
(2000) 04 AHC CK 0048
In the Allahabad High Court
Case No : C.M.W.P. No. 2893 of 2000

Gobardhan Lal

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 03-04-2000

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2000) 2 AWC 1515 : (2000) 87 FLR 658 : (2000) 2 UPLBEC 1356

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Gaurav Kumar Srivastava, for the Appellant;

Judgement

M. Katju, J.—This writ petition has been filed against the impugned transfer order dated 8.12.1999 copy of which is Annexurc-1 to the petition. By that order the petitioner who was District Supply Officer, Meerut was transferred to the headquarter at Lucknow.

2. In this case on 19.1.2000 we passed the following interim order :

"Heard learned counsel for the petitioner and the learned Chief Standing Counsel.

The petitioner has challenged the transfer order dated 8.12.1999, Annexure-1 to the writ petition. The petitioner is District Supply Officer, Meerut. By the impugned transfer order, he has been transferred from Meerut to the head quarter at Lucknow. Annexure-2 is copy of the letter dated 1.12.1999 sent by a local MLA Sri Atul Kumar to the Minister of Food and Civil Supply, Government of U. P. in which it has been written that the petitioner does not give importance to MLAs and he is lodging false cases against businessmen, and therefore, he should be immediately removed from Meerut and one Sri Mohan Singh should be posted as District Supply Officer, Meerut, since Sri Singh's functioning is in accordance with the policy of the B.J.P. However, the District Magistrate, Meerut, in his letter dated 10.12.1999 has written to the Secretary, Food and Civil Supply Department. U. P. that the petitioner is doing good work and he has greatly

improved the functioning of the office of the District Supply Officer and there is no complaint against him. Thereafter, the petitioner was transferred by the impugned order.

We are prima facie of the opinion that the petitioner's transfer was because of the aforesaid letter of the MLA.

A large number of petitions are coming up before this Court challenging transfer orders of Government servants at the behest of politicians. We are distressed to note that over the last few decades there has been continuous politicalisation of the bureaucracy, and harassment of the Government servants due to political interference. Under the Constitutional Scheme relating to Government servants, as implicit in Part XIV of the Constitution, the Government servants should be politically neutral in discharging their duties. No doubt the Government may formulate policies and it is the undoubted duty of Government servants to faithfully implement these policies (provided they are not illegal or unconstitutional) even if the Government servants disagree with the said policies, but the Government servants should not be politically allied with any party. Under the British pattern of administration which we have adopted under our Constitution it is implicit that while the Minister can lay down the policy (which has to be implemented by the Government servants), there should not be day-to-day interference with the routine matters of the department by the Minister. In particular, transfers and postings of Government servants is in the discretion of the Senior Officer of the concerned department, who has to pass such orders on administrative grounds only and not for political, caste, monetary or other extraneous consideration. It is regrettable that over several decades there has been undue political interference in the bureaucracy due to which standards and independence of the bureaucracy have been adversely affected. Frequent transfers in fact demoralize the working of the Government servants, besides imposing an extra financial burden on the depleted State exchequer.

We are deeply distressed to know from media reports (in T.V. and newspapers) that transfers will not be made on the recommendations of the local unit of the ruling party. This is wholly unconstitutional.

The time has, therefore, now come to lay down proper guidelines by the Court in this connection. We propose to do so in this case.

However, before doing so, we grant the learned Chief Standing Counsel three weeks time to file a counter-affidavit. List as part-heard before us on 14.2.2000, on which date the Chief Secretary himself shall file a personal affidavit and shall explain in detail as to what is the policy and objective criteria of the Government regarding transfers and postings of Government servants and what instructions have been issued by him in this connection to ensure that there is no undue political interference in the bureaucracy and in the transfers and postings of Government servants.

On that date, the Chief Secretary, U. P.. must either himself appear before us or

nominate a senior officer (not below the rank of Secretary to the U. P. Government) for this purpose.

Until further orders, the operation of the impugned transfer order dated 8.12.1999 shall remain stayed. Learned Standing Counsel will communicate copy of this order to the Chief Secretary, U. P. Government."

3. The facts of the case are mentioned in the above order and hence it is not necessary to repeat the same. However, we are reiterating the general principles mentioned in the above order.

4. A counter-affidavit has been filed by the Chief Secretary of the U. P. Government. In Annexure-CA 1 of the same the policy regarding transfer has been mentioned Annexure-CA 2 is a copy of the order of the State Government dated 23.12.1998, directing all staff to follow the aforesaid policy.

5. A counter-affidavit has also been filed by Sri Prabhat Chandra Chaturvedi, Secretary Food and Civil Supplies, U. P., Lucknow. In para 5 of the same, it has been stated that the alleged letter of the MLA dated 1.10.1999 Annexure-2 to the writ petition was never written by the said MLA Shri Atul Kumar and is a forged letter and Shri Atul Kumar has informed the Deputy Secretary, Food and Civil Supplies about this by the letter dated 1.2.2000. In para 6 of the counter-affidavit, it is stated that the letter dated 1.12.1999 and 19.12.1999 have been issued by a fictitious person, and respondent No. 5 Atul Kumar has not signed the same. In para 7, it is stated that the petitioner was suspended on 10.2.1997 for alleged serious irregularities and misconduct but was reinstated though departmental enquiries are still pending. In para 8 it is stated that the petitioner while posted as District Supply Officer, Hamirpur, committed serious irregularities and was suspended on 15.12.1997 but was reinstated on 20.3.1999, although the departmental proceedings are still continuing against him. In para 11 of the counter-affidavit, it is stated that the petitioner is real brother of MLA Shri Ram Pal Verma and hence to get the transfer order cancelled, he put pressure from several political sources. Photostat copies of some letters are Annexure-C4. In para 13 of the counter-affidavit it is stated that certain enquiries are going on against the petitioner and hence in the public interest it was decided to attach him to the head office at Lucknow. In para 19 of the counter-affidavit, it is stated that the petitioner was transferred on administrative ground. In para 20, it is stated that the transfer order was not issued on political pressure.

6. In view of the conflicting statements in the affidavits, it is not possible for us to decide the disputed questions of fact in writ jurisdiction as to whether the transfer order was passed due to political pressure or not. However, we wish to lay down some general principles regarding transfers and postings of Government servants in this case, as observed by us in our order dated 19.1.2000.

7. This is necessary because a large number of petitions are being filed in this Court challenging the orders of transfers and postings on the ground that they

were issued on political consideration due to the pressure of some political persons, or on some other extraneous consideration. This phenomenon is to be seen not only in the State of U. P. but in other States in India also. One of us (M. Katju, J.) has already laid down in a comprehensive judgment in *Smt. Gayatri Devi v. State of U. P.*, 1997 (2) UPLBEC 925, the basic principles which must be adopted in transfer matters, and we endorse the views expressed in the aforesaid judgment.

8. In *Smt. Gayatri Dent's* case (supra) this Court has relied on the decisions of this Court in *Pradeep Kumar v. Director, Local Bodies* 1991 (1) UPLBEC 156 *Pawan Kumar Srivastava Vs. U.P. State Electricity Board and Others*, and *Sheo Kumar Sharma v. Basic Shiksha Adhikari* 1991 UPLBEC 69 and we agree with the view taken in those judgments. In these decisions, the Court held that transfer orders should not be passed on political considerations but only on administrative grounds.

9. In our country although it has not been mentioned expressly in the Constitution or in any statutory rule that transfer orders shall not be passed on political consideration but only on administrative grounds, yet it is well-settled that there are not only Constitution provisions but also conventions in the Constitution which have to be followed vide *Supreme Court Advocates-on-Supreme Court Advocates-on-Record Association and another Vs. Union of India*, . In our country, we have borrowed the British pattern of administration, and hence, in our opinion, where the constitutional provision or the law relating to Government servants are silent, the British conventions will ordinarily apply. One British convention which is applicable to the Civil Services is that civil servants and other public authorities are expected to be politically neutral. Unless this principle is followed strictly, there is bound to be chaos in the administration, particularly in these days when Governments change frequently. Hence, it is absolutely essential that this healthy principle is followed at every level. As regards transfers and postings of Government servants, we are of the opinion that this matter is exclusively in the hands of the senior officer of the Department to decide. No doubt, if an MLA or any political person or even a layman has any grievance against a civil servant, he can bring the grievance to the notice of the senior officer of the Department, but it is exclusively in the hands of the senior officer to transfer the Government employee or not, and that too only on administrative considerations.

10. Unfortunately in U. P. (and in some other States too) in the last few decades or so, there has often been excessive political interference in the administration. In *Gayatri Devi's* case (supra) mention has been made of the second report of the Police Commission where instances have been given where the Inspector General of Police could not transfer even an Inspector of Police, and when he tried to do so in fact, the Inspector General of Police was transferred and the transfer of the Inspector was cancelled, because the Inspector had connections with the political leadership. Unless this practice is stopped, no police officer can

effectively control his subordinates. We, therefore, reiterate that transfer is a matter exclusively in the hands of the senior officer of the department, and it is not to be done on political pressure. The Chief Secretary, U. P., is directed to issue necessary instructions to all departments in the light of the above observations expeditiously.

11. It may be mentioned that in the Hindi magazine "Maya" of 31.12.1999, it has been mentioned that between July, 1991 to November, 1999, i.e. in about eight and a half years, about 5137 Government officers have been transferred. Many District Magistrates and S.S.Ps. have been transferred three or four times in a year, e.g., in the districts Ambedkar Nagar. Padrauna. Siddharth Nagar, Bhadohi. Hamirpur. Mahoba, etc. Often transfers and postings were made for caste or political reasons. It is often found that those Government servants who are close to certain politicians (due to caste or other affiliation) get "cream" postings. In the magazine "India Today" of 14.2.2000, it has been mentioned that in U. P. 160 District Magistrates and 200 S.Ps. were shifted last year. In the past five years, around 800 District Magistrates and 1,000 S.Ps. were transferred. Nearly half the number of I.A.S. Officers in the State have had less than one year's tenure in the past five years. Consequently, the State's spending on transfer allowance skyrocketed from just Rs. 1.6 crore in 1995-96 to Rs. 23 crore in 1998-99. This has also contributed to the State's financial crisis.

12. In our opinion, the citizens have a fundamental right to good governance, and this right to have good governance is part of Article 21 of the Constitution. Article 21 has been interpreted by the Supreme Court in several decisions to mean that the citizens have a right to a dignified and civilized life, and not merely an animal life. Unless the citizens get good governance, it is not possible for them to have a dignified and civilized life. In our opinion, good governance is only possible if the Government servants are politically neutral and are not transferred or otherwise victimized at the instance of any political party or politicians, as is the practice in England. We are distressed at reading in today's Times of India (Delhi edition) of the transfer of the I.G. Prisons, Shrikrishna merely because of an altercation with an MLA. If transfers are done in this manner, no civil servant can ever function properly.

13. In this connection reference may be made to the book "Nice Guys Finish Second" written by Shri B. K. Nehru, former I.C.S. Officer and former Governor of several States. On page 556 of this book. Shri B. K. Nehru said :

"I also studied the organization of the Home Civil Service (in England) and how it was that in spite of a vigorous democracy the civil service had retained its independence in that it was guided by the rules and the law and not by the whims and Wishes of transient ministers. The answer was simple. All the three powers which are exercised by the minister in India to bend the civil servant to his will, namely, appointments, transfers and suspensions, are not exercisable by them at all in the United Kingdom. They are exercised by a very small group of Senior Secretaries presided over by the Secretary of the Civil Service

Department who reports to the Prime Minister direct. It is they who appoint people, transfer them and punish them, not the ministers. The Prime Minister of course, approves their proposals, but when I asked the Head of the Civil Service Department what would happen if the Prime Minister refused to sign, he was shocked out of his wits. He said, "But that cannot happen." Such is the power of the conventions of the British Constitution, which, if broken, would lead to a furore in Parliament."

14. The above statement of Shri Nehru clearly shows how the British administration functioned, specially regarding transfers and postings of civil servants, and we should follow this healthy convention.

15. We are also of the opinion, that the Government should fix some specific period (say of three years) for the posting of a Government servant at a particular place, otherwise the Government servants will have no stability in life. Several Government servants are transferred very frequently and this is bad for the morale of the service. Apart from this, a heavy burden is cast on the exchequer due to such transfers. Hence, we direct the Government to fix at the earliest a period of posting during which the Government servants will not be ordinarily transferred or disturbed unless there are some very exceptional grounds, which must be recorded in writing.

16. Having laid down the above principle regarding transfers and postings of Government servants, we direct, that in all cases where a civil servant has a grievance that his transfer was due to political pressure or some other extraneous consideration he may make a representation to the Chief Secretary to the U. P. Government who will either himself or through one or more senior officers or committees to be nominated by him decide the said representation against the transfer order within six weeks of making such representation. The representation shall be decided on purely administrative ground and ignoring any political or other extraneous consideration, keeping firmly in mind the consideration that a Government servant is expected to be politically neutral, and non-partisan. The Chief Secretary, or his nominee, shall also have power to grant stay of the transfer order till final disposal of the representation.

17. As regards transfers and postings of class I officers in U. P., we direct the State Government to set up a Board similar to the Civil Services Board (C.S.B.) which exists in the Central Government. The functioning of the Civil Services Board at the Centre has proved to be good and efficient from the point of view of ensuring that the civil servants are politically neutral and fair. Hence, we direct that a similar board be constituted by the U. P. Government in consultation with the Chief Secretary, U. P. within two months.

18. Some of the directions we have given may amount to Judicial legislation. However, it is accepted in the modern age that Judges also legislate. The Austinian positivist jurisprudence of the 19th Century has been replaced by sociological jurisprudence in the 20th Century which permits legislative activity

by the judiciary. In this connection, reference may be made to the decision of the Constitution Bench of the Supreme Court in *Mrs. Sarojini Ramaswami Vs. Union of India and others*, (paragraph 92) in which the Supreme Court observed :

"In this context, it is also useful to recall the observations of R. S. Pathak. C.J., speaking for the Constitution Bench in *Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.*, about the nature and scope of Judicial review in india, The learned Chief Justice stated thus :

".....It used to be disputed that Judges make law. Today, it is no longer a matter of doubt that a substantial volume of the law governing the lives of citizens and regulating the functions of the State flows from the decisions of the superior Courts. "There was a time," observed Lord Reid. "when it was thought almost indecent to suggest that Judges make law--they only declare it..... But we do not believe in fairy tales any more."

19. The petitioner in this case can make a representation to the Chief Secretary to the State Government who will decide the representation himself or through his nominee in the manner mentioned above.

20. We may mention that it has often come to our notice in cases where transfer or posting orders are challenged that the petitioner files a copy of a letter of an MLA or other political person recommending transfer of the Government servant, but in the counter-affidavit, it is alleged that the letter is forged. It is often difficult in such cases to ascertain whether the letter is genuine or forged, and in view of such disputed questions of fact writ Jurisdiction is hardly appropriate. Hence, in such cases it is better for the Government servant to approach the Chief Secretary, U. P. Government and this internal mechanism will be better for this purpose. The Chief Secretary is a very Senior Government Officer with sufficient maturity and seniority to withstand political or other extraneous pressure and deal with the issue fairly, and we are confident that he will do justice in the matter to civil servants. This will also avoid or reduce the floodgate of litigation of this nature in this Court. As regards Class I officers, the Civil Service Board shall be constituted for dealing with their transfers and postings (as already directed by us above).

21. With the aforesaid direction the petition is disposed of.