

Lokesh Kumar, P.C.S. Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-05-1997

Reported in : 1998(1)AWC27

Judge : S.C. Verma and; Dev Kant Trivedi, JJ.

Acts : [Constitution of India](#) - Article 215

Appeal No. : Writ Petition No. 628 (S/B) of 1997

Appellant : Lokesh Kumar, P.C.S.

Respondent : State of U.P. and Others

Advocate for Pet/Ap. : S.C. Misra, Adv.;C.S.C.

Judgement :

S.C. Verma, J.

1. The order of transfer dated 24.6.1997, transferring the petitioner from the post of General Manager, (Executive Director), Kichha Sugar-Company (A subsidiary of U. P. State Sugar Corporation, Ltd.), Udham Singh Nagar to Additional District Magistrate (Project), Kanpur, has been challenged in the present writ petition mainly on the ground of political interference and absence of any administrative exigency as also on account of mala fide actions of the respondents No. 1 to 3.

2. The petitioner is a P.C.S. Officer appointed in the year 1985 and while posted as General Manager, Sugar Mill, Bilaspur, District Rampur, he was transferred on 17.1.1997 as Additional District Magistrate, Sambhal, District Moradabad. The petitioner was then transferred as Deputy Director (Administration), Mandi, Moradabad on 5.2.1997. The petitioner was again transferred and relieved of the charge on 7.2.1997 and was placed in the waiting list to await further posting. The petitioner was transferred on 10.2.1997 on the post of Deputy Director, Consolidation, Azamgarh. On the request of the petitioner considering the frequent transfers, he was posted on 6.3.1997 to Kichha Sugar Company, Kichha District Udham Singh Nagar as General Manager (Executive Director). The petitioner after completing about three months on the said post has again been transferred by the impugned order dated 24.6.1997 on the complaint made by one Sri Isam Singh, Member of Legislative Council and on the recommendations made by one Sri Ilam Singh, Member of the Legislative Assembly. The petitioner has alleged that on the basis of false, concocted and frivolous complaint made by the said persons to the Hon'ble Chief Minister, Sushri Mayawati, she had directed the Appointment Secretary to transfer the petitioner to a non-sensitive post. The note dated 22.6.1997 issued by the Chief Minister is on the letter dated 8.6.1997 of Sri Isam Singh, M.L.C., Saharanpur. A copy of the letter and the endorsement of the Chief Minister are contained in Annexure No. 2 to the writ petition. The petitioner has further alleged that the impugned action is neither for any administrative exigency nor in the public interest rather it has been passed on extraneous considerations and for political considerations. The work and conduct of the petitioner is meritorious and there was no complaint or adverse record.

3. In the counter-affidavit filed on behalf of respondent No. 3, it has been stated that the order dated 24.6.1997 has been passed by the Competent Authority in public interest. In the order itself, it has been recited that the Officer mentioned in the order is being transferred in public interest. It has also been stated that a perusal of the letter contained in Annexure No. 2 would make it evident that there were complaints against the work and conduct of the petitioner. In the letter written by the Hon'ble Chief Minister dated 26.5.1997 to the Hon'ble Minister, it has been stated that in view of the complaint of Sri Isam Singh, Member Legislative Council, in which he has complained about one Sri Rudra Pratap Singh, Manager, Nanauta

Sugar Mills, Sri Nikhil Shukla, Manager, Sarsawan Sugar Mills and Sri Lokesh Kumar, General Manager, Kichha Sugar Company, Udham Singh Nagar, that their work is extremely bad and they have Committed Oppression on the Dalits and they should be immediately transferred from their posts. Thus, the work and conduct of the petitioner was not found satisfactory.

4. It has also been stated by the respondents in the counter-affidavit that the deponent (Shiv Raj, Law Officer, U. P. State Sugar Corporation Ltd., Lucknow) was advised to State that M.L.As. and M.L.Cs. hold public office and complaints of such persons cannot be treated always as borne of political interference. The respondent No. 3 has also stated that time had not arisen and the stay of the petitioner in the Factory of the Corporation was so short that the work of the petitioner could not be evaluated properly. However, complaints from the public representatives have to be given due importance. The competent authority has transferred the petitioner in public interests.

5. In the counter-affidavit filed on behalf of respondent No. 1, it has been stated that the services of the petitioner have been withdrawn from Sugar Corporation on administrative grounds and public interest. It was further stated that the Government had only placed the services of Sri J. P. Sagar, respondent No. 4 at the disposal of Sugar Corporation and the Government has not posted Sri J. P. Sagar as General Manager, Kichha Sugar Mills.

6. Apart from the above averments in the counter-affidavit, there is no other material to establish any shortcoming or irregularity committed by the petitioner which was taken into account for taking the decision to transfer the petitioner after three months.

7. The respondents have taken serious objection in the manner the writ petition was filed and the concealment of the facts made by the petitioner. The respondents have alleged that after the petitioner was transferred by order dated 24.6.1997, he was relieved of the charge on 28.6.1997 by the respondent No. 4 who joined as Executive Director. They have brought on record the charge-certificate in which the petitioner under his signature had handed over charge of the post General Manager/Executive Director, Kichha Sugar Mills in favour of

respondent No. 4 on 28.6.1997. The petitioner without placing this fact on record filed the present writ petition on 11.7.1997 and without disclosing the correct and complete facts obtained interim order dated 14.7.1997 from the Hon'ble High Court.

8. The writ petition challenging the order dated 24.6.1997 was presented before Hon'ble High Court on 11.7.1997 and the affidavit was sworn by the petitioner Lokesh Kumar on 10.7.1997. At the time when the petition was taken up for hearing on 14.7.1997, a copy of the writ petition was served on Sri P. P. Sinha at 11.00 a.m. In order to obtain the version of the respondents, the learned standing counsel was directed to file counter-affidavit by 28.7.1997 and in the meantime by order dated 14.7.1997, it was provided that no incumbent shall be posted in place of the petitioner. It was further provided that in case any officer has been posted and has already taken over charge prior to the date of passing of the order, the order shall not be operative. On 28.7.1997, as no counter-affidavit it was filed and the learned standing counsel had prayed for two weeks further time and in view of the averments contained in the supplementary affidavit as also the letter dated 26.5.1997 of the Chief Minister, it was directed that the post of General Manager, Kichha Sugar Company should be kept vacant till further orders and the posting of the Officer be kept in abeyance. The case was thereafter directed to be listed on 12.8.1997.

9. By an application under Article 215 of the Constitution, filed on 12.8.1997, which was directed to be listed on 13.8.1997, it was brought to our notice that despite the order dated 28.7.1997 the respondent No. 4 Sri Jai Prakash Sagar, is still performing the duties on the post of General Manager.

10. By our order dated 13.8.1997, we directed the respondent No. 2 Sri B. K. Singh, respondent No. 3 Sri Devendra Chaudhary and respondent No. 4 Sri Jai Prakash Sagar to show-cause why action for contempt be not taken against them. The counter-affidavit on behalf of respondents was thereafter filed on 28.7.1997 and the explanation had also been furnished by the respondents No. 2 and 3 in compliance to the order dated 13.8.1997 requiring them to show-cause. On considering the explanation furnished by the respondents, we were satisfied that

the order dated 28.7.1997 was served on them by registered post on 1.8.1997 and there was no wilful disobedience. We accordingly discharge the notices by our order dated 27.8.1997.

11. At the outset, we may indicate that the petitioner was bound to place correct and complete facts relating to his handing over of the charge of the post on 28.6.1997. He is a responsible Government Officer and was supposed to be more circumspect. We understand and appreciate his anxiety but in narrating his tale of woes, he should not have lost the sense of fairly detailing complete facts before the court. We expect him to be more discreet even in cases of acute diversity.

12. In the above conspectus of facts, the validity of the impugned order dated 24.6.1997 has now to be considered. As regards the merit of the action of the respondents to transfer the petitioner, we are of the opinion that series of events and the material on record establish that the respondents in colourable exercise of their power on extraneous considerations, have passed the impugned order of transfer only for political reasons. In the letter written by Sri Isam Singh, M.L.C. contained in the Annexure No. 2 to the writ petition, it has been stated that the petitioner is very close to Sri Mulayam Singh and Sri Azam Khan and in his prior posting at Rampur Sugar Mill he had exploited the Sugar Mill and he should be immediately transferred to some other place, i.e., to a non-sensitive post. On this letter, there is an endorsement of recommendation by Sri Ilam Singh, M.L.A. Nagal, Saharanpur. On this letter itself, there is a note addressed to the Secretary appointment, signed by the Chief Minister dated 22.6.1997 requiring immediate transfer of the petitioner to some non-sensitive post. There is another letter of the Chief Minister addressed to Hon'ble Minister dated 26.5.1997, in which a copy of the letter of Sri Isam Singh, M.L.C. was enclosed and in which the work of the petitioner and few others have been stated to be bad. It was also stated that they have committed oppression on Dalits and as such they should be immediately transferred from their post.

13. Relevant extract of the letter is quoted below:

^ek- ea=h th]

phuh m|ksx ,oa xUuk fodkl foHkkx]

bl i= ds lkFk Jh bZle flag] lnL;fo/kku ifj'kn dk i= layXu gS ftlesa bUgksasus Jh :nz izrki flag] izcU/kd]uuksrk] phuh feYI] Jh fuf[ky 'kqDyk] izcU/kd] ljlokWa phuh feYI RkFkk Jh ykdsd'skdqekj] iz/kku izcU/kd] fdPNk 'kqxj dEiuh] m/keflag uxj dk dk;Z vR;Ur [kjkc gksusrFkk nfyrksa dk mRihM+u djus ds dkj.k tuinksa ls ckgj LFkkukarfjr fd;s tkus dkvuqjks/k fd;k g SA d`i;k ek- lnL; fo/kku ifj'kn ds vuqjks/k dks /;ku esaj[krs gq, bUgsa rRdky orZeku inkSa ls LFkkukarfjr djus dk d'V djsaA

ga- ek;korh

layXud % mijksDrkuqlkj

26&5&97

eq[; ea=h] mRrj izns'k

14. Hon'ble the Chief Minister, on the request of the Member Legislative Council, required that the petitioner be transferred from his post. Although in the counter-affidavit, it has been stated that the impugned action of transfer has been taken in public interest and on the subjective satisfaction of the appointing authority in view of the complaints received against the petitioner from responsible persons holding public office which has also been taken note of by Hon'ble the Chief Minister but no material whatsoever has been brought on record which may reflect the unsatisfactory work and conduct of the petitioner. On the other hand, the respondent No. 3 in the counter-affidavit has clearly stated that the tenure of the petitioner was too short for any assessment being made of his work on the post held by him and the same has not been evaluated so far. It is thus clear that the impugned action is based only on the complaint of Sri Isam Singh, M.L.C. which has been taken cognizance by the Chief Minister without any further enquiry. It is surprising to note that in the letter of the Chief Minister dated 22.6.1997, it has been stated that the complaint has been made by Sri Isam Singh, M.L.C. with regard to oppression committed by the petitioner on Dallts, yet no enquiry or complaint or material has been placed on record. In the letter of Sri Isam Singh, it has also been stated that the petitioner has association with Sri Mulayam Singh

and Sri Azam Khan belonging to his group and as such he should be transferred.

15. It is really unfortunate that the administrative actions are taken in such manner which has resulted in untold sufferings and financial expenditure on the administrative side. Transparency and objectivity reflecting the set norms and rules should be the criteria of administration and executive rather than whimsical labelling of the officers with the tags of any shade.

16. Public interest is not abstract to be found in the Dictionaries but must be obvious and visible. Politicising services would be unproductive and detrimental against the interest of the country.

17. On many occasions, judicial note has been taken against such actions and they have been deprecated and strongly condemned but it seems that the directions have not been properly understood.

18. The learned counsel for the petitioner placed reliance on the numerous decisions of this Court in which the order of transfer passed on political interference without there being any administrative exigency or in the public interest have been set aside.

19. It would suffice to refer to one of the decisions of the Division Bench in *Pradeep Kumar Agrawal v. Director, Local Bodies, U. P. IVth, Lucknow and others*, 1994 (1) UPLBEC 189, in which it has been held :

'It would be appropriate to observe here that in a democratic set up like ours, bureaucrats are expected to act and discharge their executive functions impartially and strictly in accordance with the Rules and Regulations. No doubt, as of right no Government servant can claim to be posted either on a particular station or post, therefore, the transfers are to be done only in administrative exigencies and in public interest, but in the instant case the letter written by the aforesaid M. P. addressed to Minister for Urban Development bearing endorsement of the Officers of the State Government, indicated that instant transfer has neither been made in administrative exigency nor in public interest. It is not only a matter of surprise but highly objectionable that bureaucrats are dancing at the tunes of such letters

ignoring the well settled norms meant for transfer.'

20. In view of the above facts and circumstances of the case, we are satisfied that the impugned action was taken by the respondents in colourable exercise of their power without there being any administrative exigency or public interest on the other hand mainly for political reasons.

21. We allow the petition and set aside the impugned order dated 24.6.1997. The petitioner would function on the post of General Manager/ Executive Director, Kichha Sugar Company, but it would be open to the respondents to pass orders in accordance with law.

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