
(2009) 03 SHI CK 0033
In the High Court Of Himachal Pradesh

Roshan Lal and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Citation : (2009) 1 ShimLC 382

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—The petitioners herein have prayed for the following relief:

(i) That the impugned order dated 18.1.2002, Annexure A-6, may be quashed and set aside qua the applicants and they may be allowed to continue in their present cadre i.e. HPPWD 4th Circle, Shimla -3.

(ii) Record of the case may also be called for the perusal of this, Hon''ble Tribunal.

(iii) Any other relief deemed proper in the circumstances may also be granted.

(iv) Costs of the application may also be awarded.

2. Annexure A-6 is the office order dated 18.1.2002 transferring the petitioners from Shimla Division No. III, of the H.P. Public Works Department to other Divisions of the same Department, in and outside Shimla.

3. The petitioners were engaged on work charged basis with the State of Himachal Pradesh. With the passage of time, they were regularized and petitioners No. 1 and 2, S/Shri Roshan Lal and Sardip Singh were brought on regular cadre as Telephone Operator w.e.f. 5.2.1990 and petitioner No. 3 Shri Kirpa Ram was brought on regular cadre as telephone attendant w.e.f. 1.1.1995. In the year 1995, the posts of Telephone Operator and Telephone Attendant were clubbed with that of Receptionist and S/Shri Roshan Lal and Sardip Singh were confirmed as such on 5.2.1990 and Shri Kirpa Ram was confirmed w.e.f.

1.1.1995.

4. The State of Himachal Pradesh framed "Recruitment and Promotion Rules for the post of Receptionist Work Charged brought in regular cadre in the department of Public Works Himachal Pradesh" (hereinafter referred to as "the Rules"). In terms of Rule 3(a), Receptionists are in Circle cadre. However, Rule 17 specifically empowers the State to relax any of the provisions of the Rules with respect to any class or category of persons or post.

5. Vide impugned order dated 18.1.2002 (Annexure A-6), petitioner No. 1 Shri Roshan Lal was transferred from Shimla Division-III to 1st Circle, Mandi; petitioner No. 2 Shri Sardip Singh was transferred from Shimla Division-III to 8th Circle, Hamirpur and petitioner No. 3 Shri Kirpa Ram was transferred from Shimla Division-III to Electrical Circle, Shimla.

6. It is this order which has been impugned primarily on the ground that the petitioners are in Circle cadre and no option/consent for their transfer outside the said Circle was obtained. It is also contended that in the event of any administrative exigency necessitating transfer due to the staff having been rendered surplus, persons junior to the petitioners ought to have been transferred outside the Circle.

7. It is an undisputed fact that the petitioners were deployed in the Metropole MLA Hostel, Shimla to run the telephone exchange and due to the installation of automatic telephone exchange by the H.P. Vidhan Sabha, some of the staff had been rendered surplus.

8. The State being a model employer in its wisdom, rather than dispensing with the services thought it prudent to transfer/adjust the employees outside the Circle. The matter was deliberated at the highest level in the Government and it was so found that out of 18 working Circles within the Himachal Pradesh PWD, the total sanctioned posts of receptionists were 56 and only 49 of them were functional or had been filled up. Out of these 56 posts, in Circle 21 there were 21 sanctioned posts whereas 25 receptionists were working. The matter was further deliberated and it was decided that keeping in view the sanctioned strength vis-a-vis the functional posts the services of 7 surplus receptionists working in the Metropole Sub Division (Circle 21) be transferred to places where no receptionists were working at the relevant time. Accordingly, Shri Roshan Lal was, ordered to be adjusted against the 1st Circle, Mandi where neither a sanctioned post existed nor was any person working. Similarly, Shri Sardip Singh was ordered to be posted in the 8th Circle, Hamirpur where there were two sanctioned posts but no one was working on them and Shri Kirpa Ram was sent to the Electrical Circle, Shimla, where 3 sanctioned posts existed but nobody was working in the said Circle. Importantly, the Governmental decision, as is evident from Annexure R-2 dated 15.12.2001 categorically stated that "Government has accorded approval for the transfer/adjustment of the surplus receptionists alongwith the post.

9. The Government in its wisdom thought not to dispense with the services of the surplus staff and, therefore, the decision to transfer the petitioners was taken keeping in view the fact that each of the petitioners were transferred to their home District. It is true that in order of seniority the petitioners were not the junior most. It is undisputable that the petitioners have been transferred to their home District. There is nothing arbitrary, whimsical or capricious about the same. The criteria adopted is quite rational and objective. It is a reasonable classification based on said decision. In fact the place of posting of petitioner No. 3 is Shimla itself.

10. The decision to transfer was taken after the Government accorded its approval. Importantly, the petitioners are employees of the State Government and their transfer/posting is from one Circle to another Circle of the same department of the State of Himachal Pradesh. The transfer does not encompass change of department or the employer.

11. Be that as it may be transfer is an incident of service and the petitioners have no vested right to continue at the same place of posting if the administrative exigencies so warrant. The decision was taken by the Government in larger public interest so as not to retrench any employee and to utilize the services of the petitioners in the optimum manner. The decision taken by the Government is well reasoned. Instead of dispensing with the services of surplus employees the benevolent State choose to utilize their services and adjust them at vacant places along with their posts. The transfer is not malafide as there is nothing on record to prove the same.

12. Under these circumstances, the decision of the respondents is well reasoned, legal and valid and based upon exigencies of services in administrative and public interest.

13. Essentially transfer is a change of place of employment within an organization. It is an incidence of public service and the power to transfer can be exercised by the employer unless an express bar or restraint on the exercise of such power is spelt out. This power, however, has to be exercised in a bonfide manner. State of Rajasthan and Others Vs. Anand Prakash Solanki,

14. The Apex Court in National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, while dealing with the case of transfer of an employee from corporate office to the project at Itanagar has held as under:

...It is by now well-settled and often reiterated by this Court that no Government servant or employee of Public Undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other 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 of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals

cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned. On the facts and circumstances of the cases before us, we are also unable to agree with the learned Counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicts any transfer of the employees from one Office or Project or Unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer....

15. In *Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another*, , while dealing with the case of an employee of the postal service department transferred from Agartala Division to Meghalaya Division, the Apex Court held that;

12. The manner, nature and extent of exercise to be undertaken by Courts/Tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions - status, service prospects financially and same yardstick, norms or standards cannot be applied to all category of cases. Transfers unless they involve any such adverse impact or visits the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

14. The allegations made against the respondents are of serious nature and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned Counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the problems faced by the administration. It is not for this Court to direct one way or the other.

Emphasis supplied

16. The ratio laid down in Janardhan Debanath (supra) and Shri Bhagwan (supra) was reiterated by the Apex Court in State of U.P. and Others Vs. Siya Ram and Another, , while dealing with the case of transfer of an employee from Tubewell Division-I, Gazipur to the office of the Joint Chief Engineer, Tubewell East, Faizabad.

17. In Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others, , the Apex Court reversed the directions of the High Court directing the respondents to post the employee at his original place of posting. Apart from the aforesaid decisions, the Court also considered its earlier decisions in Abani Kanta Ray Vs. State of Orissa and Others, and Union of India and Others Vs. S.L. Abbas,

18. The question of inter zonal transfer was also considered by the Apex Court in Prabir Banerjee Vs. Union of India (UOI) and Others,

19. The aforesaid principles have further been reiterated by the Apex Court in Mohd. Masood Ahmad Vs. State of U.P. and Others,

20. In the facts of the present case the order of transfer undoubtedly is in public interest. The surplus staff was to be accommodated and hence in its wisdom the State decided to transfer the employees to their home District. There is nothing irrational, illogical or unreasonable about the same. The criteria adopted is absolutely justifiable. As has been noticed hereinabove, the State had the power to relax the Rules. The State Government has framed the transfer policy but the rules clearly empowered the State to relax any conditions. The decision to transfer was taken at the highest level and is deemed to have been taken in exercise of the powers of relaxation empowering the Government to take such a decision.

21. In these circumstances, the petitioners have no vested right to continue in the same Circle or at their place of posting.

22. In fact even in case of political interference the Apex Court in Mohd. Masood Ahmad (supra) has held as under:

Even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. It is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official, the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case. In the present case, there is no infirmity in the impugned transfer order.

23. Mr. Dilip Sharma, learned Counsel for the petitioners has referred to the decision of this Court reported in Santokh Singh v. HPSEB and Anr. Latest HLJ

2008 HP 82, in support of his contention. In fact, inspite of the memorandum issued by the Board indicating that the employees cannot be transferred to another Division/Circle, the Court itself held that "despite this notification we are not taking the view that the hands of the employers are totally tied and it cannot under any circumstances transfer an employee from one circle to another." In the said case there was no material on record to show as to what was the administrative exigency which weighed with the Government to exercise the powers of transfer. The decision therefore, does not help the petitioners at all as in the present case there is enough justification to support the governmental action.

24. Reference to the decision of Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others, , by the learned Counsel for the petitioners is also misconceived. The Apex Court was essentially dealing with the case where the services of the employees appointed and posted at the Centre opened by the Jawaharlal Nehru University were sought to be transferred to the Manipur University which had completely taken over the Centre along with its infrastructure and employees. It was in this background that the Court held that no transfer could have taken place which would have resulted into change of the employer. Hence, the decision is not applicable.

25. The principle of last come first go, is not applicable in the present case for the simple reason that the employees were not retrenched and the rational adopted by the State to transfer/post the employees to their home District is absolutely rational and logical, particularly when the transfer is along with the post and there were no incumbents or the persons senior to the petitioners. In fact the Apex Court in Janardhan Debanath (supra) has held that the question as to whether there is a loss of seniority or promotional prospects can be gone into in an appropriate proceedings if at all there is any adverse order passed. In the present case liberty is granted to the petitioners to agitate their issue of seniority and other promotional benefits, if need so arises.

26. The impugned order was stayed in the present proceedings on 1.2.2002. Unfortunately the said order has continued to be in operation since then. This has led to the non-utilization and proper deployment of the staff and resources available with the State. The petitioners had no legally enforceable right in law. Hence, interim order is vacated and the petition is dismissed with costs quantified as Rs. 5000/-, so also the pending application.