

Court No. - 22

Case :- WRIT - A No. - 9304 of 2023

Petitioner :- Aftab Ahsan Usmani

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Health Family Welfare Lko And 2 Others

Counsel for Petitioner :- Mohd. Mansoor, Mohammad Danish

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the parties.
2. Under challenge is the transfer order dated 30.06.2023 whereby petitioner working on the post of Dental Hygienist has been transferred from District- Shrawasti to District- Sonbhadra and also the order dated 02.11.2023 rejecting petitioner's representation.
3. It has been submitted that earlier petitioner has filed Writ-A No. 7771 of 2023 challenging the transfer order which was disposed of vide order dated 10.10.2023 directing the opposite parties to decide petitioner's representation. It is submitted that impugned order dated 02.11.2023 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 by way of punishment as the complaints made against petitioner were found established.
5. Learned Standing Counsel has submitted that the petitioner is posted at Shrawasti for last more than 30 years and, therefore, has been transferred on administrative grounds but unable to defend the finding given in paragraph 2 of the impugned order dated 02.11.2023 where it has been mentioned that the petitioner has been transferred on the direction of the Principal Secretary as the work and conduct of the petitioner was not satisfactory.
6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record as well as the impugned order dated 02.11.2023, it is quite evident that the opposite parties have admitted that petitioner has been transferred by way 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 by way of punishment having found complaints against him established, the impugned orders dated 30.06.2023 and 02.11.2023 are hereby **quashed** by issuance of writ in the nature of certiorari. It will however be open to the opposite parties to pass any appropriate orders in accordance with law.

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

Order Date :- 6.12.2023

-Amit K-