

Jagdish Singh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jun-18-1999

Reported in : 1999(3)WLC480; 1999(1)WLN550

Judge : B.S. Chauhan and; M.A.A. Khan, JJ.

Appeal No. : D.B. Civil Special Appeal No. 848 of 1999

Appellant : Jagdish Singh

Respondent : State of Rajasthan and ors.

Advocate for Def. : Mr. M.S. Singhvi

Advocate for Pet/Ap. : Mr. G.K. Vyas

Disposition : Appeal dismissed

Judgement :

B.S. Chauhan, J.

1. The instant special appeal has been filed under Section 18 of the Rajasthan High Court Ordinance, 1949, against the judgment and order dated 24-5-1999, by which the writ petition filed by the appellant-petitioner against the impugned transfer order dated 3-5-1999 has been rejected by the learned Single Judge.

2. Appellant-petitioner, a Upper Division Clerk working in the Office of Executive Engineer, Jalore, was transferred vide order dated 7-4-1999 in place of respondent No. 4 Mr. Om Prakash Prajapat, Upper Division Clerk under the Additional Chief Engineer, Irrigation Department, Jodhpur. The said order dated 7-4-1999 was cancelled vide impugned order dated 3-5-1999 on the representation of respondent No. 4 to the Competent Authority ventilating his grievances regarding posting. Being aggrieved and dissatisfied, appellant-petitioner preferred the writ petition making allegations that the impugned transfer order dated 3-5-1999 had been passed in order to accommodate respondent No. 4 in his place by . respondent No. 5 and, therefore, the transfer order, having been passed on extraneous consideration was liable to be quashed.

3. The learned Single Judge, after hearing learned Counsel for the parties, recorded the finding of fact that the appellant-petitioner as well as respondent No. 4 had secured their transfer orders by taking help of political persons and when the appellant-petitioner himself had managed transfer order by political influence, no indulgence could be given to him in discretionary jurisdiction under Article 226 of the Constitution of India and the writ petition was dismissed. Being aggrieved and dissatisfied, the instant appeal has been filed.

4. We have heard Mr. G.K. Vyas, learned Counsel for appellant-petitioner and Mr. M.S. Singhvi, learned Counsel for respondent No. 4/caveator and given our anxious and solicitous consideration to their rival submissions.

5. Transfer is a condition of service and a Government employee, holding a transferable post, has no right to insist for being posted at any particular place. It is an exclusive domain of the Competent Authority to determine as where and for how long the services of a particular employee are required as per the administrative needs. The limited scope of judicial review in this respect can be invoked only if the order is found to have been passed in flagrant violation of Statutory Rules or the order stands vitiated having been passed in malafide exercise of power. The transfer order should not be interfered-with unless there are strong and compelling grounds rendering the said order improper and unjustifiable. It is also settled principle of law that discretionary powers under

Article 226 should not be exercised merely because a law point has been successfully canvassed before the Writ Court. The Court must examine the public interest vis-a-vis private interest for the reason that interest of justice and public interest coalesce. They are very often one and the same. (Vide Ramniklal N. Bhutto, and Anr. v. State of Maharashtra and Ors. : AIR 1997 SC1236). Thus, if the transfer order has been passed in public interest on administrative grounds or in administrative exigency, no interference is warranted by the Writ Court.

6. The issue of transfer at the behest of politicians has also been considered by the Courts time and again. In Pratap Narain Srivastava v. State of U.P. and Ors. 1995 (1) Edu. & Service Cases 509 Pradeep Kumar Agrawal v. Director (1994) 1 UPLBEC 189; and Sheo Kumar Sharma and Ors. v. District Shiksha Adhikari, Kanpur Dehat and Ors. (1991) 1 UPLBEC 690, it has categorically been held by the Allahabad High Court that a transfer order passed under political influence cannot be sustained in the eyes of law.

7. It is settled proposition of law that a transfer order cannot be passed deterrent to the administrative needs and claim of other employees. Administrative need, if permitted to be compromised, merely to allow a politician to have some political gain, would lead to a total subservience and further to a deeper malaise in the governance of the administration. More so, it would be subversive of rule of law as transfer, in law can be made only in administrative exigency or on administrative grounds. Every action of the State or its instrumentalities must be passed on valid relevant principles and must not be guided by any extraneous or irrelevant consideration. Further, such action must not only be fair, legitimate and above-board but must be without any affection or aversion and also should not give an impression of bias, favoritism or nepotism. Exercise of power against the spirit of law would tend towards arbitrariness and would be violative of mandate of the Constitutional provisions. (Vide Bank of India v. Jagjit Singh Mehta : (1992)ILLJ329SC ; Dr. Archana Patni v. State of Rajasthan 1998 RLW 1280; E.P. Royappa v. State of Tamil Nadu and Ors. : (1974)ILLJ172SC ; Haji T.M. Hassan Rawther v. Kerala Financial Corporation AIR 1978 SC 158; and Ramchand v. Union of India and Ors. : (1994)1SCC44).

8. In a society, like ours, which suffers from moral bankruptcy, if transfers of Government employees are permitted to be made on political consideration giving a go-bye to the administrative exigency, it would not only adversely affect the public interest, i.e. the Supreme Laws of the land, but also be inconsistent with public policy, guiding transfers and postings of public servants. More so, it will demoralise the public servants as well as the public authorities as those government servants, who can lick the boots of politically influential persons will march ahead of others in respect of transfers and postings.

9. In view of above, the impugned transfer order deserves to be quashed but we are in respectful agreement with the learned Single Judge as it has been observed by His Lordship that as the appellant-petitioner had got himself transferred by taking assistance of the local Member of Legislative Assembly, the conduct of the appellant-petitioner disentitled him for any relief in equity jurisdiction. The said observation gets fortified by the judgment of the Hon'ble Supreme Court in Maj. Chandrabhan Singh v. Latqfatulla Khan and Ors. : [1979]1SCR891 , wherein the Hon'ble Supreme Court has observed as under:

So when the writ petitioners had themselves unlawfully invoked the review jurisdiction of the Competent Officer, which did not exist to their advantage, and to the disadvantage of the present appellant..., (hey could not be heard to say, when the department invoked itself the same jurisdiction....The conduct of the writ petitioners was, therefore, such as to disentitle them to certiorari, and the High Court erred in ignoring that important aspect of the matter even though it was sufficient for the dismissal of the writ petition.

10. Similarly, a Division Bench of this Court, in Dr. G.D. Harsh v. Rajasthan State Seeds Certification Agency 1989 (1) RLW 449, placed reliance upon the judgment of the Hon'ble Supreme Court in Jawahar Lal v. Union of India and Ors. : [1962]3SCR739 , and held that in case both the parties are found at fault, the plaintiff must always fail and Court need not render any aid to the cause of the plaintiff as rendering any assistance to such a plaintiff would be contrary to the principles of public policy, i.e. 'ex dolo malo non oritur actio', meaning thereby that no Court will lend its aid to a man who found his cause of action upon an illegal

act.

11. Thus, in view of the above, the factual matrix of the case does not present any special feature warranting review of the judgment and order under challenge in appeal. The appeal is accordingly dismissed. However, there shall be no order as to costs.

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