

**(1997) 11 AHC CK 0124**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 31755 of 1997

Jokhu Prasad Tripathi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Nov. 18, 1997

**Citation:** (1997) AWC 655 Supp

**Hon'ble Judges:** S.H.A. Raza, J; Bhagwan Din, J

**Bench:** Division Bench

**Advocate:** S.N. Shukla, for the Appellant; U.N. Sharma and S.C., for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

S.H.A. Raza

1. The Petitioner Sri Jokhu Prasad Tripathi who holds the post of Deputy Director Agriculture (Prasar) was transferred from Jhansi to Gorakhpur on 15.6.1997. Merely within a period of less than three months, he was transferred to Lucknow and posted as Project Officer (D.P.A.P./P.P.M. Cell) Secretariat. This order has been assailed in the present writ petition.

2. We have heard Sri S. N. Shukla, learned Counsel appearing on behalf of the Petitioner, Sri Umesh Narain Sharma, (who has filed an application for impleadment, which did not find favour with this Court but under the rules of the Court was allowed a hearing) as well as, the learned standing counsel and Sri Amrendra Nath Singh, learned Counsel appearing on behalf of Sri Kunwar Fateh Bahadur Singh, Respondent No. 4, at considerable length.

3. The impugned order has been assailed mainly on two grounds-firstly, that the order suffers from colourable exercise of power and secondly, that his son, who was earlier studying in Intermediate classes at Allahabad started his studies at Gorakhpur. His studies would suffer, if he would be shifted to Lucknow. The examination of the course, i.e., Intermediate shall commence from middle of the March, 1998. It was submitted that the transfer of the Petitioner in the

mid-academic session was not appropriate.

4. In support of the contention that order suffers from colourable exercise of power, it has been asserted that the Petitioner has taken actions against the businessmen holding fertilizer licences after taking samples, which were not found according to the norms. They made complaints against the Petitioner as he had initiated action against them and lodged F.I.R. It was submitted that businessmen had formed a nexus with the District Agriculture Officer and one politician and legislator, Sri Kunwar Fateh Bahadur Singh, who is now a Minister in Government of U.P. The District Magistrate, Gorakhpur, Sri Sanjiva Saran at the behest of those businessmen and pressure exercised upon him by the said politician, recommended the transfer of the Petitioner to the State Government. Consequently, the Petitioner was transferred to Lucknow, by means of an order passed by the Secretary, Agriculture, Government of U.P. Sri Sanjiva Saran, erstwhile the District Magistrate, Gorakhpur and Sri Kunwar Fateh Bahadur Singh, who was then a legislator and now a Minister in the Government of U.P. have been arrayed in their name as opposite parties to the writ petition. An affidavit of service upon them has been filed but Sri Sanjiva Saran the then District Magistrate has not filed his response. On behalf of Sri Kunwar Fateh Bahadur Singh, a counter-affidavit sworn by one Rajesh Kumar Singh has been filed, wherein it has been stated that Sri Kunwar Fateh Bahadur Singh had received certain complaints from the merchants against the Petitioner, but the District Magistrate while recommending the transfer of the Petitioner has exercised his independent mind. No allegation of any sort has been levelled against the Secretary, Ministry of Agriculture, who passed the impugned order. It cannot be presumed that a person to the rank of Secretary of an important Ministry would pass an order recklessly, only on the basis of the recommendation of the District Magistrate. He ought to have passed the order after considering the pros and cons of the controversy involved. It is well-settled that whenever allegation of mala fide against a person is levelled, that person should be impleaded as a party to the writ petition to rebut the allegation. The Secretary has not been impleaded by name, to rebut the allegation, that he passed the order only at the behest of any person or on the recommendation or the report of the District Magistrate concerned. Hence, no charge of mala fide can be attributed to the Secretary, who passed the order of the transfer.

5. It was vehemently argued by the learned Counsel for the Petitioner that the impugned transfer order amounted to a punishment. The argument is misconceived. If that contention is accepted, even then in such situations, where complaints are made against an officer, two options are open before the appointing authority, either to proceed against such an officer by holding a disciplinary enquiry or to transfer him from the present place of posting casting no stigma on his character and conduct. In the present case, the State Government opted to transfer the Petitioner to Lucknow and attached him to Secretariat.

6. In *Abani Kanta Ray v. State of Orissa and Ors.* 1995 Suppl. (4) SCC 169, it was 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 or any professed norm or principle governing the transfer.

7. In [State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others](#), it was held that hardship caused to the employee cannot be a ground for judicial review.

8. In [Sreedam Chandra Ghosh Vs. State of Assam and others](#), the Petitioner assailed the order of transfer, but the High Court repelling the challenge, directed the department to enforce the transfer order and take suitable action against the erring person. It was further observed:

This Court has amplified the exercise of power and the self-imposed limitations on the exercise of the power in the given circumstances. In this case, since the Petitioner stood in the way of enforcement of transfer order, passed by the competent authority, the High Court has given appropriate direction to the Director to enforce the orders and take suitable action against the erring officers.

9. The learned Counsel for the Petitioner, cited the dictum of Hon"ble Supreme Court in *Director of School Education v. O. Karuppa Thevan*, wherein, Hon"ble Supreme Court set aside the impugned order of the Tribunal and directed that the Director of School Education should not effect the transfer order till the end of the current academic year. He also relied upon the case of [Arvind Dattatraya Dhande Vs. State of Maharashtra and others](#), where on the ground of colourable exercise of power, the transfer order was quashed.

10. Hon"ble Supreme Court in *O. Karuppa Thevan* (supra) intervened in the matter on the peculiar facts and circumstances of that case, which is not applicable to the present case. No doubt a transfer order can be set at naught on the ground of mala fide.

11. In view of the settled position that the transfer order can be assailed only on the ground of mala fides or infraction of the statutory rule, question of hardship, etc. have no relevance. Whenever a person joins a public office, he holds the post knowingly fully well, that the post is transferable and he can be posted any where.

12. But we cannot ignore to take into account some of the recent developments, where a public servant is shuttled from one place to another within the shortest possible time, as a result of which a feeling of uncertainty in the administration may creep in, which will ultimately boomerang upon the State, inasmuch as, the officers would be reluctant to take initiative out of the fear and the administration would be adversely affected. Consequently, the people of State would be the worst sufferers, who would not be able to rely upon such officers, whose tenure is not assured at a particular place.

13. Although in the present writ petition, we have desisted ourselves from making any interference, but we are of the view that the transfer of the Petitioner should be considered by the State afresh, considering the entire surrounding circumstances, which impelled the State Government to pass such an order.

14. In view of the aforesaid reasons, we dismiss the writ petition. However, we direct the Secretary, Ministry of Agriculture, to consider afresh the case of the Petitioner, as to whether, he should be transferred from Gorakhpur to Lucknow or not, in case the Petitioner prefers a representation to the Secretary, Ministry of Agriculture within four weeks from today. The Secretary, Ministry of Agriculture will consider and dispose of the representation within three weeks from the date of filing such a representation. It is further provided that till Secretary passes the final orders, the impugned order of transfer passed on 10.9.1997 shall remain in abeyance.