
(2020) 06 UK CK 0010

In the Uttarakhand High Court

Case No : Special Appeal No.96 Of 2020, Writ Petition (S/S) No.523 Of 2020

Kuldeep Singh Panwar And Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 10-06-2020

Acts Referred:

Transfer Act, 2017 — Section 27
Constitution Of India, 1950 — Article 226

Citation : (2020) 06 UK CK 0010

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Vikas Bahuguna, S.S. Chauhan, V.B.S. Negi, Abhishek Verma

Final Decision : Disposed Of/ Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Vikas Bahuguna, learned Counsel for the appellant, Mr. S.S. Chauhan, learned Deputy Advocate General for the State Government and

Mr. V.B.S. Negi, learned Senior Counsel assisted by Mr. Abhishek Verma, learned Counsel for the respondent-writ petitioner.

2. The respondent-writ petitioner had invoked the jurisdiction of this Court filing Writ Petition (S/S) No.523 of 2020, wherein he sought a writ of

certiorari to quash the order dated 26.5.2020; and a writ of mandamus directing the respondents not to disturb the functioning of petitioner as Up

Razik, Rasiyabar Unit, Haridwar, Forest Range, Haridwar.

3. Facts, to the limited extent necessary, are that Mr. Pradeep Uniyal was hitherto attached as the Up Razik in Rasiyabar Unit of Haridwar Forest

Division. As certain irregularities committed by him came to light, a show cause notice was issued to him, and in the interest of administration and

management, and the protection of wildlife from human population, Mr. Pradeep Uniyal was removed from the said unit with immediate effect, and was attached to the divisional office, Divisional Forest Control Unit. The sixth respondent-writ petitioner, who was the Up Razik in Rasiyabar Unit, was posted as the Unit in-charge of Jhilmil Conservation Reserve. The jurisdiction of this Court was invoked contending that, despite the government order dated 20.5.2020 prohibiting transfer of persons from one Unit to another in view of the Covid-19 pandemic, the fourth respondent had issued proceedings dated 26.5.2020 transferring the appellant to the Rasiyabar Unit; and the said order, passed without giving the petitioner an opportunity of being heard, is illegal.

4. In the order under appeal, the learned Single Judge observed that the said order dated 26.5.2020 was in violation of the government order dated 20.5.2020; the said order also did not disclose whether the provisions of Section 27 of the Transfer Act had been taken into consideration, and complied with prior to the passing of the order, by placing the matter before the Transfer Committee; the contention that the recommendation was made on 19.5.2020, prior to the Government Order dated 20.5.2020, was not tenable; and if the documents were read together, the action taken was for the purpose of "transfer", and not for the purpose of making any administrative arrangement.

5. Mr. Vikas Bahuguna, learned Counsel for the appellant, would submit that the respondent-writ petitioner had suppressed the fact that an order dated 28.5.2020 was passed by the Deputy Conservator of Forest, Haridwar giving the appellant charge of the Rasiyabar Unit, and posting the respondent-writ petitioner to the Haridwar Unit, until further orders. On the other hand, Mr. V.B.S. Negi, learned Senior Counsel appearing for the respondent-writ petitioner, would submit that if, indeed, such an order had been passed on 28.5.2020, the appellant ought to have brought this fact to the notice of the learned Single Judge when the matter was heard, and an interim order was passed on 01.06.2020; and the very fact that no such order was placed before the learned Single Judge, would go to show that the said order is ante-dated.

6. It is unnecessary for us to examine this contention in an intra-court appeal, for we are satisfied that the appeal is required to be allowed, and the

order is required to be set aside, on other grounds. A bare reading of the office order dated 10.4.2020, issued by the Divisional Forest Officer, would

show that the respondent-writ petitioner was merely posted as the Unit In-charge of the Jhilmil Conservation Reserve. All that the respondent-writ

petitioner was entrusted with, is the charge of Conservation Reserve and nothing more. An in-charge appointment does not confer any right on the

person, to whom charge is entrusted, to claim that he should be continued in that post. On 26.5.2000 the Conservator of Forest had, after obtaining

approval from the Chief Conservator of Forest, posted the appellant as in-charge of the Rasiyabar Unit.

7. Even if the order, impugned in the Writ Petition, is, as held by the learned Single Judge, a transfer order, it is well settled that transfer from one

place to another is an incidence of service, and is made in the exigencies of administration. No person can claim that he should not be transferred from

one place to another. No government servant has a legal right to be posted forever at any one particular place or at a place of his choice. (Kendriya

Vidyalaya Sangathan v. Damodar Prasad Pandey (2004) 12 SCC 299; Major General J.K. Bansal v. Union of India (2005) 7 SCC 227 ; Union of

India v. Janardhan Debanath (2004) 4 SCC 245; National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan (2001) 8 SCC 574). Transfer of an

employee, appointed to a particular cadre of transferable posts, is an incident of service and is made in administrative exigencies. No government

servant has neither a legal right to be posted at any particular place nor any choice in the matter. Transfer is necessary in public interest and

efficiency in public administration, and is, normally, not to be interfered with by Courts/Tribunals. (Gujarat Electricity Board v. Atmaram Sungomal

Poshani (1989) 2 SCC 602; Public Services Tribunal Bar Association v. State of U.P (2003) 4 SCC 104).

8. Transfer of a public servant, on administrative grounds or in public interest, should not be interfered with unless there are strong and compelling

grounds rendering the transfer order improper and unjustifiable. (Rajendra Ch. Bhattacharjee (1995) 2 SCC 532). Who should be transferred, and

posted where, is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of the

rules, Courts should not, ordinarily, interfere with it. (Kendriya Vidyalaya Sangathan; Union of India v. S.L. Abbas (1993) 4 SCC 357; Major General

J.K. Bansal; Abani Kanta Ray v. State of Orissa 1995 Supp (4) SCC 169; S.L. Abbas (1993) 4 SCC 357).

9. A government servant holding a transferable post has no vested right to remain posted at one place, and 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. (Shilpi Bose v. State of Bihar 1991 Supp (2) SCC

659; Major General J.K. Bansal (2005) 7 SCC 227). A person holding a transferable post, unless specifically provided in his service conditions, has no

choice in the matter of posting. (Rajendra Ch. Bhattacharjee (1995) 2 SCC 532). Unless there is a term to the contrary in the contract of service, a

transfer order is a normal incidence of service. (Pearlite Liners (P) Ltd. v. Manorama Sirsi (2004) 3 SCC 172). In a transferable post, an order of

transfer is a normal consequence and personal difficulties are matters for consideration of the department, and not the Court. (Rajendra Roy (1993) 1

SCC 148).

10. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or as violative of any statutory provision (an Act or Rule)

or is passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or for every type of

grievance sought to be made. (Gobardhan Lal (2004) 11 SCC 402). The employer is entitled to decide, on a consideration of the necessities of

administration, whether transfer of an employee should be made to a particular place. The employer is in the best position to judge as to how to

distribute its employees at different places. Courts/Tribunals should be wary of interfering with such orders made by the employer in discharge of its

managerial functions. If an order of transfer is made malafide, or for some other ulterior purpose, Courts/ Tribunals may interfere and set aside such

an order of transfer, as mala fide exercise of power is not considered an exercise of power in law. The finding of malafides should, however, be

reached by Courts/Tribunals only if there is sufficient and proper evidence and such a finding should not be reached capriciously or on flimsy grounds.

(Syndicate Bank Ltd. Vs. Workmen AIR 1966 SC 1283). Transfer orders should not be interfered with except where the transfer has been made in a

vindictive manner. (Public Services Tribunal Bar Assn. v. State of U.P., (2003) 4 SCC 104; Tushar D. Bhatt v. State of Gujarat (2009) 11 SCC 678).

11. Questions, as to whether the transfers effected are in public interest or not, are normally not examined as this would essentially require factual

adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. Courts or Tribunals, normally, do not interfere

with such orders as a matter of routine, as if they were appellate authorities substituting their own decision for that of the employer/management, as

against such orders passed in the interest of administrative exigencies of the service concerned. (National Hydroelectric Power Corpn. Ltd. v. Shri

Bhagwan (2001) 8 SCC 574 and State of U.P. v. Siya Ram (2004) 7 SCC 405).

12. Courts or tribunals are not appellate forums to decide on transfer of employees on administrative grounds. Wheels of administration should be

allowed to run smoothly and Courts/ tribunals are not expected to interdict the working of the administrative system by transferring officers to places it

considers proper. It is for the administration to take appropriate decisions and such decisions shall stand unless they are vitiated either by malice or

extraneous considerations. (State of M.P. v. S.S. Kourav (1995) 3 SCC 270). Courts or Tribunals cannot substitute their own decisions, in the matter

of transfer, for that of the competent authorities. (Gobardhan Lal3; Kendriya Vidyalaya Sangathan (2004) 12 SCC 299; Janardhan Debanath (2004) 4

SCC 245; National Hydroelectric Power Corpn. Ltd. (2001) 8 SCC 574; S.L. Abbas (1993) 4 SCC 357; B.C. Chaturvedi v. Union of India (1995) 6

SCC 749; National Hydroelectric Power Corpn. Ltd. (2001) 8 SCC 574; Major General J.K. Bansal (2005) 7 SCC 227).

13. The government order dated 20.5.2020 prohibiting transfers, is at best, in the nature of executive instructions. No order of transfer can be

interdicted on the ground that it is in violation of any executive instructions, as such instructions of the government are not enforceable in writ

proceedings under Article 226 of the Constitution of India (Union of India v. S.L. Abbas, AIR 1993 SC 2444; and J.R. Raghubathu v. State of Andhra

Pradesh, AIR 1988 S.C. 1681). Executive instructions, issued by the Government/ public authorities with regard to transfers, are in the nature of

guidelines and do not have statutory force. (S.L. Abbas (1993) 4 SCC 357). Courts or Tribunals would not quash orders of transfer merely because

administrative instructions/ guidelines are not followed. (S.L. Abbas (1993) 4 SCC 357). An order of transfer, made even in transgression of

administrative guidelines, cannot be interfered with, as they do not confer any legally enforceable right unless it is shown to be vitiated by malafides or

is made in violation of any statutory provision (Gobardhan Lal (2004) 11 SCC 402) and, instead, the affected party should be relegated to approach the

higher authorities in the department. (Shilpi Bose 1991 Supp (2) SCC 659; Major General J.K. Bansal (2005) 7 SCC 227).

14. The observations in the order under appeal that no material was placed to show that the appellant's transfer, by proceedings dated 26.5.2020,

was in accordance with Section 27 of the Transfer Act, need not detain us since it is not even the case of the respondent-writ petitioner that his

posting, vide proceedings dated 10.04.2020, was in compliance with Section 27 of the said Act.

15. Viewed from any angle, we are satisfied that the learned Single Judge was in error in interdicting the posting order dated 26.5.2020 whereby

charge was entrusted to the appellant in the place of the respondent-writ petitioner. The order under appeal is, therefore, set aside.

16. Mr. VBS Negi, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, Mr. S.S. Chauhan, learned Dy. Advocate General

for the State Government and Mr. Vikas Bahuguna, learned Counsel for the appellant, agree that, in light of the order now passed by this Court, the

cause in the writ petition does not survive; and the writ petition has been rendered infructuous.

17. The writ petition is dismissed as infructuous, and the special appeal is, accordingly, disposed of. No costs.