
(2006) 10 AHC CK 0012
In the Allahabad High Court

Dr. Anup Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Citation : (2006) 3 UPLBEC 2664

Hon'ble Judges : V.C. Misra, J;Amitava Lala, J

Bench : Division Bench

Judgement

Amitava Lala, J.—The petitioner's contention is that he is a disabled person, therefore, it is difficult for him to discharge his duty as doctor upon being transferred from the present place of posting to another. The transfer order is dated 10th July, 2006. Challenge has been thrown by filing the writ petition only on 6th October, 2006. However, the petitioner took a plea that he has made his representation on 25th July, 2006 explaining his disease as in paragraph 6 of the writ petition. He has stated that the Chief Medical Officer, Ghaziabad and other member surgeons certified that the disability of the petitioner is 60%. As per the certificate dated 19 December, 2002 he is permanently physically handicapped person.

2. He relied upon the Division Bench judgment of the Lucknow Bench of this High Court dated 26th July, 2006 passed in Writ Petition No. 965(SB) of 2006 (Dr. Anil Bajaj and Anr. v. State of U.P. and Ors.) and Writ Petition No. 942 (SB) of 2006 (Dr. Ramesh Pal Singh Panwar v. State of U.P. and Anr.) to establish that such Division Bench referred the matter for the purpose of due consideration by the authority even in the teeth of transfer when found disability of 80% and 55% of the petitioners respectively. It was further observed by the Division Bench that disability would be one of the criteria for the purpose of due consideration at the time of transfer. In the aforesaid judgment their Lordships also observed that the order is made being an attempt to supplement the order, which has been passed by another Division Bench of this Court in connection with the transfer in re: Civil Misc. writ petition No. 72532 of 2005 Dr. Virendra Kumar Pal v. State of U.P. and

Ors. Such Division Bench has passed an order to regulate transfer of the incumbents who are holding the post at a place or within a District very long. However, it has also been observed by the Lucknow Bench that the doctors against whom transfer order have been passed in May and June, 2006, if have not made any representation till the date of the order i.e. 26th July, 2006 nor have approached the court, it can be presumed that they felt satisfied with the transfer orders and they have no grievance.

3. According to us, the transfer is part of the service, which cannot be interfered with particularly when it is in respect of public interest or in administrative exigency. However, subject to joining in the transferred post, personal difficulties can be considered.

4. Here we have to consider what is the nature of duty to be discharged by a doctor. A doctor has to treat others particularly in the public hospital where there is huge rush of patients. Therefore, he has to be physically fit and mentally alert in all respect. There might be temporary disablement, which can be cured. For such disability any order, which is required to be passed by the State Government, can be passed stopping transfer for the time being. In the rarest of the rare case the Court can also interfere. But when a certificate has been obtained on 19th December, 2002 i.e. about 4 years before this date about the permanent disability of 60% by the incumbent then it is a question before the Court how such doctor will render service to the patients and whether he will be burden on the State or not. In these types of cases, it is proper for the State to call the list of permanent disabled doctors at least having 50% of such disability from each Districts and place it before high powered Medical Board to ascertain the truth and if found genuine, offer them for voluntary retirement. In case it appears that any incumbent is relied upon fake document only to stall the transfer process, disciplinary action will be taken. Showing any sympathy to them at the cost of the patients in attending hospitals is misplaced sympathy. On the other hand a Doctor is doing highly specialized and sophisticated job, therefore, if he loses his service he can be able to survive by his private practice, in the manner as he will desire. Since it is highly sophisticated job, there is no dearth of work. But not rendering service to the patient at public places i.e., hospitals etc. as per the requirement of the State and obtaining salary is an offence to the oath of a doctor.

5. Therefore, our observation and order is also not in conflict with the order, which has been passed in the matter of Dr. Virendra Kumar Pal (*supra*) or in the matter of Dr. Anil Bajaj and Dr. Ramesh Pal Singh Panwar etc. (*supra*) but in further supplement to consider the problem not only on the question of right but also on the question of duty i.e. both ways to keep check and balance otherwise the flood gate will be opened to obtain stay order of transfer on the ground of disability and the court will be bound fall on misplaced sympathy.

6. Transfer is an incident of service. It should not be interfered with unless there is apparent illegality, malafide or cause of exceeding jurisdiction. This is not such

a case. Therefore, we do not want to interfere with the same.

7. However, subject to joining of the petitioner in the transferred place he will be entitled to place his representation to the higher authority about his personal inconvenience for the purpose of due consideration, who will do the same sympathetically and take a decision preferably within one month from the date of communication of the order upon giving fullest opportunity of hearing and by passing a reasoned order thereon. For the purpose of effective adjudication a copy of the writ petition and its annexures can be treated as part and parcel of the representation.

8. With the above observation the writ petition is, thus, disposed of.

9. No order is passed as to costs.

10. Certified copy of this order be supplied to the petitioners on payment of usual charge and free of cost to the learned Standing Counsel.

V.C. Misra, J.

11. I agree.