
(2011) 12 AHC CK 0137

In the Allahabad High Court

Case No : Service Single No. 8648 of 2011

Constable No. 669 Civil Police Suresh Kumar

APPELLANT

Vs

Director General Police U.P. Lko. and Others

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Citation : (2011) 12 AHC CK 0137

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Anil Kumar, J.—Heard Sri Rakesh Pathak, learned counsel for the petitioner and Sri Manjeev Shukla, learned State Counsel.

2. The facts, in brief, of the present case are that the petitioners are working as Constable in U.P. Police. Initially they were transferred out side the range of their present place of posting, as such for redressal of their grievance, approached this Court by filing Writ Petition No. 1913 (S/S) of 2011(Ram Prakash Singh and Others Vs. State of U.P. and Others), disposed of vide order dated 23.5.2011. The relevant portion of the same is quoted as under:

Accordingly, the writ petition is disposed of finally with the direction to the Deputy Inspector General of Police, Faizabad Region, Faizabad to consider and decide the representations contained as Annexure No. 6 to the writ petition, in accordance with law, within one month from the date a certified copy of this order is produced before him.

3. Thereafter by order dated 23.7.2011 (Annexure No. 3) passed by opposite party No. 3, petitioners are allowed to work and discharge their duties. Now by means of impugned order dated 31.10.2011(Annexure No. 1) passed by opposite party No. 2, petitioners have been transferred within the range of their present place of posting. Hence the present writ petition has been filed challenging the impugned order dated 31.10.2011.

4. Learned counsel for the petitioners submits that impugned order of transfer is illegal and arbitrary in nature as the same has been passed in mid session and their children are studying in Highschool and Intermediate and if they are compelled to go on the transferred place studies of children will suffer in the present era of competition, so the impugned order of transfer beside being illegal, against principles of natural justice and in violation of law as laid down by this Court in the case of Dr. A.K. Singh Vs. State of U.P. and Others 2005 (23) LCD 1055 has held as under:

We, therefore, while declining the entertain the writ petition, give liberty to the petitioner to make a fresh representation raising his grievance within a period of two weeks from today. If such a representation is made, the same shall be considered and disposed of expeditiously preferably within a period of six weeks, thereafter. For a period of eight weeks, the petitioner shall be allowed to continue at his present place of posting, if no one has joined in place of the petitioner and the operation and implementation of the transfer order dated 24.12.2004 contained in Annexure-1 to the writ petition in respect of the petitioner shall remain stayed till then.

5. In view of the above said fact, learned counsel for the petitioners submits that impugned order of transfer dated 31.10.2011 passed by opposite party No. 2 is liable to be set aside.

6. I have heard learned counsel for the parties and gone through the record,.

7. The sole question which is to be considered and decided in the present case is whether the petitioners who are working as Constable in police establishment, which is a discipline force, can be transferred in mid session as if their children are studying in Highschool and Intermediate thus on the said ground impugned transfer order can be set aside?

8. Answer to the above said question find place in the judgement of this Court 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."

Further, 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.

9. In view of the said facts, petitioner cannot derive any benefit from the case of Dr. A.K. Singh (Supra) as the said judgment is not applicable in the facts and circumstances of the case because admittedly in the matter in question petitioners have challenged the impugned order of transfer on the ground that the same has been passed in mid session and their children are studying, cannot be a ground for challenge the transfer order as stated herein above so I do not find any illegality or infirmity in the impugned order which is under challenged in the present writ petition.

10. No other points have been argued or pressed by the learned counsel for the petitioners.

11. For the foregoing reasons, writ petition lacks no merit and is dismissed as such.

12. No order as to costs.