
(2009) 05 AHC CK 0457
In the Allahabad High Court

Catherine Tiwari	Vs	APPELLANT
State of U.P.and others		RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0457

Hon'ble Judges : Pradeep Kant, J and Syed Nazim Husain Zaidi, J

Final Decision : Dismissed

Judgement

S.N.H.Zaidi, J.

Heard Shri O.P.M. Tripathi, learned counsel for the appellant and Shri Mukund Tiwari, learned counsel for the respondents.

The appellant, a nurse in the E.S.I Hospital, feels aggrieved by her transfer from E.S.I. Hospital, Sarojani Nagar, Lucknow to E.S.I. Hospital, Naini, Allahabad. The transfer order is dated 25.6.2008. The transfer has been effected on administrative reason as indicated in the order itself. This is the third successive writ petition out of which the present Special Appeal has arisen challenging the same transfer order by filing one after the other writ petition.

In the first writ petition, namely, Writ Petition No. 3517 (S/S) of 2008, the transfer order was challenged on various grounds including the plea that the appellant could not be transferred because of the complaint made against her and that she was a heart patient; therefore, her transfer be stayed, besides the plea that she was to retire within a period of two years. The said writ petition was finally disposed of by learned Single Judge on 3.7.2008, without interfering with the transfer order, giving liberty to the appellant to make a representation before the authority concerned. There was no stay order passed nor she was given any protection and she was to join at the transferred place and the liberty to file representation was given.

The appellant did not join at the transferred place and waited for the decision on the representation. The representation was rejected on 1.8.2008.

The appellant filed a second writ petition bearing Writ Petition No. 4918 (S/S) of 2008. This writ petition was again dismissed by the learned Single Judge after considering the plea of the appellant regarding the transfer order being passed when the complaint was pending. The learned Single Judge observed that it was settled law of the Supreme Court that in case there are certain complaints against the employee, that can be a ground for transfer, therefore, the transfer order against the appellant can not be treated as punitive.

Regarding the plea that the appellant has not been provided with a copy of the alleged complaint etc. the learned Single Judge observed that it was the matter of the enquiry proceedings and it can not be the subject matter in the writ petition and the writ petition was dismissed on 20.8.2008.

The appellant still did not join at the transferred place and preferred a Special Appeal bearing no. 509 of 2008. This special appeal was also dismissed on 4.9.2008 by a Division Bench, in which one of us (Pradeep Kant, J.) was a member. The Division Bench took into consideration the plea regarding the transfer on administrative ground. The Court, however, took into account the plea raised about the illness of the appellant in the wake of one year period or so being left in service before retirement and, therefore, permitted her to make a representation on compassionate ground. While doing so the Court observed that the joining and functioning of the appellant at the transferred place shall be subject to any order being passed on the representation. The representation was to be made within two weeks. It was also provided that in case the appellant reports for joining at Allahabad within ten days, she shall be paid her regular salary and future salary, month to month from the date of reporting for duty subject to disciplinary and administrative control of the authority concerned.

We are informed by the learned counsel for the appellant that on 5th September, 2008 the appellant had joined at Allahabad and she is being paid salary regularly. The representation made again on compassionate ground has been rejected on 6th November, 2008 by the Director.

It is against this order that the appellant again preferred a third writ petition, which has been dismissed by the order under appeal.

At the outset, it would be pertinent to mention that no litigant has a legal right to challenge the same order again and again by filing successive writ petitions. If liberty is given to make a representation after dismissing the writ petition in a matter of transfer on compassionate ground, it again does not give any fresh cause of action normally to be challenged in a second writ petition, the reason being that once the challenge to the transfer order originally passed, fails and the Court refuses to interfere in the transfer order merely because the plea of staying transfer/revoking the transfer on compassionate ground is raised and since the stay or revocation of transfer order on compassionate ground lies within the domain of the State Government/appointing authority itself, therefore, any decision taken by such authority on its own discretion would not be open to

challenge. In case the petition against the transfer order is entertained, in which the challenge has not been rejected, may be in such a case, a subsequent order passed on the representation can also be put to judicial review.

One more important aspect of the matter is that the government servant does not have right not to comply with the transfer order without there being any interference or otherwise protection given by the Court or by the superior authority and to keep on filing petition after petition challenging the order in the High Court. Government servant can not claim that he should be posted at a particular place for a particular period. The transfer is an incidence of service. The posting of government servant by issuing transfer order is a natural requirement in service law. The transfer is effected keeping in mind the exigency of service, and in public interest or for administrative reasons. It is the sole discretion of the appointing authority to post the government servant at any place where he/she is more required. Of course, if transfer order has been passed in violation of any statutory Provision or Rule or is a result of mala fide or bias of the authorities, then that can be subjected to scrutiny by the Court but unless the order so suffers, the High Court will, normally, not interfere in the transfer order.

In the instant case, there is admittedly a complaint against the appellant. The appellant fully knows about that complaint as is evident from the orders passed by the State Government and the Director and the stand taken in the writ petition itself. The plea of the appellant that she can not be transferred on such a complaint deserves to be rejected outright. It may be mentioned that instead of suspending her on the ground of such a charge she has only been required to be transferred but she has continuously been litigating against the transfer order.

The learned Single Judge has considered all such pleas raised before him and has dismissed the writ petition but has again given liberty to the appellant to file claim petition before the Public Service Tribunal.

We do not find any justification for allowing the appellant to file claim petition under the liberty given by this Court before the Public Service Tribunal, it being not maintainable after the dismissal of the three successive writ petitions. The filing of the successive writ petitions challenging the same transfer order, though one of the order was passed on the representation of the petitioner is an abuse of the process of the Court. The appellant right from 25.6. 2008 till September, 2008 did not join her duties at the transferred place without there being any order available to her, directing her to remain at Lucknow. She has filed aforesaid writ petitions and two special appeals on the same grounds. We, therefore, deem it expedient that a cost of Rs. 10,000/ be imposed upon the appellant, for aluring the process of the Court.

The cost of Rs. 10,000/ shall be deposited within one month in the Registry of this Court, from the date of receipt of a certified copy of the order, failing which the recovery shall be made by issuing recovery certificate by the Registrar.

The special appeal is, accordingly, dismissed.