

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 19.09.2019	Orders Pronounced on 30.09.2019
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CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.14358 of 2019
and
W.M.P.No.14419 of 2019
and
W.M.P.No.14420/2019
W.M.P.No.15544/2019.

S.Thiruarasu ... Petitioner
..vs..

1. NLC India Ltd.,
Rep. By its Chairman Cum Managing Director
Corporate Office
Block-1, Neyveli-1.
 2. The Chief General Manager (HR)
Group Head - C
NLC India Ltd., Corporate Office
Block-1, Neyveli-1.
 3. The Chief Manager (HOHR)
Mine IA, Mines Office
NLC India Ltd., Corporate Office
Block-1, Neyveli-1.
- ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the transfer order issued by the 2nd respondent in proceedings O.O.No.CORP/HR/EB/NE/ 0620/2019-28 dated 28.03.2019 and the consequent relieving order issued by the third respondent in proceedings O.O.No.Mine-IA/HR/EB/Rel/Mar 19, 2019 dated 30.04.2019 and quash the same.

For Petitioner : Mr.N.G.R.Prasad
for
M/s. Karl Marx K.C.

For Respondents : Mr.N.Nithyanandan

ORDER

Writ Petition is filed challenging the transfer order issued by the 2nd respondent in proceedings O.O.No.CORP/HR/EB/NE/0620/2019-28 dated 28.03.2019 and the consequent relieving order issued by the third respondent in proceedings O.O.No.Mine-IA/HR/EB/Rel1/Mar 19,2019 dated 30.04.2019.

2. The case of the petitioner is that he joined the services of the first respondent Corporation, which is a company owned by the Government of India and having 4 Mines and 5 Thermal Power Stations in Neyveli and other places, as a IW Gr.I on 14.08.1990 and periodically promoted as Tech Gr.III (C), Tech Gr.II (B) and Tech Gr.I (A), Sr.Tech Gr.II and Sr.Tech Gr.I and then promoted as Chief Technician on 01.09.2012.

3. It is also the case of the petitioner that he is one of the elected Vice Presidents of CITU, NLC Labour and Staff Union, which is espousing the cause of the workers working in the first respondent Corporation without any compromise. The petitioner actively involved in the trade union activities. The Union is against outsourcing or mining activities, which would incur loss to the respondent. The Union is also insisting to regularise the contract workers and to provide job to those, whose lands have been acquired by the respondent. The respondent, in order to weaken the spirit of the workers, started harassing the office bearers by adopting unfair labour practice and victimising the office bearers for trade union activities and that the petitioner has been continuously transferred from one unit to other unit and other division and on 28.03.2019, the petitioner has been transferred to Barsingsar Project, Rajasthan, showcasing the departmental bias of the respondent. Thereafter, the petitioner could not enter the company, as his punching was locked.

4. It is further case of the petitioner that the office bearers held talks with the company and that the respondent accepting to withdraw the transfer, obtained a letter from the petitioner on 11.04.2019 and released his punching and as such, from 13.04.2019, he again started attended the company. But, to his shock, on 30.04.2019, through sources, he came to know that the respondent is going to issue relieving order to him. Immediately, the Union raised a dispute with the Assistant Labour Commissioner, Puducherry, who on hearing the dispute, directed the respondent to maintain status quo and posted the conciliation to 02.05.2019. On 02.05.2019, the Assistant Labour Commissioner closed the dispute hurriedly, whereas, he has no power to close the dispute. Therefore, on 06.05.2019, he filed a petition before the Assistant Labour Commissioner,

Puducherry to reopen the dispute.

5. The petitioner further submitted that in the meanwhile, on 03.05.2019, he received the relieving order from the third respondent through post. Immediately, he sent a representation to the first respondent requesting to withdraw the transfer order, which is not yet considered.

6. Further case of the petitioner is that the respondent Corporation started in the year 1956 and till date no worker has been transferred to outside Neyveli without willing and as such, the act of the respondent in transferring the petitioner to Rajasthan is malafide, arbitrary and with official bias.

7. It is also the case of the petitioner that the first respondent has framed policy for transfer of executives and supervisors, by proceedings dated 28.05.2015, but no such Rule was framed for transferring the industrial workers, which shows that the respondent have never contemplated transfer of workmen, but only to victimise him, he has been transferred to Rajasthan. Even applying Rule 6.2 of the Rules for Transfer of Executives and Supervisors, the respondent ought not to have transferred the petitioner as his wife is working in Jawahar School, Neyveli and apart from that, his second daughter is studying in the same school. Hence, the petitioner is before this Court with this Writ Petition stating that the order of respondent in transferring the petitioner to Rajasthan, is a biased one and with malafide intention.

8. The respondents have filed counter affidavit stating that the Writ Petition is misconceived, factually incorrect and legally not maintainable. It is settled law that the transfer of an employee is a part of service conditions and it cannot be challenged unless the order of transfer is tainted with malafides or without jurisdiction. Merely because, the petitioner is an office bearer of a trade union, he is not immune from being transferred, if otherwise liable for transfer.

9. The respondents further submitted that the petitioner is guilty of suppression of material and relevant facts and withholding of documents in his possession pertaining to the case. The petitioner approached this Court with incorrect and misleading facts. The order of transfer is incident of service and issued on administrative exigencies taking into account all other attendant facts. In terms of impugned transfer order dated 28.03.2019, the petitioner was relieved on 30.03.2019 from Mine-IA and the petitioner was no longer on the rolls of Mine-IA, Neyveli and as a result, the petitioner was not entitled for entry into Mine-IA, Neyveli from 01.04.2019. The petitioner made a representation dated 11.04.2019 to the effect that his

family circumstances require reconsideration of his transfer order and he undertook to work anywhere in Neyveli and requested to release the locking of the punching. The said representation was duly examined and he was permitted to continue in Neyveli till 30.04.2019 and he was specifically informed that he would be relieved on 30.04.2019 so as to join the posted unit viz., Barsingsar Project. As such, the petitioner was aware of the relieving order to be passed on 30.04.2019 itself. Accordingly, the petitioner was relieved from Mine-IA, Neyveli on 30.04.2019 A.N. and thereafter, he was not on the rolls of the third respondent. The Writ Petition came to be filed by the petitioner before this Court on 13.05.2019, ie., 13 days after relieving.

10. It is the further contention of the respondents that the transfer of employees of the respondent, as in the present case, is made in public interest and for administrative reasons. Hence, there has been no violation of any law or orders in this regard. Apart from the general principles of service jurisprudence, even by specific order, the petitioner is liable to be transferred to anywhere in India. In fact, a number of similarly placed employees were already transferred to outside project of the subsidiary company. The allegations of malafide by the petitioner against the respondent is vague and without any substance and in the absence of any particulars specifying the grounds of malafide and proof of malafide alleged on the respondent, the alleged ground raised to challenge the order of transfer on malafide reasons is unsustainable.

11. It is further submission of the respondents that transfer is an incident of service, more so a condition of service. In the absence of any challenge to the service conditions applicable to the petitioner, he is not entitled to contend that without his consent, he cannot be transferred. Administrative transfers are prerogative of the respondent and the competent authorities are the best persons to assess and act accordingly. That apart, petitioner is one of the Vice Presidents of the Trade Union, responsible for a particular unit viz., Mine-IA and whose participation in the Central Union activities are remote and negligible and therefore, there was nothing for the respondent to be afraid of the presence of the petitioner in Neyveli and as such, the allegations of malafide or vindictiveness are unfounded and untenable.

12. It is further submitted by the respondents that the respondent Company has so far transferred 35 employees, including the petitioner, from Neyveli to Barsingsar. Transfer orders are based on organizational interest and requirements. The petitioner is not entitled to any preferential treatment in the matter of transfer on the only ground of he being an office

bearer of a trade union, when employees holding different positions have moved on transfer to Barsingsar, Tuticorin etc., Hence, they prayed for dismissal of the Writ Petition.

13. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

14. Mr.N.G.R.Prasad, learned counsel appearing for the petitioner contended that the petitioner's transfer is malafide and the petitioner is the Vice-President of major union CITU and he espoused the cause of the workers and he raised several industrial disputes as against the management and in order to cut his industrial activities, this malafide transfer was passed. Further, the learned counsel submitted that no employees were transferred from Neyveli to Rajasthan and Rajasthan Company is a subsidiary company and at the time of petitioner's entering employment, no condition was prescribed and at the time of petitioner's entering the service, Rajasthan Unit was not started and there is no agreement to transfer the petitioner anywhere of India. Hence, the order of transfer is vitiated.

15. Further, the learned counsel appearing for the petitioner submitted that the petitioner's wife is working in Neyveli as a school teacher and whenever the spouse is working in the same station, the husband is entitled to work in the same place. However, in the present case, as against the transfer policy, the petitioner is transferred to Rajasthan and the transfer of the petitioner to other State is only a punitive one and hence, this Court has to necessarily interfere with the order of transfer.

16. In support of his above contentions, learned counsel for the petitioner relied upon the following decisions:-

(i) Decision of the Hon'ble Supreme Court reported in 1960 AIR (SC) 650 (M/s.Kundan Sugar Mills ..vs.. Ziyauddin and others);

(ii) Decision of this Court dated 10.01.1974 made in W.P.Nos.3 & 4 of 1971 and 1461 & 598 of 1970 (R.Srinivasan .. vs.. The Management of Narasu's Coffee Company and another);

(iii) Decision of this Court dated 27.01.2012 made in W.P.No.24281 of 2009 (Chief Personnel Officer ..vs.. The Presiding Officer);

(iv) Decision of Madurai Bench of this Court dated 27.10.2010 made in W.P.(MD) No.3733 of 2010 (T.Selvaraj ..vs.. The Director of School Education);

(v) Decision of this Court dated 12.01.2017 made in W.P.Nos.42783 & 42784 of 2016 (G.Prasad ..vs.. The Divisional Railway Manager); and

(vi) Decision of Kerala High Court reported in MANU/KE/0111/1977 (P.Pushpakaran ..vs. Coir Board and another).

17. Per contra, learned counsel appearing for the respondents would submit that the petitioner claiming as the Vice-President and he is the main person of CITU and he is one of the office bearers of trade union, approached this Court with incorrect, misleading facts. The petitioner is working as Chief Technician and he was transferred to Rajasthan on administrative exigencies, taken into account all other attendant facts and the said company in Rajasthan is owned by the respondent management. In the impugned order of transfer dated 28.03.2019, this petitioner was specifically informed that he would be relieved from 30.03.2019 A.N. and he was eligible for T.A/D.A, Joining Time and other transfer incidentals as per Rules. In terms of impugned order, the petitioner was relieved on 30.03.2019 itself from Mine-IA and the petitioner was no longer on the rolls of Mine-IA and the petitioner was not entitled for entry into Mine-IA from 01.04.2019 onwards.

18. Further, learned counsel appearing for the respondents would submit that the petitioner was well aware of the above events and initially he made representation on 11.04.2019 to the effect that family circumstances require reconsideration of the transfer order, which was received by him and undertook to work anywhere in Neyveli. The competent authority considered the representation, however, subsequently rejected the same on administrative grounds. It was not the case of the petitioner that the impugned transfer was actuated by malice or without jurisdiction or contrary to service conditions. However, considering his representation, the petitioner was given extension of time from the relief to join the transferred unit and was permitted to continue in Neyveli upto 30.04.2019 and he was specifically informed that he would be relieved on 30.04.2019 so as to join Barsingsar Project. Even thereafter, the petitioner was not having any grievance and did not challenge the impugned order of transfer dated 28.03.2019. Thereafter, the petitioner rejoined duty on 13.04.2019 and continued till 28.04.2019 and did not attend duty on 29.04.2019 and 30.04.2019. However, suppressing the above facts, the present Writ Petition is filed.

19. The learned counsel appearing for the respondents would further submit that the contention of the learned counsel for the petitioner is absolutely incorrect. In fact, the respondent management had established 250 Mega Watt Mining-cum-Power Project in Barsingsar in the State of Rajasthan. The said project has been duly approved by Ministry of Coal, Government of India and other Regulatory Agencies. It is one of the

Projects of the respondent outside Neyveli and the project requires suitable qualified/experienced personnel in different disciplines and hence, such personnel were being transferred to Barsingsar, Rajasthan on need basis from time to time. The transfer of the employees of the respondent, as in the present case, is made in public interest and on administrative reasons. Further, the emoluments, seniority and promotional avenues of those transferred, have been unaffected by transfer.

20. The learned counsel appearing for the respondents would also submit that in fact, the respondent have no grievance against the petitioner and the petitioner was appointed in the year 1991 and is presently working as Chief Technician (Electrical) with effect from 14.11.2012 and he is a suitable candidate and his services were very much required in the Barsingsar Project, Rajasthan.

21. Further, learned counsel for the respondents would submit that the terms and conditions of the appointment order as well as the orders of further promotions stipulate that the transfer is an incidence of service and further the appointment order itself is very clear that the petitioner is liable to transfer anywhere of India. Further, learned counsel for the respondents drew the attention of this Court the conditions, particularly, clause - 7 in his appointment order, wherein it is stated that he/an employee will also be subjected to further terms and conditions of service, as may be prescribed by the Corporation from time to time and the respondent/management reserves its right to change the service conditions, for which there will not be any separate notice of charge. Even as per the conditions stipulated in the order of latest promotion as Chief Technician (Electrical), it is clear from condition -5 that the petitioner will be subjected to any other terms and conditions of service as may be prescribed by the Corporation from time to time. Therefore, the learned counsel for the respondents would submit that the transfer conditions were stipulated in the appointment order as well as in the order of petitioner's latest promotion.

22. The learned counsel for the respondents would further submit that in respect of ground raised by the petitioner that no workmen have been transferred outside Neyveli is unfounded. In fact, a number of similarly placed employees were already transferred outside project of the subsidiary Company of the respondent Corporation at Tuticorin, Tamil Nadu and also another subsidiary company at Ghattampur, Kanpur Nagar District, Uttarpradesh and the petitioner's allegation of malafide against the respondent management is vague and without any substance.

23. The learned counsel would further submit that in fact, initially the petitioner made representation for reconsideration of his transfer order stating personal reasons, as if his wife is working and his second daughter is studying in the school run by the society through NLC Officials and thereafter, taking advantage as member of labour union, he raised industrial dispute and initiated conciliation proceedings on 30.04.2019 before the Assistant Commissioner of Labour and the Assistant Commissioner of Labour granted status quo. Thereafter, the Assistant Commissioner of Labour, on 02.05.2019, closed the Industrial Dispute stating that the transfer order of the petitioner does not carry any malafide intention and the union demand of transferring its office bearers outside Neyveli does not come under Industrial Dispute and accordingly, the conciliation was closed. Hence, in this case, there is no malafide intention. In fact, there was a disciplinary proceedings pending against the petitioner. However, the competent authority may be of the opinion that further continuance of an employee in a particular place would cause inconvenience as well as difficult situation for the peaceful functioning of the administration and in those circumstances, transfers alone are remedies in the interest of administration and therefore, it is not necessary that there must be a transfer only after conducting enquiry or initiating disciplinary proceedings and that the administrative transfers are issued on various circumstances and on various grounds. Hence, no grounds available to the petitioner to challenge the present impugned order and the Writ Petition is liable to be dismissed.

24. I have considered the rival submissions made by the learned counsel for the petitioner as well as learned counsel for the respondents and perused the materials available on record.

25. Admittedly, the petitioner is working as Chief Technician in the respondent management and equally, there is no dispute with regard to the pendency of disciplinary proceedings against him. Further, the petitioner is the Vice-President of CITU and he was transferred through impugned order transferring from Neyveli to Barsingsar Project, Rajasthan, on administrative grounds.

26. The learned counsel appearing for the petitioner argued on two folds:-

(i) The appointment order of the petitioner did not impose a condition that the petitioner can be transferred to outside place.

(ii) Impugned transfer order, transferring the petitioner to Barsingsar, Rajasthan, is a biased one and with malafide

intention.

27. In respect of the first contention of the learned counsel for the petitioner that the appointment order did not impose a condition that the petitioner can be transferred to outside place, this Court perused the appointment order of the petitioner dated 31.07.1990, in which para-7 clearly reveals that the petitioner will be subjected to further terms and conditions of service as may be prescribed by the Corporation from time to time and the respondent management deserves its right to change the service conditions, for which, there will not be separate notice of charge.

28. Admittedly, at the time of petitioner joining duty, Neyveli Lignite Corporation have no subsidiary company and in the year 2013, they have established their subsidiary companies all over India, viz., Barsingsar in Rajasthan, Talabira in Odisha and its joint ventures and subsidiaries in NTPL at Tuticorin and NUPPL at Ghatampur, South Pachwara Coal Block at Jharkhand etc.,.

29. On earlier occasion, employees of Neyveli Lignite Corporation, namely, one C.Duraikannu and one Radhakrishnan were transferred from Neyveli to Tuticorin, which were challenged before this Court in W.P.Nos.26640 of 2009 and 13746 of 2012 raising same arguments as raised in this Writ Petition and this Court vide orders dated 10.02.2010 and 19.06.2012, after elaborate consideration in paragraphs 9 & 10, dismissed those Writ Petitions holding that the respondent management have right to transfer its employees to the subsidiary units. Hence, the similar argument raised by the petitioner herein is not in substance and accordingly, the first contention is rejected.

30. The next contention of the learned counsel appearing for the petitioner is that the petitioner is facing disciplinary proceedings and pending disciplinary proceedings, with malafide intention, in order to victimise the petitioner, the said transfer order is passed, that too, from Neyveli to Rajasthan. This Court perused the counter affidavit, wherein it is stated that similarly placed persons were transferred to Uttarpradesh Unit.

31. The learned counsel for the petitioner, at the time of hearing, stated that the petitioner's native place is Tirunelveli and they come and settle in Neyveli and he participated in union activities and if he is transferred to far away place, like Rajasthan, there is irreparable loss and hardship caused to the petitioner. Hence, this Court directed the respondents to get instructions in that aspect. Pursuant to the same, the respondents filed a memo dated 19.09.2019 stating

that the respondent management agrees to consider re-transferring the petitioner to NTPL, Tuticorin, a subsidiary company of the respondent, instead of impugned transfer to Barsingsar Project, Rajasthan. Thereafter, the learned counsel appearing for the petitioner took time to get instructions from his client and after instructions, the learned counsel for the petitioner reported that the petitioner is not willing to go anywhere, except Neyveli. Hence, this Court has no other option to proceed the case.

32. This Court perused the representation made by the petitioner immediately after the impugned transfer. The original transfer order was dated 28.03.2019, wherein the petitioner was transferred from Neyveli to Barsingsar Project, Rajasthan and he was relieved on 30.03.2019. Immediately thereafter, the petitioner made a representation dated 11.04.2019 to the respondents requesting to reconsider the transfer order on the ground stating that due to his family circumstances, he is unable to work in the outside place and also to release his punching. However, the said request was not considered. Again, the petitioner made another representation on 03.05.2019 to reconsider his transfer on the ground that his wife is working in Jawahar School and his second daughter is studying in the same school and he is not able to work outside Neyveli. However, the respondent management has not considered his request. Thereafter, he initiated conciliation proceedings through labour union and on 30.04.2019, the union raised a dispute as against the transfer of the petitioner before the Assistant Labour Commissioner and on the same day, the Assistant Labour Commissioner issued an order of maintaining status quo and final order was passed on 02.05.2019, wherein, the Assistant Labour Commissioner hold that the transfer order of the petitioner does not carry any malafide intention and the union demand of transferring its office bearer does not come under Industrial Dispute.

33. From the perusal of the above, this Court can easily arrived at a conclusion that the stand adopted by the petitioner is not cogent and genuine, since his representations dated 11.04.2019 and 03.05.2019 to reconsider the transfer order reveals that he cited family grounds, however, the labour union in its representation dated 06.05.2019 cited different reason, ie., as if the petitioner was ordered to be transferred by the respondent union with malafide intention and hence, they have not accepted the Assistant Labour Commissioner's earlier decision and hence, requested to reopen the same industrial dispute immediately. Perusal of the above makes it clear that the petitioner did not make allegation with regard to union activities in his representations, however, the union made allegation of malafide, which cannot be accepted and the same is

liable to be rejected.

34. This Court perused the decisions relied on by the learned counsel for the petitioner. There is no dispute over the decisions referred by the learned counsel for the petitioner. It is well settled law. In the decision rendered in Kundan Sugar Mills case cited supra, reported in 1960 AIR (SC) 650, the Hon'ble Apex Court held that ordinarily the employees would have agreed only to serve in the factory then in existence and the employer would have employed them only in respect of that factory. However, in the present case, on perusal of the appointment order, it is clear that the respondent management reserves its right to change the terms and conditions and specifically, when the petitioner was promoted to the post of Chief Technician, the promotion order also makes it clear that the respondent reserves its right to change its service conditions. Further, the service conditions are not challenged anywhere, but the same are accepted and hence, the above decision relied by the petitioner is not applicable to the present case on hand.

35. The decision of Madurai Bench of this Court dated 27.10.2010 made in W.P.(MD) No.3733 of 2010 (T.Selvaraj ..vs.. The Director of School Education), relied on by the learned counsel for the petitioner is with regard to punishment transfer, wherein it is held that when an order of transfer is passed in lieu of punishment, the same is liable to be set aside, being wholly illegal. But, in this case, the transfer order is not a punishment order, but it is on administrative grounds. Hence, the said decision relied on by the learned counsel for the petitioner is not applicable to the present case on hand.

36. This Court perused the decisions cited by the learned counsel for the respondents. It is useful to refer the decisions as follows:-

(i) (2008) 9 SCC 345 (Government of Andhra Pradesh ..vs.. G.Venkata Ratnam), wherein it is held as follows:-

8. The Court seems to have been completely taken in by the ipse dixit of the respondent and his tall "claims about his own ability and virtually allowed him to choose his own place of posting. The judgment at its beginning recounts the respondent's qualifications that include two Master's degrees, one in Sanskrit and the other in Archaeology, a B. Ed. degree in Sanskrit and the degree of Sahitya Shiromani from Sri Venkateswara University. The judgment then proceeds to observe as follows:

"The petitioner as it appears from the pleadings is a highly qualified man. The confidence with which he made assertion in the affidavit dated 13.3.2006 to the effect that 'if any other employee has my skill, knowledge, expertise and experience I forgo my job' makes this Court examine this matter in depth and not treat the impugned order as a mere order of transfer in the course of administration."

It further observes as follows:-

"The petitioner asserted in his affidavit dated 13.3.2006 that he has expertise in deciphering early Rock and Stone and Copper Plates inscriptions in Brahmi, early Telugu and Kannada, Nagari, Tamil and Tamil Grandha. He further asserted that other than the petitioner that no other employee in the entire Archaeology Department with the expertise, knowledge or experience in these matter and that his services are required more at the head office."

The Court then purports to remind itself that transfer is an incidence of service and is not to be lightly interfered with. It proceeds to elaborate that this judicial policy is based on two reasons, one the continuance of an employee of the State Government at one particular place for a long time is likely to create undesirable consequences like creation of vested interests and misuse of the power that comes with the employment under the State and the other being the exigencies of the administration requiring the service of a particular person at a particular place. It then proceeds to explain away that the first reason, that is, the undesirability of stay at anyone place for a long time should not apply to the case of the respondent because in Archeology, in any event one worked in ancient times and dealt with 'the dry bones of history'.

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11. We are surprised to see the High Court castigating the respondent's transfer order as lacking in bonafide on such flimsy

and fanciful pleas advanced by the respondent. We are more than satisfied that the High Court's finding regarding lack of bona fide in the matter on the part of the State Government is completely unfounded and untenable. The legal position regarding interference by Courts in the matter of transfer is too well established to be repeated here. The respondent's transfer neither suffers from violation of any statutory rules nor can it be described as mala fide by any stretch of imagination. We are, accordingly, unable to sustain the High Court's order. In the result, this appeal is allowed, the order coming under challenge is set aside and the writ petition filed by the respondent in the High Court is dismissed."

(ii) (2007) 8 SCC 150 (Mohd. Masood Ahamed ..vs.. State of U.P. and others). The relevant portions are extracted hereunder:-

4. The petitioner-appellant, who was an Executive Officer, Nagar Palika Parishad Muzaffarnagar, had in his writ petition challenged his transfer by the State Government by order dated 21.6.2005 as Executive Officer, Nagar Palika Parishad Mawana, District Meerut. Since the petitioner was on a transferable post, in our opinion, the High Court has rightly dismissed the writ petition since transfer is an exigency of service and is an administrative decision. Interference by the Courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions, transfer is an exigency of service vide B.Varadha Rao vs. State of Karnataka AIR 1986 SC 1955, Shilpi Bose vs. State of Bihar AIR 1991 SC 532, Union of India vs. N.P. Thomas AIR 1993 SC 1605, Union of India vs. S.L. Abbas AIR 1993 SC 2444, etc.

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7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in Rajendra Rao vs. Union of India (1993) 1 SCC 148; (AIR 1993 SC 1236), National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan (2001) 8 SCC 574; (AIR 2001 SC 3309), State Bank of

India vs. Anjan Sanyal (2001) 5 SCC 508; (AIR 2001 SC 1748). Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh vs. State of U.P. (1997) 3 ESC 1668; (1998) All LJ 70) and Onkarnath Tiwari vs. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866; (1998 All LJ 245), has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders."

(iii) In (2006) 9 SCC 583 (S.C.Saxena ..vs.. Union of India and Others), it is held that "A Government Servant cannot disobey a transfer order by not reporting at the place of posting and then go to the court to ventilate his grievances. It is his duty to first report for work, where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

(iv) (2004) 11 SCC 402 (State of U.P. and others ..vs.. Gobardhan Lal). The relevant portions are as follows:-

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.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

(v) JT 2004 (9) SC 185 (Kendriya Vidyalaya Sangathan ..vs.. Damodar Prasad Pandey and others). The relevant portion is as follows:-

"4. Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any prescribed norms of principles governing the transfer (see Ambani Kanta Ray vs. State of Orissa, (Suppl) 4 SCC

169). Unless the order of transfer is vitiated by malafide or is made in violation of operative guidelines, the Court cannot interfere with it. (see Union of India vs. S.L. Abbas 1993 AIR(SC) 2444. Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of operative any guidelines or rules the courts should not ordinarily interfere with it. In Union of India & Ors. Janardan Debanath & Anr. 2004 (4) SCC 245 it was observed as follows:

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan (2001) 8 SCC 574".

(vi) 2011 Writ LR 676 (H.Rahothuman & K.Gopalakrishnan .. vs.. TN State Transport Corporation, Villupuram Ltd., represented by its MD). The relevant portion reads as follows:-

7. In the case on hand, except the self claim of the petitioners that only because of the agitations and strikes called for by them, the aggrieved management, to wreck vengeance against them, resorted to transfer, there is no substantive material made available before this Court to act upon such claim. In the referred to case, mala fides could be easily seen from the attitude of the management in issuing

transfer orders immediately after dropping the suspension orders. Such is definitely not the case herein. The petitioners, if at all were struggling and striving for a just cause for others, could have very well resorted to lawful means in getting their demands fulfilled. It must be highlighted that calling for strikes by employees working in transport corporations would undoubtedly cause untold hardships to the general public including students, office-goers, patients, elders etc. Therefore, the employees connected to essential services should always serve with a sense of dedication as any move to strike by them would have adverse impact on the general mass. This does not mean that this Court approves or endorses any vindictive measure and anti-labour practice of the managements and that the unions and employees should not insist upon for the rights and privileges they are legally entitled to. For any aggrieved individual or Unions representing employees, there is always legal means available for redressal of the grievances and without resorting to such course, through which, they would definitely get their rights established in an effective manner, one should not be allowed to say that strikes and lock-out are the only solution to win the case. Further, an employee cannot dictate upon the management to post him or transfer him at one particular place suiting his convenience. The management has the absolute right and discretion to transfer an employee when such transfer is warranted in terms of public policy and to meet an administrative exigency. It is the discretion of the management to examine and decide as to whether a junior should be transferred in a particular place or a senior depending upon the nature of the route the buses ply and the experience of the hand to be deployed at a particular place."

(vii) In the decision of the this Court dated 10.02.2010 made in W.P.No.26640 of 2009 (C.Duraikannu ..vs.. NLC Ltd., & Others) it is held as follows:-

14. It is to noted that in the counter affidavit, it has been specifically stated that the NLC has 89% equity participation in NTPL and it is a subsidiary of NLC. In support of the said averments, the 53rd annual report

2008-2009 of NLC has been produced and in page 73 of the said report, it is seen from the statement pursuant to Section 212 of the Companies Act 1956, that NTPL has become a subsidiary of NLC on 26.05.2008. Therefore, it is clear that the contention raised by the petitioner stating that NTPL is not a subsidiary of NLC is factually incorrect.

.....

17. Therefore, I am unable to accept the contention raised by the learned counsel appearing for the petitioner that the Rules of the organisation should remain static. In view of the above reasoning, it has to be necessarily concluded that the NTPL is a subsidiary of NLC and therefore the ground raised by the petitioner that he has been transferred to a different organisation is not well founded. Therefore, the judgments relied on by the learned counsel for the petitioner does not advance the case of the petitioner, since factually in the present case the order of promotion specifically stated that the petitioner was liable for transfer to the subsidiaries of NLC."

(viii) This Court in its decision dated 18.03.2009 made in W.A.No.282 of 2009 (R.Thangavel ..vs.. The Director (Power), NLC & others), held that it is well known that transfer is an incidence of service and highly placed officers like Appellant herein cannot refuse to proceed to the station, where they have been transferred. It is also held therein that the case of the appellant is that he has an aged father to be looked after. We are afraid the appellant cannot refuse to obey the order of transfer on such ground, since his wife, who is working in the State Government, can very well take care of his father.

37. Perusal of the above said decisions makes it clear that the proof of malafide has to be sustained and the petitioner has to establish the same with appropriate proof. However, in the present case, the dispute raised by the union and the petitioner's representation directed to the management, and the pleadings of the petitioner herein are contrary in nature. Hence, the petitioner has not established any malafide in respect of transfer and further in the present case, Adjudicating Authority, namely Assistant Labour Commissioner, himself has arrived at a conclusion that the transfer order does not carry any malafide intention and the union demand of transferring its office bearer does not come under Industrial

Dispute and hence, the matter is closed.

38. In view of the above and also applying the decision of the Hon'ble Apex Court cited supra to the facts of the case, I do not find any malafide or illegality in the impugned order of transfer and the same cannot be interfered with under Article 226 of the Constitution of India and accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

Mra
To

1. The Chairman Cum Managing Director
NLC India Ltd.,
Corporate Office
Block-1, Neyveli-1.
2. The Chief General Manager (HR)
Group Head - C
NLC India Ltd., Corporate Office
Block-1, Neyveli-1.
3. The Chief Manager (HOHR)
Mine IA, Mines Office
NLC India Ltd., Corporate Office
Block-1, Neyveli-1.

+1 CC to Mr.N. Nithianandan, Advocate sr 83594.

+1 CC to Mr.K.C. Karlmarx, Advocate sr 83423.

WEB COPY

W.P.No.14358 of 2019

and

W.M.P.No.14419 of 2019

and

W.M.P.No.14420/2019

W.M.P.No.15544/2019.

BP (CO)
SP (03/10/2019)