
(1992) 04 AHC CK 0068

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36418 of 1991

Khushi Ram Arya

APPELLANT

Vs

Director of Education, U.P. Allahabad and Another

RESPONDENT

Date of Decision : 01-04-1992

Acts Referred:

Citation : (1992) 04 AHC CK 0068

Hon'ble Judges : N.L.Ganguly, J

Final Decision : Allowed

Judgement

1. This petition is directed against orders dated 29.10.1991/13111991 and 4th/7th December, 1991 (Annexures 11, 12, 14 and 15 to the writ petition). The petitioner is a Principal and on the date of the impugned order was posted as Principal of the Government Inter College Roorki. He assumed office of the Principal of the College on promotion w.e.f. 521989. The petitioner was transferred to join at Roorkee on 1091990. Actually, he took over the charge on 13101990.

2. Soon after joining, the petitioner received a transfer order dated, 8101991 directing the petitioner to join at Doriwala in district Dehradun. The petitioner immediately approached this Court by filing a Writ Petition No. Nil of 1991 on 1111991. It was pleaded in the writ petition that there was no Intermediate College at Doriwala in district Dehradun and the transfer order was wholly illegal and cannot be given effect to. This Court was pleased to dispose of the petition the same day with a direction that the petitioner may submit a representation before the higher authorities of the department within a fortnight disclosing all the facts and circumstances and asked the latter to pass appropriate orders. The order impugned in that petition dated 8101991 transferring the petitioner to Doriwala was directed to be stayed during the pendency of the representation before the departmental authorities.

3. The petitioner in compliance with the directions of the Court dated 1111991 submitted a representation to the respondent State by registered post on

12111991. The State was pleased to pass order dated 29101991. By the order of the Director of Education, the petitioner was again directed to be transferred to the Intermediate College, Horawala in district Dehradun, instead of Doriwala. This order of transfer was passed without considering the representation of the petitioner which was submitted in pursuance of the orders of this Court. Since this order passed by the Director of Education without caring to wait for the decision on the representation of the petitioner, the petitioner again approached this Court by a Writ Petition on 20.11.1991 and this Court was pleased to quash the second order of transfer by its order dated 20.11.1991. The respondents were further directed to decide the representation afresh. The matter was before the State Government itself. The order impugned in the present writ petition was made against the petitioner transferring him to Horowala from the institution where he was originally posted. The petitioner again approached this Court by the present writ petition filed on 17.12 .1991

On this writ petition, Hon"ble M. Katju, J. was pleased to issue notice and to stay the operation of the transfer order impugned. It appears that one Sri Prem Chand Shastri got his caveat filed through an advocate of this Court. The Caveator claimed himself to be a member of the Parents and Teachers" Association. The Stamp Reporter had wrongly reported that there was no caveat filed. Hence, it was requested that the interim order passed in the petition may be vacated and caveator may be heard before grant of fresh interim order. Hon. Markandey Katju, J. was pleased to hear the matter further. The matter was then placed before this Court. The parties to the petition have exchanged counter affidavits, supplementary counter affidavits, rejoinder affidavits and supplementary rejoinder affidavit and the petition was heard on a number of days. Sri Prem Chand Shastri and one Tej Singh has also filed their counter affidavits.

4. Learned counsel for the petitioner mainly submitted the following points for consideration:

1. The transfer order is bad in law, motivated and the action was taken mala fide against the petitioner.

2. There were serious complaints and allegations as disclosed in the counter affidavit of Sri Tula Ram Pal. The learned counsel referred to the annexure CA2 filed with the affidavit of Sri Tula Ram Pal and pointed out the report of Sri R.P. Dhyani, an officer of the department who conducted the investigation and detailed enquiry in the matter. He submitted that perusal of the report (annexure "2" submitted by Sri R.P. Dhyani) shows that act and conduct of the petitioner and other teachers and staff of the institution were highly irresponsible and uncalled for. They were indulging in actual "marpeet" and indiscipline in the institution. The peaceful atmosphere of the institution was spoiled and it remained no longer a quiet and disciplined institution. The prestigious institution's name and fame was highly tampered with on account of the petitioner and the misconduct of the others.

5. The aforesaid allegations if examined closely would show that they are very serious in nature and are not to be lightly ignored or treated by the petitioner. If such allegations as stated are correct, the erring persons are to be dealt with properly according to law and disciplinary proceedings etc. are to be started and if they are found guilty of such allegations and charges, they deserve proper punishment as provided in law. Instead of taking such action as provided in law, the learned counsel for the petitioner submitted, the respondents considered it proper to transfer the petitioner to a remote village in the hills. The learned counsel for the petitioner further submitted that the transfer from Roorki to Horewala was nothing but a punishment. Such punishment cannot be given by merely transferring the person from one place to another.

6. During the course of argument on the earlier hearing, learned counsel for the petitioner pointed out that the other four persons against whom there were allegations by the department have not been punished and only the petitioner has been chosen to be penalised. This allegation was made in the rejoinder affidavit and the learned Standing Counsel who appeared for the State submitted that a new plea has been taken in the rejoinder affidavit which cannot be permitted to be entertained. Learned Standing Counsel submitted that without an opportunity to rebut those allegations, the petition cannot be decided. I consider it proper that an opportunity be given to the learned Standing Counsel for filing a supplementary affidavit in reply to the allegations aforementioned. Learned Standing Counsel has filed a supplementary counter affidavit annexing a report of action taken against those four other persons against whom also there were allegations along with the petition. Copy of the report of action taken against those other persons have been annexed with the supplementary counter which I have perused. One person has been transferred by giving promotion to him on 20121991. Against another person the matter of transfer would be considered in the next session. Regarding the third person, the allegation is that the proposed action is under contemplation and no action has been taken so far. Regarding the fourth person, the allegation is that he has no concern with the institution as he is not an employee of the institution and as such no action could be taken against him. Learned counsel for the petitioner, learned counsel for the caveator and the learned Standing counsel have been heard in detail. The submission of the leaned Standing Counsel is that the action taken by the respondents are just and legal and very appropriate in the circumstances and calls for no interference under Article 226 of the Constitution of India. Similar arguments have been advanced by Sri A. Koomar who represented the District Associate Inspector of Schools, who is at present officiating as Principal of the institution after the transfer order was passed. Learned Standing Counsel submitted that the action of transfer of the petitioner to Horiwala was just and proper and since the petitioner is to retire in a year and half, it would not be proper to take serious departmental action against him. As such, light action of transferring him to Horowala was just and proper. Learned counsel for the petitioner submitted the reply submissions to the arguments of counsel for the

respondents. He submitted that the entire action taken by the respondents is mala fide, illegal, and no transfer order can be sustained if it is seen that the same has been taken by way of punishment. He submitted that in 1991 (2) UPLBEC Page 1302: Sheshmani Tripathi v. Inspector General of Prisons, U.P. Lucknow and another, similarly a transfer order was challenged which was passed by way of punishment. The order of learned single judge was quashed by the Division Bench of this Court in Special Appeal reported in the same law reports at page 1303. The learned counsel further relied on the same case which was relied by this Court in AIR 1991 SC 532, which lay the same principles of law. I need not further add cases as it is fully established and needs no further cataloguing of case law. This aspect of the matter of transfer order of the petitioner that the same was passed on the report received by the authorities from various quarters, i.e. the Parents and Teachers Association and Dr. R.P. Dhyani, Dy. Director of Education.

7. Heard the learned counsel for the parties at length. I am of the clear opinion that such an order of transfer made on allegations of reports & allegations is an order by way of punishment & cannot be sustained. As such, I direct that the respondents shall not interfere with the functioning of the petitioner as Principal of the Govt. Inter College, Roorki. Any arrangement made subsequent to the impugned order of transfer of the petitioner shall have no consequence after this judgment and order. Learned counsel for the petitioner has stated that the petitioner has already served for about 8 1/2 years in the hills and he is to retire within 2 years. However, the judgment of the present writ petition does not mean that the respondents are stopped from taking any action according to law. The respondents are free to transfer the petitioner and other erring persons at the subsequent stage according to law and the rules. If during the period under transfer, the petitioner has not been paid any emoluments, the same may be paid within the next 2 weeks and he shall be paid the monthly emoluments regularly. The petition is allowed. The transfer order impugned in this petition is quashed. Parties to bear cost.

8. A certified copy of this Judgment be issued to learned counsel for the parties, in 3 days on payment of usual charges.

(Petition allowed)