

**Institute of Advance Studies in Education, Gandhi Vidya Mandir,
Sardarshahar, District Churu through its Registrar - Appellant @HASH
Pradeep Kumar Sharma s/o Amarchand Sharma, aged 34 years, resident
of Behind Bus Depo, Ward No. 19, Sardar Sahar, District**

Court: RAJASTHAN HIGH COURT

Date of Decision: Aug. 9, 2016

Citation: (2016) 4 RLW 2825

Hon'ble Judges: Navin Sinha, CJ. and Pankaj Bhandari, J.

Bench: Division Bench

Advocate: Mr. Kuldeep Mathur and Mr. Himanshu Shrimali, Advocates, for the Appellant; Mr. Sandeep Shah, Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. Navin Sinha, C.J. - The present appeals assail a common order dated 19.7.2016 allowing three separate writ petitions setting aside

individual orders for transfer each dated 17.5.2016 by which the Respondents have been transferred from Churu in Rajasthan to Bemetara in

Chhattisgarh.

2. Learned Counsel for the Appellants submitted that transfer and posting are incidence of service. The fact that the order of transfer may have

followed immediately after seizure of the computers of the Respondents will not make it punitive in nature. The transfers were ordered in

administrative exigency according to the needs of the Appellants. The office atmosphere was vitiated on account of complaints against the

Respondents and some others by the students pursuing distance education details of which were spelt out in the counter affidavit. If transfer was

ordered in interest of discipline it cannot be termed punitive. That there were complaints against them was not denied by the Respondents. The fact

that at Bemetara the infrastructure may be incomplete and was under construction cannot lead to the conclusion for absence of administrative

exigency or a punitive transfer or because by inadvertence another building of the Appellants themselves at Chhattisgarh may have been shown in

the annexure. The fact that Bemetara was at a considerable distance from Churu was an irrelevant consideration.

3. Learned counsel for the Respondents urged that the transfer suffered from malice in law. The Respondents when assigned additional duties of a

Coordinator at the Model Counselling Centre at Churu itself were given additional allowance of Rs. 5000/- but when they have been transferred to

another State, only 10% additional allowance has been granted. The Appellants had attempted to mislead the Court by presenting photographs of

another location. In support of the submission that the transfer was punitive in nature reliance was placed on (2009) 2 SCC 592 Somesh Tiwari

v. Union of India and ors. It was lastly submitted that the seizure of the computers was not a ground mentioned in the order of transfer and the

counter affidavit also asserts that it was not the reason for transfer. All these factors taken cumulatively are clearly reflective of the transfer inflicted

by malice in law and being punitive in nature.

4. We have considered the submissions on behalf of the parties.

5. Transfer is an incidence of service. Normally Courts refrain from interference unless there is violation of statutory rules or regulations, it is shown

to be afflicted by malafides or is vindictive/punitive in nature. Barring these exceptions it shall be wholly inappropriate exercise of jurisdiction to sit

as an appellate authority over an order of transfer to decide the manner in which the employer shall conduct its affairs and the manner in which it

will utilise its personnel at one location or the other sans its own requirements. The primary duty of an employee is to first comply the order of

transfer and then represent. Failure to join may be construed as misconduct also.

6. If it is the employer's privilege and prerogative to transfer an employee from one place to another, the fact that it may be at a considerable

distance is a wholly irrelevant consideration. If the employee is of the opinion that the allowance is not sufficient, he is at liberty to pursue his

remedies in accordance with law including under the rules and regulations governing his employment.

7. It is not in dispute that the Appellant, a deemed private University has its premises at different places in the country including at different

locations in the State of Chattisgarh itself. Merely because the construction at Bemetara may be incomplete and is in process, cannot be a ground

to urge that the Respondents cannot be transferred there or that no administrative exigency exists. The setting up of an institution is but part of

establishment and running of an institution where employees are required for various functions. The order of transfer itself displays there was

already a Director, one Shri Surendra Pal posted at the Bemetra Coordination Office before whom the Respondents, who are Office

Assistant/Senior Computer Operators are to report.

8. That leaves the only question with regard to the transfer being punitive in nature. An order of transfer can always be effected on ground of

administrative exigencies. The order of transfer need not spell out the precise administrative exigency. Transfer orders are not required to be

speaking in nature as they are not orders to be passed after hearing the employee complying with the principles of natural justice. If an order of

transfer is challenged it is always open for the employer to explain the administrative exigency in the counter affidavit. The principle that an order

cannot be explained or the grounds supplemented by a counter affidavit will have no application. The order of transfer dated 17.5.2016 makes it

explicit that it was in administrative exigencies as the personnel were well acquainted with the work and their services were required elsewhere and

for better coordination between its branches.

9. The counter affidavit filed by the Appellants stated that certain complaints had been received from the students pursuing distance education that

their grievances were not being handled properly nor expeditious steps were being taken for redressal more particularly those in the grievance cell,

the examination cell and degree department. A proper note sheet was drawn up by the Registrar indicating these facts and after receiving the

approval of the Vice-Chancellor as a routine administrative procedure, the computer systems in the grievance cell and other sections dealing with

various complaints of students were taken into custody for examining and curbing misuse. It is not the computers of the Respondents alone but that

of certain others also which were seized. The note sheet appended to the counter affidavit states that the students of distance education from far

places appeared before the Registrar and narrated their grievance with regard to the degree, marks card, migration, registration and pointed out

that despite these being placed before the grievance cell no response was received and the personnel would defer action on it while watching

licentious and irrelevant materials on the computer screen. Earlier also the computer of one Arun Kumar (who we are informed since resigned) was

seized and in which objectionable materials were found. It was therefore necessary to seize the computer in like manner and have them examined.

There was no denial of these facts by the Respondents.

10. The question for our consideration is whether the reason would tantamount to a punitive transfer because no departmental proceedings have

been held and no finding of guilt has been recorded. The computers still remained to be opened for which a Committee of five persons had been

constituted also.

11. In Somesh Tiwari (supra) an anonymous complaint was lodged against the appellant who was a Deputy Commissioner of Central Excise, that

he had a caste bias pursuant to which transfer was ordered. An enquiry was conducted by Assistant Commissioner, Directorate of Vigilance into

the anonymous complaint against the appellant and was not found to be true but still recommendations were made that he should be transferred.

Observing that though transfer is an administrative matter and should not be interfered with unless malafides was proved, it was held that in view of

the report of the enquiry conducted by the Assistant Commissioner, Directorate of Vigilance where the allegations were not found proved and the

transfer was based on an anonymous complaint, it was wholly illegal and that transfer was ordered as a measure of punishment.

12. The case is completely distinguishable on its own facts as in the present case the computers have been seized for the purpose of an enquiry

pursuant to complaints received with regard to it being put to extraneous use by the Respondents instead of utilising the same to perform duties.

Earlier when on similar complaints the computer of another was seized objectionable materials were in fact found in it. The seizure was preceded

by a note of the Registrar spelling out the reasons, approved by the Vice-Chancellor and a Committee has been constituted to examine the same.

We do not think that it makes the transfer punitive. Merely because the University may not have been satisfied with the manner for discharge of

duties by the Respondents and may have taken administrative steps to look into that aspect further including by transfer of the Respondents and no

departmental proceedings have been held arriving at a finding of guilt will not make it punitive in nature as the transfer was only to ensure a better

atmosphere in the office where grievance of students of distance education coming from far places was attended expeditiously. No slur or

aspersions have been cast on the Respondents. The seizure of the computers is germane and relevant only for the purpose of transfer and cannot

be looked into by the Appellants for any other disciplinary or service purposes against the Respondents except after compliance with procedure

established by law with due opportunity of defence.

13. In Union of India and Ors. v. Janardhan Debanath and anr. (2004) 4 SCC 245 the respondents challenged their order of transfer on the

ground inter-alia that the order was passed as a measure of penalty. The Union of India took the stand that it was done in public interest on ground

of exigencies of administration. The respondents had misbehaved with a superior and the conduct was unbecoming of an employee and therefore

with a view to enforce discipline and to avoid recurrence of unfortunate incident, they were transferred. Allowing the appeal, it was observed as

follows:-

14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any

misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an

enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie

satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by

learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public

interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could

be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of

solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is

clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are

allowed with no order as to costs.

14. We are therefore unable to hold that the transfer was punitive in nature. In any event it has been ordered in administrative exigency for six

months only.

15. The appeals are allowed and the order under appeal is set aside.