

(1999) 08 AHC CK 0209

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6235 of 1999

Prayag Lal Gautam

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 UPLBEC 2002

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : N.C. Rajvanshi, for the Appellant; S.C. and Pradeep Shanker Pandey, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—By means of this writ petition under Article 226 of the Constitution of India under Article 226 of the Constitution of India, the petitioner has challenged the validity and propriety of the order of transfer dated 3-2-1999, Annexure 5 to the writ petition, passed by the respondent No. 2 transferring him from the post of Assistant Basic Siksha Adhikari (Nagar), Mirzapur to Shahganj, Jaunpur. It is prayed that the said order be quashed and the respondents be directed not to interfere in the functioning of the petitioner on the said post at Mirzapur. An interim order staying the transfer of the petitioner was originally passed by Hon''ble V.M. Sahai, J. on 8-3-1999. The said order was recalled by him on 10-5-1999 as the Bench which he was presiding was not the appropriate Bench to take cognizance of the matter. The matter, therefore, came to be heard before the appropriate Bench presided over by Hon''ble M. Katju, J. who stayed the operation of the transfer order dated 3-2-1999 on 28-5-1999.

2. On behalf of Radheshyam Dubey, who had been posted in place of the petitioner at Mirzapur, applications for impleadment and recall of the interim order dated 28-5-1999 have been moved primarily on the ground that the petitioner had filed the writ petition by concealing certain material facts, in as

much as, he had been relieved on 19-2-1999 and in his place Radheshyam Dubey-applicant had taken over on 27th May, 1999 on transfer from Ballia to Mirzapur. In support of the application for recall of the order dated 28-5-1999, an affidavit has been filed and a copy of the charge certificate to the effect that the petitioner has handed over charge in the Forenoon of 19-2-1999 has been filed as Annexure 1 to the affidavit.

3. Heard Sri N.C. Rajvanshi, learned Counsel for the petitioner as well as Sri P.S. Pandey, appearing on behalf of Radheshyam Dubey, who has moved an application for impleadment, at considerable length.

4. Sri Rajvanshi urged that the petitioner was transferred from Mirzapur to Shahganj in district Jaunpur on account of Political pressure and in the wake of certain uncorroborated complaints made against him and, therefore, the transfer order is not bona fide and has not been passed in the public interest. Sri P.S. Pandey, learned Counsel for the respondent repelled the submission and pointed out that the petitioner had misconducted himself at Mirzapur and has abused his official position for personal aggrandizement. It was further pointed out that there are serious allegations against the petitioner with regard to misuse of office, and squandering of Government funds and complaints were made against the conduct of the petitioner in October, 1998. It was also pointed out that the present writ petition has become infructuous obviously for the reason that the petitioner stood relieved as he had handed over charge of office, which he was holding at Mirzapur on 19-2-1999 and in his place the applicant Radheyshyam Dubey has joined on 27-5-1999.

5. In view of the above facts, which have been brought to the notice of this Court, it is no longer necessary to require the counter affidavit to be filed by the other respondent Nos. 1 to 7. As a matter of fact, Sri Rajvanshi pointed out that he does not want that respondent Nos. 5, 6, and 7 should remain on record and their names may be deleted. Since this writ petition can be disposed of on the basis of the admitted facts as have been called out after living of the affidavit by successor-in-force of the petitioner, it would do better to dispose of it finally at this stage instead of allowing it to drag on without any corresponding advantage.

6. This fact that pursuant to order of transfer dated 3-2-1999, the petitioner had handed over charge on 19-2-1999 and stood relieved from Mirzapur is indubitable. It is also not disputed that at present Radheyshyam Dubey is working as Assistant Basic Siksha Adhikari (Nagar), Mirzapur right from 27th May, 1999. He joined the post on that date after having been relieved from Ballia on transfer. It is amazing to note that in spite of the fact that before passing of the order dated 28-5-1999 by this Court, the petitioner had already handed over charge on 19-2-1999 but he failed to inform the Court that the order of transfer has already taken effect. The petitioner deliberately suppressed the fact of handing over charge on 19-2-1999 with a view to obtain the stay order on 28-5-1999. This fact was also concealed by the petitioner that his substitute has also taken "over on 27th May, 1999 in his place. The petitioner undoubtedly is

guilty of concealment of material facts with the result he has disintitiled himself to the equitable and discretionary extraordinary relief under Article 226 of the Constitution of India. The extra ordinary jurisdiction of this Court under Article 226 of the Constitution can be invoked only by a person who comes with a clean hands. A person who has been guilty of committing fraud is certainly not entitled to the benefit otherwise available under Article 226 of the Constitution. In *Rajbir Singh Vs. Purushottam Lal and others*, this Court observed that it is settled law that when a person approaches the Court of equity in exercise of Us extra ordinary jurisdiction under Article 226 of the Constitution of India, he should approach the Court with clean objectives. There is no need to cite any authority for this but the reference may be made to the cases of the *The Ramjas Foundation and Others Vs. Union of India and Others*, , *G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another*, and *K.R. Srinivas Vs. R.M. Premchand and Others*, . The Hon"ble Supreme Court in the case of *Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another*, , observed thus: -

"A Court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution of India must so act as to prevent proportion of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and subtleties invented to evade law."

Likewise, in the case of *State of Maharashtra and Others Vs. Prabhu*, , the Apex Court observed that it is the responsibility of High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for the sake of justice and refusing to interfere where it is against the social interest and public good. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , Hon"ble Supreme Court ruled that the Courts of law are meant for imparting justice between the parties. One who comes to the Court must come with clean hands.

7. Apart from the above fact, the present petition lacks merits. It cannot be said that the order of transfer of the petitioner has a direct nexus with the complaints which were made against him. The submission of Sri Rajwansi that the petitioner has been transferred on account of political pressure exerted through the complaints is not well merited. A busy body or a representative of the citizens can always bring to the notice of higher authorities about the misdemeanors of the their subordinate employees and if the appointing authority or the departmental authorities find that the continuance of a particular employee at a particular station is not in public interest, such an employee can always be transferred. As it is. in the present case, no political pressure was exerted on the transferring authority.

8. Transfer is an incident of service. When a Government servant joins the department, he knows it full well that he is likely to be transferred from one place to another. He cannot stick to and one place for an indefinite period. It is

for the employer to determine where he is to remain posted and what work is to be taken from him. In the instant case, after due consideration the petitioner was transferred from Mirzapur to Jaunpur. As a matter of fact, in the wake of the various complaints made against him, it was but natural that the petitioner should have been shifted from the place where he had become controversial. This Court would not intervene with the administrative decision taken by the executive authority, who has in the fitness of things, found expedient to transfer the petitioner.

9. For all what has been said above and particularly keeping in view the fact that the petitioner has already been relieved from Mirzapur, it is not a fit case in which judicial intervention under Article 226 of the Constitution of India is warranted. The writ petition is accordingly dismissed.