

(2004) 04 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 34246, 34247, 34249 and 34251 of 2002

Commissioner Kendriya Vidyalaya Sangathan and Others

APPELLANT

Vs

Central Administrative Tribunal and Another

RESPONDENT

Date of Decision : 01-04-2004

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2004) 102 FLR 298 : (2004) 3 UPLBEC 2391

Hon'ble Judges : S.P. Srivastava, J;K.N. Ojha, J

Bench : Division Bench

Advocate : V.B. Singh and D.P. Singh, for the Appellant; Deepak Kaushik, for the Respondent

Judgement

S.P. Srivastava, J.—Heard Sri Vijay Bahadur Singh, Senior Advocate, assisted by Sri D.P. Singh, learned Counsel for the petitioners.

2. Sri Deepak Kaushik learned Counsel for the contesting respondent, who has put appearance at this stage on advance notice, has also been heard.

3. Since the controversy raised in all the aforementioned writ petitions is of an identical nature, they are being disposed of by a common order.

4. The petitioners feel aggrieved by the judgment and order passed by the Central Administrative Tribunal, interfering in the orders transferring the respondent-employees and remitting the matter for reconsideration in the light of the observations made in the body of the judgment.

5. The facts in brief shorn of detail and necessary for the disposal of the writ petitions lie in a narrow compass.

6. Sri Kailash Singh, a Primary Teacher, Sri Harish Chandra Sharma, Yoga Teacher, Sri Bhagwan Singh, Lower Division Clerk and Sri Krishna Chand, a Lab Assistant of Kendriya Vidyalaya, Bulandshahar were transferred vide the order

dated 22.11.1999 issued by the Deputy Commissioner, Kendriya Vidyalaya Sangathan, New Delhi to various Kendriya Vidyalayas situate at different places in the North East Region of the country. Sri Kailash Singh was transferred from Bulandshahar to Churchandpur, Sri Harish Chandra was transferred from Bulandshahar to Imphal, Sri Krishna Chand was transferred from Bulandshahar to Churchandpur and Sri Bhagwan Singh was transferred from Bulandshahar to Gotakha. The aforesaid transferees filed separate original applications u/s 19 of the Administrative Tribunals Act, 1985, challenging their transfers on various grounds.

7. The Tribunal vide the impugned order being of the view that there was no reason why these transferees could not be accommodated within the division in the absence of genuine administrative ground directed the respondent, the present petitioner herein, to reconsider the matter of transfer of the applicant within the Division. The Tribunal was also of the view that the applicants were entitled for the payment of salary for the intervening period in view of the stay order granted by the Tribunal. The present petitioners are, directed to pay the salary due to the respondents and pass appropriate transfer orders posted them within a period of 3 months from the date of service of the said order.

8. Learned Counsel for the appellant has strenuously urged that in the present case, the transfer order had been passed not only in the public interest but also on administrative exigencies, which had been detailed in the counter affidavit filed in opposition to the application. The contention is that it was not open to the Tribunal to go into the question in regard to the sufficiency or otherwise of the administrative exigencies or the administrative grounds, which had been clearly indicated in the counter affidavit filed by the petitioners and it was employers' satisfaction in the matter which had to be accepted specially when the impugned action could not be demonstrated to be suffering from any malafides or arbitrariness.

9. The learned Counsel for the petitioner has further urged that in the present case, all the transferees had been relieved on 27.11.1999 much before the grant of the interim order by the Tribunal and the persons who had been posted in place of the transferees, had already joined with the result that the interim stay order granted by the Tribunal on 3.2.2000 had become meaningless and could not be given effect to.

10. The question in regard to the scope of interference in the transfer orders had been considered in detail by the Apex Court in its decision in the case of Union of India and Ors. v. Sri Janardhan Debanath and Anr., Civil Appeal Nos. 1010-1011 of 2004, decided on 13.2.2004. In its aforesaid decision the Union of India had taken a stand that the transfer impugned in that case had been done in public interest and on account of exigencies of administration. It was also pointed out that the respondent not only misbehaved with the Director (Postal Services), a Senior Lady Officer, who was confined and dragged from one room to another which was done with a view to force her to withdraw the charge sheet against

the Deputy Post Master, but she was also abused in filthy language and was physically manhandled. This conduct was certainly unbecoming of an employee and with a view to enforce discipline and to avoid recurrence of such unfortunate incident, the concerned employees had been transferred. The Apex Court in its aforesaid decision had observed that no Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incidence but is a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine. It was also indicated that the manner, nature and extent of exercise to be undertaken by Courts/Tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions. Service prospects financially and same yardstick-norms or standards cannot be applied to all category of cases. The transfers unless they involve any such adverse impact or visits the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

11. In the present case, it is not disputed that there were serious allegations in regard to the various misconducts committed by the transferees. The details of the misconduct, which is not disputed by the Counsel for the contesting respondents, had been given in the counter affidavit filed by the present petitioner in opposition to the application filed u/s 19 of the Administrative Tribunals Act, 1985. In the aforesaid view of the matter, the ratio of the decision of the Apex Court in the case of Union of India (supra) stood squarely attracted and no justifiable ground could be pointed out which might require any interference in the impugned transfer orders.

12. In its aforesaid decision in the case of Union of India and others (supra) the Apex Court had clearly indicated that the question whether an employee could be transferred to a Division is a matter for the employer to consider depending upon the administrative exigencies and the extent of solution for the problems faced by the administration. It is not for that Court to direct one way or the other.

13. So far as the other aspect regarding payment of salary is concerned, the Tribunal was of the view that since there was an interim order of stay, the petitioners were bound to release the payment of salary irrespective of the fact

as to whether the transferees actually performed their duties attached to their office or not?

14. The Tribunal has, however, manifestly erred in equating the interim order as having the effect of quashing the transfer order. The Apex Court in its decision in the case of Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, had observed as follows :

"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of any order does not, however, lead to such a result. It only means that the order which has been stayed could not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence."

15. In the present case, there is no dispute that at the time by the interim order was granted, the transferees had been dislodged from their posts and in their place other employees had been posted filling up the consequential vacancies. In the circumstances, therefore, not only because the interim order could not be an order quashing the impugned orders of transfer but as the petitioners had not discharged the duties, the principle of "no work no pay" had to be taken to be attracted and consequently, no direction for the payment of salary ought to have been issued.

16. The learned Counsel for the transferees states that during the pendency of their application before the Tribunal, they had been allowed to join the post at various places within the State of U.P. The learned Counsel for the petitioner has stated that when the cases of transfer due will be considered for preparing the chain of transfer and posting.

17. The learned Counsel for the petitioner had given an undertaking about the fresh consideration of the cases of the transferees-respondents during the aforesaid period.

18. Considering the facts and circumstances as brought on record in their totality, the impugned order 21.11.2001 passed by the Central Administrative Tribunal, Allahabad Bench is quashed with a direction to the petitioners for reconsideration of the case of the transferees-respondents strictly in accordance with law and after taking into consideration the transfer policy and the guidelines regulating such transfers.

19. Ordered accordingly.