

Neutral Citation No. - 2023:AHC:147400

A.F.R.

Court No. - 33

Case :- WRIT - A No. - 11797 of 2023

Petitioner :- Amit Kumar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Lavlesh Kumar Shukla

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir,J.

1. The petitioner has challenged his transfer order dated 30.06.2023. The petitioner is a Senior Auditor in the establishment of the Director, Co-operative Societies and Panchayat Audit, Lucknow, U.P. The transfer order has been passed in public interest.

2. The case of the petitioner is that his wife, who is an Assistant Teacher in Government Primary School, has been transferred from Bahraich to Amroha, as recently as on 26.06.2023. Her transfer has been made in accordance with the service rules and the transfer policy applicable to her employer, which attempts to post spouses at the same station.

3. It is pointed that the State Government have issued a transfer policy for the year 2022-23, where in paragraph no. 5(iv), it is provided:

"iv. यदि पति-पत्नी दोनों सरकारी सेवा में हों, तो उन्हें यथासंभव एक ही जनपद / नगर/ स्थान पर तैनात करने हेतु स्थानान्तरण किया जा सकेगा"

4. It is harping on this policy that learned Counsel for the petitioner submits that the impugned transfer order transferring him to another region located 200 k.m. away from Pilibhit, is manifestly illegal and arbitrary.

5. The submission further is that the petitioner's wife's rights under the service rules applicable to her, cannot be defeated, particularly, once she has been recently transferred to the petitioner's place of posting, wherefrom he has been shunted out. It is also argued that the respondents

have followed a policy of pick and choose while ordering the impugned transfer.

6. It is submitted that transfer though an exigency of service, the power cannot be exercised in an arbitrary and mechanical manner, particularly for a punitive purpose. It is argued that an order of transfer, that is based on a policy of pick and choose, is punitive in nature and not in public interest.

7. In support of his contention, learned Counsel for the petitioner has relied upon a Bench decision of this Court in **Deepa Vashishtha v. State of U.P. and others, 1995 SCC OnLine All 897**, where it has been held:

"15. However, in a recent pronouncement of the Apex Court rendered in Home Secretary, U.T. Chandigarh v. Darshjit Singh Grewal, JT 1993 (4) SC 387, their Lordships have ruled that policy guidelines are relatable to the executive power of the administration, and having enunciated a policy of general application and having communicated it to all concerned, the administration is bound by it. It can, no doubt, change the policy but until that is done, it is bound to adhere to it.

16. Now, coming to the case in hand, the Government orders/guidelines/policy said to have not been adhered to, are contained in Annexures-16, 17 and 18 to this petition and they lay down thus:

1. If the couple is in education department, they both should be kept at one station at the time of appointment and transfer.

2. If one of the husband and wife belongs to education department and another to different department, even then efforts should be made to transfer one of them to that place where the other is posted.

3. Husband and wife posted at the same station should not be transferred.

4. On account of their postings to different places, husband and wife suffer difficulties, therefore, as far as possible, they should be kept at one place.

17. Thus, the guidelines in respect of couple in Government service, have taken care of that husband and wife should be placed at one station. Placing the words "as far as possible", it is couched not in negative form and accordingly the same is interpreted by the Apex Court.

18. Taking into account the human considerations and social needs, the aforesaid guidelines have been framed and the basic idea behind it is that

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whole set up of the family may not be disturbed notwithstanding the fact that said guidelines are not in imperative form. Thus, it needs consideration with positive approach till the policy is not changed or amended in view of the decision in Home Secretary, U.T. Chandigarh's case(supra), and if it is not possible to keep husband and wife at one place, cogent reasons in such cases are expected to be assigned so that transferee husband or wife, as the case may be, able to know the reasons. If any policy has been framed and still operative, the executive actions are expected to be in conformity with the same and not to negate it.

19. In other words, in the garb of public interest or administrative exigencies, it is not at the whims of the authority to disturb the family by transferring one of the husband and wife to a different place since the guidelines are not in imperative form or they have no force of law. If the administrative exigencies or public interest so requires, certainly husband and wife may be transferred to different places but only in exceptional cases, i.e., rarest of rare cases, for which no illustration can be given.

20. But now a days, it is invariably seen that for the reasons best known to the department this kind of transfers are being made disturbing the couple. In the opinion of this court, such practice needs to be deprecated.

21. What kind of perplexities and difficulties, a spouse could confront with in the event of another being posted at a different place, can easily be imagined by anyone by putting himself/herself in that situation and then it would be realised that how torturous and painful it really is, to leave husband and children at one place and to lead a solitary life at the transfer-place. Therefore, to avoid such disturbance and mental agony, the aforesaid guidelines are framed."

8. Reliance is next placed on the decision of this Court in **Ram Awadh Ram v. State of U.P. and another, 2005 (5) AWC 4379**, where it has been held:

"**15.** This Court (D.B.) in *Vijay Kumar Chaurasia v. State of U.P. and others*, (2004) 3 UPLBEC 2463 has held that ordinarily High Court cannot interfere with the order of transfer made in exigency of service as a part of conditions of services, unless the transfer was found to be made malafidely or service rules prohibits such transfer.

16. I have heard learned Counsel for the parties. I find that in view of the analysis made above, the transfer in question could not have been made in a routine manner by a general transfer order, as the petitioner was an office bearers of an Union elected on 2.11.2003 and as provided in the Government Order dated 3.6.2004 (Annexure-3 to the

writ petition) as well as in reference to the Rule 27 of the Rules, 1980 his transfer was ab-initio illegal. It is notable that there was nothing or for no specific reason or presumption transfer could not be avoided, whereas, the transfer of the petitioner was made along with others in a routine manner, which is in derogation to the rules. By the subsequent transfer order dated 9.7.2004 earlier transfer order dated 29/30.6.2004 was not cancelled, rather it is fresh transfer order, which is also under challenge. In these circumstances, the impugned order dated 29/30.6.2003 and subsequent transfer order dated 9.7.2004 are not legally sustainable, therefore, they are set aside."

9. Mr Roopesh Tiwari, learned Standing Counsel appearing on behalf of the respondents has resisted the grant of relief that the petitioner seeks. He submits that transfer is an exigency of service and for the violation of provisions of the transfer policy, a writ cannot be issued.

10. Upon hearing learned Counsel for parties, this Court is of opinion that the law by now has come to be fairly well settled. Transfer is indeed an exigency of service and interference by this Court in exercise of our writ jurisdiction under Article 226 of the Constitution of India is permissible only in the event that the transfer is actuated by *malafides* in fact or is vitiated by *malafides* in law. Still, there is one more avenue, where this Court can interfere with a transfer order, and, that is where the transfer order is in breach of a statutory rule. However, in no event a transfer order can be interfered with on the ground of infraction of the State's transfer policy. This position of the law is well settled in view of the decision of the Supreme Court in **Mrs. Shilpi Bose and others v. State of Bihar and others, AIR 1991 SC 532.**

11. In **Mrs. Shilpi Bose (supra)**, it was held:

"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."

12. So far as the decision in **Ram Awadh Ram** (*supra*) is concerned, this Court finds that, in that case, there was a violation of a Government Order that had been issued under a certain rule of the U.P. District Offices (Collectorates) Ministerial Service Rules, 1980 and the Court found the violation of a statutory rule a valid ground to interfere with the transfer order. The said decision is, therefore, not attracted to the facts of this case. So far as Bench decision in **Deepa Vashishtha** (*supra*) is concerned, this Court is of opinion that in view of the law laid down by the Supreme Court in **Union of India and others v. S.L. Abbas**, (1993) 4 SCC 357, the principle in **Deepa Vashishtha** must be held, confined to the facts of that case. In **S.L. Abbas** (*supra*) the question arose in the context of transfer of a husband and wife, both employees of Central Government, where the husband was resisting his transfer from Shilong to Pauri (U.P.). The ground urged was the transfer policy of the Government, amongst others, which favoured posting of spouses, if in the employ of the Central Government at the same station. The policy was referable to some executive instructions of the Government that did not have statutory force. It was in the context of the aforesaid facts that in **S.L. Abbas**, it was held by their Lordships of the Supreme Court:

"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.

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9. Shri Goswami, learned counsel for the respondent relies upon the decision of this Court in *Bank of India v. Jagjit Singh Mehta* [(1992) 1 SCC 306 : 1992 SCC (L&S) 268 : (1992) 19 ATC 528] rendered by a Bench of which one of us (J.S. Verma, J.) was a member. On a perusal of the judgment, we do not think it supports the respondent in any manner. It is observed therein: (SCC pp. 308-09, para 5 : ATC pp. 530-31, para 5)

“There can be no doubt that *ordinarily and as far as practicable* the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places *No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible.* The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the

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administrative needs and the claim of other employees."

(emphasis added)

10. The said observations in fact tend to negative the respondent's contentions instead of supporting them. The judgment also does not support the respondents' contention that if such an order is questioned in a court or the tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the court or the tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterised as mala fide for that reason. To reiterate, the order of transfer can be questioned in a court or tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions."

13. If there were anything about the propriety of following precedent, the Bench decision in **Deepa Vashishtha** having briefly referred to **S.L. Abbas**, the matter stands concluded against the binding authority of **Deepa Vashishtha**, in view of a much later decision of the Supreme Court in **State of U.P. and others v. Gobardhan Lal, (2004) 11 SCC 402**. In **Gobardhan Lal (supra)**, spelling out the scope of interference by this Court, in the exercise of jurisdiction under Article 226 of the Constitution of India, with an order of transfer passed, even in violation of the transfer policy, it was observed:

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as

the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

14. In view of the law well settled, a violation of the notified transfer policy of the State, that is in the nature of administrative guidelines, as distinguished from statutory rules, does not afford a right to the Government Servants, when transferred in its violation, to assail the transfer on that ground. This Court does not find any good ground to interfere with the impugned order.

15. However, in case after the petitioner joins the station of transfer and represents his case, the Director, Co-operative Societies and Panchayat Audit, Lucknow, U.P is ordered to decide the petitioner's representation within 15 days of its receipt and communicate its result to the petitioner within a week thereafter.

16. This petition is **disposed of** in terms of the aforesaid orders. Costs easy.

Order Date :- 24.7.2023 / Prashant D.