

**Phoola Devi Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Sep-17-1998

**Reported in :** 1999(1)AWC179; [1998(80)FLR884]

**Judge :** M. Katju, J.

**Appeal No. :** C.M.W.P. No. 29758 of 1998

**Appellant :** Phoola Devi

**Respondent :** State of U.P. and Others

**Advocate for Def. :** S.C., ;Faujdar Rai and ;Chandra Kumar Rai, Advs.

**Advocate for Pet/Ap. :** J.P. Singh, Adv.

**Judgement :**

**M. Katju, J.**

1. Heard learned counsel for the petitioner, Sri Faujdar Rai for respondent No. 4 and learned standing counsel.

2. The petitioner has challenged the impugned order dated 24.8.1998 Annexure-2 to the writ petition. The said order states that the U. P. State Education Minister (Basic) by his order dated 19.8.1998 has directed the cancellation of the petitioner's transfer order.

3. A large number of petitions are being filed in this Court relating to transfer or transfer cancellation orders, and in many of them, the impugned order blatantly states that the order is being passed at the Instance of a Minister or an M.L.A. of the ruling party.

4. This Court has repeatedly held in a series of decisions that a Minister, M.L.A. or politician cannot direct transfer and posting, and this can only be done by the competent officer of the department concerned. Thus, in Sheo Kumar Sharma v. Basic Shiksha Adhikari, 1991 (1) UPLBEC 690, this Court observed :

'It is regretted that a Minister should pass a transfer order which function is to be discharged by the competent authority in the Department. If anything adverse to the conduct of the incumbent comes to the knowledge of a Vidhayak or some other public representative then he may forward it to the competent authority requesting him to consider the same and do the needful in the matter, but interference by directing transfer straightaway is not compatible to the principle of law by which a country having a democratic set up is to be governed. All the persons in position should know that this is not the Government of the men however, high position they may occupy but is the Government of laws.'

5. Similarly, a Division Bench of this Court in Pradeep Kumar Agarwal v. Director. Local Bodies, 1994 168) FLR 879. observed :

'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 the Minister for Urban Development bearing endorsement of the officers of the Government indicates that the instant transfer has either been made in administrative exigency or 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 for transfer.'

In Pawan Kumar Srivastava v. U. P. State Electricity Board, 1995 (70) FLR 956, this Court quashed a transfer order passed on the desire of the Chief Minister. In this case the petitioner was a Chemist Grade-11 in the service of the U. P. Government and was also General Secretary of the U. P. Vidyut Mazdoor Sangh

which is affiliated to the Bhartiya Mazdur Sangh. The city President of the Bahujan Samaj Party wrote a letter to the Chief Minister that the petitioner was harassing members of the Backward Class. The Secretary to the Chief Minister then wrote a letter to the Chairman, U. P. State Electricity Board, conveying the request of the Chief Minister to transfer the petitioner, and on this letter the petitioner was transferred. Allowing the writ petition of the petitioner Hon'ble Alok Chakrabarti. J., in an elaborate and well considered decision observed :

'I am convinced that the petitioner's transfer was on political considerations and complaint and not at all was considered from the angle of administrative exigency or public interest.'

6. Although this Court is reluctant to interfere with transfer orders since this is ordinarily an incidence of service, yet this Court is of the view that transfers and postings should be done only by the concerned officers in the department concerned and not by or at the instance of Ministers, M.L.As. or any politician. The task of a Minister is to lay down policy and not to make transfers and postings, which should be done by the senior official of the department concerned.

7. In this country, we have followed the British system of a non-political bureaucracy and hence it is for the bureaucrats to do transfers and postings. This is not the Job of the Ministers or M.L.As. or any politician.

8. It is unfortunate that a series of cases are coming up recently before this Court in which the impugned transfer orders or transfer cancellation orders unabashedly and brazenly state that the transfer order or transfer cancellation is being done by or at the instance of a Minister or M.L.A. or some politician- The result of such political interference in the matter of transfers and postings of Government servant is that the Government servants get demoralised and they become affiliated to some political party or politician (often on caste or communal consideration) which is wholly destructive of all norms of administration.

9. In my opinion, if politicians keep ordering transfers and postings the result will be the total collapse of administration and opening of the floodgates for corruption and crime. The time has come when this practice of politicians ordering transfers

and postings must be stopped and we must follow the British system where the bureaucracy is really independent and non-political and can function without political interference.

10. Moreover, there is a statutory authority, viz., U. P. Basic Shiksha Parishad, which has a Chairman and other officials, and in my opinion, only the concerned officials of the U. P. Basic Shiksha Parishad can order transfers or postings of teachers or headmasters and not Ministers, M.L.As. or politicians.

11. Since the impugned order clearly states that it has been made on the direction of the Minister, in my opinion, it is wholly illegal. Consequently, the impugned order dated 24.8.1998 is stayed. However, it is open for the concerned official in the department concerned to pass appropriate orders in this connection.

12. Respondents may file counter-affidavit within three weeks. List thereafter.

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