
(1997) 10 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4278 of 1996

Jagdish Chandra Ozha

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 13-10-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1997) 3 RLW 2091 : (1998) 3 WLC 381 : (1997) 2 WLN 247

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed by the petitioner for issuing direction to the respondents to transfer the petitioner and his wife to Jodhpur city area in strict compliance with the transfer policy issued by the respondents for the year 1996-97.

2. Petitioner and his wife are Teachers Gr. II and had been posted in 1992 and 1994 respectively in the rural area i.e. in villages Khara Bera school. According to the petitioner, the transfer policy issued by the respondents contained in Annex. P/I entitles him and his wife to be transferred to city area. Petitioner has also raised the grievances that a large number of persons, junior to petitioner and his wife have been posted in city area ignoring the claim of the petitioner. The names of such persons have been given in Ground (iii) to the petition, though the said persons had not been impleaded as respondents. Petitioner further contends that not transferring him and his wife to the Jodhpur city area amounts to discrimination and violates the mandate of Article 14 of the Constitution of India. There are also allegations of malafide against the respondents, though no respondent has been impleaded by name.

3. Heard Shri R.P. Dave, learned Counsel for the petitioner.

4. The issue of transfer and posting has been considered time and again by the Apex Court and entire law has been settled by catena of decisions by the Apex

Court and it is entirely upto the competent authority to decide when, where and at what point of time, a public servant is to be transferred from his present posting. Union of India and Others Vs. S.L. Abbas, ; Mrs. Shilpi Bose and others Vs. State of Bihar and others, ; State of Orissa and another Vs. Radheshyam Nanda, ; Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, ; State of Uttar Pradesh v. Dr. D.N. Prasad Balwant Singh and another Vs. State of Punjab, N.K. Singh Vs. Union of India and others, and Abani Kanta Ray Vs. State of Orissa and Others,

5. An employee holding a transferable post cannot claim any vested right to work on a particular place as the transfer order does not affect any of his legal rights and Court cannot interfere with a transfer/posting which is made in public interest or on administrative exigency. In Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, , the Hon"ble Supreme Court has observed as under:

Transfer of a Govt. servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Govt. servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration.

6. Similarly in Union of India and Others Vs. H.N. Kirtania, , the Hon"ble Apex Court observed as under:

Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide.

7. The issue of "modus animus" was considered in Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, wherein the Supreme Court has held as under:

It has been held time and again by this Court that the High Court would be justified in refusing to carry on investigation into the allegation of malafides, if necessary particulars of the charge making out a prima facie case are not given in the writ petition. Keeping in view the well established rule that the burden of establishing malafide lies very heavily on the person who alleges it and considering all the allegations made by the appellant in regard thereto, we do not think that they could be considered as sufficient to establish malus animus.

8. Similarly in E.P. Royappa Vs. State of Tamil Nadu and Another, , the Supreme Court observed as under:

Secondly we must not also overlook that the burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved and the very seriousness of such allegations

demands proof of a high order of credibility...In this context it may be noted that top administrators are often required to act which affect others adversely but which are necessary in the execution of their duties. These acts may land themselves to mis- constructions and suspicion as to the bonafide of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other, not because of any special status which they are supposed to enjoy, not because they are highly placed in social life or administrative set-up...these considerations are wholly irrelevant in judicial approach.. .but because otherwise, functioning effectively would become difficult in a democracy.

9. The Supreme Court in *Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others*, observed as under:

The court would be justified in refusing to carry out investigation into allegations of malafides. If necessary particulars of the charge making out a prima facie case are not given in the petition. The burden of establishing mala fides lies very heavily on the person who alleges it. The petitioners who seek to invalidate the impugned order.... must establish the charge of bad faith or bias of misuse by the Govt. of its powers.

10. In *Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others*, . The Supreme Court observed as under:

That it was somewhat unfortunate that allegations of malafide which could have no foundation in fact were made and several cases which had come up before this Court and other courts and it had been found that these were made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of which might at least stick. It is, therefore, the duty of the Courts,...to scrutinize these allegations with care so as to avoid being in any manner influenced by them in cases where they have no foundation in fact. . . .Therefore, while the court should be conscious to deal with the allegations of malafide caste aspersions on holders of high office and power, the court cannot ignore the probabilities arising from proved circumstances.

11. In *M. Sankaranarayanan, IAS Vs. State of Karnataka and others*, , the Supreme Court observed as under:

It may be permissible in an appropriate case to draw a reasonable inference of malafide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of institution, surmise or conjecture

12. In *N.K. Singh Vs. Union of India and others*, , the Supreme Court has held as

under:

The inference of malafides should be drawn by reading in between the lines and taking into account the attendant circumstances. . .No other suspicious circumstance is made out to permit the contrary inference. No roving inquiry into the matter is called for or justified within the scope of judicial review of a transfer scrutinised with reference to the private rights of an individual....Unless the decision is vitiated by malafides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicial manageable standards for scrutinising transfers and the courts lack the necessary expertise for personnel management of all Govt. departments. This must be left in public interest to the departmental heads subject to be limited judicial scrutiny indicated.

13. In view of the above, the petitioner in the instant petition has not made any firm foundation for alleging that their posting is contrary to any statutory provision or has been actuated by any malice. Vague and mellow allegations of malafides without material to substantiate the same do not warrant any interference by this Court. Moreover, the petitioner has not impleaded any respondent by name. Thus, the issue of malafide cannot be considered. (vide *Banavalikar J.N. Dr. v. Municipal Corporation of Delhi* AIR 1996 SC 326 and *All India Bank Officers Federation and Ors. v. Union of India and Ors.* 1996 (8) J.T. 550).

14. Mr. Dave has vehemently argued that the transfer policy issued by respondents is binding on them and, they are bound to transfer/post the petitioner and his wife in Jodhpur city area.

15. In *Union of India v. S.L. Abbas* (supra) the Apex Court had observed that the Govt. instructions on transfer are mere guidelines without any statutory force and the Court or Tribunal cannot interfere with the order of transfer unless the transfer order is passed malafide or where it is made in violation of the statutory provisions.

16. Similarly the Supreme Court in *Bank of India Vs. Jagjit Singh Mehta*, , has observed as under:

There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. Desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice. Even though their preference may be taken into account while making the decision in accordance with administrative needs. In case of *All India Services*, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship, if the administrative needs and

transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case, the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by "accepting such a promotion and any appointment in the All India Services with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incident of All India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places..

No doubt the guidelines require the two spouses to be posted at one place as far as practicable but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect alongwith the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and claim of other employees.

(emphasis added)

17. This, it is clear that the transfer policy contained in Annex. P/1 does not create any legal right in favour of the petitioner or his wife. It is settled law that writ under article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when there is a complaint by the petitioner that there is a breach of the statutory duty on the part of the respondent. Therefore, there must be judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke the writ jurisdiction. *State of Kerala and Others Vs. K.G. Madhavan Pillai and Others*, ; *State of Kerala Vs. Smt. A. Lakshmikutty and others*, ; *Mani Subrat Jain and Others Vs. State of Haryana and Others*, ; and *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*,

18. In *Shilpi Bose's* case (*supra*), the Apex Court has held that order of transfer/posting "Issued by the competent authority do not violate any of her legal right". The employee holding a transferable post cannot claim any vested right to claim posting at a particular place.

19. Issue of seniority and giving the discriminatory treatment to employees in transfer/posting cannot be clubbed together. Seniority of the employee is an interest acquired by him under the prevailing/ applicable rules. The Apex Court in *Indian Administrative Service (S.C.S.) Association, U.P. and Others Vs. Union of India (UOI) and Others*, has held that an employee has no vested right to seniority but he has an interest to seniority acquired by working out the rules. It could be taken away only by operation of valid law. This view has been approved

and fortified by the, Hon"ble Apex Court in Akhil Bhartiya Soshit Karamchari Sangh and Another Vs. Union of India, through its Secretary, Ministry of Railway and Others, While issue of transfer/posting is merely a condition of service and cannot be equated with the issue of seniority. Transfer/posting being a condition of service, cannot be claimed by the employee as a vested right or interest. The concept of vested right has been explained by the Apex Court in Masammat Bibi Sayeeda and Others etc. Vs. State of Bihar and Others, wherein it has been described as under:

The word "vested" is defined in Black's Law Dictionary (6th Edn.) at page 1563 as "Vested. Fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent". Rights are "vested" when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continues of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary, [International Edn.] at page 1397 "vested" is defined as "[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests". In Sulekh Chand and Salek Chand Vs. Commissioner of Police and Others,

20. Thus, I find no force in the contention raised by Shri Dave that the persons junior to the petitioner had been posted in urban areas and not posting the petitioner and his wife in Jodhpur city area amounts to discrimination and thus, violates the mandate of Article 14 of the Constitution. This contention is preposterous and has no legal sanctity behind it.

21. However in State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, , it has been held by the Apex Court that it is not permissible for the writ court or Tribunal to go into the relative hardship of an employee which may be caused by his transfer/posting. It is for the competent authority/employer to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration.

22. In the instant case, petitioner and his wife have already made representations to the competent authority ventilating all their grievances and the said representations are contained in Annexs. P.4 and P. 5 to this petition. It appears that the respondents have not yet Considered and disposed of the said representations.

23. In view of the above, no case is made out which may warrant the interference by this Court. As the representations of the petitioner and his wife have not yet been considered by the competent authorities, the petition is disposed off with a direction to the respondents to consider and dispose of the said representations within a period of six weeks from the date of production of certified copy of this judgment and order alongwith fresh representation before

the competent authority. However, it is clarified that inspite of the fact that administrative exigencies are supreme and the competent authority has to decide a case bearing in mind the administrative exigency, the competent authority cannot brush aside the grievance of employees being personal in nature.