

Devi Prasad Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-16-2004

Reported in : (2004)2UPLBEC2083

Judge : Rakesh Tiwari, J.

Appeal No. : Civil Misc. Writ Petition No. 40530 of 2003

Appellant : Devi Prasad

Respondent : State of U.P. and ors.

Advocate for Def. : R.K. Mishra, Adv. and ;S.C.

Advocate for Pet/Ap. : I.S. Tomer, Adv.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard Counsel for the parties and perused the record.

2. The aforesaid writ petition is preferred against the order dated 27.8.2003 passed by respondent No. 2, Maha Nideshak, Chikitsa Evam Swasthya Sewayen, U.P., Lucknow. By the aforesaid order the order of transfer dated 14.6.2003 has been cancelled.

3. The petitioner was appointed as Optometrist. It is alleged that vide order dated 14.6.2003 respondent No. 2 transferred the petitioner to District Hospital, Mirzapur and respondent No. 6 Dukharan was transferred from District Hospital, Mirzapur in place of the petitioner at Primary Health Centre, Chilh, Mirzapur directing them to join in their respective place of posting forthwith. In pursuance of the order dated 13/30.7.2003 the petitioner was relieved from Primary Health Centre, Chilh, Mirzapur and joined his place of posting.

4. It is further alleged that respondent No. 6 had been working in the District Hospital, Mirzapur for about 17 years and was engaged in various private clinical works and managed to get favour of respondent No. 3 who vide order dated 27.8.2003 cancelled the order of transfer dated 14.6.2003 in arbitrary and illegal manner and retransferred the petitioner and respondent No. 6 maintaining status-ante to the order dated 14.6.2003. The impugned order is assailed on the ground that it has been passed malafide due to extraneous consideration and political pressure said to have been managed by respondent No. 6. It is also urged that the normal tenure of posting at a place is 3 years. In the instant case, the petitioner was transferred after 4 years of his posting at Primary Health Centre, Chilh and respondent No. 6 was transferred after more than 17 years of his posting at District Hospital, Mirzapur as such there was no legal justification to cancel the order of transfer vide impugned order dated 27.8.2003.

5. Reliance has been placed by the Counsel for the petitioner on the case of Smt. Bina Tripathi v. State of U.P., (1987) V Lucknow Civil Decision 253, in which it has been held that once the transfer order has been passed and complied with it had exhausted itself and can not be cancelled by a subsequent order.

6. The Counsel for the petitioner submits that in the instant case the petitioner had joined the District Hospital, Mirzapur and as such the transfer order has exhausted itself. It can not be cancelled by subsequent order, as such the order dated 27.8.2003 is not sustainable in the eye of law and is liable to be set aside.

7. The Counsel for the respondents submits that the alleged transfer order dated 14.6.2003 filed as Annexure-1 to the writ petition is not an order of transfer. It is a letter of authorization passed by respondent No. 2 authorizing the Chief Medical

Officer, Mirzapur for transferring the petitioner from Primary Health Centre, Chilh, Mirzapur to District Hospital Mirzapur in place of respondent No. 6. The letter dated 14.6.2003 is as under :

^iszkd]

egkfunskd]

fpfdRlk ,oaLok LF; Isok;sa]

mRrijzns'k A

Isok esa]

eq[;fpfdRlk vf/kdkjh]

fetkZiqjA

la[;k&30Q@vk-ls-@343@03@2429 y[ku fn- twu 14] 2003]

fo'k; % vklVksesf VLV ds LFkkukUrj.k dslEcU/k esa A

egksn;]

mijksDrfo'k;d vkidks voxr djuk gS fd Jh nsoh izlkn vklVks- izk- Lok- dsUnz] phYgdk ftyk fpfdRlky; rFk ftyk fpfdRlky;] fetkZiqj] esa dk;Zjr vklVks- Jh nq[kgj.kdk izk- Lok- ds- phYg LFkkukUrfjr djus gsrq vkidks vf/kr fd;k tkrk gS A

i;kvius Lrj ls mDr LFkkukUrj.k djrs gq;s voxr djuk lqfuf'pr djus dk d'V djsaA

Hkonh;]

g-@viBuh;]

,l- ch- ekFkqj]

funskd jk'Vh; dk;Ze] m-iz- A**

8. It appears from the record that the Chief Medical Officer, Mirzapur by letter dated 13.7.2003 transferred the petitioner under the authorization of the Director Medical and Health Services, U.P., Lucknow which is appended as Annexure-2 to the writ petition. Malafide has been alleged against respondent No. 3, the Upper Nideshak Chikitsa, Swasthya Evam Pariwar Kalyan, Mirzapur but no malafide has been averred in the writ petition against respondent No. 3 as is evident from Paras 8 and 9 of the writ petition. The averments made in Paras 8 and 9 are wholly vague. Paras 8 and 9 of the writ petition are as under:

'That the respondent No. 6 who had worked at District Hospital, Mirzapur for about 17 years continuously and as such also engaged in various private clinics and working there as Optometrist and earning more money. Due to this reason he managed to get favour of respondent No. 3 on extraneous and political basis, who vide his order dated 27.8.2003 in a wholly arbitrary and illegal manner cancelled the transfer order dated 14.6.2003 and re-transferred the petitioner and the respondent No. 6 to the place of the last posting. A true as well as photostat copy of the impugned order dated 27.8.2003 passed by the respondent No. 2 is filed herewith as Annexure-5.

That the impugned order dated 27.8.2003 cancelling the transfer order dated 14.6.2002 by which the petitioner was posted at District Hospital, Mirzapur was passed malafide due to the extraneous consideration and political pressure on behalf of the respondent No. 6, therefore, the same is liable to be set aside.'

9. The order dated 27.8.2003 is as under :

^izs'kd]

egkfun's'kd]

fpfdRlk ,oaLok LF; lsok;sa]

mkjizns'k A

lsok esa]

eq[;fpfdRlk vf/kdkjh]

fetkZiqjA

la[k&30@vk-ls-@343@03@2429 y[ku fn- vxLr 27] 2003]

fo'k; % vkIVksesf VLV ds LFkkukUrj.k dsIEcU/k esa A

egksn;]

mijksDrfo'k;d i;k egkfun'skd ds i=kad 30Q@vk-ls-@343@03@2429]fnukad 14-6-2003 dks lUnfHkZr djus dk d'V djs ftlds }kjk Jh nsoh izlkn]vkIVks- izk- Lok- dsUnz] phYg dks ftyk fpfdRIky; rFkk ftyk fpfdRIky;] phYg gsrqJh nq[kgj.k dks LFkkukUrj.k djus gsrq vkidks vf/kr fd;k x;k Fkk] dks RkkRdkfydizHkko ls fujLr fd;k tkrk gS A Jh nsoh izlkn] izk- Lok- ds-] phYg esa rFkknq[kgj.k ftyk fpfdRIky;] fetkZiqj esa dk;Zjr jgsaxs A

Hkonh;]

g-@viBuh;]

,l- ch- ekFkqj]

funs'kd jk'Vh; dk;Ze m-iz- A**

10. From perusal of order dated 27.8.2003 it is apparent that respondent No. 2 has cancelled his authorization by which he had authorized Chief Medical Officer, Mirzapur, vide order dated 14.6.2003 directing that the petitioner would continue at Primary Health Centre, Chilh, Mirzapur and that respondent No. 6 would continue to work in District Hospital, Mirzapur. At the time of admission, the operation of the impugned order dated 27.8.2003 cancelling the transfer order was stayed by this Court. The impugned order was vacated by this Court on 27.1.2004 on an application moved by the Counsel for respondent No. 6. The order dated 27.1.2004 is as under :

'None appears for the petitioner, Sri R.K. Misra, Counsel for the respondents is present. Heard him. The interim order is vacated.'

11. Subsequent to the vacation, respondent No. 6 has joined his duties in District Hospital, Mirzapur. The recall application has been filed for recoiling the aforesaid

order dated 27.1.2004 and by the consent of the parties now this writ petition is being disposed of finally.

12. In 2001 (8) SCC 574, National Hydro Electric Power Corporation v. Shiv Bhagwan and Anr., the scope of judicial enquiry has been explained and it has been held that the transfer of an employee is not only incident but a condition of service and is not subject to judicial interference as a matter of routine unless shown to be an outcome of malafide exercise of power or violative of any statutory provision. As stated above there is no specific allegation regarding malafide against respondent No. 2, the Maha Nideshak, Chikitsa Evam Swasthya Sewayen, U.P., Lucknow who had passed the order dated 14.6.2003 authorizing the Chief Medical Officer, Mirzapur to transfer the petitioner. The transfer is an incident of service. The services of the petitioner are transferable. Hence, the order of transfer which has been influenced can not be interfered with.

13. In view of the above, the order dated 27.8.2003 cancelling the transfer which was acted upon was not affected by order cancelling the authorization as when transfer order was passed the respondent No. 2 was fully authorized to do so. Cancellation of his authority did not affect his orders already passed and subsequent cancellation does not result in cancellation of orders already passed. The respondent No. 2 had no right to cancel order already acted upon.

14. In view of the above order dated 27.8.2003 can not be sustained and is quashed.

15. The writ petition is dismissed. No order as to cost.