

Court No. - 20

Case :- WRIT - A No. - 8246 of 2023

Petitioner :- Mahendra Pratap Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Panchayatiraj Deptt. Lko. And 7 Others

Counsel for Petitioner :- Rohit Nandan Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and Mr. Aniruddh Singh, learned State Counsel appearing for opposite parties 1 to 8. Affidavit of service has been filed indicating notice upon opposite party no.9 who has however not put in appearance.

2. Petition has been filed challenging order dated 30.06.2023 and relieving dated 01.07.2023 whereby petitioner has been transferred from District Bahraich to District Gonda on the post of Assistant Development Officer (Panchayat Raj). Also under challenge are consequential orders dated 03.07.2023, report dated 29.08.2023 as well as order dated 11.09.2023 whereby petitioner's representation against transfer has been rejected.

3. It has been submitted that earlier petitioner had filed WRIT - A No. - 6092 of 2023 challenging transfer order which was disposed of vide order dated 21.08.2023 directing the authority concerned to consider and decide petitioner's representation by a reasoned and speaking order. It is in pursuance thereof that order dated 11.09.2023 has been passed rejecting petitioner's representation.

4. Learned counsel for petitioner has drawn attention to fact that although impugned transfer order dated 30.06.2023 simply indicates transfer of petitioner on administrative/public interest grounds but in impugned order dated 11.09.2023, fact that

petitioner has been transferred on stigmatic grounds, which indicates malice in law, has been adverted.

5. Learned counsel for petitioner has indicated various portions of order dated 11.09.2023 to submit that a detailed analysis has been given by opposite parties for effecting impugned transfer order which is therefore based only on complaints and earlier enquiries held against petitioner in which he was punished. Learned counsel for petitioner has also submitted that since petitioner has already been punished for the alleged misconduct, present transfer order would amount to double jeopardy. It is submitted that a bare perusal of impugned order will make it evident that it has been passed as a measure of punishment, which is therefore in violation of Rule 15(a) of the Fundamental Rules applicable upon petitioner. It is also submitted that since impugned order is based only on the report dated 29.08.2023, the order indicates non-application of mind by authority concerned while passing the impugned order. Learned counsel has placed reliance on following judgments:-

(1) **Somesh Tiwari v. Union of India and others** reported in (2009) 2 SCC 592 [Hon'ble the Supreme Court];

(2) **Kalabharati Advertising v. Hemant Vimalnath Narichania and others** reported in (2010) 9 SCC 437 [Hon'ble the Supreme Court];

(3) **The Registrar General High Court of Judicature at Madras v. R. Perachi and others** reported in (2011) 12 SCC 137 [Hon'ble the Supreme Court];

(4) **Sabhapati Pathak v. State of U.P. and others** reported in 2012(30) LCD 1344 [a coordinate Bench of this Court];

(5) **Dharmendra Kumar Saxena v. State of U.P. and others** reported in 2013(7) ADJ 53 [a coordinate Bench of this Court];
and

(6) Dinesh Kumar Pno. 182462102 v. State of U.P. and others, WRIT - A No. - 7338 of 2023 decided by this Bench on 03.11.2023.

6. Learned State Counsel has refuted the submissions advanced by learned counsel for petitioner with submissions that a perusal of order dated 30.06.2023 will make it evident that the same has been passed only as a measure of administrative transfer in public interest without attaching any stigma to aforesaid transfer and it is only in pursuance of decision on petitioner's representation that order dated 11.09.2023 has been passed. As such it is submitted that transfer order cannot be said to be stigmatic in nature. He has also placed reliance on judgment rendered by a coordinate Bench of this Court in **Ramakrishna Pal (Pradhan Sahayak) v. State of U.P. & others** [Writ Petition No.17746(S/S) of 2018] decided on 29.08.2018.

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident that initially transfer order dated 30.06.2023 merely indicated transfer of petitioner on administrative/public interest grounds. There is no narration of any other aspect in the transfer order. However, the said order was challenged as indicated herein above and vide order dated 21.08.2023, the concerned authority was directed to consider and decide representation of petitioner dated 03.07.2023 by a reasoned and speaking order. It is in pursuance thereof, impugned order dated 11.09.2023 has been passed.

8. A perusal of impugned order dated 11.09.2023 makes it evident that it is based on the report dated 29.08.2023 submitted by District Panchayat Raj Officer, Bahraich and indicates various disciplinary actions taken against petitioner and orders

of punishment passed against him during course of his employment. The authority thereafter has rejected petitioner's representation on ground that petitioner's conduct is not in accordance with the Conduct Rules, which would require him not to continue in service in the present place of posting. The order however also indicates the fact that petitioner has been continuously posted in the present place of posting for the past 32 years.

9. The aspect as to whether an order of transfer can be issued by the employer on stigmatic grounds have already been considered in a number of judgments which have been relied upon by learned counsel for petitioner. In **Somesh Tiwari**(supra) following has been indicated:-

"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. Aforesaid reasoning has also been adopted in various other judgments on that point.

11. However, a coordinate Bench of this Court in **Ramakrishna Pal**(supra) has taken a divergent view and has sought to distinguish judgment rendered by Hon'ble the Supreme Court in **Somesh Tiwari**(supra) in the following manner:-

"19. When the facts of the instant case are seen in the light of the principles of law laid down by the Hon'ble Supreme Court in the case of R.Perachi (supra), Rajendra Singh (supra) and Janardhan Debnath (supra) what clearly comes out is that once transfer order itself indicates that the same is being passed in a routine manner then it would be desirable from the point of view of the administration that even if complaints are there, the employee can be transferred out of unit/place concerned. The employee concerned is not faced with any stigma or any insinuation as the order does not indicate so and consequently, no interference would be required in such a transfer order. To the same effect is the Division Bench judgment of this Court of Dr. Anil Kumar Pradhan Vs. State of U.P."

"20. So far as the judgment in the case of Somesh Tiwari (supra) over which reliance has been placed by learned counsel for the petitioner suffice to state that subsequent to the

said judgment of the year 2008, the Hon'ble Supreme Court has considered the matter in the case of R. Perachi (supra) in the year 2011 as well as in the case of Rajendra Singh (supra) in the year 2009 and as such the aforesaid subsequent judgments would prevail. Even otherwise the question before the Hon'ble Supreme Court in the case of Somesh Tiwari (supra) was as to whether the High Court while quashing the order of transfer passed against the employee was correct in directing that he would not be entitled to the salary for the period after the modified order of transfer till the date he joined at the original place of transfer and was not a question pertaining to punitive transfer. Also, the order of transfer in the case of Somesh Tiwari (supra) is not reflected in the judgment of Hon'ble Supreme Court and consequently it cannot be said whether the said order itself reflected any allegation or insinuation or complaint against the employee concerned so as to have rendered it a punitive order of transfer."

12. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is quite evident that initial order pertaining to transfer of petitioner dated 30.06.2023 does not indicate any stigmatic ground against petitioner and states that petitioner is being transferred simply on administrative/public interest grounds. It is only when aforesaid order of transfer was challenged before this Court that a specific direction was issued to authority concerned to advert to representation of petitioner and decide the same by a reasoned and speaking order. Naturally in doing so the authority concerned would be required to advert to all the submissions raised by petitioner in his representation. Therefore the order having been passed in compliance of directions issued by this Court cannot be termed to indicate transfer order having been passed as a mode of punishment.

13. A perusal of judgments relied upon by learned counsel for petitioner in his favour are on the aspect that an order of transfer cannot be effected as a mode of punishment and cannot be on stigmatic grounds. In the considered opinion of this Court, aforesaid judgments would be applicable in the present facts and circumstances but in favour of the opposite parties since there is no stigma attached to the initial order of transfer of petitioner dated 30.06.2023. Even otherwise, the impugned order has also been passed on the ground that petitioner has been posted in a particular district for the past 32 years.

14. It is admitted by learned counsel for the parties that transfer

is an incidence of service as has already been held in a number of judgments which does not require reiteration. An absolute leeway is to be granted to the State authorities for transfer and postings of its employees. The aspect of judicial review in such transfer and postings is on a very limited scope, which does not appear to be made out in the present case.

15. Although, the impugned order appears to be based on report dated 29.08.2023 but the same does indicate the fact of conduct of petitioner as well as fact that he has been posted in a particular place for the past 32 years. Once a composite order has been passed on various grounds, no segregation of grounds indicated in the order are required to be undertaken and the order has to be seen in its composite sense particularly when, as in the present case where the order also indicates prolonged continuance of petitioner in a particular district.

16. Courts are not required to embark upon a fishing expedition to find out ways and means to scuttle routine transfer orders, which prima facie are not stigmatic. There may be instances where considering the nature and conduct of an employee, a full fledged enquiry is not required but at the same time, his further continuance in view of long posting at a particular place may also not be desirable.

17. In considered opinion of this Court, in such a situation, if transfer order is issued as a routine transfer without any reflection on conduct/complaints against the employee, it would not come within purview of judgment rendered in **Somesh Tiwari**(supra).

18. In view discussions made herein above, in the considered opinion of this Court, the transfer order against petitioner does not appear to be stigmatic in nature at all. It is only the subsequent order dated 11.09.2023 which can be termed to be

stigmatic but such reasons were required to be recorded by authorities concerned in view of directions issued while disposing of petitioner's earlier petition. In fact not having recorded any such reasons would have been deemed to be contemptuous on part of the authority concerned.

19. In view of aforesaid, the petition being devoid of merits is dismissed. The parties to bear their own costs.

Order Date :- 30.11.2023

kvg/-