
(2011) 12 AHC CK 0310
In the Allahabad High Court
Case No : Service Single No. 8642 of 2011

Const. Driver P.N.O. No. 802110408 Islamuddin	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Citation : (2011) 12 AHC CK 0310

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Hon"ble Anil Kumar, J.—Heard Sri P.K.Pandey, learned counsel for the petitioner and learned State Counsel. By means of present writ petition, petitioner has challenged the impugned order of transfer dated 5.4.2011 passed by opposite party No. 3 and reliving order dated 20.11.2011 (Annexure No. 1) passed by opposite party No. 4 so for it relates to petitioner.

2. The facts in brief as stated by learned counsel for the petitioner that petitioner is working on the post of Constable Driver in District Ambedkar Nagar has been transferred to Gorakhpur.

3. While assailing the impugned order, learned counsel for the petitioner submits that the impugned order of transfer in violation to the transfer policy as well as the same has been passed in a mid-session thus, in case if the petitioner is transferred in pursuance to the impugned order, the study of his children will suffer in the present era of competition. So, the impugned order of transfer is illegal, liable to be set aside.

4. I have heard learned counsel for parties and perused the record.

5. The law is well settled that transfer being exigency of service can be effected by the employer concerned in accordance with administrative exigency, in the interest of administration and public interest at any point of time and that cannot

be monitored and guided by this Court unless it may be shown that transfer order is vitiated on account of the contravention of the statute, or lacks jurisdiction or mala fide.

6. In the present case as argued by learned counsel for petitioner that the impugned order of transfer is in violation of transfer policy is not correct because in the case of Union of India and Others Vs. S.L. Abbas, Hon''ble Apex Court has held as under :-

The said guideline, however, does not confer upon the Government employee a legally enforceable right.

7. The said view has been reiterated by Hon''ble Supreme Court in the case of Rajendra Roy Vs. Union of India (UOI) and Another, wherein the Apex Court has held as under:

It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the Order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification the Court and the Tribunal should not interfere with the order of transfer.

8. In the case of Bank of India Vs. Jagjit Singh Mehta, , the Hon''ble Supreme Court has held as under:

The said observations in fact tend to negative the respondent's contentions instead of supporting them. The judgment also does not support the Respondent's contention that if such an order is questioned in a Court or the Tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the Court or Tribunal can quash the order of transfer, if any of the administrative instructions/ guidelines are not followed, much less can be characterized as mala fide for that reason. To reiterate, the order of transfer can be question in a Court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions.

9. The said view was again reiterated by Hon''ble Supreme Court in the case of National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others,

10. Next argument advanced by learned counsel for the petitioner that the transfer order is against the principle of natural justice as the same has been passed during mid-session of the studies of his son/daughter, is also got no force as in the case of Rajendra Prasad Vs. Union of India (UOI) and Broadcasting, Government of India, Director, General, All India Radio Directorate Akashwani, Station Director, All India Radio and Station Director, All India Radio, after considering the judgment of Hon''ble Supreme Court in the case of Director of School Education Madras and Others Vs. O. Karuppa Thevan and Another 1996 (1) UPLBEC 347 this Court has held as under:-

The issue of transfer in mid academic session was considered by the Hon''ble Supreme Court and it was held that" the fact that children of the employee are studying should be given due weight, if the exigencies of the service are not urgent

Therefore, it is for the employer to examine as to whether transfer of an employee can be deferred till the end of the current academic session. The Court has no means to assess as what is the real urgency of administrative exigency. Thus, the Court is not inclined to consider this submission at all.

11. The same view has been reiterated by Division Bench of this Court in the case of Gulzar Singh Vs. State of U.P. and Others, and Another Division Bench of this Court in the case of S.P. Jindal Vs. State of U.P. 2002 (1) AWC 306 and also in the case of Jagendra Singh Vs. State of U.P. and Others (2009) 3 UPLBEC 2338.

12. For the foregoing reasons, I do not find any infirmity or irregularity in the impugned order of transfer dated 5.4.2011 passed by opposite party No. 3 and reliving order dated 20.11.2011 (Annexure No. 1) passed by opposite party No. 4 so for it relates to petitioner. However, the petitioner if so advised may make a representation for redressal of his grievances within a period of two weeks from today and after receiving the same, the opposite party No. 2 may consider and dispose of the same by speaking and reasoned order within a further period of two weeks thereafter in accordance with law. With the above above observations, writ petition is disposed of finally.