
(2011) 06 AHC CK 0153
In the Allahabad High Court

Sridhar Tripathi

APPELLANT

Vs

State of U.P.Through Secy.Deptt.of Home Govt.of U.P.Lko.

RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Citation : (2011) 06 AHC CK 0153

Hon'ble Judges : Anil Kumar, J

Final Decision : Disposed Of

Judgement

Anil Kumar, J.—Heard Sri Sanjay Kumar Pandey, learned counsel for petitioner and learned Standing Counsel on behalf of respondents.

2. By means of present writ petition, petitioner has challenged the impugned transfer order dated 14.11.2009 (Annexure no. 1 to the writ petition) as well as relieving order dated 31.05.2011.

3. Learned counsel for petitioner argued that impugned order by which petitioner has been transferred as well as relieving order dated 31.05.2011 are totally illegal and arbitrary in view of the fact that petitioner's children/daughters are studying at District Faizabad and if during midsession, he is compelled to go on transferred from District Faizabad, in that circumstances, studies of his children/daughters shall suffer in present era of competition. In order to strengthen his argument he has placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of B.Vardha Rao Vs. State of Karnatka (1986) 4 SCC, 131.

4. The law is well settled that transfer being exigency of service can be effected by the employer concerned in accordance with it's 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 may be shown that transfer order is vitiated on account of contravention of the statute, or lacks jurisdiction or malafide.

5. The Hon'ble Supreme Court in the case of Shilpi Bosh(Mrs.) and others Vs. State of Bihar and others, 1991 Supp. (2) SCC 659 wherein the Hon'ble

Supreme Court has held as under:

"In our opinion, the Court should not interfere with the transfer order which is made in public interest and for administrative reasons unless the transfer order are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred from one place to the other. Transfer order issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."

6. The aforesaid view has been reiterated by the Hon"ble Supreme Court in the case of Union of India and another Vs. N.P. Thomas, 1993 Supp.(1) SCC 704 and N.K. Singh Vs. Union of India and others (1994) 6 SCC 98 holding therein if a person holding a transferable post, is transferred, there is no violation of any statutory/mandatory rules, then the same is not subject to judicial review.

7. Further, in the case of Chief General Manager (Telecom) N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others (1995) 2 SCC 532, Hon"ble Supreme Court has held as under :

"It is needless to emphasize that a government employee or any servant of a public undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that the respondent holds a transferable post and unless specifically provided in his service condition, he has no choice in the matter of posting. Since the respondent has no legal or statutory to claim of his posting at Agartala, therefore, there was no justification for the tribunal to set aside the respondent"s transfer to Dimpur."

8. Accordingly, the argument submitted by the learned counsel for the petitioner that transfer order is against the principle of natural justice as the same has been passed during midsession, so the studies of his children/daughters shall suffer, has got no force as in the case of Rajendra Prasad Vs. Union of India 2005 (2) ESC 1224 after considering the judgment of Hon"ble Supreme Court in the case of Director of School Education Madras and others Vs. O Karuppa Thevan and another, 1996(1) UPLBEC 347 this Court has held as under:

"The issue of transfer in mid academic session was considered by the Hon"ble Supreme Court and it was held that" the fact that children of the employee are studying should be given due weight, if the exigencies of the service are not urgent." Therefore, it is for the employer to examine as to whether transfer of an employee can be deferred till the end of the current academic session. The Court has no means to assess as what is the real urgency of administrative exigency. Thus, the Court is not inclined to consider this submission at all."

9. The same view has been reiterated by Division Bench of this Court in the case

of Gulzar Singh Vs. State of U.P. and other, 2006 (5) AWC 4755 and another Division Bench of this Court in the case of S.P. Jindal Vs. State of U.P., 2002(1) AWC 306 and also in the case of Jagendra Singh Vs. State of U.P. and others, (2009) 3 UPLBEC 2338.

10. For the foregoing reasons, as in the instant case, petitioner is holding a transferable post and by means of order dated 14.11.2009, transferred from District Faizabad to District Deoria, so there is neither any illegality nor infirmity in the impugned order of transfer dated 14.11.2009 or relieving order dated 31.05.2011.

11. In view of the above said facts, I am of the considered opinion that petitioner is not entitled for relief as claimed by him under Article 226 of the Constitution of India.

12. However, as prayed, petitioner is permitted to make a fresh representation before respondent no. 2 (Director General of Police, Uttar Pradesh, Lucknow) within a period of ten days from today and the said Authority after receiving the representation of petitioner, dispose of the same within further period of three weeks with reasoned and speaking order and communicate the same to petitioner.

13. With the above observation, writ petition is disposed of finally.