
(2011) 06 AHC CK 0037
In the Allahabad High Court
Case No : Writ A. No. 35039 of 2011

Shiv Mangal Maurya and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Citation : (2011) 06 AHC CK 0037

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—At the outset, Mr. M.M. Sahai, learned Counsel for the Petitioners requested and permitted to make correction in the description of the Petitioner No. 1.

2. Heard learned Counsel for the parties and perused the material on record.

3. This writ petition is directed against the order dated 18.6.2011 issued by Chief Revenue Officer, Varanasi communicating the order of District Magistrate dated 16.6.2011 cancelling an order of transfer dated 6.6.2011 passed by the Deputy Collector transferring the Petitioners from one place to another.

4. learned Counsel for the Petitioners has contended that the impugned order of transfer has been passed to facilitate certain other Lekhpals who are working in an urban areas since long, though initial order of transfer dated 6.6.2011 was issued in purported compliance of the G.O. dated 21.6.2002 in order to shift those Lekhpals who were posted in one area for a long time.

5. However, in my view submissions of the learned Counsel for the Petitioners lacks substance.

6. Firstly, the Government Order dated 21.6.2002 lays down a policy/guidelines for transfer of revenue officials in the year 2004--05. The order of transfer dated 6.6.2011 is passed in the year 2010-11. There is nothing on record to show that

the same policy as laid down under the Government Order dated 21.6.2002 has been reiterated and has been followed in the present case.

7. Moreover, the breach of the Government Order laying down transfer policy does not provide any cause of action.

8. In *Union of India and Others Vs. S.L. Abbas*, , in para 7 of the judgment, their Lordships in the Apex Court held as under:

The said guideline however does not confer upon the Government employee a legally enforceable right.

9. In *S.L. Abbas (supra)* the employee placed reliance on an earlier judgment of the Apex Court in *Bank of India Vs. Jagjit Singh Mehta*, in support of his contention where certain guidelines have been issued, as far as practicable, they must be adhered to and based on the said decision, it was contended where transfer order has been issued in breach of administrative guidelines, when challenged, it is incumbent upon the authorities to give reasons, which justify breach of such guidelines and in absence thereof, the order has to be set aside being arbitrary and illegal. Negating this contention and after referring the judgement in *Jagjit Singh Mehta (supra)*, the Apex Court in *S.L. Abbas (supra)* said:

The said observations in fact tend to negative the Respondent's contentions instead of supporting them. The judgement also does not support the Respondent's contention that if such an order is questioned in a Court or the Tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the Court or the Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterised as mala fide for that reason. To reiterate, the order of transfer can be questioned in a Court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions.

10. The judgement in *S.L. Abbas (supra)* has clearly set at rest the question that the order of transfer when challenged on the ground of violation of administrative instructions/guidelines, neither it is obligatory on the authorities to explain as to why they have passed the order of transfer, which is not consistent with the conditions of the administrative guidelines nor failure to provide such explanation would result in to draw an inference that the exercise of power is malicious in law. Since the order of transfer has to be assailed by pleading mala fide as such and not to infer on the basis that the order of transfer is in breach of the conditions of administrative exigency, the breach of administrative exigency would not justify quashing of the order of transfer and therefore, in no manner the argument can be allowed to be stretched so as to invite interference with the order of transfer except where order of transfer is found to be in violation of statutory provision or is vitiated by mala fide.

11. So far as accommodating certain other persons and to allow them to work at

a particular place is concerned, no specific averments have been made naming the persons for whose benefit the impugned order has been passed. A very vague pleading has been made in paragraph No. 13 of the writ petition and without substantiating the same the plea of malafide cannot be entertained by this Court.

12. For the reasons stated above, I do not find any reason to interfere with the impugned order. The writ petition lacks merit and is hereby dismissed.