
(2002) 04 MP CK 0061
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1645 of 2002

Om Prakash Pali

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-04-2002

Acts Referred:

Citation : (2002) 2 MPHT 335 : (2002) 1 MPJR 425 : (2002) 2 MPLJ 593

Hon'ble Judges : Bhawani Singh, C.J; Rajendra Menon, J

Bench : Division Bench

Advocate : Sharad Verma, for the Appellant; S.K. Seth, A.A.G., for the Respondent

Judgement

Rajendra Menon, J.

The petitioner, who is working as an Assistant Engineer in the Public Health Engineering Department, Sub-Division, Chicholi, has filed the instant petition impugning the order dated 30-7-2001 (Annexure A-2) passed by respondent 2 transferring him from Sub-Division Chicholi (Betul) to Sub-Division, Deori (Sagar) and the order dated 7-3-2002 passed by the State Administrative Tribunal in O.A, No. 623/2002.

It is submitted by the petitioner that vide order dated 18-7-2001 (Annexure A-2), the respondent 2 (Executive Engineer) had transferred him from Chicholi to Betul in the same Sub-Division. In compliance of the aforesaid order, the petitioner joined at Betul and started working there. Subsequently, the respondent 2 by the impugned order dated 30-7-2001 (Annexure A-2) has transferred the petitioner along with 37 other persons to Sub-Division, Deori.

Being aggrieved by the aforesaid order of transfer, the petitioner filed application u/s 19 of the Administrative Tribunals Act, 1985 before the Madhya Pradesh State Administrative Tribunal, Jabalpur vide O.A. No. 623/2002. The Tribunal by the impugned order (Annexure A-7) dated 7-3-2002 has dismissed the application summarily. It has been held by the Tribunal that the transfer is

neither arbitrary nor malafide and no case for interference is made out.

The learned counsel for the petitioner has assailed the order. It is submitted by him that the transfer is contrary to the transfer policy of the State Government (Annexure A-5). It is also contended by him that the transfer, which has been made in the mid-session cannot be sustained, as his children are studying and this will create serious problems for him. It is also submitted by the learned counsel that the Executive Engineer having transferred the petitioner from Chicholi to Betul on 18-7-2001, the impugned order passed by respondent 2 within a short period cannot be sustained.

We have considered that submissions made by the learned counsel for the petitioner. Transfer is an incident of service and the scope of judicial review in such cases is very limited. It is a well settled law that transfer of an employee can be interfered with by the Court only when it is found that it has been made with malafide intention or is arbitrary, issued by an incompetent authority or is in violation of any statutory Rule or Regulation.

The scope of judicial review in cases of transfers has been considered by the Supreme Court in the case of State Bank of India Vs. Anjan Sanyal and Others,] and Union of India and Others Vs. S.L. Abbas,], It has been held in these cases that transfer is an administrative function and Courts should not normally interfere with the same until and unless it is found that the transfer is made in violation of statutory rules, regulation or by an incompetent authority or the order is vitiated by malice or arbitrariness.

In the case of State Bank of India (supra), the Supreme Court has observed in Paragraph 4 that:-

"An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is malafide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

Viewed in the light of the aforesaid legal principles, the submission made by the learned counsel for the petitioner is unsustainable and is, therefore, rejected.

Learned counsel submitted that as his children are appearing in examination, therefore, the respondents be directed to permit him to continue at Betul upto May 31, 2002.

Having considered the submission made by the learned counsel, it is directed that the respondents shall permit the petitioner to continue at Betul till May 31, 2002. He shall be relieved on May 31, 2002. Petitioner shall join his duties at Sagar on June 1, 2002.

With the aforesaid direction, the petition is disposed of.