

(2011) 12 AHC CK 0277

Allahabad High Court

Case No: Service Single No. 9461 of 2011

Constable Driver
Pramod Kumar

APPELLANT

Vs

The State of U.P. and
Others

RESPONDENT

Date of Decision: Dec. 23, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Hon'ble Anil Kumar, J.

Heard Sri Rakesh Kumar Singh, learned counsel for petitioner, learned State counsel and perused the record.

2. By means of the present writ petition, the petitioners have challenged the impugned order of transfer dated 20.12.2011 (Annexure No. 1) passed by O.P. No. 3 by which the petitioner has been transferred to Lucknow to Hardoi and the consequently order dated 17.12.2011, 04.12.2011 passed by O.P. No. 2 and 4.

3. Learned counsel for petitioner has assailed the impugned order of transfer only on the ground that the same is in contravention to the transfer policy.

4. Learned counsel for petitioner while challenging the impugned orders submits that the impugned order of transfer is against the transfer policy/guidelines (as the petitoienr"s son is 100% handicapped), so the same is illegal and arbitrary in nature and the same are not in accordance with law, passed with ulterior motive, liable to be set aside.

5. 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.

6. Further, it is not disputed by learned counsel for petitioners that petitioner are holding a transferable post.

7. Learned counsel for petitioner further argued that the impugned order of transfer have been passed in a mid-session in case if the petitioners are transferred in pursuance to the impugned orders, the study of their children will suffer in the present era of competition. So, the impugned order of transfer is illegal, liable to be set aside.

8. I have heard learned counsel counsel for parties and perused the record.

9. 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.

10. In the present case as argued by learned counsel for petitioner that the impugned order of transfer is in violation of transfer policy is not correct 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.

11. 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 Oder 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.

12. 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 therefore. 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.

13. 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](#), .

14. Next argument advanced by learned counsel for 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.

15. 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 Uttar Pradesh and others, (2009) 3 UPLBEC 2338.

16. No other points have been argued or pressed by the learned counsel for the petitioners.

17. In view of the abovesaid facts, I do not find any illegality and infirmity in the transfer order which is under challenge.

18. For the foregoing reasons, the relief as claimed by petitioners in present writ petition cannot be granted under Article 226 of the Constitution of India.

19. However, as prayed by petitioner"s counsel, and in view of the taking into consideration peculiar facts and circumstances of the case, petitioner is permitted to make representation in respect to grievance which he has raised in the present writ petition to O.P. No. 2 /Deputy Inspector General Of Police, Lucknow within a period

of two week from today annexing all relevant documents and material in support of his case and after receiving the same, O.P. No. 2 dispose of within a further period of four weeks thereafter with reasoned and speaking order.

20. For a period of six weeks for till the decision is taken the matter in question by O.P. No. 2 no coercive measure shall be taken against the petitioner.

21. With the above observations, writ petition is disposed of.

22. No order as to costs.