
(2013) 12 AHC CK 0119

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 61110 of 2013

Pratap Narain Srivastava

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2014) 2 ADJ 664

Hon'ble Judges : Rajes Kumar, J;M.C. Tripathi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri Ashok Khare, learned Senior Advocate, assisted by Sri Siddharth Khare, learned counsel appearing on behalf of the petitioner and Sri C.B. Yadav, learned Additional Advocate General, assisted by Sri Pankaj Rai, learned Additional Chief Standing Counsel. By means of the present writ petition, the petitioner has challenged the transfer order dated 23.10.2013, by which he has been transferred from Prantiya Khand, Lok Nirman Vibhag, Sant Kabir Nagar to Staff Officer, Bareilly Vratt, Lok Nirman Vibhag, Bareilly.

2. When the matter was taken up, it was found that raising the grievance the petitioner has already filed the representation on 28.10.2013, thus, this Court has directed the authority concerned to dispose of the representation of the petitioner. The representation has been decided vide order dated 13.11.2013. The aforesaid representation of the petitioner has been rejected. The order dated 13.11.2013 rejecting the representation of the petitioner is being challenged by way of amendment.

3. The contention of the petitioner is that he has been transferred at the behest of the Minister of Public Works Department on the ground that he was not able to satisfy some of the worker of the ruling party. The declaration of his transfer has also been made in a public meeting. The publication in the newspaper, namely, "Hindustan" has been made in this regard, which is annexed as annexure-3 to

the writ petition. He submitted that the Minister had come to address the public meeting and not in the inspection and no discrepancy has been found in the inspection. The code of conduct does not permit any officer to make any arrangement of the public meeting of any Minister or any political party and to remain present in such meeting. The petitioner is a sincere officer and no finger has yet been raised on his integrity and performance of work. However, he submitted that the reasons given in the order dated 13.11.2013 for his transfer is incorrect and unjustified. He further submitted that impugned transfer order is contrary to Government Transfer Policy for the year 2013-14, inasmuch as before issuing the transfer order, approval has not been taken from Hon''ble Chief Minister, since the petitioner is a Class I officer.

4. Sri C.B. Yadav, Additional Advocate General, assisted by Sri Pankaj Rai, learned Additional Chief Standing Counsel submitted that the transfer has not been made at the behest of the Minister. In the newspaper publication, the name of the petitioner has not been mentioned. The petitioner has been transferred for the reasons stated in the order dated 13.11.2013. So far as transfer policy is concerned, the requisite procedure has been followed and is in consonance of business rules. The petitioner has not been transferred in isolation but alongwith the petitioner, number of other officers have been transferred. Therefore, it cannot be said that the petitioner has been singled out and his transfer is based on mala fide. The record relating to the transfer has been produced before the Court to demonstrate that the transfer of 19 Executive Engineers have been proposed including the petitioner vide proposal dated 23.10.2013 and such proposal has been approved by the Principal Secretary, Lok Nirman Vibhag, the other officers and also by the concerned Minister on 23.10.2013 and a note has also been made to take the approval from Hon''ble Chief Minister. The approval of Hon''ble Chief Minister has been granted on 24.11.2013, therefore, the proper procedure has been followed.

5. We have considered the rival submissions and perused the record. In the order dated 13.11.2013 while deciding the representation the following reasons have been given:

6. The record reveals that the transfer of 19 Executive Engineers have been proposed vide proposal dated 23.10.2013, which includes the name of the petitioner. The said proposal has been approved by the Principal Secretary and the concerned Minister apart from the other officers on 23.10.2013 and a note has also been made for taking the approval from Hon''ble Chief Minister. Hon''ble Chief Minister has granted the approval on 24.11.2013. Thus, we are of the view that the procedure for the transfer as provided in the Government Transfer Policy for the year 2013-14 has been complied with. The object of the aforesaid transfer policy is to adopt a uniform policy of the transfer and to complete the annual transfer within the stipulated period and to avoid the arbitrary transfer after completion of the annual transfer in the mid session and to avoid the harassment and the hardship of the officer but the aforesaid transfer policy does

not prohibits the mid session transfer. It provides procedure for the transfer after the completion of the annual transfer chain. The transfer is exigency of the service. The aforesaid transfer policy is a kind of guidelines, which normally should be adhered to in order to achieve the object of the transfer policy but it cannot be strictly construed. Normally it is expected that if a procedure is provided, it should be adhered to. Policy provides that the transfer of the Class I officer be made after getting the approval from Hon"ble Chief Minister, therefore, it is expected that before issuing the transfer order, approval of Hon"ble Chief Minister should be taken but in case, if the approval of the Principal Secretary and the concerned Minister have been taken prior to the issuance of transfer order and the approval has been granted subsequently by Hon"ble Chief Minister, the transfer order shall not stand vitiated, merely on this ground. As stated above, the petitioner alone has not been singled out. He has been transferred alongwith other 18 Executive Engineers. The reasons for the transfer is mentioned in the order dated 13.11.2013, while deciding the representation of the petitioner. Whether the facts stated in the order dated 13.11.2013 is correct or not is a question of fact and cannot be examined in the writ jurisdiction. However, at the appropriate stage/forum, it is open to the petitioner, if so advised, to dispute such factual averments made in the impugned order. On the facts and circumstances, we are of the view that no case of mala fide or that the impugned order is contrary to the statutory provisions, has been made out.

7. Apex Court in the case of State of U.P. and Others Vs. Gobardhan Lal, , while dealing with the case of transfer has held as follows:

8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory

provision.

9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

10. The very questions involved, as found noticed by the High Court in these cases, being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write-ups in journals or newspaper reports, conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the in-built powers of supervision and control in the hierarchy of the administration of State or any Authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities affecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the concerned authorities, the Courts and Tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalised directions as have been given by the High Court could ever be given leaving room for an inevitable impression that the Courts are attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously Courts endeavor to safeguard the rights of parties.

On the facts and circumstances and the law laid down by the Apex Court referred hereinabove, we do not find any reason to interfere in the matter. We accordingly, decline to exercise our extra-ordinary discretionary jurisdiction under Article 226 of the Constitution of India.

The writ petition fails and is, accordingly, dismissed.