
(2016) 03 AHC CK 0014
In the Allahabad High Court
Case No : Special Appeal No. 150 of 2016

Dhaneraj

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 AILLJ 236

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Bhupendra Nath Singh and Devendra Pratap Singh, Advocates, for the Appellant; C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

1. This special appeal has arisen from a judgment and order of the learned Single Judge dated 3 February 2016.
2. The appellant is an Assistant Sub-Inspector of Police. He was transferred on his request by the Deputy Inspector General of Police, Chitrakoot Division to Banda. Subsequently, on 3 November 2015, the appellant was transferred from Banda to Mahoba. The appellant filed a writ petition seeking a writ of certiorari to quash the order of transfer dated 3 November 2015, a mandamus to the Deputy Inspector General of Police, Chitrakoot Division not to transfer him from Banda to Mahoba and not to interfere in the "peaceful functioning" of the appellant and a mandamus to dispose of his representation.
3. The learned Single Judge declined to entertain the writ petition. The principal ground which has been urged before the learned Single Judge and in support of the special appeal is that the transfer was vitiated by mala fides. The learned Single Judge noted that the appellant made allegations against one Mohd. Raees Ahmad, Senior Assistant Sub-Inspector at Chitrakoot Dham. During the course of

the hearing, the learned counsel states that he is in the office of the Deputy Inspector General of Police. The allegation of the appellant is that Mohd. Raees Ahmad demanded commission from the appellant and since this was not paid, he has been transferred.

4. In evaluating whether a case of mala fides has been established, it would be necessary to advert to the pleadings in the writ petition. In paragraph 9 of the writ petition, the averment is as follows:

"That some construction is under gone, due to not given commission to senior Assistant Sub Inspector of Ministerial ASI (M) in the office of respondent no.2 namely Raees Ahmad, petitioner is maliciously transferred on 3.11.2015 to again district Mahoba, which is against the circular dated 12.8.2015, in the para no.10 of circular dated 12.8.2015 it is mention therein that time to work as the post of Assistant Sub Inspector of Ministerial ASI (M) in any district is 5 years and in a mandal 12 years."

5. The averment in paragraph 9 is sought to be verified in the affidavit filed in support of the writ petition on the basis of records. An allegation of mala fides involving a demand of commission should evidently not be based on records and hence, the verification was without application of mind and could not have been held to be proper. Besides, as the learned Single Judge noted, the allegation of mala fides is not such that could be accepted. The allegation is wholly vague and devoid of material particulars.

6. The next aspect of the matter which has been canvassed is that the Inspector General of Police, Allahabad Zone has, on 31 January 2016, called upon the Deputy Inspector General of Police, Chitrakoot Division to stay the transfer and to submit a report to him. According to the appellant, his case had also been recommended by the Superintendent of Police, Banda on 1 November 2015. Moreover, it has been submitted that on 9 November 2015, the Inspector General of Police, Allahabad Zone had directed the Deputy Inspector General of Police to submit a report to him so that appropriate action could be taken. The appellant has relied upon a judgment of a Full Bench of this Court in Tara Prasad Misra v. State of Uttar Pradesh & Ors, (1990) 2 UPLBEC 905, in support of the contention that the order which has been passed by a superior authority should be adhered to by a subordinate authority. The petition does not seek a mandamus in the writ petition for the enforcement of the order dated 9 September 2015.

7. What is particularly a matter of concern in these proceedings is the manner in which a member of the police force has utilised every possible avenue not to comply with an order of transfer by which he was posted from Banda to Mahoba. Merely because he was posted to Mahoba on his own request, would furnish no justification to him to be immune from a normal order of transfer which was passed in the exigencies of administration. The order of transfer was passed on 3 November 2015. The appellant challenged the order in the writ petition which was filed on 16 November 2015. In the writ petition, there was no order of stay

during the pendency of the writ petition. The mere pendency of the writ petition could not have been utilised not to comply with the order of transfer. Even after the writ petition was dismissed on 3 February 2016 which is nearly one month ago, the appellant has not complied with the order of transfer.

8. We are of the view that a litigation should not be utilised as a ploy to defeat the discipline of the police force as has been done in the present case. Mala fides have to be proved with precision. In the present, that is clearly absent. The case of the appellant that his children are studying at Banda and are going to appear in the ensuing Intermediate Examination - 2016 could, at the best, be a ground to make a representation, but here again, we see no reason for the appellant not to comply with the order of transfer. The general principles which have been laid down in the judgments relied upon by the learned counsel appearing on behalf of the appellant in *Om Prakash Singh v. State of Uttar Pradesh*, 2008 (2) ESC 1141 (All) (DB), and *S.C. Duggal v. Department of Personal, Union Bank of India, Bombay & Ors*, 1996 LLR 792, are well settled. Equally, the law is also well settled that the Court must be circumspect in interfering with an order of transfer in exercise of writ jurisdiction under Article 226 of the Constitution unless a case of statutory violation or mala fides is established by means of cogent material which is brought before the Court. This is clearly not the situation in the present case.

9. The appellant, in our view, should not be permitted to take shield behind the correspondence which was made between the Inspector General of Police, Allahabad Zone and the Deputy Inspector General of Police, Chitrakoot Division. The administrative authorities are competent enough to run their respective departments and to ensure compliance of their orders. A member of the police force however must abide by the discipline of the organization. Hence, we see no reason to interfere with the judgment and order of the learned Single Judge.

10. The special appeal is, accordingly, dismissed. There shall be no order as to costs.