
(2010) 12 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 15721 of 2010

Dilipbhai Rudabhai Parmar

APPELLANT

Vs

Chief Commissioner and Others

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 1 GLH 662

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Hasit H. Joshi, for the Appellant; None for Respondent 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—This petition, preferred under Article 226 of the Constitution of India, challenges order dated 23.10.2010 passed by Respondent No. 4, whereby the request/representation of the Petitioner for transfer to Customs Division, Porbandar has been rejected.

2. The brief facts of the case are that, the Petitioner is a driver working in the Office of the Commissioner of Customs (Preventive). He came to be transferred by the Assistant Commissioner, Customs Division, Porbandar (Respondent No. 4) to the Commissionerate of Customs (Preventive), Jamnagar by order dated 23.6.2008, with immediate effect, on administrative grounds. It is the case of the Petitioner that in the year 2009 he came to know that one of the drivers from the Customs Division, Porbandar, had been transferred and posted to D.R.I. Unit, Gandhidham, therefore, one post of driver was vacant at the Customs Division, Porbandar. The Petitioner made a representation dated 19.5.2009 requesting to be posted at Customs Division, Porbandar. It is averred in the petition that the Petitioner belongs to Porbandar and his entire family is settled there. The mother of the Petitioner is aged more than 80 years and is in need of attendance, everyday. The Petitioner is the only son having no other brothers or sisters, so he

is required to attend to his mother, in her old age. However, due to his transfer from Porbandar to Jamnagar, the Petitioner is unable to look after his mother effectively. It is further averred that the son of the Petitioner is studying in Standard 11 in the Science Stream, and requires the assistance of his father, the Petitioner, in his studies. Further, because of the transfer of the Petitioner to Porbandar, he is incurring costs in running two establishments, one for himself and the other for his family, at Porbandar; which he can ill-afford in his small salary.

3. It appears that the Petitioner made some representations, the last one being representation dated 24.2.2010, wherein it was stated by him that another driver has now retired from service with effect from 28.2.2010, therefore, he may be posted at Porbandar in place of the said driver. As the representations of the Petitioner remained undecided, the Petitioner approached this Court by filing Special Civil Application No. 8855/2010. This Court (Coram : A.L. Dave,J.), by order dated 4.8.2010 disposed of the petition with a direction to the Respondent authorities to consider the representations of the Petitioner dated 19.5.2009 and 24.2.2010 expeditiously, and preferably within a period of 3 months. Accordingly, Respondent No. 4 decided the representations dated 19.5.2009 and 24.2.2010 of the Petitioner, by passing the impugned order dated 23.10.2010, whereby the request of the Petitioner for transfer to Porbandar, has been rejected. Aggrieved thereby, the Petitioner has approached this Court by filing the petition.

4. Mr. Hasit H. Joshi, learned Counsel for the Petitioner has submitted that there are two vacancies of drivers available at Porbandar, therefore, there is no justification for not considering the request of the Petitioner for transfer from Jamnagar to Porbandar. That the Petitioner has taken a loan from a Bank for purchase of a house at Porbandar, against which he is paying monthly installments. The Petitioner is incurring unnecessary expenses in maintaining two households at Jamnagar and Porbandar respectively, which he is unable to afford. That the son of the Petitioner is studying in Standard 11, in the Science Stream, and the presence of the Petitioner is required in order to render assistance to him in his studies. Lastly, it is submitted that the impugned order dated 23.10.2010 is an unreasoned one, therefore, the same deserves to be quashed and set aside, and the Respondents be directed to consider the case of the Petitioner.

5. I have heard Mr. Hasit H. Joshi, learned Counsel for the Petitioner, perused the averments made in the petition, contents of the impugned order and other documents on record. The transfer of the Petitioner from Customs Division, Porbandar to the Commissionarate of Customs, Jamnagar, has been directed by order dated 23.6.2008. This order is annexed as Annexure-A to the petition. A perusal thereof makes it clear that the Petitioner has been transferred from Porbandar to Jamnagar on administrative grounds. By the same order, the Petitioner has also been directed to surrender the Government residential accommodation at Porbandar, one week from the date of the said order. The

Petitioner has not specifically challenged this order in the present petition. Further, it is not the case of the Petitioner that the order of transfer suffers from any illegality or infirmity. The only grievance of the Petitioner is that the representations made by him, requesting that he be transferred from Jamnagar back to Porbandar, have been rejected by the impugned order. A perusal of the said order makes it clear that as the Petitioner has been transferred on administrative grounds, his request for transfer to Porbandar cannot be considered.

6. Before dealing with the submissions advanced by the learned advocate for the Petitioner, it would be instructive to advert to a few judgments illustrating the settled legal position in this regard. In *National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others*, the Supreme Court held that:

No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but 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 mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned. (Para 5)

7. Further, in *State of U.P. and Others Vs. Gobardhan Lal*, the Supreme Court has laid down the following principles:

It is too late in the day for any Govt. servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. The order of transfer made even in transgression of administrative guidelines cannot

also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision. (Para 8)

8. If examined in the light of the above principles of law, the case of the Petitioner is not that the order of transfer dated 23.6.2008 is an outcome of malafide exercise of power, or has been passed in violation of any statutory provisions, or has been passed by an authority not competent to do so. The only ground of challenge is that there are two posts of drivers vacant at the Customs Division, Porbandar, against one of which the Petitioner can be accommodated.

9. Who should be posted where, is for the employer to decide and the Court cannot lightly take over such administrative or executive functions. The employer is the judge of how to distribute its manpower, in the exigencies of service and for the smooth running of the administration. Just because there may be two vacant posts of drivers available at Porbandar, as stated by the Petitioner, it is not incumbent upon the Respondents to transfer the Petitioner back to Porbandar against one of those posts. The services of the Petitioner may be required at Jamnagar, in the interest of the administration. This is stated in the transfer order and in the impugned order dated 23.10.2010, as well. The submission of the learned Counsel for the Petitioner, in this regard, therefore, has no force.

10. The other contentions raised by the learned Counsel for the Petitioner, are that the family of the Petitioner, including his aged mother and son, who is studying in the Science stream, are staying at Porbandar, and the Petitioner cannot afford maintaining two households. This submission is also devoid of merit, as the order of transfer dated 23.6.2008 makes it clear that the Petitioner was required to give up his Government accommodation at Porbandar, pursuant to his transfer, within one week from the date of the order. Meaning thereby, that if the Petitioner is keeping his family at Porbandar, it is of his own volition, for which the Respondents are not to be faulted. The Petitioner can very well take care of his family at Jamnagar, if he so desires. The payment of the installments of Bank loan, have no relevance to the order of transfer, or rejection of his request for being transferred back to Porbandar, and does not take the case of the Petitioner any further.

11. Regarding the last submission made by the learned Counsel for the Petitioner, that the impugned order dated 23.10.2010, whereby the request of the Petitioner for being transferred to Porbandar has been rejected, is an unreasoned one, a perusal thereof indicates that the request of the Petitioner could not be considered as he has been posted at Jamnagar on administrative grounds. Coupled with the order of transfer itself, which has also been passed on administrative grounds, no other reasons need be indicated by the Respondents. The Supreme Court has, time and again, cautioned against interference of the Courts in transfer matters, in the absence of malafide exercise of power, violation of statutory provisions or where the order has been passed by a competent authority. Admittedly, in the present case, the Petitioner is not alleging that there

is a malafide exercise of power or violation of any statutory provisions. Nor is it the case of the Petitioner that the order of transfer has been passed by an authority that is not competent to do so.

12. In view of the settled principles of law as enunciated by the Supreme Court in the judgments quoted hereinabove, which are applicable to the present case, in my considered view, there is no justifiable reason to interfere with the impugned order of transfer (though not specifically challenged in the petition) or order dated 23.10.2010, rejecting the representation of the Petitioner.

13. The petition is devoid of merit and deserves to be rejected. It is, accordingly, rejected.