
(2020) 09 MP CK 0192
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 766 Of 2020

Omprakash Singh

APPELLANT

Vs

Principal Secretary, Mahila Evam Bal Vikas Vibhag & Others

RESPONDENT

Date of Decision : 24-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Madhya Pradesh Uchacha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005
— Section 2(1)

Citation : (2020) 09 MP CK 0192

Hon'ble Judges : S. A. Dharmadhikari, J; Vishal Mishra, J

Bench : Division Bench

Advocate : Sohit Mishra, M.P.S.Raghuvanshi

Final Decision : Dismissed

Judgement

1. In this appeal preferred under section 2(1) of Madhya Pradesh Uchacha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, challenge has been made to the order dated 5/8/2020 passed by learned Single Judge dismissing the writ petition registered as W.P. No.10351/2020.

2. In the writ petition, appellant/petitioner had challenged the order dated 13/7/2020 whereby he has been transferred from Project Gwalior, City-1, District Gwalior to Project Bhitwar, District Gwalior. The learned Single Judge, after considering the material available on record, has held that there is no absolute bar of transfer of spouse if the husband and wife are posted in the same district and Headquarter. Clause 11.9 of the transfer policy merely provides that if an application for transfer on their request is made, then the husband and wife may be posted at the same place. In absence of any absolute bar coupled with the fact that the transfer policy is not enforceable by law, the impugned transfer order could not be quashed on the ground of violation of clause 11.9 of the transfer policy. The learned Judge further found that it was not a case of transfer from one district to another. The learned Single Judge dismissed the writ petition,

while relying on the decision in the case of Mridul Kuamr Sharma Vs. State of M.P. (ILR [2015] MP 2556) wherein it has been held that mere filing of a representation would not create any vested right in favour of the employee and the direction to decide the representation can only be given after the transfer order is executed. Since the appellant/petitioner had not joined at the transferred place, the learned Single Judge declined to issue any direction for deciding the pending representation.

3. Learned counsel for the appellant has assailed the order passed by the learned Single Judge contending that the writ Court failed to consider the fact that earlier wife of the appellant had got herself transferred to Gwalior on her own expenses as appellant was already posted at Gwalior. As such, the impugned transfer order is in violation of the transfer policy, particularly clause 11.9. He further placed reliance on the judgment in the case of B.Vardha Rao Vs State of Karnataka (AIR 1986 SC 1955) to contend that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant, disrupt education of children and create number of other complications. Therefore, the Government should be reasonable and fair in implementation of its policy of transfer. It is further submitted that the other Project Officers who have been posted for more than five years have not been transferred. The learned Single Judge did not consider the arbitrariness in the case of appellant, who is having children aged about 3 years and 1½ years and there is no one in the family to look after them.

4. On the other hand, learned counsel for the State has supported the order passed by the learned Single Judge and submitted that no interference is warranted therewith. It is submitted that the transfer policy is nothing but a guideline having no statutory force.

5. Heard, learned counsel for the parties.

6. This Court in the case of Vijay Swaroop Saxena vs. State of M.P. & Ors. (2008 (3) MPLJ, 210) has held as under :-

13. Presently, we shall refer to certain citations that relate to the field of transfer. In Mrs. Shilpi Bose and Ors. vs. State of Bihar and Ors., AIR 1991 SC 532, it has been held as under :-

"4. 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 malafide. 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 over looked these aspects in interfering with the transfer Orders."

14. In N.K. Singh Vs. Union of India and Ors., ((1994) 6 SCC 98), it has been held as under :-

"4. There are two aspects of transfer of a public servant holding a sensitive and important post. One aspect relates to the private rights of the public servant as an individual pertaining only to his service career. The other is concerned with prejudice to public interest irrespective of the individual interest. The element of prejudice to public interest can be involved only in transfers from sensitive and important public offices and not in all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration. Such cases would be rare and this factor as a vitiating element must be accepted with great caution and circumspection."

15. In Union of India and Ors. vs. S.L. Abbas, ((1993) 4 SCC 357), it has been held as under :-

"6. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that order of his transfer is vitiated by mala fides on the part of the authority making the order,- though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must

consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."

16. In *State of U.P. And another vs. V.N. Prasad (Dr.)* 1995 Supp. (2) SCC 151 their Lordships expressed the opinion as under :-

"2..... We are of the opinion that at the stage which the matter was brought to engage the attention of the High Court. There was no prima facie material to establish any malafides which required strong and convincing evidence. The presumption is in favour of the bona fides of the order unless contradicted by acceptable material."

17. In *National Hydroelectric Power Corporation Ltd., vs. Shri Bhagwan and another*, (2001) 8 SCC 574, it has been held in para 5 as under :-

"5. On a careful consideration of the submissions of the learned counsel on either side and the relevant rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well-settled and often reiterated by this Court that no Government servant or employee of public Undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned. On the facts and circumstances of the cases before us, we are also unable to agree with the learned counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicts any transfer of the employees from one Office or Project or Unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer. In the facts of the present cases, at any rate, no such result is bound to occur since the project undertaken to which the respondents have been transferred is itself a new one and, therefore, we see no rhyme or reason in the alleged grievance."

18. In *Kendriya Vidyalaya Sangatan vs. Damodar Prasad Pandey and Ors.*, ((2004) 12 SCC 299) their Lordships came to hold that in the absence of arbitrariness, malafides or violation of any operative guidelines or rules, Court

should not interfere in the matter of transfer.

19. In *Union of India and Ors. vs. Janardhan Debanatha and another*, ((2004) 4 SCC 245), it has been expressed as follows :- "14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated."

20. In *State Bank of India vs. Anjan Sanyal and Ors.*, ((2001) 5 SCC 508) a two - Judge Bench of the Apex Court clearly laid down the scope of judicial review in the matter of transfer. Their Lordships opined unless mala fide, or prohibited by services rules, or passed by an incompetent authority, the order should not be lightly interfered with, in exercise of a Court's jurisdiction under Article 226 of the Constitution of India.

21. In *State of U.P. and Ors. vs. Gobardhan Lal*, (2004) 11 SCC 402, their Lordships while dealing with power of a Court in the matter of transfer expressed the opinion that transfer is prerogative of the authorities concerned and Court should not normally interfere therewith, except when the transfer order shown to be vitiated by mala fides or in violation of any statutory provision, or having been passed by an authority not competent to pass such an order."

(Emphasis supplied)

7. Appellant has primarily assailed the order of transfer on the premise that it is in violation of clause 11.9 of the transfer policy which provides for transfer/posting of husband and wife at the same place on their own expense. However, it is also explicit therein that it would not mean that if husband and wife are posted at the same place, they cannot be transferred. Moreover, it is well settled in law that transfer is an incidence of service. Which employee should be posted where, is a matter for the appropriate authority to decide. Until and unless the transfer is vitiated by mala fide or is made in violation of any statutory provisions, the Court cannot interfere with the order of transfer. The Supreme Court while dealing with the scope of judicial review in the matter of transfer, held that transfer is an incidence of service and normally should not be interfered with by the Court. If any administrative guidelines recalling transfer of an employee are violated, at best the same confers the right on the employee to approach the higher authorities for redressal of his grievance [See: *Public Services Tribunal Bar Association v. State of U.P. and another*, (2003) 4 SCC 104, , R.S. Chaudhary

and Others v. State of M.P. and Others, ILR (2007) MP 1329, Government of Andhra Pradesh v. G. Venkata Ratnam, (2008) 9 SCC 345 and State of Haryana and Others v. Kashmir Singh and Another, (2010) 13 SCC 306]. The appellant has not been able to make out a case of malafide or violation of statutory policy, the twin grounds available for interference. He has no statutory right to remain posted at any particular place.

8. Thus, considering the overall facts and circumstances of the case together with the legal conspectus, as elucidated hereinabove, this Court does not find that any illegality or perversity has been committed by the learned Single Judge in passing the impugned order.

9. The appeal fails and is, accordingly, dismissed. However, needless to say that if the appellant joins at the transferred place of posting, the Authority concerned shall decide the pending representation, if any, on its own merits and in accordance with law.