
(2008) 09 AHC CK 0270
In the Allahabad High Court

Samay Singh and Chaman Singh	Vs	APPELLANT
The State of U.P. and Others		RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Citation : (2008) 119 FLR 721

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the materials on record.

2. Petitioners have come up in this petition challenging validity and correctness of an order of transfer dated 3.9.08 passed by respondent No. 3- Vice Chancellor, Sardar Ballabh Bhai Patel, University of Agriculture and Technology, Meerut appended as annexure No. 7 to the writ petition.

3. it appears from record that petitioners are class IV employees and the impugned order of transfer has been made after the matter was discussed and a settlement was arrived at between the employers and employees" Union.

4. The impugned order is assailed on the ground that it has been passed on wrong assertions; the petitioners had orally informed the University authorities that that farm land of the university is being grabbed by certain persons; that impugned transfer is against the guidelines contained in Govt. transfer policy dated 14.4.1998 wherein it is provided that "SAMUH GHA KARMIO KO UNKE GRIH JANPAD MAIN HEE TAINAAT KIYA JAYEGA".

5. Counsel for the petitioners has relied upon paragraph No. 15 of Division Bench judgment of this Court rendered in Rajendra Prasad Vs. Union of India (UOI) and Broadcasting, Government of India, Director, General, All India Radio Directorate Akashwani, Station Director, All India Radio and Station Director, All India Radio,

which is as under:

Therefore, in view of the above, the law stands summarised that in a case of class IV or low paid employees, the power of transfer should be used sparingly when required in administrative exigency and not in a routine manner. More so, the power is to be exercised in good faith not arbitrarily and the employer should try to accommodate at a nearby place as his transfer at a far distance may cause him great financial hardship and may make his survival difficult.

In the same judgment, it has also been held that transfer is an incident of service and an employee cannot claim a right to be posted at a particular place, it is choice of the employer to determine as on what place and for how long services of an employee are required. It has further been held that power of transfer should be used sparingly when required in administrative exigency and not in a routine manner.

6. In the present case, transfer of the petitioners is not in routine manner as appears from impugned order which shows that petitioner have also admitted before the authority that agricultural farm land of the university is being grabbed by others and that they are unable to prevent it.

7. So far as question of transfer at a distant place is concerned, it may be stated that University can only post the petitioners at a place it has agricultural farm land where petitioners' services can be utilised.

8. Next decision relied upon by the counsel for petitioner is Bhagwan Verma v. Secretary, Board of High School and Intermediate Education, U.P. Allahabad 2002(2) ESC Allahabad 392. In that case, the Court was considering transfer of class VI employee to a distant place on the basis of a complaint that he remained absent without permission and the Court found that from the language used in the order it is evident that the transfer order is punitive and had been passed without a preliminary enquiry and therefore quashed the order.

9. Facts of the present case are entirely different from the facts of aforesaid case. In the instant case, it is admitted by the petitioners that agricultural land of the University has been encroached and grabbed while they were working. Besides it, there has also been a settlement of the employers with the Employees union for transferring the petitioners, hence it cannot be said that impugned order of transfer is punitive in nature and has been made without any opportunity to them as Employees Union is competent to represent and make bargain on behalf of the employees.

10. Admittedly, the petitioners failed to stop encroachment upon farm land of the university and mere information by them to the higher authority in this regard does not absolve them of their responsibility of safeguarding property of the university.

11. In my considered view, the authorities cited and relied upon by the counsel for petitioner are clearly distinguishable and have no application to the facts and

circumstances of the present case.

12. As regards violation of Govt. transfer policy or guidelines issued from time to time in that regard, suffice it to say that they are mere executive instructions having no statutory flavour. So far as the provision in the Govt. Orders that class IV employees may be posted in their home town is concerned, it applies to normal/routine transfers and not to the transfers made under administrative exigencies or public interest. The petitioners have been given hearing before transferring them.

13. For all these reasons, this Court is not inclined to interfere with the matter as admittedly petitioners are holding transferable post.

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