

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.4394 of 2022

Pravati Sethi

....

Petitioner

Mr. Prasanna Kumar Pattnayak,
Adv.

-versus-

Principal Secretary, Department of
School and Mass Education and
Ors.

Opposite Parties

Mr. Biswajit Mohanty, SC
(for S & ME Deptt.)

CORAM:

MR. JUSTICE S.K. PANIGRAHI

ORDER

03.03.2022

Order No.

01. 1. This matter is taken up through hybrid arrangement.
2. Heard the parties.
3. The present petitioner, who happens to be the wife of one Ananda Chandra Sethi, Assistant Teacher, Government U.G. High School, Barasahi of Odogaon Block, in the district of Nayagarh, has filed this writ petition with a prayer for modification of the transfer order dated 06.12.2021 read with order dated 30.11.20221 issued in favour of her husband, on medical grounds.
4. The mould of a few classes of service, have the latitude of transferability ingrained in them. The subject of transfer is purely the discretion of the employer and does not necessitate the matter to bring up to this level. The Hon'ble Apex Court in the case of **Union Of India And Ors vs S.L. Abbas¹** has succinctly held that :

¹ 1993 AIR 2444

“....An order of transfer is an incident of Government Service....Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration.”

5. The same principle has been unambiguously expounded in the cases of **Public Services Tribunal Bar Association vs State Of U.P. & Another**², **Gujarat Electricity Board v. Atmaram Sungomal Poshani**³ and **N.K. Singh vs Union Of India**⁴.

6. However, this view does not bar the scope of judicial review in matters of transfer. The attention of the court can be invited when the order of transfer suffers from infirmities of legality. Unless such latches on part of employer are evident and established the interference of the Court is uncalled. The said view has been enshrined in the case of **National Hydroelectric Power Corp. Ltd. vs Shri Bhagwan**⁵, wherein the Hon'ble Court has observed that :

“..It is by now well-settled and often reiterated by this Court that no Government servant or employee of public Undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the

² 2003 4 SCC104

³ 1989 2 SCC 602

⁴ 1995 AIR 423

⁵ AIR 2001 SC 3309

class or category of transferable posts from one place to other 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 malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned. ..”

7. The cases of **Sri Abani Kanta Ray vs State Of Orissa & Ors⁶**, **Union of India and Ors. v. H.N. Kirtania⁷** and **Chief General Manager (Telecom) ... vs Shri Rajendra Ch. Bhattacharjee**, resonate the said observation of the Hon’ble Supreme Court.

8. In the case of **State of U.P. and Others vs Gobardhan Lal⁸**, the Hon’ble Supreme Court observed that transfer in service is an essential condition of service. The inertia of staying affixed to a place or position of service till the end of tenure is contrary to the practices of needful administrative action and also often vitiates good governance. The Court held that :

“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

⁶ 1995 SUPP 4 SCC169

⁷ 1989 AIR 1774

⁸ AIR 2004 SC 2165

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."

9. Additionally, in the case of **Rajendra Singh and Ors. vs. State of U.P. and Ors**⁹, the Hon'ble Apex Court held that:

"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 contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires."

10. Furthermore, this Court is cognizant of the hardships faced by the employees in case of their transfer abruptly. Nevertheless, probing into a transfer order which does not indicate any legal infirmity is improper and a transgression of

⁹ AIR2007SC2786

the scope of judicial powers. Matters pertaining to inconveniences caused by transfer, render the administrative authorities as the proper channel of grievance redressal and not the courts. In the case of **State Of Madhya Pradesh & Ors vs Sri S.S. Kourav & Ors**¹⁰, the Hon'ble Apex court held that:

“This court cannot go into that question of relative hardship. It would be for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administrator. If there is any such hardship, it would be open to the respondent to make a representation to the Government and it is for the Government to consider and take appropriate decision in that behalf.”

11. Again, in the case of **Rajender Roy v. Union of India**¹¹, the Hon'ble Apex court observed that:

“7..It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department....”

12. Since the husband of the petitioner was well aware of the fact that he would be transferred on joining the job, he should have been mentally and physically ready to go to the place of transfer. Moreover, the distance between the place of posting and the place of transfer is not very far. The Court also strongly deprecates the practice of spouse approaching this Court for the

¹⁰ AIR 1995 SC 1056

¹¹ AIR 1993 SC 1236

petitioner. The petitioner being an aggrieved party should have approached to the authority.

13. In light of the discussion made above, I am not inclined to interfere with the Transfer order of 06.12.2021 read with order dated 30.11.20221 issued in favour of the husband of the petitioner.

14. In such view of the matter, this writ petition is dismissed having no merit.

(S.K. Panigrahi)
Judge

