

(2000) 03 AHC CK 0048
In the Allahabad High Court
Case No : C.M.W.P. No. 13436 of 1995

Mashooq Ahmad

APPELLANT

Vs

Manager (Personnal and Industrial Relation) B.P.C. Ltd.,
Naini, Allahabad

RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (2000) 2 AWC 1603 : (2000) 85 FLR 579 : (2000) 2 UPLBEC 1474

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : Tej Pratap Singh and A.K. Srivastava, for the Appellant; S.C. and P.K. Mukherjee, for the Respondent

Judgement

M. Katju, J.—This writ petition has been filed against the impugned transfer order dated 10.10.1994 Annexure-1 to the writ petition.

2. Heard learned counsels for the parties.

3. The petitioner was appointed as class III employee on 13.10.1983 in the service of the respondent corporation, which is a public sector undertaking and hence an instrumentality of the State within the meaning of Article 12 of the Constitution. On 30.9.1989 the petitioner was promoted as Assistant-cum-typist and since then he has been working at Allahabad on that post as stated in paragraph 2 of the writ petition. By the impugned order dated 10.10.1994 he was transferred from the Allahabad to the Bombay office of the respondent. He made a representation against that order but to no avail. Hence he filed Writ Petition No. 36888 of 1994 which was disposed of by this Court with the direction that the petitioner may make a representation vide Annexure-3 to the writ petition. The petitioner again made another representation but again to no avail. The petitioner has alleged that his family lives in Allahabad and he is only a clerical employee and it is not possible for him to take his family to Bombay and hence he will have to maintain two establishments, one at Allahabad and another

at Bombay, which is not possible for him on his meagre salary. Hence he filed this writ petition.

4. An interim order dated 15.10.1998 was passed in this case which was set aside in Special Appeal No. 972 of 1998 by order dated 12.1.1999. However, as I am deciding the petition finally, the aforesaid orders of this Court pertaining to the interim orders are no longer relevant.

5. A counter-affidavit has been filed on behalf of the respondent and in paragraph 9 of the same it is stated that the petitioner's service was transferable. In paragraph 10 of the counter-affidavit it is stated that the respondent has branches throughout India, and as a routine course on account of exigencies of work the employees are transferred from the head office to other branches and also between the branches. In paragraph 11 of the counter-affidavit it is stated that a vacancy of typist arose at the Bombay office on account of voluntary retirement of a typist. Hence, the petitioner was transferred from Allahabad to the Bombay office. In paragraph 20 of the counter-affidavit it is stated that the petitioner went on medical leave w.e.f. 2.12.1994 stating that when he is fit he will carry out the transfer order. True copy of the letter dated 6.12.1994 is Annexure-CA7 to the counter-affidavit. He wrote another letter dated 10.4.1995 vide Annexure-CA8 stating that he is still ill and shall join at the Bombay office as soon as he is fit. In paragraph 23 of the counter-affidavit it is stated that several other workmen have been transferred to various branches of the respondent corporation.

6. In the rejoinder-affidavit the petitioner has stated in paragraph 1 that earlier on 17.8.1995 this Court stayed the operation of the transfer order until further orders but against that order a special appeal had been filed which was allowed. In paragraph 7 of the rejoinder-affidavit it is stated that the transfer order was passed as a measure of harassment to get rid of the employees who were not succumbing to the pressure of opting for the voluntary retirement scheme, and hence it was mala fide. In paragraph 8 of the rejoinder-affidavit it is stated that the transfer order was in violation of the relevant standing orders. In paragraph 14 of the rejoinder-affidavit it is stated that the petitioner was suffering from liver abscess and was admitted in Nazareth Hospital at Allahabad in December, 1994 and he has no money to continue his treatment. When he tried to get medical reimbursement the same was granted only on the condition that he joins at Bombay. It is stated that the petitioner was directed to get the medical bills sanctioned by the Regional Manager (Bombay) where the petitioner was transferred. In paragraph 15 of the rejoinder-affidavit it is stated that four employees whose names are given therein had been transferred to various branch offices. They filed a writ petition which was dismissed but thereafter they filed a special appeal before this Court and during the pendency of the special appeal they were informed by the letter of the company dated 15.11.1997 that if they withdraw the special appeal their transfer orders will be cancelled and they will be permitted to rejoin in the office at Allahabad. Hence they got their special

appeal dismissed as withdrawn and the transfer orders of these persons were then cancelled.

7. In paragraph 20 of the rejoinder-affidavit it is stated that the normal practice of the respondent company is that whenever they required any personnel for any of their branch offices they issue circulars inviting applications from the interested employees who wish to join the said branch office. Copy of one of the said circulars dated 15.11.1997 is Annexure-6 to the rejoinder-affidavit. However, in the case of the petitioner he was compelled to join at the Bombay branch. In paragraph 47 of the rejoinder-affidavit it is stated that the petitioner was not in a position to join at Bombay.

8. On the facts and circumstances of the case I am of the opinion that the transfer order is arbitrary and illegal. It may be noted that the transfer orders of several persons whose names are mentioned in paragraph 15 of the rejoinder-affidavit viz. S/Sri L.N. Tiwari, B.P. Yadav, K. K. Mishra and R. P. Pandey who were also working at Naini branch at Allahabad were cancelled. Hence, in my opinion there is discrimination against the petitioner.

9. It may also be mentioned that the petitioner is only a class III employee and it is economically impossible for a class III and class IV employee in these hard days of high Inflation to live and survive with his family at Bombay after transfer from Allahabad. It must be understood that in big cities like Bombay, living expenses are very high and for a class III or class IV employee who has been living at Allahabad to be sent to Bombay will really be an indirect way of depriving him of his job because he simply cannot survive at Bombay. He will have to take a house on heavy rent and also bear other heavy expenditures which on his paltry salary he cannot afford. This Court must take a realistic view in the matter. No doubt it has been held in many cases that transfer is an exigency of service, but at the same time it must also be understood that no Government authority or instrumentality of the State can act arbitrarily, as arbitrariness violates Article 14 of the Constitution vide *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, Thus, the principle that transfer is an exigency of service cannot be considered in isolation, but it must be read along with the equally important principle that every Government authority or instrumentality of the State (e.g. a public sector undertaking like the respondent) must act in non-arbitrary manner. We cannot consider only the first principle and ignore the second one. In fact the second principle, i.e. the principle that arbitrariness violates Article 14 of the Constitution is a constitutional principle. Hence, any transfer order which is arbitrary becomes illegal as it is in violation of Article 14 of the Constitution.

10. In my opinion, the transfer of a class III or class IV employee of a public sector undertaking from a middle size town like Allahabad to a far away big city like Bombay is arbitrary as it fails to take into consideration the fact that such an employee cannot in these hard days of inflation survive in such a far away big city. The living expenses in the big cities are very high and for class III or class

IV employee. It is very difficult to survive there. This Court cannot function in an ivory tower divorced from economic realities prevailing in the country, but must take a practical common sense view.

11. If the respondent corporation really needed a typist at Bombay, it could have advertised the post of typist in a Bombay newspaper and could have selected a good typist who lives in Bombay. The fact that the petitioner who lives in Allahabad has been transferred to Bombay supports the version of the petitioner that the real purpose of his transfer was because he refused to opt for the voluntary transfer scheme, and thus it was an indirect method to get rid of him. In my opinion this is clearly mala fide.

12. No doubt it has been mentioned in the petitioner's appointment letter that he can be transferred to the branches of the Corporation but the said clause cannot override Article 14 of the Constitution. In my opinion, the statement in the aforesaid letter that the petitioner can be transferred to the branches of the Corporation cannot mean that the Corporation can act arbitrarily in the matter. No letter or contract can override Article 14 of the Constitution. The respondent Corporation is an instrumentality of the State and hence its action is subject to Article 14 of the Constitution.

13. For the reasons given above the petition is allowed. The impugned transfer order dated 10.10.1994 and 10.1.1995 Annexures-1 and 4 to the petition are quashed. No order as to costs.