

**(2012) 01 AHC CK 0333**

**Allahabad High Court**

**Case No:** Service Single No. - 4655 of 2008

Nagendra Prasad Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Jan. 12, 2012

**Hon'ble Judges:** Anil Kumar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### **Judgement**

Hon"ble Anil Kumar, J.

Matter is taken in revised cause list.

2. None appeared on behalf of the petitioner.

3. Heard Learned Standing Counsel and perused the record.

4. By means of the present writ petition, the petitioner has challenged the impugned order of transfer dated 30.6.2008 (Annexure No.1) passed by opposite party no.2 i.e. Director U.P. Ground Water Department, 9th Floor Indira Bhawan, Lucknow by which he has been transferred from Lucknow to Saharanpur.

5. From the perusal of the record, it transpires that the petitioner has assailed the impugned order of transfer submits on the ground that it is against the government transfer policy as well as the same has been passed in a mid session, in case if the petitioner is compelled to go on transfer, the study of his children will suffer in the present era of competition. Hence, the same is arbitrary in nature, liable to be set aside.

6. The law is well settled that transfer being exigency of service can be effected by the employer concerned in accordance with 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.

7. In the present case, the ground taken by the petitioner that the impugned order of transfer is in violation of transfer policy, liable to be set aside because in the case of Union of India and Others Vs. S.L. Abbas, Hon"ble Apex Court has held as under :-

The said guideline, however, does not confer upon the Government employee a legally enforceable right.

8. The said view has been reiterated by Hon"ble Supreme Court in the case of Rajendra Roy Vs. Union of India (UOI) and Another, wherein the Apex Court has held as under:-

It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the Order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification the Court and the Tribunal should not interfere with the order of transfer.

9. In the case of Bank of India Vs. Jagjit Singh Mehta, the Hon"ble Supreme Court has held as under:

The said observations in fact tend to negative the respondent's contentions instead of supporting them. The judgment also does not support the Respondent's 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 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.

10. The said view was again reiterated by Hon"ble Supreme Court in the case of National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others.

11. Next ground taken by the petitioner that the transfer order is against the principle of natural justice as the same has been passed during mid-session of the studies of his son/daughter, is also got no force as in the case of 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, after considering the judgment of Hon"ble Supreme Court in the case of Director of School Education v. O. Karuppa Thevan 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.

12. The same view has been reiterated by Division Bench of this Court in the case of Gulzar Singh Vs. State of U.P. and Others, and another Division Bench of this Court in the case of State of U.P. and Another Vs. Damodar Dutt Sharma and Another, and also in the case of Jagendra Singh Vs. State of U.P. and others, (2009) 3 UPLBEC 2338.

13. For the foregoing reasons, I don't find any illegality, infirmity in the impugned order dated 30.6.2008 (Annexure No.1) passed by the opposite party no.2 i.e. Director U.P. Ground Water Department, 9th Floor Indira Bhawan, Lucknow under challenge in the present writ petition, thus, the writ petition lacks merit and is dismissed.