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Riaz Ahmad Vs. Additional Registrar (Administration), Co-operative Societies and ors.

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Court : Allahabad

Decided On : Sep-02-2002

Reported in : (2003)1UPLBEC262

Judge : S.P. Mehrotra, J.

Acts : [Constitution of India](#) - Articles 226 and 323A

Appeal No. : Civil Misc. Writ Petition No. 36953 of 2002

Appellant : Riaz Ahmad

Respondent : Additional Registrar (Administration), Co-operative Societies and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Syed Wajid Ali, Adv.

Disposition : Petition dismissed

Judgement :

S.P. Mehrotra, J.

1. This writ petition has been filed by the petitioner under Article 226 of the [Constitution of India](#), inter-alia, praying for issuance of writ, order or direction in the nature of certiorari quashing the transfer order dated 21.8.2002 (Annexure 14 to the writ petition) and further for issuance of writ, order or direction in the nature of mandamus commanding the respondents not to interfere in the functioning of the petitioner as Accountant in the office of the District Assistant Registrar, U.P. Co-operative Societies, Siddharth Nagar and pay him salary regularly.

2. From the allegations made in the writ petition, it transpires that the petitioner was initially working on the post of Assistant Accountant, and since 29.10.1997, the petitioner is working on the post of Accountant. It further transpires that by the order dated 18th August, 1997 (Annexure 1 to the writ petition), the petitioner was transferred from Gorakhpur to Siddharth Nagar on his request on account of his domestic problems. By the order dated 17th November, 1997 (Annexure 2 to the writ petition), the petitioner was transferred to District Sant Kabir Nagar. However, considering the domestic problems of the petitioner, the said transfer order dated 17th November, 1997 was cancelled by the order dated 19th November, 1997 (Annexure 3 to the writ petition).

3. Again, by the order dated 20th January, 1998 (Annexure 4 to the writ petition), the petitioner was transferred from Siddharth Nagar and attached to District Sant Kabir Nagar. However, the said transfer of the petitioner by the order dated 20th January, 1998 was cancelled by the order dated 24th April, 1998 (Annexure 5 to the writ petition).

4. Again, by the order dated 12th November, 1998 (Annexure 6 to the writ petition), the petitioner was transferred from Siddharth Nagar and attached to the Divisional Office, Basti. However, by the order dated 25th February, 1999 (Annexure 7 to the writ petition), the said transfer of the petitioner, by the order dated 12th November, 1998 was cancelled.

5. Again, by the order dated 26th September, 2001 (Annexure 8 to the writ petition), the petitioner was transferred from Siddharth Nagar to the Divisional Office, Basti. However, the said transfer, by the order dated 26th September, 2001 was cancelled by the order dated 6th October, 2001 (Annexure 9 to the writ

petition).

6. Thereafter, by the order dated 29th June, 2002 issued by the Additional Registrar (Administration), Co-operative Societies, U.P., Lucknow (Annexure 10 to the writ petition), several employees including the petitioner were transferred. By the said order dated 29th June, 2002, the petitioner was transferred from Siddharth Nagar to Banda. Subsequently, by the order dated August 21, 2002 (Annexure .14 to the writ petition), the said order dated 29th June, 2002 was modified in respect of the petitioner, and the petitioner was transferred from Siddharth Nagar to Maharajganj instead of to Banda.

7. I have heard learned Counsel for the petitioner and learned Standing Counsel appearing for the respondents.

8. Learned Counsel for the petitioner submits that on account of domestic problems, the petitioner would suffer hardship, if he is transferred to Maharajganj.

9. Having considered the submission made by the learned Counsel for the petitioner, I am unable to agree with the same. Admittedly, the petitioner is holding a transferable post. Transfer is an incident of service. Normally, transfer orders are not interfered with by the High Court in exercise of its writ jurisdiction under Article 226 of the [Constitution of India](#), unless there is violation of statutory Rules or there is malafide in the issuance of transfer order. Learned Counsel for the petitioner has not been able to show any malafide on the part of the respondents, nor has any violation of statutory Rules been pointed out by the impugned transfer order.

10. Reference in this regard may be made to certain judicial decisions.

11. In *B. Varadha Rao v. State of Karnataka and Ors.*, AIR 1986 Supreme Court 1955, their Lordships of the Apex Court laid down as follows (Paragraph 4 of the said AIR) :

'4.....We agree with the view expressed by the learned Judges that transfer is always understood and construed as an incident of service. The words or other conditions of service' in juxtaposition to the preceding words 'denies or varies to his disadvantage his pay, allowances, pension' in Rule 19(I)(a)

must be construed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the Government Servant and some disadvantage touching his pay, allowances, pension, seniority, promotion, leave, etc. It is well understood that transfer of a Government Servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore, does not result in any alteration of any of the conditions of service to his disadvantage. That a Government Servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident 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.....'

12. In *Mrs. Shilpi Base and Ors. v. State of Bihar and Ors.*, AIR 1991/ Supreme Court 532, their Lordships of the Supreme Court laid down as follows, (Paragraph 4 of the said AIR) :

'4. In our opinion, the Courts should not interfere with a transfer order which are 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 over looked these aspects in interfering with the transfer orders.'

13. In *Union of India and Anr. v. N.P. Thomas*. AIR 1993 Supreme Court 1605, their Lordships of the Supreme Court laid down as follows (Paragraph 8 of the said AIR) :

'8. In the present case, it cannot be said that the transfer order of the respondent transferring him out of Kerala Circle is violative of any statutory Rule or that the transfer order suffers on the ground of mala fide. The submissions of the respondent that some of his juniors are retained by Kerala Circle and that his transfer is against the policy of the Government posting the husband and wife in the same station as far as possible cannot be countenanced since the respondent holding a transferable post has no vested right to remain in the Kerala Circle itself and cannot claim, as a matter of right, the posting in that Circle even on promotion.'

14. In *Union of India and Ors. v. S.L. Abbas*, AIR 1993 Supreme Court 2444, their Lordships of the Supreme Court laid down as follows (Paragraphs 7 and 8 of the said AIR):

'7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the [Constitution of India](#) in service matters. This is evident from a perusal of Article 323A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323A. (We find it all the more surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction). The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment

for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (Competent Authority).'

15. In *State of Punjab and Ors. v. Joginder Singh Dhatt*, AIR 1993 Supreme Court 2486, their Lordships of the Supreme Court laid down as follows (Paragraph 3 of the said AIR):

'3. We have heard learned Counsel for the parties. This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the [Constitution of India](#) in a matter where, on the face of it, no injustice was caused.'

16. In *N.K. Singh v. Union of India and Ors.*, (1994) 6 Supreme Court Cases 98, their Lordships of the Supreme Court laid down as follows (Paragraph 23 of the said SCC) :

'23.....Assessment of worth must be left to the bona fide decision of the superiors in service and their honest assessments accepted as a part of service discipline. Transfer of a Government Servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the Superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the Courts lack the

necessary expertise for personnel Management of all Government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.'

17. In *Abani Kanta Ray v. State of Orissa and Ors.*, 1995 Supp (4) Supreme Court Cases 169, their Lordships of the Apex Court laid down as follows (Paragraph 10 of the said SCC):

'10. It is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. (See *N.K. Singh v. Union of India*)'

18. Coming now to the facts of the present case, the petitioner was posted in Siddharth Nagar by the order dated 18th August, 1997, and thus, five years have passed since his posting in Siddharth Nagar. During these five years, various transfer orders were issued from time to time in respect of the petitioner, but the same were cancelled considering the personal problems of the petitioner. Even the transfer order dated 29th June, 2002 (Annexure 10 to the writ petition) was modified by the order dated 21st August, 2002 (Annexure 14 to the writ petition), and the petitioner has now been transferred from Siddharth Nagar to Maharajganj. In Paragraph 26 of the writ petition, the petitioner has himself alleged that the distance between District Maharajganj and District Siddharth Nagar is near about 40 to 50 Kms., which is evidently not a big distance.

19. Thus, considering the facts and circumstances of the case, I am of the opinion that no interference is called for with the impugned transfer order.

20. Learned Counsel for the petitioner then submitted that no substitute has been sent in his place at Siddharth Nagar, and as such he should be permitted to remain at Siddharth Nagar till his substitute is sent. This submission of the learned Counsel for the petitioner cannot be accepted. In the order dated 21st August, 2002 (Annexure 14 to the writ petition), it is categorically stated that the petitioner should join at his new place of posting without waiting for any substitute. In the circumstances, it is not open to the petitioner to contend that he should be

permitted to remain at Siddharth Nagar till his substitute is sent.

21. In view of the aforesaid discussion, this writ petition lacks merit, and the same is liable to be dismissed. The writ petition is accordingly dismissed.

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