
(2011) 09 AHC CK 0333
In the Allahabad High Court
Case No : Service Single No. 4953 of 2011

U.P. Lekhpal Sangh Branch Unnao	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 03-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 09 AHC CK 0333

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri D.K. Dixit, learned Counsel for Petitioner and learned Standing Counsel for opposite parties.

2. By means of the present writ petition, Petitioner Nos. 1 and 2 have challenged the impugned order of transfer dated 15.7.2011 passed by Sub Divisional Magistrate, Sadar, Unnao by which Lekhpals working in district Unnao, who are the members of the Association known as Uttar Pradesh Lekhpal Sangh, Branch Unnao (herein above referred as an "Association") to which Ram Naresh Singh (Petitioner No. 2) is the president of the said association has been transferred from one place to another in the same district.

3. A primary objection has been raised by the learned Standing Counsel that the present writ petition filed by Petitioner No. 1/Uttar Pradesh Lekhpal Sangh, Branch Unnao through its president Ram Naresh Singh, is not maintainable as the association is not aggrieved by the order of transfer dated 15.7.2011 by which its members are transferred from one place to another in the same district and if any of the member of the association working on the post of Lekhpal is aggrieved by the said order then in that circumstances they should approached this Court for redressal of his grievance by filing writ petition in individual capacity. So the present writ petition is liable to be dismissed on the said ground

as association has No. locus to file the same.

4. Sri D.K. Dixit, learned Counsel for the Petitioners, in rebuttal, submits that since the order in question passed by opposite party No. 3 is in violation of transfer policy as such Petitioner No. 1 being Association of Lekhpal working in district Unnao can agitate the claim of its members by filing writ petition under Article 226 of the Constitution of India.

5. After hearing the learned Counsel for the Petitioner and the learned Standing Counsel, on the preliminary objections, I am of the considered opinion that present writ petition filed by Petitioner No. 1 i.e. Uttar Pradesh Lekhpal Sangh, Branch Unnao through its President Ram Naresh Singh challenging the order dated 15.7.2011 by which its members have been transferred on place to another in the same district on the ground that it is violation of Government Policy dated 14.5.2011(Annexure No. 2) has No. locus or right to challenge the same in view of the Full Bench judgment of this Court repoted in the case of Umesh Chand Vinod Kumar v. Krishi Utpadan Mandi Samiti, Bharthana and Ors. 1984 LCD 10. Further, from the perusal of impugned order dated 15.7.2011 passed by opposite party No. 3, it reveals that the same has been passed in administrative exigency of service and public interest and in case if any employee, who is working on the post of Lakhpal, member of Association/ Petitioner No. 1 then in that circumstances he can agitate his grievance individually by filing writ petition under Article 226 of the Constitution of India thereby challenging the order dated 15.7.2011 as the order of transfer is "personam" in nature and the person aggrieved by the same, hence the present writ petition filed by Petitioner No. 1/ Association of Lekhpal working in district Unnao, is not maintainable, dismissed on the said ground.

6. So far as the grievance raised by Sri Ram Naresh Singh/ Petitioner No. 2 thereby challenging the impugned order of transfer by which he has been transferred from one place to another is concerned, the transfer order in question is passed in administrative exigency of service and in the public interest and also the learned Counsel for the Petitioners does not dispute that the Petitioner is holding transferable post.

7. Keeping in view the said fact as well as the law which is well settled that transfer being exigency of service can be effected by the employer concerned in accordance with its 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 the contravention of the statute, or lacks jurisdiction or mala fide as such in view of the judgment passed by the Hon''ble Supreme Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, wherein Hon''ble Supreme Court has held as under:

8. " In our opinion, the courts should not interfere with a 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 mala fide. 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 orders 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."

9. The aforesaid view has been reiterated by Hon"ble Supreme Court in the case of Union of India and another Vs. N.P. Thomas, and N.K. Singh Vs. Union of India and others, 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. Further, in the case of Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, Hon"ble Supreme Court has held as under:

9. "It is needless to emphasise 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 conditions, he was No. choice in the matter of posting. Since the Respondent has No. legal or statutory right to claim his posting at Agartala, therefore, there was No. justification for the Tribunal to set aside the Respondent's transfer to Dimpur."

10. For the foregoing reasons, the writ petition filed by Petitioner No. 2 also lacks merits and is dismissed.

11. However it will not preclude the Petitioner No. 2 from making appropriate representation explaining his personal problems to opposite party No. 2, if any, within a week from the date of certified copy of this order and if such a representation is made, the same may be considered by the said authority within two weeks thereafter in accordance with law.