

(2002) 09 AHC CK 0161
In the Allahabad High Court
Case No : C.M.W.P. No. 37545 of 2002

Raghunandan Singh and Another	Vs	APPELLANT
Pradhan Prabandhak (Karmik), U.P.S.R.T.C. and Others		RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Penal Code, 1860 (IPC) — Section 323, 504, 506

Citation : (2002) 5 AWC 4368

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Advocate : Jai Narain, for the Appellant; P.N. Rai, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—This writ petition has been filed by the Petitioners, inter alia, challenging the order dated 18th June 2002 (Annexure-2 to the writ petition). By the said order dated 18th June 2002, Petitioner No. 1 (Raghunandan Singh) has been transferred from Aligarh Region to Varanasi Region while Petitioner No. 2 (Ashok Misra) has been transferred from Aligarh Region to Jhansi Region.

2. It is, inter alia, alleged by the Petitioners in this writ petition that the Petitioners are in the service of U.P. State Road Transport Corporation on the post of Conductor, and that presently, the Petitioners are posted at Kasganj Depot. in Aligarh Region ; and that on 8th June 2002, a first information report was lodged against the Petitioners in Case Crime No. 500 of 2002 under Sections 323, 504 and 506, I.P.C. ; and that Respondent No. 4 made recommendation to the higher authorities for transferring the Petitioners to distant region ; and that on the recommendation of Respondent No. 4, the Petitioners have been transferred by the said order dated 18th June 2002. It is inter alia, further alleged by the Petitioners that the Petitioners are class III employees holding the post of conductor and their families would suffer great hardships on account of the said transfer order.

3. I have heard Shri Jai Narain, learned Counsel for the Petitioners and Shri P. N. Rai, learned Counsel for the Respondents.

4. Learned Counsel for the Petitioners submitted that the Petitioners are class III employees and their transfer from Aligarh to distant Region is arbitrary. Learned Counsel for the Petitioners has relied upon the decision of this Court in Mashooq Ahmad Vs. Manager (Personnal and Industrial Relation) B.P.C. Ltd., Naini, Allahabad, . Learned Counsel for the Petitioners further submits that the family of the Petitioners would suffer great hardships on account of the said transfer order.

5. Shri P. N. Rai, learned Counsel appearing for the Respondents, submits that the Petitioners are working on the post of conductor, and the nature of their job is such that they are required to travel from one place to another, and as such, there is no question of any hardship to the Petitioners.

6. After considering the submissions made by the learned Counsel for the parties, I am not satisfied that it is a fit case for interference under Article 226 of the Constitution of India. The impugned order of transfer dated 18th June 2002, has been passed by the Pradhan Prabandhak (Karmik), U.P. State Road Transport Corporation, Lucknow, on administrative grounds. The transfer is an incident of service. Normally, the High Court does not interfere with the transfer orders in exercise of its writ jurisdiction under Article 226 of the Constitution of India, unless there is a mala fide intention in issuing the transfer order or the transfer order is shown to have been issued in violation of certain statutory rules. In the present case, the Petitioners have not shown any violation of statutory rules in issuing the impugned order of transfer, nor have they shown that there is a mala fide intention on the part of the Respondents in issuing the transfer order. The only allegation in the writ petition is that in view of the first information report lodged on 8th June 2002, Respondent No. 4 recommended to the higher authority for transfer of the Petitioners. In my opinion, even if this allegation is assumed to be correct, still this does not show any mala fide intention on the part of the Respondents in issuing the transfer order. The Pradhan Prabandhak (Karmik), U.P. State Road Transport Corporation, Lucknow, has issued the impugned transfer order, and the said order states that the same has been issued on administrative grounds. There is no reason to disbelieve the statement made in the said order.

7. As regards the decision of this Court in Mashooq Ahmad case (supra), relied upon by the learned Counsel for the Petitioners, the said decision is not applicable to the facts of the present case. In Mashooq Ahmad case, the Petitioner who was class III employee (Assistant cum-typist) in the Respondent-corporation was transferred from Allahabad to Bombay. Transfer orders in respect of several other persons were cancelled, but not in respect of the Petitioner. Considering the facts and circumstances of the case, a learned single Judge of this Court held as follows :

"8. On the facts and circumstances of the case, I am of the opinion that the transfer order is arbitrary and illegal. It may be noted that the transfer orders of several persons whose names are mentioned in paragraph 15 of the rejoinder-affidavit viz., S/Sri L. N. Tiwari, B. P. Yadav, K. K. Mishra and P. P. Pandey, who were also working at Naini Branch at Allahabad were cancelled. Hence in my opinion there is discrimination against the Petitioner.

9. It may also be mentioned that the Petitioner is only a class III employee and it is economically impossible for a class III and Class IV employee in these hard days of high inflation to live and survive with his family at Bombay after transfer from Allahabad. It must be understood that in big cities like Bombay living expenses are very high and for a Class III or Class IV employee who has been living at Allahabad to be sent to Bombay will really be an indirect way of depriving him of his job because he simply cannot survive at Bombay. He will have to take a house on heavy rent and also bear other heavy expenditure which on his paltry salary he cannot afford. This Court must take a realistic view in the matter. No doubt it has been held in many cases that transfer is an exigency of service but at the same time it must also be understood that no Government authority or instrumentality of the State can act arbitrarily, as arbitrariness violates Article 14 of the Constitution vide *Maneka Gandhi v. Union of India* AIR 1978 SC 597. Thus, the principle that transfer is an exigency of service cannot be considered in isolation, but it must be read along with the equally important principle that every Government authority or instrumentality of the State (e.g., a public sector undertaking like the Respondent) must act in a non-arbitrary manner. We cannot consider only the first principle and ignore the second one. In fact the second principle, i.e., the principle that arbitrariness violates Article 14 of the Constitution is a constitutional principle. Hence any transfer order which is arbitrary becomes illegal as it is in violation of Article 14 of the Constitution."

8. Thus, this decision was based on the circumstances that transfer orders in respect of other persons had been cancelled, and further, hardships involved in big city like Bombay. In the present case, the facts and circumstances are entirely different. Hence, the decision in *Mashooq Ahmad case* (supra), cannot be applied in the present case.

9. In view of the aforesaid discussion, no interference is called for with the impugned transfer order in exercise of writ jurisdiction under Article 226 of the Constitution of India. The writ petition filed by the Petitioners lacks merits, and the same is liable to be dismissed.

10. Learned Counsel for the Petitioners then submitted that the Respondent No. 1 may be directed to decide the representation of the Petitioner No. 1 dated 29.7.2002 (Annexure-3 to the writ petition) and the representation of the Petitioner No. 2 dated 31.7.2002 (Annexure-4 to the writ petition).

11. Having considered the submission of the learned Counsel for the Petitioners, it is directed that the Respondent No. 1 will decide the respective representations

of the Petitioner Nos. 1 and 2 (Annexures-3 and 4 to the writ petition) expeditiously, preferably within a period of six weeks from the date of filing of a certified copy of this order along with copies of the respective representations of the Petitioner Nos. 1 and 2 before the Respondent No. 1. It is, however, made clear that no directions are being given on the merit of the said representation, as it is for the Respondent No. 1 to take appropriate decision in this regard.

12. The writ petition is dismissed, subject to the aforesaid observations.