
(1993) 09 AHC CK 0074

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32345 of 1993

Purshottam Lal Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 AWC 194

Hon'ble Judges : S.R. Misra, J;B.M. Lal, J

Bench : Division Bench

Advocate : Sant Sharan Sharma and Sadhna Upadhyaya, for the Appellant;

Final Decision : Dismissed

Judgement

B.M. Lal, J.—By means of present petition under Article 226 of the Constitution of India, the Petitioner seeks a writ in the nature of certiorari quashing an order dated 30-6-1993 contained in Annexure-2, whereby he has been transferred from Jhansi to Banda.

2. Admittedly the Petitioner, who is an Assistant Engineer, is working at Jhansi with effect from 12-7-1988 vide para 13 of the writ petition.

3. On 28-6-1993 the Chief Engineer, Bundelkhand Zone, Jhansi (Respondent No. 3) passed an order contained in Annexure-1 to this petition whereby eight Assistant Engineers including the Petitioner were transferred and the Petitioner was retained at Jhansi as his transfer was a local [one i.e. from Provincial Division Jhansi to 35th Circle, Jhansi.

4. However, by a subsequent order dated 30-6-1993 impugned in this petition, he has been transferred to Banda as stated above. The reason attributed to his transfer as mentioned in the order itself is public interest.

5. The impugned order dated 30-6-1993 is sought to be challenged inter-alia on the grounds: "

(1) Transfer policy has not been adhered to in the case of the Petitioner.

(2) Four other- Assistant Engineers namely, Sarvshri R. K. Rusia, Komal Chand Jain, M. C. Misra and Param Lal Yerma, who had not worked in Non Executive Division & come within the policy of transfer, have not been transferred, and the respondent's action in transferring the Petitioner is discriminatory and violative of Article 14 of the Constitution of India.

(3) Respondent No. 3, namely Sri V. P. Sharma, who was at one point of time Superintending Engineer of the Petitioner, got annoyed with him and with a view to harass the Petitioner he has passed the impugned transfer order.

(4) Petitioner's children are admitted in Schools at Jhansi and his wife is under medical treatment at Jhansi.

6. Learned counsel appearing for the Petitioner Sri S. S. Sharma advanced arguments at length in support of the above stated grounds.

7. As regards first two grounds that transfer policy has not been followed and other Assistant Engineers have been retained while Petitioner has been transferred, suffice it to say that executive instructions & policy decisions are made to facilitate proper functioning of the administration and Government work. It is well settled that these executive instructions and policy decisions cannot be enforced in the proceedings under Article 226 of the Constitution of India since they have no statutory force of law and as such ground nos. 1 and 2 are not available to the Petitioner in writ proceedings.

8. So far as ground No. 3 is concerned that on account of personal annoyance of Sri V. P. Sharma (Respondent No. 3) the order of transfer has been passed, it may be stated that though Petitioner has levelled allegations against Sri V. P. Sharma, but has not arrayed him by name in the array of Respondents.

9. The last ground that his children are admitted in schools at Jhansi and his wife is under medical treatment there, it is to be noted that according to his own showing the Petitioner came to know about his transfer on 17-7-1993 after his return from Jabalpur where he had gone in connection with sad demise of his maternal uncle. It may also be noted here that both the children of the Petitioner are studying in Class III and Class VIII.

10. It is well known to all that during, the entire month of July, only admission process is carried out in schools and no substantial teaching work at all i.e. had the petitioner been really sincere in proceeding to Banda pursuant to his order of transfer and tried to get his children admitted there, they could have certainly been admitted in any school at Banda.

11. Similar is the position in regard to treatment of his wife. It is not that Petitioner cannot pursue the treatment of his wife if posted to Banda.

12. It appears there is no truth in the aforesaid grounds and the same appear to have been set up just for the purposes of this case.

13. On the question of transfer, it has repeatedly been emphasised by the Apex Court, that it is nothing but an incident of service and the Courts are not expected to interfere with the orders of transfer which are made in public interest and exigencies of administration. No doubt, Courts can certainly interfere where it is found that transfer has been made in violation of any mandatory statutory rule or same is malafide or has been made in colourable exercise of power.

14. However, none of the aforesaid grounds exists in the present case.

15. Needless to mention an employee holding transferable post, has no vested right to continue at one particular place rather he is liable to be transferred from one place to another. The transfer of a public servant does not violate any of his legal rights.

16. The Apex Court has further held that even if transfer order is passed in violation of executive instructions, decisions or orders the Courts are not supposed to interfere with the same instead the affected party should approach to the higher authorities. See *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, .

17. It is surprising that in the instant case the transfer order is dated 30-6-1993 and according to his own showing the Petitioner came to know about it on 17-7-1993, but what he did after 17-7-1993 has not been stated in this petition. The present petition has been filed before this Court only on 7th September, 1993. Even he has not cared to make any kind of representation to his higher authorities for redressal of his grievances if any, during the aforesaid period and is still avoiding to join at Banda in pursuance of his transfer. May be the order of transfer is against the executive instructions, but that does not mean that its implementation is to be or permitted to be withheld.

18. If a public servant avoids or fails to proceed on transfer in compliance to the transfer order without there being any plausible justification therefor, it amounts to disobedience of the order passed by competent superior authority and thereby such public servant renders himself liable for disciplinary action under the relevant service Rules. See *Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani*, .

19. In the instant case, admittedly the Petitioner came to know about his transfer order on 17-7-1993 and he filed the instant petition on 7-9-1993. Thus, between the period from 17-7-1993 to 7-9-1993 neither he complied with the transfer order nor made any representation to his higher authorities nor approached this Court and thereby continuously disobeyed the order passed by his superior authority for such a long period without sufficient reasons.

20. This Court is not expected to pass any order regarding such disobedience, and accordingly we are refraining from expressing any opinion on this aspect.

21. It is for the department authorities to enquire into the matter so as to

maintain discipline in the administration and do the needful in accordance with law.

22. In the result, the petition fails and is accordingly dismissed.

23. Let a copy of this order be sent to concerned departmental authority for perusal and necessary action.