

Court No. - 10

Case :- WRIT - A No. - 18992 of 2023

Petitioner :- Vijay Bahadur Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Priyanka Srivastava, Abhishek Kumar Srivastava

Counsel for Respondent :- C.S.C., Shri Ram Pandey, Tanisha Jahangir Monir

Hon'ble Kshitij Shailendra,J.

1. This case has been nominated to this Bench under the order of Hon'ble the Chief Justice.

2. Heard Mr. Abhishek Kumar Srivastava, learned counsel for the petitioner, Mr. Jitendra Singh, learned Additional Chief Standing Counsel for respondent Nos. 1 and 2, Mr. Himanshu Kumar, learned counsel holding brief of Ms. Tanisha Jahangir Monir, learned counsel for respondent No.3 and Mr. Shri Ram Pandey, learned counsel for respondent No. 4.

3. The petitioner is aggrieved by the impugned transfer order dated 20.10.2023, whereby the State Government, on the ground of exigency of work, has transferred the petitioner from district Agra to district Saharanpur with a direction to immediately join the transferred post.

4. While assailing the transfer order, it has been argued that just three months ago, the petitioner was transferred from district Farrukhabad to district Agra and, therefore, the order impugned having been hurriedly passed, is seriously prejudicial to the petitioner's interest, as he has just settled at district Agra. Learned counsel for the petitioner further submits that the petitioner is

suffering from heart disease and he may be transferred to any place, either at Prayagraj or any other nearby location. He has further contended that three posts are vacant in district Prayagraj and has also placed reliance upon an order dated 01.11.2023 passed by this Court in Writ A No. 8487 of 2023 (Anar Singh vs State of U.P. through Principal Secretary Nagar Vikas Anubhag 3 and another), whereby a direction was issued to the State Government to decide the concerned petitioner's representation and till the disposal of the representation, joining pursuant to the impugned transfer order has been stayed.

5. All the learned counsel representing the respondent side submit that the order of transfer has been passed on the ground of exigency of work and for administrative reasons and, therefore, no interference is warranted.

6. It is well settled position of law that transfer of an officer/employee is inherent in terms of the appointment and in absence of its provision in the relevant Service Rule, it is implicit as an essential condition of service subject to contrary provision in the rule. Fundamental Rule 15 provides that "the President may transfer a Government servant from one post to another".

7. In the case of *Shanti Kumari v. Regional Deputy Director, Health Services, Patna Division, Patna and others*, reported in (1981) 2 SCC 72, the petitioner was Auxiliary Nurse Midwife posted at Bowstead Zanana Hospital at Barh. She was transferred to Urban Family Welfare Centre, Danapur. She challenged her transfer in Patna High Court by filing writ petition, which was dismissed in limine. In her special leave petition the Supreme Court declined to interfere with order of High Court but authorities were directed to consider her grievance and until decision was taken, her transfer order was stayed. The Supreme Court ruled as under:

"2.Transfer of a Government servant may be due to exigencies of service or due to administrative reasons. The courts cannot interfere in such matters."

8. In ***B. Varadha Rao v. State of Karnataka and others***, reported in (1986) 4 SCC 131, the Supreme Court had the occasion to consider a short point whether an order of transfer is appealable under Rule 19 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, and the Supreme Court held that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post.

9. The Supreme Court in the case of ***Shilpi Bose (Mrs) and others v. State of Bihar and others***, reported in 1991 Supp (2) SCC 659, was dealing with the case of transfer of some lady teachers in Primary Schools in the State of Bihar. They were transferred, on their own request, to places where their husbands were posted. The transfer orders were made by the District Education Establishment Committee. The teachers, who were displaced, challenged the transfer order before the Patna High Court on the ground that District Education Establishment Committee had no jurisdiction. Patna High Court allowed the petition, set aside the transfer order and directed for re-posting of the respondents. Ultimately, the matter was carried to the Supreme Court and the Supreme Court set aside the judgment of the Patna High Court and held as under:

"4. 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 orders 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. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

10. The law laid down in *Shilpi Bose* (supra) was again reiterated by the Supreme Court in the case of ***Union of India and others v. S.L. Abbas***, reported in (1993) 4 SCC 357, and observed as under:

"6. An order of transfer is an incident of Government service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a Government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. ..."

11. The Supreme Court again dealt with the matter of transfer in the case of ***State of U.P. and others v. Gobardhan Lal***, reported in (2004) 11 SCC 402. Said case arose out of the judgment of a Division Bench of the Allahabad High Court (2000 All LJ 1466), wherein the High Court had issued some general directions in the matter of transfers. The Government servants were given liberty to file representation against their transfer directly to the Chief Secretary and further direction was issued to the State Government to constitute Civil

Service Board for dealing with transfers and postings of Class-I officers. The Supreme Court found that the High Court fell in serious error and such general direction will leave an impression that the Courts are attempting to take over the reign of the executive administration. The Supreme Court held that a challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

12. In the case of *Mohd. Masood Ahmad v. State of U.P. and others*, reported in (2007) 8 SCC 150, the Supreme Court has elaborately considered the well settled principle again and observed that since the petitioner was on a transferable post, in our opinion, the High Court has rightly dismissed the writ petition since transfer is an exigency of service and is an administrative decision. Interference by the courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions, transfer is an exigency of service.

13. In the aforesaid case i.e. *Mohd. Masood Ahmad* (supra) the Supreme Court approved the view taken by the Allahabad High Court wherein this Court had refused to interfere in the transfer cases. The Supreme Court observed as under:

"7. Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in **Vijay Pal Singh v. State of U.P.**, (1997) 3 ESC 1668, and **Onkar Nath Tiwari v. Chief Engineer, Minor Irrigation Deptt.**, (1997) 3 ESC 1866, has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders."

14. Similar view has been reiterated by the Supreme Court in the case of **Rajendra Singh and others v. State of Uttar Pradesh and others**, reported in (2009) 15 SCC 178, and held as under:

"8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see **State of U.P. v. Gobardhan Lal**, (2004) 11 SCC 402; SCC p. 406, para 7).

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides..."

15. In **Rajendra Roy Vs. Union of India & another**, JT 1992 (6) SC 732, it was said "in a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department."

16. In **N.K. Singh Vs. Union of India**, JT 1994 (5) SC 298, the Apex Court said:

"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....."

17. In ***Abani Kanta Ray Vs. State of Orissa & others*** 1995 suppl. (4) SCC 169 the Supreme Court observed:

"It is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer."

18. In ***National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan*** 2001 (8) SCC 574, the Apex Court held that transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration.

19. In ***Public Service Tribunal Bar Association Vs. State of U.P. & another*** 2003 (4) SCC 104 the Court said,

"Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the Courts. This Court consistently has been taken a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner."

20. In ***Union of India VS. Janardhan Debanath***, JT 2004 (2) SC 371, the Apex Court said"

"No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide

exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management...."

21. Noticing distinction in respect to the transgression of civilian employee or those working in public sector undertakings and those of disciplined forces, in *Major General J.K. Bansal Vs. Union of India* 2005 (7) SCC 227, the Apex Court said:

"The scope of interference by courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made."

22. In *Prasar Bharti Vs. Amarjeet Singh* 2007 (9) SCC 539, the Court said that an order of transfer is an administrative order. There cannot be any doubt that the transfer being an incident of service should not be interfered except some cases where, inter alia, mala fide on the part of the authorities is proved.

23. In *Union of India & another Vs. Murlidhar Menon & others* 2009 (11) SCALE 416 the Court observed that even if the conditions of service are not governed by the statutory rules, yet the transfer being an incident of service, an employee can be transferred which may be governed by the administrative instruction since an employee has no right to be posted at a particular place.

24. In view of above, while **declining to interfere in the transfer order impugned**, the writ petition is **disposed of** in the following terms:

(i) The petitioner, who has already been relieved from Agra, may join the transferred post immediately.

(ii) The petitioner is permitted to file a representation before the respondent No. 1, (State of U.P. through Principal Secretary, Nagar Vikas Anubhag-3, Government of U.P. at Lucknow), requesting his

transfer to any other place based upon the availability/vacancy etc. and pressing medical ground, if any, as the Court finds that transfer from district Farrukhabad to district Agra was earlier made accepting the medical unfitness of the petitioner.

(iii) The respondent No. 1 shall sympathetically consider the representation and pass appropriate order thereon **by the end of February, 2024**, after summoning the relevant report from the concerned authorities regarding availability of the vacancy in any of the districts proposed by the petitioner.

Order Date :- 30.11.2023

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