
(2015) 01 AHC CK 0153

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 47750, 44145, 44393, 45946, 45980, 46076, 47821, 51209, 51231, 51295, 51354, 51356, 51566, 51581, 51588, 51623, 51625, 51660, 51661, 51662, 51663, 51664, 51665, 51674, 51675, 51676, 51677, 51839, 51842, 51895, 51997, 51999, 5

Ram Adhar Maurya and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 4 ADJ 72 : (2015) 6 AWC 5671 : (2015) 3 ESC 1425 : (2015) 3 SCT 281 : (2015) 2 UPLBEC 1028

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : Dharendra Kumar Srivastava, for the Appellant

Final Decision : Disposed off

Judgement

Pradeep Kumar Singh Baghel, J.—In this batch of writ petitions, the petitioners have challenged their respective transfer orders passed in pursuance of the Government Order dated 07th June, 2014, being the transfer policy of the State Government. Therefore, all the writ petitions have been heard together and are being disposed of by this common judgment and order. The petitioners in this batch of writ petitions are either Constables or Female Constables or Constable Drivers or Head Constables or Sub-Inspectors in the Police Department of the State. They have approached this Court under Article 226 of the Constitution to challenge the transfer policy of the State Government dated 07th June, 2014, known as "Border Transfer Scheme", and the consequential orders of their transfer, as are impugned in the respective writ petitions.

2. The background of the present policy is that the State Government way back on 11th July, 1986 took a policy decision that the Constables, Head Constables, Sub-Inspectors and Inspectors should not be posted in the districts near or

adjoining to their home districts and where their immovable properties are situated. This policy had consistently been followed by the police department till 2012. In the year 2012, the State Government changed the said policy of 1986 with a scheme known as "Border Transfer Scheme", where under the Constables and Head Constables were permitted to be posted in any of the districts adjoining to their home districts. Consequently, a Government Order dated 20th March, 2012 was issued to the said effect. The Uttar Pradesh Police Headquarters, Allahabad issued a consequential office-memorandum on 20th March, 2012 permitting the posting of the aforesaid police personnels in any of the adjoining districts to their home districts. Pursuant to the said change of policy, a large number of transfer of Head Constables and Constables were made posting them near their home districts.

3. From the record it transpires that the State Government again changed its policy in view of the various complaints received by the State and the police officers to the effect that the police personnels who are posted near their home district slip to their home without permission and even without informing the superior authorities, and this illegal conduct of the police personnels had an adverse impact on law and order situation. It was also noticed that they are involved in the local disputes including the property disputes, and the allegations are made against them regarding their partiality. In view of the said experience, the State Government took the policy to revive the provisions of Paragraph-5 of the earlier Government Order dated 11th July, 1986 by amending the Government order dated 20th March, 2012, whereby the Constables and Head Constables were allowed to be posted in the districts adjoining to their home district, by a Government Order dated 07th June, 2014, which is impugned in this batch of petitions. It is thus clear that vide impugned Government Order dated 07th June, 2014 the earlier practice of 1986, which had consistently been followed for a considerably long time, has been revived.

4. A large number of writ petitions were filed before this Court challenging the validity of the Government Order dated 07th June, 2014. A learned Single Judge of this Court vide judgment and order dated 12th December, 2014 has decided a batch of petitions, led by Writ-A No. 34228 of 2014 (Manish Kumar Dixit and others v. The State of U.P. and others), upholding the validity of the Government Order dated 07th June, 2014 and has dismissed all the petitions. However, the learned Single Judge has also held that in case of individual hardship, the concerned police personnel can file a representation to the appropriate authority to cancel or modify his/her transfer order on the said ground.

5. Dissatisfied with the order of the learned Single Judge, Special Appeal Defective No. 42 of 2015 (H.C. 72 A.P. Arvind Kumar and others v. State of U.P. and 7 others) and other connected batch of special appeals were filed by the police personnels which came to be dismissed by a Division Bench of this Court on 23rd January, 2015. It is worthwhile to extract the relevant part of the order of the Division Bench passed in the special appeals, as under:

"The learned counsel for the appellants has relied upon various judgments which are already quoted in the learned Single Judge Judgment mainly Vinod Kumar v. State of U.P., 2010 (7) AD J 315 FB and Prakash Singh and Others Vs. Union of India (UOI) and Ors, (2007) 103 CLT 69 : (2006) 12 JT 225 : (2006) 9 SCALE 444 : (2006) 8 SCC 1 : (2006) 6 SCR 473 Supp and also raised various pleas, however, lastly, conceded and submitted that appellants may be given permission to comply with the order of moving representation before the concerned authorities in compliance of the liberty granted by the learned Single Judge while disposing of their writ petitions and fixed a time frame for disposal of such representation if preferred before the concerned authorities.

In view of the statement made by the learned counsel for the appellants we are of the opinion that Special Appeal devoid of merit and deserves to be dismissed and the appellants may be given liberty to move representation before the concerned authority as provided in para 43 of the judgment of the learned Single Judge."

6. In the instant writ petitions, principally the Government Order dated 07th June, 2014 and the consequential orders of transfer have been challenged. In most of the petitions, the petitioners, apart from challenging the aforementioned policy of the State Government, have also averred their personal hardship. From the record it transpires that the personal hardships can broadly be put in three categories: (i) illness of the petitioner/s or his spouse or family members; (ii) the children of the petitioner/s are school/college going and this mid-session transfer will cause hardship to them; and, (iii) the petitioner/s is/are differently abled persons.

7. In the cases of Manish Kumar Dixit (supra) and H.C. 72 A.P. Arvind Kumar (supra), the issue regarding personal hardship has also been considered and the Court has expressed its view that in case of personal hardship the police personnels (petitioners) can submit a representation to the appropriate authority, who shall consider it and pass the appropriate order.

8. It is well-settled law that the transfer is a condition of service. The Courts should ordinarily refrain from interfering with the transfer of an employee. An employee has no right to be posted at a particular place. He cannot exercise his option for his posting at a place of his choice. It is entirely to the employer to decide where and at what point of time a public servant is to be transferred from the present place of posting. The Supreme Court has consistently taken the view that an order of transfer is a part of service conditions of an employee which should not be interfered with ordinarily by the Court of law in exercise of its discretionary jurisdiction under Article 226 of the Constitution unless the order has been passed in violation of the service rules or it is infected with malice.

9. The petitioners belong to a disciplined force. They cannot be treated at par with other Government employees, while dealing with them in transfer matter. The police personnel should obey the transfer order immediately without any

delay. Experience reveals that large number of writ petitions are filed challenging the transfer orders on diverse grounds. Some of the police personnel approach this Court after lapse of several months. It is surprising that without joining at the new place of posting, they manage to be on leave for long time. The Supreme Court in the case of *State of Haryana and Others Vs. Kashmir Singh and Another etc. etc.*, (2010) 127 FLR 728 : (2010) 11 JT 148 : (2010) 13 SCC 306 : (2011) 1 SCC(L&S) 376 , has considered the transfer of police personal and observed thus:

"12. Transfer ordinarily is an incidence of service, and the Courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the State authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation. The administrative authorities concerned may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well-settled that Courts must not ordinarily interfere in administrative matters and should maintain judicial restraint, vide *Tata Cellular Vs. Union of India*, AIR 1996 SC 11 : AIR 1994 SC 11 : (1994) 4 JT 532 : (1994) 6 SCC 651 : (1994) 2 SCR 122 Supp ."

(Emphasis supplied by me)

10. In *S.C. Saxena v. Union of India and others*, (2006) 9 SCC 583 , the Supreme Court has held as under:

"6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a Government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a Court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Monohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty."

(Emphasis supplied by me)

11. In the case of *State of U.P. and Others Vs. Gobardhan Lal*, AIR 2004 SC 2165 : (2004) 101 FLR 586 : (2004) 5 JT 454 : (2004) 3 LLJ 749 : (2004) 3

SCALE 574 : (2004) 11 SCC 402 : (2005) SCC(L&S) 55 : (2004) 1 SCR 337 : (2004) 3 SLJ 244 : (2004) AIRSCW 4571 : (2004) AIRSCW 2082 : (2004) 3 Supreme 92 : (2004) 6 Supreme 161 , the Supreme Court cautioned the Courts and tribunals not to act as appellate authority. Even in the case of allegations of mala fide, there should be some concrete materials. The Supreme Court held as under:

"8. 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."

12. What emerges from the law laid down in the aforesaid cases is that ordinarily the Court should not interfere in the matter of transfer unless the order of transfer is shown to be outcome of mala fide exercise or in violation of statutory provisions prohibiting any such transfer. The Court should not act as an appellate authority substituting its own decision. However, as held by the Supreme Court in the case of Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357 , if the employee has some personal hardship or the transfer order is against the guidelines issued by the Government on the subject, the employee can make a representation with respect to his transfer before the higher/appropriate authority, who may consider the same having regard to exigency of administration.

13. In view of the above, I do not find any illegality in the orders as are impugned in the present writ petitions. Hence, no interference is warranted under Article 226 of the Constitution. The petitioners are, however, at liberty that if there is any personal hardship, they may make a representation before the appropriate authority, who shall consider the same and pass the appropriate order in accordance with law expeditiously.

14. The writ petitions are, accordingly, disposed of. No order as to costs.