
(2007) 07 UK CK 0036
In the Uttarakhand High Court
Case No : Special Appeal No. 74 of 2007

Joginder Singh	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 11-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 1 UC 78

Hon'ble Judges : Rajeev Gupta, C.J.; Prafulla C. Pant, J

Bench : Division Bench

Advocate : M.S. Chauhan, for the Appellant; N.S. Pundir, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Sri M.S. Chauhan, Advocate for the Appellant.

Sri N.S. Pundir, Standing Counsel for the Respondents.

They are heard on admission.

2. Appellant Joginder Singh has filed this Special Appeal under Chapter VIII Rule 5 of the High Court Rules against the impugned judgment dated 07-06-2007 passed in Writ Petition No. 628 (S/S) of 2007.

3. Appellant Joginder Singh had filed writ petition for the following reliefs:

I. Issue a writ, order or direction in the nature of certiorari to quash the impugned transfer orders dated 19-07-2006, 07-08-2006 and 15-05-2007 passed by the Respondents in contravention of this Hon'ble court direction dated 18-04-2007.

II. Issue a writ, order or direction in the nature of mandamus directing to the Respondents not to interfere in the working of the Petitioner as S.F.A.(H) at the office of the Deputy Inspector General of S.S.B. Ganiadeoli, Ranikhet-Almora.

III. Issue any other order or direction which this Hon'ble Court may deem fit and

proper in the facts and circumstances of the case.

IV. Award cost of the petition to the Petitioner."

4. The Petitioner/Appellant, in substance, was challenging his transfer from Ranikhet to A.O. Kheri.

5. The Petitioner/Appellant, initially, was transferred vide order dated 19-07-2006, which was modified vide order dated 07-08-2006 to the effect that the Petitioner/Appellant was permitted to remain at his present place of posting i.e. Ranikhet till the end of academic session upto 31-03-2007. The Appellant's representation against his transfer also stands dismissed vide order dated 15-05-2007.

6. The submissions advanced on behalf of the Petitioner did not find favour with the learned Single Judge, resulting in the dismissal of his writ petition vide impugned judgment dated 07-06-2007.

7. Sri M.S. Chauhan, the learned Counsel for the Appellant, vehemently argued that the Respondents have erred in not giving due weight to the Petitioner's/Appellant's representation to the effect that the Petitioner/Appellant may be posted at such place where there is Kendriya Vidyalaya as Petitioner's children are studying in Kendriya Vidyalaya.

8. The Apex Court in the case of Major General J.K. Bansal Vs. Union of India (UOI) and Others, , while considering the scope of interference in the matter of transfer of a Government servant, observed in paras 8 to 11:

8. Before we advert to the submissions made by the learned Counsel for the Appellant, it will be useful to take notice of the law regarding the scope of interference in a writ petition filed under Article 226 of the Constitution assailing an order of transfer.

9. In *Shilpi Bose v. State of Bihar* the Appellants, who were lady teachers in primary schools, were transferred on their requests to places where their husbands were posted. The contesting Respondents, who were displaced by the Appellants, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. This Court allowed the appeal and set aside the judgment of the High Court by observing as under:

4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with

the order instead affected party should approach the higher authorities in the department.

10. In *Union of India v. S.L. Abbas* the Respondent was working at Shillong in the office of the Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shillong to Pauri in the hills of UP. (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3-4-1986. The Tribunal allowed the petition and quashed the transfer order. In appeal this Court set aside the order of the Tribunal and observed as under:

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.

11. Similar view has been taken in *National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan* wherein it has been 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 another is not only an incident, but a condition of service, necessary too in public interest and efficiency in 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 though they were the Appellate Authorities substituting their own decision for that of the management.

9. As the Petitioner/Appellant, admittedly, has completed his full term of three years at his present place of posting at Ranikhet, the Petitioner/Appellant cannot be permitted to raise any grievance so far as his transfer is concerned.

10. Where a Government servant should be transferred/posted, is entirely for the concerned department to decide and the Courts have no role to play in such matters.

11. We, therefore, do not find any infirmity in the impugned judgment whereby the order of Petitioner/Appellant's transfer has been affirmed.

12. The Special Appeal, therefore, is liable to be dismissed and is hereby dismissed summarily.