

(1991) 12 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37192 of 1991

K.P. Singh

APPELLANT

Vs

Ayukta, Gram Vikas Evam Panchayati Raj Nideshalaya and
Others

RESPONDENT

Date of Decision : 20-12-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (1991) 2 AWC 350 : (1992) 1 UPLBEC 434

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Advocate : Rakesh Dwivedi and Dinesh Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—The Petitioner, who is a Senior Auditor, was transferred from the office of the Deputy Development Commissioner, Allahabad, to the office of the Deputy Development Commissioner, Agra, by order dated July 30, 1991, passed by the Additional Commissioner (Admin), Gramya Vikas, U.P. Lucknow. The aforesaid order was challenged by the Petitioner by filing writ petition No NIL of 1991 in this Court on the ground that the Government order dated July 9, 1991, prohibited transfer of persons of Clerical grade from one division to another division. The writ petition was disposed of by judgment and order dated September 5, 1991, with the observation that the Petitioner may make a representation to the Additional Commissioner, Gramya Vikas and Panchayati Raj, U.P. Lucknow, who shall decide the same stating as to why the Petitioner had been transferred from one Division to another Division in violation of the aforesaid Government order. The operation of the transfer order was stayed till the disposal of the representation. The Petitioner then made a representation on September 31, 1991, which was rejected on September 21, 1991 by the Commissioner, Gramya Vikas, U.P. The Commissioner held that the personal reasons given by the Petitioner for staying his transfer were not sufficient. It was

further held that sub-paragraph (2) of para 4 of the Government Order dated July 9, 1991, clearly provided that class III employees could be transferred outside the district and as the Petitioner belongs to a service which has a State cadre there was no violation of the policy laid down in the aforesaid Government order by his transfer from Allahabad to Agra. The Petitioner was not satisfied and he filed a second writ petition No. Nil of 1991. It was contended on behalf of the Petitioner that the Commissioner, Gramya Vikas, had held that the transfer from one district to another district was permissible but he omitted to consider whether, in the case of the Petitioner, transfer from one division to another division could be made under the Government order dated July 9, 1991, or not. Hon'ble M.L. Bhat, J. accordingly passed an order on September 30, 1991, directing the Commissioner, Gramya Vikas, to reconsider his earlier order dated September 21, 1991, and give a finding on the question as to whether under the Government order governing the subject, the Petitioner could be transferred from Allahabad Division to Agra Division. It was further directed that if it was found that transfer from one Division to another Division was not permissible a fresh transfer order may be passed transferring the Petitioner to any district within the Allahabad Division. The operation of the transfer order was again stayed till a fresh transfer order was passed. In pursuance of the order passed by this Court the matter was reconsidered and the Petitioner's representation dated October 7, 1991, was rejected by the Commissioner, Gramya Vikas and Panchayat Raj, by order dated October 22, 1991. The Petitioner has filed the present third petition challenging the aforesaid order of the Commissioner.

2. I have heard Shri Rakesh Dwivedi for the Petitioner and Shri M.C. Tevari, learned Standing Counsel for the state and have perused the record.

3. It is contended by the learned Counsel for the Petitioner that the Commissioner has not followed the direction issued by this Court by its order dated September 17, 1991, passed in the second writ petition filed by the Petitioner, inasmuch, as the precise question as to whether the Petitioner could be transferred from one Division to another Division under the Government order dated July 9, 1991, has not been considered. In my opinion there is no force in the contention raised by the learned Counsel for the Petitioner. The Commissioner, Gramya Vikas, has held that under the Government orders dated October 25, 1980, and February 22, 1983, it has been laid down that the Senior Auditors will be appointed at Divisional levels and not at district levels. It has been further held that the transfer of the Petitioner from Allahabad Division to Agra Division does not violate the policy laid down in the Government Order dated July 9, 1991, or any other instruction issued in this regard. The ground given by the Commissioner shows that a Senior Auditor cannot be posted at a district and has to be posted at the head quarter of a Division. In these circumstances the contention of the Petitioner that he could be transferred within a Division and not outside the Division can not be accented as there is no other post within the Division where he could be transferred. If at all a Senior Auditor has to be transferred it has to be outside his Division because such a post exists

only at the headquarter of a Division.

4. At the time of hearing of the writ petition I asked the learned Counsel for the Petitioner to inquire from his client, who was present in Court, as to whether the post of Senior Auditor is in existence in any other district of the Division, or it was only at the headquarter of the Division. After consulting his client Shri Rakesh Dwivedi frankly stated that such a post did not exist in any other district except at the headquarter of the Division. In such a situation if the contention of the Petitioner is accepted it would mean that a Senior Auditor can never be transferred from his first place of posting throughout his service. This can never be the intention of the Government Order. Thus the contention raised by the learned Counsel for the Petitioner is wholly devoid of merits and is liable to be rejected.

5. Transfers are effected in respect of transferable posts in the exigencies of service and a government servant has no right to insist that he should be continued in a particular place. The transfer orders are passed in the larger interest of administration. The mere fact that a particular guideline has not been scrupulously followed can be no ground for quashing the transfer orders in exercise of the power conferred by Article 226 of the Constitution unless 1 he order has been made malafide or then; is a statutory provision which prohibits such a transfer. The courts would not interfere and substitute its own decision in the matter effecting transfer of a government servant.

6. Apart from the fact that the Petitioner has failed to make out any case that the Government order dated July 9, 1991, prohibited his transfer, there are other grounds on which his writ petition is liable to be dismissed. A transfer order does not amount to an order of penalty but is an incident of service. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, ; it has been held that the transfer is an implied condition of service and the appointing authority has a wide discretion in the matter. It has been further held that the government is the best judge to decide how to distribute and utilise the services of its employees but the power must be exercised bonafide and in public interest. In *B. Varadha Rao Vs. State of Karnataka and Others*, , it was observed that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and does not result in alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no government servant can claim to remain in a particular place or on a particular post unless of course his appointment itself is to a specified non-transferable post.

7. The Supreme Court has considered the matter again in *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, , wherein it was observed as follows in para 4 of the report:

In our opinion, the courts should not interfere with a transfer order which are

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. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer order.

8. It is unfortunate that instead of complying with the transfer order dated July 30, 1991, the Petitioner filed three writ petitions in this Court and has wasted public time and money. It appears that the Petitioner has scant regard for the orders passed by the superior authorities and he has tried to circumvent the order by filing writ petitions stating wrong facts that he was holding a divisional post and as such he could be transferred within the Division only. The Petitioner has given his age as 54 years. And it is obvious that he is a fairly senior person and it can be presumed that he must be aware that he can be transferred only to the headquarter of a Division and his transfer within the Division was not possible in any manner. This conduct of the Petitioner cannot be justified on any record.

9 In Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, , it was observed as follows in para 4 of the report:

Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to another 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. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The Respondent lost his service as he refused to comply with the order of his transfer from one place to the other.

10. I have examined the Government order of July 9, 1991, carefully and in my opinion it did not at all prohibit transfer of a Senior Auditor (the post held by the Petitioner) from one division to another division. That apart it is merely in the nature of a guide line issued by the Government regarding transfer of its employees. In fact the heading (Vishay) mentioned at the top of the order specifically says so. It is not a statutory rule framed under Article 309 of the Constitution or under some statute. It confers no right upon a government servant. Even if the transfer order has been passed in violation of the guideline or some executive instruction or order it will not be proper for this Court to interfere with the same under Article 226 of the Constitution of India. Therefore the Petitioner has not made out any case for quashing of the impugned transfer order.

11. The writ petition fails and is accordingly dismissed in limine.