
(2006) 10 AHC CK 0103

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 53097, 54138 and 52775 of 2006

Ram Pal Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 04-10-2006

Acts Referred:

Citation : (2006) 10 AHC CK 0103

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K. Shukla, J.

1. Each one of the petitioners have been performing and discharging duties as Assistant SubInspector (Ministerial). Each one of the petitioners have been posted at Agra.

2. Petitioner Ram Pal Singh in the year 2005 was attached in the office of Fatehgarh, District Farukhabad. Petitioner Raj Pal Singh was attached in the office of District Kanpur. Petitioner Ram Nath Singh was attached in the office of Fatehgarh, District Farukhabad. Each one of the petitioners it appear requested to Inspector General of Police, Kanpur Zone, Kanpur pointing out various personal inconveniences and on 10.7.2006 an order was passed extending continuance of petitioners at Agra. Thereafter on 12.9.2006 an order has been passed and by means of the same attachment order qua the petitioners has been sought to be cancelled and petitioners has been asked to join their duties at their respective place. At this juncture all these three writ petitions have been filed.

3. Learned Counsel for the petitioners Sri Prabhakar Dwivedi contended with vehemence that in the present case once personal request of the petitioners had been accepted and extending the attachment up to till 31.5.2007 order was passed then there was no occasion to cancel the said attachment on 12.9.2006 as such petitioners have been meted with arbitrary treatment and writ petitions deserves to be allowed.

4. Sri Shashank Shekhar, learned Counsel representing State on the other hand contended that petitioners have got no vested right to claim their stay at one particular place and once attachment order was recalled then in all eventuality petitioner should go to join their duties at their respective place where they have been asked to perform and discharge duties, as such impugned order is justifiable order and no interference be made by this Court.

5. After respective arguments have been advanced undisputed factual position which is emerging is to the effect that petitioners were posted at Fatehgarh, District Farukhabad and Kanpur respectively, but at no point of time petitioners have proceeded to join their duties at transferred place and to the contrary requested for their continuance at Agra. Request of petitioners have been accepted up to till 31.5.2007 and thereafter said attachment order has been cancelled.

6. It is well settled that transfer and posting is within the domain of the authority concerned and it is not for this Court to see as to where an incumbent should be posted and where his services can be best utilized.

7. At this juncture the view point of Hon"ble Apex Court due transfer is being looked into. In the case of Mrs. Shilpi Bose and others v. State of Bihar and others, 1995 (71) FLR1011 (SC), the Hon"ble Apex Court held as under:

"A Government servant holding a transferable post has no vested right to remain posted at one place or the other he is liable to be transferred from one place to the other. Transfer order issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with daytoday transfer orders issued by the Government. and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

8. In the case of State of U.P. v. Gobardhan Lal, 2004 (101) FLR 586 (SC), Hon"ble Apex Court has held as under :

"It is too late in the day for any Government servant to contend that once appointed on posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing of conditions of services. Unless the order if transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order or transfer cannot lightly be interfered with as a matter, of course, or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at

the best may afford an opportunity to the office or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with as they do not confer any legally enforceable rights, unless as noticed supra shown to be vitiated by mala fide or is made in violation of any statutory provisions."

9. Hon"ble Apex Court in case of Union of India and others v. Janardhan Debanath and another, (2004) 4 SCC 245, has taken the view that transfer order should not be interfered unless same is in violation of statutory provisions or order passed is mala fide. Relevant extract is being quoted below:

"The High Court while exercising jurisdiction under Article 226 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident but a condition of service. Necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. v. Shri Bhagwan, (2001) 8 SCC 574."

10. The caution given by Hon"ble Apex Court qua transfer matters of members of Force has been given in the case of Major General K. Bansal v. Union of India, 2005 (107) FLR 37, in following terms :

"It will be noticed that these decisions have been rendered in case of civilian employees or those who are working in Public Sector Undertakings. The scope of interference by Courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed force should posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless and exceptionally strong case is made out no interference should be made."

11. Here in the present case, even before this Court petitioners have miserably

failed to show as to on what ground their transfer orders have been stayed and they were permitted to continue at Agra. Vague and evasive recital of fact has been mentioned. Once authority concerned in its discretion have chosen to recall the order of attachment and there being no violation of any statutory Rule and there being no material of mala fide as such there is hardly any scope of interference in the impugned order.

12. Consequently, all three writ petitions are devoid of substance and are dismissed.