
(2012) 01 AHC CK 0503
In the Allahabad High Court
Case No : Service Single No. - 5436 of 2011

Sarvendra Singh	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Citation : (2012) 01 AHC CK 0503

Hon'ble Judges : Devendra Kumar Upadhyaya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Devendra Kumar Upadhyaya, J.—By means of the present petition, the petitioner seeks to challenge the order dated 03.08.2011 whereby he has been transferred from district Pratapgarh to district Chhatrapati Sahuji Maharaj Nagar. The said order has been annexed as Annexure no. 1 to the writ petition.

2. This Court vide order dated 24.08.2011 directed the learned Standing Counsel appearing for the State to seek instructions in the matter as to whether the order of transfer was passed with the approval of the competent authority as per the transfer policy or not. On query being put to Sri Manjiv Shukla, learned Standing Counsel appearing for the State today, he submitted that the transfer order dated 03.08.2011 was passed with the approval of the competent authority as required by the transfer policy of the Government.

3. Sri Arvind Kumar, learned counsel for the petitioner has filed a supplementary affidavit annexing therewith a copy of judgment dated 06.09.2011 passed by this Court in Writ Petition No. 5537 (S/S) of 2011; Ashok Kumar and another Vs State of U.P. He, relying on the said judgment, has submitted that in the matter of transfer the authority concerned has to consider that it is only the longer period of service enjoyed by a person at one place which is a significant factor for considering the transfer of the employee. Learned counsel for the petitioner relied on para 5 of the said judgment, which is quoted herein below.

5. Now it is not in dispute that some Junior Engineers are enjoying their posting at Agra, since before posting of petitioners, may be in the capacity of Daily Wagers or Adhoc. In the matter of transfer, I am of the view that seniority of the persons in cadre strength has less significant and it is only longer period of service of the persons enjoyed at one place than other which becomes important factor to transfer them at different place. Therefore, I am of the view that the keeping in view the policy of the State Government of transfer that the excess Junior Engineers posted at Development Authority be transferred to the places where there are shortage of Junior Engineers, the persons who are enjoying their posting since longer period be shifted first.

4. A perusal of the aforesaid quoted paragraph of the judgment dated 06.09.2011 reveals that the observations were made by the Court in the said judgment looking into the fact that it was a case of transfer of Junior Engineers posted in excess at a particular place. Thus, the observations made in the judgment and order dated 06.09.2011 would apply to the facts of that case only. Facts in the present case are clearly distinguishable. The judgment dated 06.09.2011 in the case of Ashok Kumar (supra), thus, has no application to the case in hand. The contention of the petitioner in this regard is, thus, rejected.

5. Learned counsel for the petitioner has further submitted that the impugned transfer order in the present case has been passed in contravention of the policy of the Government which provides for retaining a government servant at a place where his/her spouse is also working. The said policy is contained in the Government Order dated 05.01.1976 which has been annexed as Annexure No. 4 to the writ petition, a perusal of which reveals that the same provides that in case husband and wife both are government servants, as far as possible both would be posted at same district. The said Government Order dated 05.01.1976 does not thus make it mandatory to post both the spouses at the same place. In absence of any argument or material placed by counsel for the petitioner to establish that the Government Order dated 05.01.1976 is mandatory, the contention raised in this regard by the petitioner's counsel also does not have merit.

6. Learned counsel for the petitioner also contended that though the impugned transfer order has been passed in public interest, but the same is not in public interest as no administrative exigencies have been shown to exist warranting transfer of the petitioner.

7. The above contention of the petitioner's counsel does not bear any credence for the reason that the order under challenge has been passed in public interest which is indicated in the order itself and the petitioner has failed to establish any thing contrary to the same.

8. As regards the contention of the petitioner's counsel that the petitioner has been discriminated in the matter of transfer on the ground that incumbency of the officers working in district Pratapgarh has not been taken into account while

passing the transfer order, suffice would it be to say that the transfer order cannot be permitted to be assailed on the ground of any such alleged discrimination.

9. For the aforesaid reasons, the writ petition lacks merit and hence, the same is hereby dismissed. No order as to costs.