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Court : Chennai

Decided On : Apr-21-2016

Judge : Satish K. Agnihotri & V. Bharathidasan

Appeal No. : W.A. Nos. 453 & 454 of 2016 & C.M.P. No. 6429 of 2016

Appellant : Loganathan

Respondent : The Government of Tamil Nadu represented by its Secretary to Government Health and Family Welfare Department and Others

Judgement :

(Prayer: Writ Appeals preferred under Clause 15 of the Letters Patent against the orders dated 29.02.2016 and 04.03.2016 passed in W.P. Nos.4521 and 8043 of 2016 respectively.)

Common Judgment:

Satish K. Agnihotri, J.

These intra-Court appeals are focussed against the orders dated 29 February 2016 and 04 March 2016 passed in W.P. Nos.4521 and 8043 of 2016 respectively.

2. Inasmuch as the issues involved in these intra-Court appeals are intertwined and there being no difference even in the arraignment of parties, both the intra-Court appeals are considered and decided by this common judgment. To avoid verbosity, the parties are referred to as per their litigative status in the instant intra-Court appeals.

3.1. The incontrovertible facts in a nutshell, leading to preferring of these intra-Court appeals are that the appellant joined the Kilpauk Medical College, Chennai as Scientific Assistant on 14 April 2008. On 23 July 2011, his services were regularised with effect from the date of his appointment, viz., 14 April 2008. Meanwhile, in 2010, he was re-designated as Scientific Officer. While so, on 04 January 2012, he was transferred from Kilpauk Medical College, Chennai to Madras Medical College, Chennai. After a span of four years, by order dated 01 February 2016 issued by the third respondent, he was relieved from the services of Madras Medical College, Chennai, in pursuance of the order dated 28 January 2016 issued by the second respondent, transferring the appellant from Madras Medical College, Chennai, to Stanley Medical College, Chennai.

3.2. Feeling aggrieved by the relieving order dated 01 February 2016, the appellant preferred the writ petition being W.P. No.4521 of 2016 with a further prayer directing the respondents 2 to 5 to allow him to continue as Scientific Officer in Madras Medical College itself. The main ground of attack of the appellant in the said writ petition was that he was relieved from Madras Medical College, Chennai without issuing a transfer order.

3.3. The learned Single Judge, on perusal of the relevant file and upon being satisfied that the appellant was in receipt of both transfer order dated 28 January 2016 and relieving order dated 01 February 2016, in original, on the afternoon of 01 February 2016, dismissed the writ petition, however, with a direction to the authorities to serve a copy of the transfer order dated 28 January 2016 to the appellant.

3.4. Not stopping with the aforestated writ petition being W.P. No.4521 of 2016, the appellant preferred the second writ petition being W.P. No.8043 of 2016 assailing the aforestated transfer order and relieving order and further, for a

direction to the authorities to allow him to continue in Madras Medical College, Chennai, itself.

3.5. The learned Single Judge, taking note of the submission of the learned Special Government Pleader that the appellant had served in Madras Medical College, Chennai, for four years and he has been transferred by the order impugned therein only to Stanley Medical College which is within the city, since there was a vacancy for a long time and observing that transfer is not only an incidence of service, but also, a condition of service, dismissed the writ petition.

3.6. Questioning the justifiability of the dismissal of the writ petitions, the appellant has preferred the instant intra-Court appeals.

4. The learned counsel for the appellant would contend that the impugned order passed was mala fide, as the appellant has made several complaints against the higher-ups, which prompted them to pass the impugned transfer order and as such, the same deserves to be quashed. The appellant does not question the legality of the order on other grounds, namely, lack of competence or the transfer order not being in conformity with the rules and regulations.

5. The question that arises for consideration of this court is whether the issue involved herein is a transfer or simply a posting. The appellant is transferred from the Madras Medical College, Chennai to the Stanley Medical College, Chennai. Both medical colleges are located in the city of Chennai only. The transfer involves displacement of the employee and his family from one place to other place. Placing from one medical college to the other medical college in the same city is a mere posting, not transfer.

6. The Supreme Court in V.Jagannadha Rao and others Vs. State of A.P. and others (2001) 10 SCC 401, has defined transfer as under :

14. Transfer in relation to service reduced to simple terms means a change of place of employment within an organization, as stated in New Oxford English Dictionary, 1993 Edn., Vol. 2, p. 3367. It is an incidence of public service and generally does not require the consent of the employee. In most service rules,

there are express provisions relating to transfer. For example, Fundamental Rule 15 provides:

15. (a) The President may transfer a government servant from one post to another; provided that except -

(1) on account of inefficiency or misbehaviour, or

(2) on his written request, a government servant shall not be transferred substantively to, or, except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14.

(b) Nothing contained in clause (a) of this Rule or in clause (13) of Rule 9 shall operate to prevent the retransfer of a government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of Rule 14.

15. Service rules sometimes define transfer. For example, supplementary Rule 2(18) of the Fundamental Rules governing Central government servants defines transfer in the following terms:

2. (18) Transfer means the movement of a government servant from one headquarter station in which he is employed to another such station, either

(a) to take up the duties of a new post, or

(b) in consequence of a change of his headquarters.

Though definitions may differ and in many cases transfer is conceived in wider terms as a movement to any other place or branch of the organization, transfer essentially is to a similar post in the same cadre as observed by this Court in *B. Varadha Rao v. State of Karnataka* (1986 (4) SCC 131). It is now well settled that a government servant is liable to be transferred to a similar post in the same cadre which is a normal feature and incidence of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified non-transferable post. No transfer is

made to a post higher than what a government servant is holding. In other words, it is generally a lateral and not vertical movement within the employer's organization.

16. Strong reliance has been placed in para 15 of *Sadanandam case*¹ for contending that transfer also includes promotion. The para reads as follows: (SCC p. 582)

15. In the first place, we must point out that the Tribunal has failed to construe para 5(2) of the Presidential Order in its proper perspective and give full effect to the powers conferred thereunder on the State Government to make provisions contrary to the scheme of local cadres prescribed under para 5(1). The words of sub-para (2) of para 5 viz. nothing in this Order shall prevent the State Government from making provision for sets out the overriding powers given to the State Government under the sub-para. Such overriding powers have been given to the State Government in express terms in recognition of the principle that public interest and administrative exigencies have precedence over the promotional interests of the members belonging to local cadres and zones. Since para 5(2) also forms a part of the Presidential Order, it forms part of the scheme envisaged for creating local cadres and zones. The Tribunal was, therefore, in error in taking the view that if the State Government was to exercise its powers under para 5(2) and make provision for promotion of UD Assistants in the Directorate and Assistant Section Officers in the Secretariat to be transferred to posts in Zones I to IV, it will be the very negation of the creation of cadres and zones under para 5(1) and it will be destructive of the scheme underlying the Presidential Order. In fact the Tribunal has realized the operative force of para 5(2) to some extent but it has failed to give full effect to its realization of the scope of Section 5(2). In para 12 of its judgment in RP No. 1595 of 1983 the Tribunal has stated that since the amended Rule refers to para 5(2) of the Presidential Order it will no longer be open to the petitioners to attack the amendment as was done in respect of the earlier amendment in the previous RP. The Tribunal has thus noticed that the amended Rule has been brought about by the Government in exercise of its powers under para 5(2) but it has failed to draw the logical inference following therefrom.

7. Thus, applying the well settled principles, we have no hesitation to hold that it is not a case of transfer, displacing the employee and his family from one place to other place, unsettling the education of the children and other incidental arrangement.

8. The allegation of the appellant that the transfer order is mala fide as the appellant has made several allegations against the higher-ups is misplaced. To allege the mala fide, it is for the employee to establish the same on substantial grounds. The allegation of mala fide is misplaced and vague. Thus, it cannot be held that the impugned transfer was made on exercise of mala fide.

9. Regarding interference of the court in respect of the transfer of an employee, the Supreme Court has examined the issue in several cases.

10. The Supreme Court in *Shilpi Bose and others Vs. State of Bihar and others* (1991 Supp (2) SCC 659), held as under :

4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

11. In *Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and others* (2004) 12 SCC 299, the Supreme Court held as under :

4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see *Abani Kanta Ray v. State of Orissa* (1995 Supp (4) SCC 169). Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see *Union of India v. S.L. Abbas* (AIR 1993 SC 2444). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In *Union of India v. Janardhan Debanath* (2004 (4) SCC 245) it was observed as follows: (SCC p. 250, para 9)

No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan* (2001 (8) SCC 574).

12. The Supreme Court in *Mohd. Masood Ahmad Vs. State of U.P. and others* (2007) 8 SCC 150), held as under :

7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in *Rajendra Roy v. Union of India* (1993 (1) SCC 148; *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan*, 2001 (8) SCC 574; *State Bank of India v. Anjan Sanyal* (2001 (5) SCC 508). Following the aforesaid principles laid down by the Supreme Court, the Allahabad

High Court in *Vijay Pal Singh v. State of U.P.* 1997 (3) ESC 1668 and *Onkar Nath Tiwari v. Chief Engineer, Minor Irrigation Deptt.*, (1997 (3) ESC 1866 has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.

13. In *State of Haryana and others Vs. Kashmir Singh and another* (2010) 13 SCC 306, the Supreme Court held as under :

12. Transfer ordinarily is an incidence of service, and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the State authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation. The administrative authorities concerned may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well settled that courts must not ordinarily interfere in administrative matters and should maintain judicial restraint, vide *Tata Cellular v. Union of India* AIR 1996 SC 11.

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14. In our opinion, the High Court has taken a totally impractical view of the matter. If the view of the High Court is to prevail, great difficulties will be created for the State administration since it will not be able to transfer/deploy its police force from one place where there may be relative peace to another district or region/range in the State where there may be disturbed law and order situation and hence requirement of more police. Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As

Holmes, J. of the US Supreme Court pointed out, there must be some free play of the joints provided to the executive authorities.

15. This Court also held in *Aravali Golf Club v. Chander Hass*, JT 2008 (3) SC 221) and *Common Cause v. Union of India*, (2008 (5) SCC 511) that Judges must observe judicial restraint and must not ordinarily encroach into the domain of the legislature or the executive.

14. The transfer order was passed in administrative exigency as the transfer is a part of service conditions of the employee. The employer is in better position to appreciate the placement of an employee in the interest of administration. Thus, no interference is warranted unless the same is passed on the basis of proved mala fides or violation of rules and regulations or lack of competence, which is not the case herein.

15. In view of the above, the court is of the considered view that the impugned orders passed by the learned Single Judge do not require any interference. Resultantly, both the writ appeals stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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