

(2013) 04 AHC CK 0146

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 20087 of 2013

Mahendra Kumar
Yadav

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: April 12, 2013

Citation: (2013) 04 AHC CK 0146

Hon'ble Judges: Amreshwar Pratap Sahi, J

Final Decision: Disposed Of

Judgement

Amreshwar Pratap Sahi, J.

Heard Sri B.R.J. Pandey, learned counsel for the petitioner, and Sri Sanjay Kumar Prajapati, learned counsel for the respondent No.5 and Sri Mrig Raj Singh learned counsel for the Respondent No.4 and learned Standing Counsel for the Respondent Nos. 1,2 and 3 who all have assisted the Court in relation to the impugned transfer order dated 2nd April, 2013. This transfer order has been opposed reciting that it is on account of certain allegations made against the petitioner and complaints received that he is being transferred from Dharmapur to Muftiganj. Learned counsel submits that this recital is absolutely false inasmuch as neither the petitioner was made aware of any such complaint nor any such inquiry has been communicated so as to gather that there is a complaint against the petitioner while working as an Assistant Coordinator.

Sri Pandey submits that this entire transfer order is based on the request of the Respondent Shashi Kant Yadav who moved an application before Dr. Paras Nath Yadav a Minister of the State Government of the Department of Minor Irrigation and Animal Husbandry.

It is urged that the said Minister passed an order on 30.1.2013 which is endorsed on the application filed by Sri Shashi Kant Yadav copy whereof is Annexure 6 to the Writ petition.

The Minister has categorically directed the Basic Education Officer to carry out the transfer order as per the request of Shashi Kant Yadav. Sri Pandey submits that it is the request of Sri Shashi Kant Yadav which has been translated into the transfer order without there being any basis for the complaint as alleged.

Sri Pandey, therefore, contends that the order amounts to clear surrender of jurisdiction before the Minister of another department by the Basic Education Officer on a totally false pretext. He, therefore, submits the order suffers from malice in law and deserves to be set aside.

Sri Mrig Raj Singh contends that there was a complaint against the petitioner and that he is in possession of the said complaint letter which has been made the basis of the transfer.

Be that as it may, it remains undisputed that the transfer may have been apparently triggered on an alleged complaint but it also stands established on record that Mr. Shashi Kant Yadav was accommodated against the same post on the direction issued by the Minor Irrigation and Animal Husbandry Minister. It is, therefore, clear to the Court that the subsequent alleged complaint is nothing else but a device to give cover to the transfer order and, therefore, the order suffers from malice in law. The Minister of another department can only make a request and he cannot pass an order for the transfer of an Assistant Coordinator who is under the Basic Education Department. The Minister, therefore, transgressed his authority and the Basic Education Officer committed a manifest error by surrendering to the jurisdiction of the concerned Minister. If the head of another department is allowed to pass orders for a different department, the entire administration would go haywire and would, to an extent, violate the rules of business. The order, therefore, suffers from malice in law.

The impugned order dated 2.4.2013 is quashed.

The petitioner shall not be disturbed from the place of his posting under the impugned order.

So far as Sri Shashi Kant Yadav is concerned, in the event he wants a transfer on his own request, it is open to him to approach the Basic Education Officer for the redressal of his grievance.

The writ petition is allowed.