
(2008) 08 AHC CK 0185
In the Allahabad High Court
Case No : Writ Petition No.1113 (S/B) of 2008

Lal Bahadur Gupta

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 08 AHC CK 0185

Hon'ble Judges : A.N.Varma, J and Shabihul Hasnain, J

Final Decision : Dismissed

Judgement

1. The petitioner by means of the present petition has assailed the order dated 13th August, 2008 whereby he has been transferred from Lucknow region to the headquarter at Lucknow. By the same order the opposite party No.4 has been transferred from Shahjahanpur region to Lucknow region. A perusal of the impugned order reveals that the same has been passed in public interest. The said order has been challenged on variety of grounds.

2. On 30th June 2008 the petitioner who was posted at Sultanpur zone was transferred to Lucknow region whereas opposite party No.4 who was at Muzaffar Nagar zone was transferred to Shahjahanpur region. Pursuant to the said order the petitioner submitted his joining at Lucknow on 2.7.2008. Wife of opposite party No.4 had earlier represented the matter to the Director praying therein that since she herself was ailing and was being treated at all India Institute of Medical Sciences and her motherinlaw who was about 63 years of age, was also seriously ill and was also being treated at the same institute, therefore, her husband be transferred to Ghaziabad and in case it was not possible then he be posted either at Kanpur region or Lucknow region. It appears that on the request of Cooperative Minister, the Minister of Energy vide order dated 30th June 2008 asked for approval for petitioner's transfer to Lucknow, which was accorded by the Chief Minister on 6th August 2008. Consequent upon this exercise the impugned order of transfer followed. Feeling aggrieved by which the petitioner

has approached this Court through the instant petition.

3. We have heard Dr. L.P. Mishra, learned counsel for the petitioner as well as Sri S.K.Kalia, Senior Advocate, assisted by Sri S.L. Dubey for the opposite party No.4 and Sri Rajneesh Kumar, learned Standing Counsel at some length.

4. Learned counsel for the petitioner vehemently argued that the impugned order of transfer is tainted with malice, manifestly illegal, unjust, and suffers from element of arbitrariness inasmuch as the same has been passed at the intervention and dictate of Cooperative Minister. He further argued that there was no element of public interest nor was there any material before the authorities to come to a conclusion that transfer of the petitioner from Lucknow region to Lucknow headquarters was justified. Cooperative Minister prevailed upon the department for effecting the order of transfer which act is purely arbitrary and colourable exercise of power. The opinion of the Director of the department was overlooked and the wish of the Minister prevailed and the impugned order followed. In support of his argument he placed reliance upon following decisions:

1. 2003 (11) Supreme Court Cases 740, Sarvesh Kumar Awasthi v. U.P. Jal Nigam and others.
2. 2005 (3) Supreme Court Cases 153, Suresh Chandra Sharma v. Chairman, U.P. State Electricity Board and others.
3. 1986 Supreme Court Cases 131, D. Varda Rao v. State of Karnataka and others.
4. 2004 (22) LCD 1472, Jai Prakash Singh v. State of U.P. and others.
5. 1994 (1) UPLBEC 189, Pradeep Kumar Agarwal v. Director, Local Bodies, U.P.
6. 1991 (1) UPLBEC 1690.
7. 1998 (16) LCD 46, Lokesh Kumar v. State of U.P. and others.

5. The proposition laid down in all the aforesaid decisions is that transfer of a public servant can not be affected at the behest of a Minister/political person or any other influential person. Power of transfer should be exercised only in a reasonable and bonafide manner without being influenced by any extraneous consideration.

6. In the case at hand as would appear the petitioner as well as the opposite party No.4 were transferred on 30.6.2008 from their place of posting to Lucknow and Shahjahanpur region respectively. However, since there was a representation preferred by the wife of the opposite party No.4, therefore, taking into account the difficulties expressed by her that the minister for the department recommended the transfer of said opposite party No.4 to Lucknow. The submission of learned counsel for the petitioner is that he is not aggrieved by the order of the transfer of opposite party No.4 to Lucknow but according to him in view of the fact that he has been directed to be posted at Lucknow Region that

suffers from extraneous consideration.

7. Transfer of the petitioner has not been effected at the behest of a Minister or upon intervention of a political person. Request made by wife of an employee has been considered and that too taking in account the difficulties expressed by her in her representation. By transferring the petitioner from Lucknow region to Headquarters at Lucknow neither the status of the petitioner is being altered in any manner nor his emoluments, are being reduced. He has only to discharge his functions at the headquarters at Lucknow. Even otherwise transfer is an incidence of service and the Appointing Authority is the best judge to decide how to distribute and utilize the services of its employees. It is also evident that element of public interest as well as administrative exigencies are to be decided and dealt with by the authorities. It is not a question to be decided by the Court. Interference with the orders of the transfer can only be made if the same is tainted with malice, against the provisions of some statutory rules or has been passed by an incompetent authority. Transfer at the instance of political persons or influential authorities has also been deprecated with aspect has been discussed by the Apex Court as well as by this Court in the decisions referred to hereinabove and other cases.

8. In view of the fact that the impugned order of transfer does not cause any prejudice nor affects the status of the petitioner nor does it reduces his emoluments and transfer being an incidence of service which in the present case is neither tainted with malice, same being in public interest and the petitioner having been transferred from one office to another at Lucknow, we do not find it a fit case for interference in exercise of powers under Article 226 of the Constitution.

9. The writ petition, thus, being devoid of merits is hereby dismissed.

(Petition dismissed)