respondents. The other allegation that the Chief Engineer has failed to comply with the directions of the court, it is clear that the Respondent decided the representation by order dated 18-11-91, a copy of the same is annexed as Annexure 1 with the counter affidavit.

12. The writ petition is dismissed, Parties to bear costs.