
(2012) 01 AHC CK 0601
In the Allahabad High Court
Case No : Writ Petition No. 8718 (S/S) of 2011

Shyam Baboo Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Citation : (2012) 2 ADJ 193 : (2012) 133 FLR 819

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Anil Kumar, J.—Heard Shri K.P. Sharma and Shri M.K. Mishra, learned counsel for petitioner, learned Standing Counsel and perused the record.

2. By means of the present writ petition, the petitioner has challenged the impugned order of transfer dated 3.7.2011 (Annexure 1) passed by opposite party No. 2 i.e. Basic Shiksha Adhikari, Lakhimpur Kheri.

3. Facts in brief of the present case as submitted by learned counsel for the petitioner are that the petitioner was initially appointed on the post of Assistant Teacher on 30.1.1980, thereafter, on 21.8.2002 promoted to the post of Head Master, presently working in the said capacity at Primary School Gandhi Gram Amboopur Block Lakhimpur, District- Lakhimpur Kheri.

4. By means of the impugned order dated 3.7.2011 (Annexure No. 1) passed by opposite party No. 2, petitioner has been transferred to Primary School situated at Block Amboopur Baherawa Block Lakhimpur, District-Lakhimpur Kheri.

5. Learned counsel for petitioner submits that the impugned order of transfer is against the Government Order/policy dated 13.6.2011 as contained in Annexure 3 to the writ petition. Further, the same has been passed on the wrong pretext, showing only 64 students at Primary School Gandhi Gram Amboopur Block Lakhimpur, District- Lakhimpur Kheri, the said fact is totally incorrect and wrong

because there are 113 students in the said Primary School whereas at Primary School Block Amboopur Baherawa Block Lakhimpur, District-Lakhimpur Kheri, there are only 93 students and falsely mentioned as 103 students only in order to transfer the petitioner by means of the impugned order, the same is passed with mala fide exercise of power on the part of the opposite party No. 2 only in order to harass and punish the petitioner with oblique motive and purpose, hence the same is illegal and arbitrary in nature.

6. In order to support his argument, learned counsel for the petitioner placed reliance on the following observation made in paragraph 18 of the judgment passed by this Court in the case of Om Tiwari v. State of U.P. and others, 2011 (29) LCD 1145, the relevant portion is quoted hereinunder :

..... Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the Courts lack the necessary expertise for personnel management of all Government departments.

7. I have heard learned counsel for parties and perused the record.

8. The law is well settled that transfer being an exigency of service can be effected by the employer concerned in accordance with administrative exigency, in the interest of administration and public interest at any point of time and that cannot be monitored and guided by this Court unless it is shown that transfer order is vitiated on account of the contravention of the statute, or lacks jurisdiction or is malafide.

9. In the present case as argued by learned counsel for petitioner that the impugned order of transfer is in violation of transfer policy is not correct because in the case of Union of India and Others Vs. S.L. Abbas, , Hon''ble Apex Court has held as under :

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

10. The said view has been reiterated by Hon''ble Supreme Court in the case of Rajendra Roy Vs. Union of India (UOI) and Another, , wherein the Apex Court has held as under :

It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the Oder of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification the Court and the Tribunal should not interfere with the order of transfer.

11. In the case of Bank of India Vs. Jagjit Singh Mehta, , the Hon''ble Supreme Court has held as under :

The said observations in fact tend to negative the respondent's contentions instead of supporting them. The judgment 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 Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can be characterized 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.

12. The said view was again reiterated by Hon"ble Supreme Court in the case of National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, .

13. So far as argument advanced by learned counsel) for the petitioner that the impugned order of transfer is a mala fide action on the part of the opposite party No. 2, the said plea is unsustainable because if malice has been alleged on the part of a person then he should be made a party by his name, as Person/petitioner who is alleging the same has to specifically plead and prove the same and the person against whom the mala fide/malice is alleged should defend the said plea, but the said condition does not exist in the present case, so the petitioner cannot drive any benefit from the plea that the impugned order of transfer is an out come of personal prejudice/mala fide action on the part of opposite party No. 2. Further the judgment cited by learned counsel for the petitioner does not come to his rescue because in the said case (Om Tiwari supra) this Court after placing reliance on various judgment has held that the guidelines/policy regarding transfer does not confer any legal right on to the employee to enforce them, as the transfer is an exigency of service and no person can retrieve his posting on his choice. It is the discretion of the competent authority to decide as to which person is to be posted where.

14. For the foregoing reason, the writ petition lacks merit and is dismissed.