
(2013) 09 AHC CK 0234

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52372 of 2013

Smt. Rajni Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2013) 9 ADJ 639 : (2014) 4 ALJ 370 : (2013) 4 UPLBEC 3355

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Suresh Chandra Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Suresh Chandra Dwivedi, learned counsel for the petitioner and learned Standing Counsel for the respondents. The writ petition is directed against the order of transfer dated 10.9.2013 passed by Commissioner, Food and Civil Supply, U.P., Lucknow transferring petitioner from Moradabad Region to Bareilly Region.

2. Learned counsel for the petitioner submitted that the impugned order of transfer is in violation of transfer policy laid down vide Government Order dated 18.4.2013.

3. The question, whether violation of transfer policy or guide lines relating to transfer contained in an executive order or executive instructions or policy for a particular period laid down by the Government would result in vitiating the order of transfer, has been considered repeatedly by Apex Court as well as this Court.

4. The enforceability of a guideline laid down for transfer specifically came to be considered by the Apex Court in Mrs. Shilpi Bose and others Vs. State of Bihar and others, and it was held that even if transfer order is passed in violation of the executive instructions or orders, the Courts ordinarily should not interfere with the order and instead affected party should approach the higher authorities in

the Department.

5. Again in *Union of India and Others Vs. S.L. Abbas*, a similar argument was considered and in para 7 of the judgment the Court said, "The said guidelines, however, does not confer upon the Government employee a legally enforceable right."

6. Referring its earlier judgment in *Bank of India Vs. Jagjit Singh Mehta*, the Apex Court in *S.L. Abbas (supra)* observed as under:

The said observations in fact tend to negative the respondents contentions instead of supporting them. The judgment also does not support the Respondents' 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 it 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.

7. Same thing has been reiterated by the Apex Court in *State of U.P. and Others Vs. Gobardhan Lal*, in the following words:

Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments.

8. Besides the judgments of the Apex Court, this Court has also considered the same time and again and has reiterated that the order of transfer made even in transgression of administrative guidelines cannot be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision. Some of such authorities are as under.

9. 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*, a Division Bench observed, "Transfer policy does not create legal right justiciable in the Court of law."

10. In Division Bench of this Court in Civil Misc. Writ Petition No. 52249 of 2000 [*Dr. Krishna Chandra Dubey v. Union of India and others*] decided on 5.9.2009 said, "It is clear that transfer policy does not create any legal right in favour of the employee. It is well-settled law that a writ petition under article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when

there is a complaint by an employee that there is a breach of statutory duty on the part of the employer."

11. In *Ram Niwas Pandey and others v. Union of India and others* (Special Appeal No. 769 of 2005) decided on 29.11.2005 also this Court held that transgression of transfer policy or executive instructions does not give a legally enforceable right to challenge an order of transfer.

12. In Civil Misc. Writ Petition No. 243 (SB) of 2007 *Uma Shankar Rai v. State of U.P. and others*, decided on 31.7.2007 this Court observed as under:

Dr L.P. Misra, learned counsel for the petitioner seriously contended that though the transfer of Government servant is made in exigencies of service, yet where transfer policy has been framed, the same is expected to be adhered to and cannot be defied in a discriminatory and selective manner. Any action of the authorities, even in respect of the matter of transfer, if is inconsistent to such policy would vitiate the order of transfer since it would render the same arbitrary and illegal. Referring to paras 2 and 3 of the transfer policy dated 11.5.2006, he contended that the respondent No. 4 having completed his tenure of six years in the District and ten years in the Commissionery even at Mirzapur yet he has again been sought to be posted at Mirzapur to accommodate him and the petitioner has been transferred to Varanasi, therefore, the impugned order is patently illegal. In support of the submission that order of transfer, if has been issued in violation of transfer policy, the same can be assailed since the transfer policy was laid down to adhere to and not to violate, reliance has been placed on the Apex Court's decision in *Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others*, ; *N.K. Singh Vs. Union of India and others*, ; *R. v. Secretary of State*, (1985) 1 All ER 40; and a Division Bench decision of this Court in *Smt. Gyatri Devi v. State of U.P. and others*, 1998 (16) LCD 17. In other words the learned counsel for the petitioner contends that even through the order of transfer may not be challenged on the ground of mere violation of transfer policy, yet such order can be interfered with if the authorities who are supposed to adhere with the guidelines, have failed to do so.

In our view the submission is mutually destructive and self contradictory. What the petitioner in fact has sought to argue is that the Executive once has laid down certain standards for guidance in its functioning, it must adhere to and any deviation thereof would vitiate the consequential action, which may be challenged in writ jurisdiction. The argument though attracting but in the matter of transfer, however, in our view, the same has no application. Transfer of Government servants in the State of U.P. is governed by the provisions contained in Fundamental Rule 15, which reads as under:

....

It is not disputed that the post held by the petitioner is transferable and he is liable to be transferred from one place to another. The employer once possess right to transfer an employee from one place to another, in our view, there is no

legal or otherwise corresponding obligation upon him to inform his employee as to why and in what circumstance an employee is being transferred from one place to another. Shifting and transferring of the employee from one place to another involves more than thousand reasons and it is difficult to identify all of them in black and white. The commonest reason may be a periodical shifting of person from one place to another, which does not require any special purpose; the other reasons include necessity of a particular officer at a particular place; avoidance of disturbance or inconvenience in working of the officer on account of a person at a particular place; unconfirmed complaints and to avoid any multiplication thereof; transfer may be resorted to and so on. These are all illustrations. The question as to whether in any of the circumstances when a person is transferred from one place to another without casting any stigma on him, does it infringe, in any manner, any right of such employee which may cause corresponding obligation or duty upon the employer to do something in such a reasonable manner which may spell out either from its action or from the record and when challenged in a Court of law, he is supposed to explain the same, In our view, the answer is emphatic no.

13. It further held:

In view of the aforesaid well-settled principles governing the matter of transfer, the consistent opinion of the Courts in the matter of judicial review of the transfer orders has been that the order of transfer is open for judicial review on very limited grounds; namely if it is in violation of any statutory provisions or vitiated by mala fides or passed by an authority holding no jurisdiction. Since the power of transfer in the hierarchical system of the Government can be exercised at different level, sometimes for the guidance of the authorities for exercise of power of transfer, certain executive instructions containing guidelines are issued by the Government so that they may be taken into account while exercising power of transfer. At times orders of transfer have been assailed before the Court on the ground that they have been issued in breach of the conditions of such guidelines or in transgression of administrative guidelines. Looking to the very nature of the power of transfer, the Courts have not allowed interference in the order of transfer on the ground of violation of administrative guidelines and still judicial review on such ground is impermissible unless it falls within the realm of malice in law. The reason behind appears to be that the order of transfer does not violate any right of the employee and the employer has no corresponding obligation to explain his employee as to why he is being transferred from one place to another.

14. The Division Bench judgment in Uma Shankar Rai (supra) has been followed by another Division bench in Jitendra Singh v. State of U.P. and another, 2009 (4) ALJ 372.

15. Following the above authorities and also dealing with the similar contention negating the same this Court in CP Tahsildar Singh Constable 289 and others v. State of U.P. and others, (2010) 1 UPLBEC 124, in para 46 of the judgment, the

Court said:

No authority of this Court or the Apex Court has been placed before me which has considered this question in the matter of transfer and has taken a different view and is binding on me. In the absence of any otherwise binding precedent, I feel myself bound to follow the law laid down by the Apex Court in *Shilpi Bose (supra)*, *S.L. Abbas (supra)*, *Gobardhan Lal (supra)* etc. and this Court's Division Bench judgments as discussed above.

16. Learned counsel for the petitioner, however, placed reliance on a Division Bench decision of this Court in *Deepa Vashishtha Vs. State of U.P. and Others* and Apex Court's decision in *State of Haryana and Others Vs. Balwan etc.,* .

17. So far as the decision in *Deepa Vashishtha (supra)* is concerned, the subsequent Division Bench in *Uma Shankar Rai (supra)* has also considered the aforesaid decision and it has been discussed that the executive orders issued in respect of certain matters which relate to right of a person and those which are in respect of a matter in which a person has no rights, stand on different footing. For example, when a person is to be considered for appointment or admission in colleges or for other benefits, he has a right of consideration at par with others, i.e., the right of equality enshrined under Articles 14 and 16 of the Constitution but in respect of the matter of transfer no person has any right, legal or otherwise, to stay at a particular place and also has no right to have a place of posting of his choice. It is the privilege of employer to decide, whom it wants to post where and what work it intends to take from such person in the interest of administration. Unless such exercise of power is shown to be mala fide, the transfer of a person is not to be interfered.

18. Similarly, the decision of Apex Court in *State of Haryana v. Balwan (supra)* was not a matter related to transfer and, therefore, has no application at all in respect to the issue up for consideration in the present case. There the matter relates to the Government policy/instructions which were found relevant in respect of right of life convicts conferring right of early release and the Court held that if such a scheme has been framed, the incumbent may ask the Government to consider his case according to such scheme.

19. Both the judgments, therefore, in my view, do not help the petitioner at all. On the contrary, there are some subsequent authorities of the Apex Court also which have deprecated any attempt to interfere with the orders of transfer very lightly.

20. Recently in *The Registrar General High Court of Judicature at Madras Vs. R. Perachi and Others,* , the Court has observed:

...transfer is an incident of service, and one cannot make a grievance if a transfer is made on the administrative grounds, and without attaching any stigma.....

21. The Court also referred to its earlier decision in *Airports Authority of India Vs. Rajeev Ratan Pandey and Others,* and said:

in a matter of transfer of a Government employee, the scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the Courts do not substitute their own decision in the matter of transfer.

22. A transfer is made in administrative exigency, if there is a complaint pending and instead of a regular department enquiry, the authority concerned decided to transfer a person concerned. It would then be a transfer purely on administrative ground and not by way of punishment etc. This approach has been approved by Apex Court in *The Registrar General High Court of Judicature at Madras (supra)*, and in para 27 of the judgment the Court observed:

...the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against first Respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the concerned unit. That is desirable from the point of view of the administration as well as that of the employee.

23. In *Tushar D. Bhatt Vs. State of Gujarat and Another*, , reiterating well established principle in long chain of authority the Court said: The legal position has been crystallized in number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies.

In view of above discussions and observations, I find no merit in the writ petition. It is, accordingly, dismissed.