

Court No. - 20

Case :- WRIT - A No. - 7338 of 2023

Petitioner :- Dinesh Kumar Pno. No. 182462102

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home U.P. Lko. And 3 Others

Counsel for Petitioner :- P.K. Singh Bisen

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
2. Rejoinder affidavit filed today is taken on record.
3. Petition has been filed challenging order dated 26.04.2023 whereby petitioner working on the post of Constable has been transferred from Lucknow to Fatehpur on administrative grounds. Also under challenge is order dated 17.06.2023 whereby petitioner's representation against transfer order has been rejected.
4. It has been submitted that a perusal of impugned orders will make evident that transfer of petitioner has been effected as a measure of punishment on the basis of complaints made against him. It is submitted that although transfer can be effected as a measure of administrative exercise but cannot be effected as a measure of punishment on the basis of complaints and enquiry instituted and finalised in pursuance of such complaints. Learned counsel for petitioner has submitted that it has been specifically provided in Rule 15(a) of U.P. Fundamental Rules (Volume 4, Parts 2 to 4) that transfer cannot be effected as a measure of punishment or misconduct. He has also adverted to judgment rendered by this Court in **Sabhapati Pathak v. State of U.P. and others**, reported in 2012 (30) LCD 1344.
5. It has been submitted that petitioner was suspended from

service vide order dated 20.02.2020 on the basis of certain allegations leveled against him and was subsequently awarded censure entry vide order dated 07.06.2021 but appeal filed thereagainst was allowed vide order dated 25.11.2022 which has become final but as would be evident from impugned order, petitioner's transfer was recommended immediately vide recommendation dated 04.04.2023, in pursuance of which impugned transfer order has been passed.

6. Learned State Counsel on the basis of instructions has submitted that transfer was effected on administrative grounds looking into work and conduct of petitioner. It is submitted that a perusal of impugned order itself will indicate serious allegations being made against petitioner due to which it was not conducive to continue petitioner at his earlier place of posting. It has also been submitted on the basis of counter affidavit that in view of complaints made against petitioner, an enquiry was conducted with a view to find out the genuineness of complaints received against petitioner in which petitioner was also afforded opportunity of hearing whereafter allegations made against petitioner were found proved due to which the matter was referred to Police Headquarter with recommendation to transfer petitioner whereafter impugned transfer order has been passed.

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident from a perusal of impugned order dated 17.06.2023 itself that petitioner has been transferred in pursuance of recommendation dated 04.04.2023 which in turn indicates misconduct and inefficiency of petitioner on his current place of posting.

8. Aforesaid observation made in impugned order itself is enough to establish the fact that petitioner has been transferred as a mode of punishment despite the fact that he has already

been exonerated in the charges levelled against him earlier in appeal.

9. In view of aforesaid, it being established that petitioner has been transferred as a mode of punishment, the same could not have been done in the light of judgment rendered by Hon'ble the Supreme Court in **Somesh Tiwari v. Union of India and others** reported in (2009) 2 SCC 592 has held as under:-

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

10. A reading of Rule 15(a) of U.P. Fundamental Rules (Volume 4, Parts 2 to 4) and judgment relied upon by learned counsel for petitioner are clearly on the aspect that transfer of an employee cannot be effected as a measure of punishment for which purpose the employer has ample opportunity to initiate disciplinary proceedings.

11. Considering aforesaid facts, since it is evident that impugned orders dated 26.04.2023 and 17.06.2023 have been passed as a measure of punishment and are therefore not only against Fundamental Rules but also against judgment rendered by Hon'ble the Supreme Court, the same are quashed by issuance of a writ in the nature of Certiorari with consequential effects. It is however made clear that this Court has not restrained future transfers of petitioner which should not be as a mode of punishment.

12. Resultantly, the petition succeeds and is allowed. The parties to bear their own costs.

Order Date :- 3.11.2023

kvg/-