

(2007) 02 AHC CK 0190
In the Allahabad High Court

Ram Bahadur Yadav

APPELLANT

Vs

U.P. Co-operative Union Ltd., Managing Director, U.P. Co-operative Union Ltd., President, District Committee, Mau/
District Assistant Registrar Co-operative Societies and
Kamlesh Kumar Yadav

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 6 AWC 5985 : (2007) 113 FLR 736

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. This writ petition has been directed against the order dated 21.9.2006 passed by the Managing Director, U.P. Co-operative Union Ltd., Lucknow (respondent No. 2), whereby the petitioner has been transferred to the regional office of the respondents at Saharanpur from the district committee at Mau.

3. Learned Counsel for the petitioner has placed on record the recommendations made by the local M.L.A. who happens to be the Minister of the co-operative department. In the recommendations the Minister has recommended for the transfer of the petitioner on the basis of certain charges.

4. The learned Counsel has argued that the transfer order is without jurisdiction and is not a legal order in the eye of law as the same has been passed at the behest of the Minister on the basis of certain charges. According to him the order is in the nature of punishment and having been passed without conducting any enquiry.

5. From the record it appears that the petitioner was posted as a Junior Clerk in the district office at Mau. It is alleged that besides performing the duties of

Junior Clerk he was also assigned certain duties of Consumer Section in the office of the District Assistant Registrar, Co-operative Societies, Mau. The Mau Kargha Audyogik Upbhokta Sahakari Samati Ltd., Domanpur, Mau is a consumer society of which Sri Kamlesh Kumar Yadav (respondent No. 4) was appointed as the Administrator by the Minister for co-operative department after dissolution of the Board. The aforesaid consumer society runs three shops under public distribution system.

6. It is alleged by the petitioner that respondent No. 4 was removed from the post of Administrator of the consumer society and that even after his removal from the post of Administrator, respondent No. 4 used to visit the aforesaid three shops of the consumer society for the purposes of taking illegal gratification from the salesmen.

7. It is further alleged that the petitioner objected to the aforesaid conduct of respondent No. 4 and asked him not to visit his shop, which annoyed him, as such respondent No. 4 made a false complaint against the petitioner to the Minister concerned. The counsel for the petitioner contends that as a result the Minister directed the Managing Director, U.P. Co-operative Union Ltd., Lucknow, respondent No. 2, to transfer the petitioner at the behest of respondent No. 4 by order dated 21.9.2006; and that the petitioner has been transferred from district Mau to district Saharanpur on the basis of impugned order dated 21.9.2006. It is strenuously argued by the learned Counsel for the petitioner that apparently the transfer order seems to be innocuous but on the scrutiny it becomes clear that the order has been passed as a measure of punishment without any enquiry or show cause notice and as such the impugned order of transfer dated 21.9.2006 is liable to be struck down and quashed by this Court.

8. The learned Counsel for the petitioner relied upon the decision rendered in *Natthi Lal v. Secretary, Ministry of Agriculture, U.P. Government, Lucknow and Ors.* (1995) 2 UPLBEC 1115 against which an Special Appeal No. 3 of 1995 was filed which was also dismissed vide decision reported in (1995) 2 UPLBEC 1121, and thereafter the SLP (Civil) No. 6322 of 1995 filed against the order dismissing the special appeal was also dismissed vide decision reported in (1995) 2 UPLBEC 1122. The High Court in *Natthi Lal (supra)* has held that the transfer order passed on the instruction of Minister of department concerned who desired a particular person to be posted on a particular post is illegal because of absence of administrative exigency and public interest as the order is not passed in the interest of department but merely to serve the interest of the person concerned.

9. The learned Counsel further relied upon the decisions rendered in *Pradeep Kumar Agrawal v. Director, Local Bodies, U.P. IV, Lucknow and Ors.* (1994) 1 UPLBEC 189; *Sheo Kumar Sharma v. Basic Shiksha Adhikari, Kanpur Dehat and Ors.* (1991) 1 UPLBEC 690; and *Nanak Chand Vs. State of U.P. and Others*,

In *Pradeep Kumar Agrawal (supra)* it has been held:

...in a democratic set up like ours, bureaucrats are expected to act and discharge

their executive functions impartially and strictly in accordance with the Rules and Regulations. No doubt, as of right no Government servant can claim to be posted either on a particular station or post therefore the transfers are to be done only in administrative exigencies and in public interest, but in the instant case the letter written by the aforesaid M.P. addressed to Minister for Urban Development bearing endorsement of the officers of the State Government, indicates that instant transfer has neither been made in administrative exigency nor in public interest. It is not only a matter of surprise but highly objectionable that bureaucrats are dancing at the tunes of such letters ignoring the well settled norms meant for transfer.

Similarly in Sheo Kumar Sharma (supra) it has been held:

It is regretted that a Minister should pass a transfer order which function is to be discharged by the competent authority in the Department. If any thing adverse to the conduct of the incumbent comes to the knowledge of a Vidhayak or some other public representative, then he may forward it to the competent authority requesting him to consider the same and do the needful in the matter, but interference by directing transfer straightway is not compatible to the principles of rules of law, by which a country having democratic set up is to be governed. All the persons in position should know that this is not the Government of the men howsoever high position they may occupy but is the Government of laws.

10. Per contra, the contention of the learned Counsel for the respondents is that the U.P. Co-operative Union Ltd., Lucknow as a whole has not been recognized as Co-operative Federal Authority, rather it is recognized in respect of the services of Supervisors and Kamdars as the Federal Authority and all the Supervisors and Kamdars having become members of the Authorities have been ceased to be the employees of the U.P. Cooperative Union.

11. It is stated that the petitioner has been suspended for the gross misconduct committed by him and that since elections of the society have already been held and the Committee of Management has already assumed the duties as such appointment of the Administrator is automatically ceased. It is submitted that the complaint has no bearing to the impugned transfer order passed by the competent authority and that the complaint was made to the State Minister for Co-operative (Independent Charge) who is also local M.L.A. from district Deoria, as such being the Minister for Co-operative Department he could have taken cognizance of the complaint made to him in the capacity of Head of the department. It is submitted that in the circumstances it cannot be said that the transfer order dated 21.9.2006 has been passed at the instance of the Minister for Co-operative Department, rather the same has been passed on administrative grounds. The impugned order in the circumstances cannot be said to be either mala-fide or illegal. Transfer of the employees of Cooperative Societies/Union is exigency of service and as such the services of the petitioner can be transferred from one place to another without any show cause notice or information or opportunity of hearing to such employees. Transfer of such employees without

opportunity of hearing is just and proper and does not require any interference by this Court under Article 226 of the Constitution.

12. In support of his contentions the learned Counsel for the respondents relied upon the decisions rendered in *Mukesh Singh Vs. State of U.P. and Others*, ; *Nanak Chand Vs. State of U.P. and Others*, *Shashi Dutt Pandey Vs. Sri Baleshwar Tyagi and others*, and *Narendra Kumar Rai Vs. State of U.P. and Others*,

13. In *Mukesh Singh (supra)* the petitioner was transferred in public interest and not on political pressure, as contended that the transfer order was passed on political pressure exerted by one politician of ruling party by writing a letter to the Chief Minister for transfer of the petitioner as the transfer order was passed after two months of said letter which was endorsed to the competent authority in due course by the Chief Minister's Secretariat.

14. Again in *Nanak Chand (supra)* it has been held that transfer from Civil Police to Inter-State Border Police challenged on the ground that the transferee did not give his consent for his transfer cannot be inferred to be mala fide, illegal and passed on political pressure etc. as the transfer order does not appear to have been passed in violation of Regulation 525 and even otherwise the services of the petitioner are transferable under Fundamental Rule 14-B of the U.P. Police Regulations.

15. Then in *Shashi Dutt Pandey (supra)* it has been held that if a Minister receives some complaints against an employee of his department, it will be perfectly within his jurisdiction to issue any direction, which the interest of administration may require.

16. Lastly in *Narendra Kumar Rai (supra)* a Division Bench of this Court held that the mere ground that the transfer order is passed on complaint of local M.L.A. or M.P. does not require any interference by High Court unless it is proved that the same was made with mala fide intention.

17. In the instant case the admitted case of the petitioner is that he has been transferred by the Managing Director, U.P. Cane Co-operative Union, Lucknow by order dated 21.9.2006. The order of transfer is claimed to have been passed at the behest of the Minister for the Cooperative Department on a complaint for the reason that the petitioner objected to the conduct of respondent No. 4 of visiting the three shops for taking illegal gratification from the salesmen of the shops. There is not even an iota of evidence brought on record by the petitioner to establish these assertions. Only a bald statement has been made by him to give colour to the writ petition. No salesman has come forward or has made any complaint against the alleged conduct of respondent No. 4. It appears that only the petitioner has taken exception to the said conduct of respondent No. 4 alleged by him for the purpose of this case.

18. It is another aspect when transfer is made the desire or instruction of an M.L.A. Or a Minister or a politician not concerned with the department for posting

a particular person on a particular post in absence of any public interest or administrative exigency and not in the interest of the department.

19. It is another aspect when a person is transferred even on instructions of a Minister who is Minister of the department concerned in public interest.

20. In the instant case the Minister concerned is the Minister for the department and he has every right to issue any direction which the interest of administration require, as such the facts and circumstances are squarely covered by the judgment rendered in Shashi Dutt Pandey (supra). No opportunity or show cause is required to be shown by an employee before he is transferred out even on administrative grounds. There are matters of enquiry for which separate proceedings may be initiated by the department if the complaints against the concerned employee are serious in nature, otherwise by transfer the employee against whom public opinion is being built for any reason, is removed from the scene, the hostilities against him are natural subdued due to his transfer without causing much damage to the service record of such an employee. The transfer order having been passed by the competent authority, i.e., Managing Director, Cane Co-operative Union, and the Minister of the department having jurisdiction and authority to issue instructions (which incidentally the petitioner has failed to establish to the contrary) no interference under Article 226 of the Constitution is required by this Court.

21. For the reasons stated above, the decisions relied upon by the learned Counsel for the petitioner are not applicable.

22. The writ petition is accordingly dismissed. No order as to costs.