

Court No. - 20

Case :- WRIT - A No. - 7857 of 2023

Petitioner :- Vivekanand Tripathi

Respondent :- State Of U.P. Thru. Prin. Secy. Medical/Health Deptt. Lucknow And 4 Others

Counsel for Petitioner :- Anurag Narain Srivastava, Shailendra Kumar Misra

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite party nos.1 to 3. Despite notices having been issued to opposite party nos. 4 and 5, no one as put in appearance on their behalf.

2. Under challenge is the transfer order dated 30.06.2023 whereby petitioner working on the post of Senior Lab Technician has been transferred from District- Lucknow to District- Barabanki. Also under challenge is the order dated 08.08.2023 rejecting petitioner's representation.

3. It has been submitted that earlier petitioner has filed Writ-A No. 5398 of 2023 challenging the transfer order which was disposed of vide order dated 27.07.2023 directing the opposite parties to decide petitioner's representation. It is submitted that impugned order dated 08.08.2023 has thereafter being passed rejecting the representation.

4. Learned counsel has adverted to the impugned order to submit that the opposite parties have clearly admitted the fact that petitioner has been transferred as a mode of punishment on the basis that complaints made against petitioner were found established.

5. Learned State Counsel on the basis of instructions dated 18.10.2023, which are taken on record however submits that petitioner has been posted in District- Lucknow passed 27 years and therefore has been transferred on administrative grounds.

6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, particularly the instructions as well as the impugned order dated 08.08.2023, it is quite evident that the opposite parties have admitted that petitioner has been transferred as a mode of

punishment on complaints made against him having been found established.

7. Hon'ble Supreme Court in the case of **Somesh Tiwari versus Union of India and others reported in (2009) 2 SCC 592** has already held that transfer which is ordinarily an incident of service can be interfered with in case it has been passed as a mode of punishment.

8. The relevant paragraph no. 16 are as follows:-

"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."

9. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it being evident that petitioner has been transferred as a mode of punishment, the impugned orders dated 30.06.2023 and 08.08.2023 are hereby quashed by issuance of writ in the nature of certiorari granting liberty to opposite parties to pass fresh orders pertaining to petitioner's transfer but the same should not be as a mode of punishment.

10. Consequently, petition succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 7.11.2023

Satish