

STATE OF U.P. AND ORS.

v.

GOBARDHAN LAL

MARCH 23, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

*Service Law:*

*Transfer—Government Employees—Conditions of service—Government employee filed a writ petition challenging his transfer order—High Court directed employee to file a representation before the Chief Secretary for appropriate orders—Correctness of—Held: Transfer of Government employees is incidental and implicit in the terms of appointment—Unless the order of transfer was an outcome of mala fide exercise of power, such transfer order should not be lightly interfered with—Competent authority empowered to transfer Government employees in public interest—High Court not entitled to give general directions to State Government in the matter of transfer or promotions/appointment of Government employees—High Court's order set aside.*

*CIVIL APPEAL NO. 408 OF 2004*

The respondent filed a writ petition before the High Court challenging his transfer order. The High Court disposed of the writ petition by directing the respondent to make a representation to the Chief Secretary as to his grievances and also made a consequential direction to the Chief Secretary to dispose of the same. Hence the appeal.

*CIVIL APPEAL NO. 409 OF 2004*

The respondent filed a writ petition before the High Court challenging the promotion of and appointment of the appellant as Director of U.P. Local Fund and Audit Department. The High Court disposed of the writ petition directing the appellant, the respondent and any other person concerned to make a representation to the Chief Secretary for appropriate orders. Hence the appeals.

**A** Allowing the appeals, the Court

**B** HELD: 1. 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 a 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 be lightly 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 shown to be vitiated by *mala fides* or is made in violation of any statutory provision. [344-A-D]

**D** 2. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Court 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. [344-E-G]

**E** 3. Conditions of service or rights, which are personal to the parties

**H**

concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities effecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the concerned authorities, the Courts and Tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalised directions as have been given by the High Court could ever be given leaving room for an inevitable impression that the Courts are attempting to take over the reins of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously Courts should endeavour to safeguard the rights of parties.

[344-H; 345-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 408 of 2004.

From the Judgment and Order dated 3.4.2000 of the Allahabad High Court in C.M.W.P. No. 2893 of 2000.

WITH

C.A. No. 409 of 2004.

Dinesh Dwivedi, Pradeep Mishra, Sandeep Singh, R.C. Verma, (NP), R.D. Upadhyay, Vivek Vishnoi for Punit D. Tyagi, Mukesh K. Giri (NP), M.P. Shorawala (NP), Pranab Kumar Mullick (NP) and Ashok K. Srivastava (NP) for the appearing parties.

The Judgment of the Court was delivered by

D. RAJU, J. Since the challenge in these appeals relates to identical

A orders, they are dealt with together. In Civil Appeal No.408/2004, one Zila Desh Bhakta Society, Meerut (U.P.), has filed an application for intervention. In our view, the same does not deserve to be countenanced having regard to the nature of the rights and grievance involved for consideration in these appeals. Hence, the application is rejected.

**B Civil Appeal No.408 of 2004:**

This appeal has been filed by the State of U.P. and others, who were arrayed as respondents before the High Court, against the order dated 3.4.2000 of a Division Bench of the Allahabad High Court in Civil Misc. Writ Petition No.2893 of 2000, whereunder the writ petition filed challenging the transfer of the respondent came to be disposed of with certain directions general and far-reaching in nature - affecting the rights of the Government and various officers of the Government in the administrative hierarchy to pass orders of transfer of Officers/Servants serving under them. The salient and necessary facts relating to the appeal are that the respondent, who was working as District Supply Officer, Meerut, came to be transferred by an Office Order dated 8.12.1999 by the Secretary, Food and Civil Supplies Department of the Government, to Head Office of Food Commissioner at Lucknow. This Office Order involved the posting of not only a substitute to the respondent at Meerut but the transfer of another officer as well. The grievance with which the said transfer order came to be challenged before the High Court was that though by an order dated 10.4.1999 the respondent, who was serving at Unnao, was transferred to Meerut and joined as such, he came to be transferred again by the impugned order due to political pressure and influence, particularly that of the local MLA by name Atul Kumar, to the Head Office at Lucknow in order to help another to be posted in his place. It seems to have been urged further that the District Magistrate of Meerut has commended the services of the respondent in dealing with the public and despite such views expressed, the transfer order came to be made for extraneous purposes, at the behest of and in order to oblige the local MLA. Carried away by the copies of the letters filed as Annexures before the High Court, allegedly written by the MLA, the Court, while issuing notice, seems to have granted interim orders of stay as well. The respondents filed counter affidavit disputing the claims made in the Writ Petition as to the alleged motives and baseless accusations relating thereto, and as found noticed in the order under challenge, it was categorically asserted for the respondents before the High Court that the so-called letter said to have been written by the MLA is a fake one and it was neither written by him nor was it available in the files. That apart, it

was also, among other things, contended that the performance of the respondent in the previous stations as well came under a cloud and as a matter of fact, he was suspended on 10.2.1997 for alleged serious irregularities and misconduct while he was District Supply Officer at Hamirpur and Gonda. Though, subsequently reinstated on 11.7.1997 and departmental proceedings instituted were pending, once again he was said to have been suspended on 15.12.1997 for irregularities committed and reinstated on 20.3.1999, subject to the condition that the departmental proceedings pending against him will continue and as a matter of fact, two departmental proceedings were said to be pending against him. The respondent (Writ Petitioner before the High Court) himself is said to be the real brother of an MLA, by name Shri Ram Pal Verma, and through him and another MLA he was said to be bringing a lot of pressure to bear on the authorities, at every stage to get favourable treatment. In the light of the above and the further claim made that the criminal proceedings have also been sanctioned against him, it was contended that his transfer was purely in public interest and necessitated by the exigencies of service to keep him away from the field work and to take him into the Head Quarters Office on the administrative side.

The learned Judges of the Division Bench, after adverting to these claims and counter claims made in the pleadings, though observed that in view of the conflicting statements in the affidavits, it was not possible for them to decide the disputed question of facts in writ jurisdiction as to whether the transfer order was passed due to political pressure or not, the Bench, in our view, fell into an error in attempting to lay down general principles relating to transfers and postings of Government Servants keeping in view, as found noticed in the order under challenge, some large-scale transfers said to have been taking place due to political interference in the State as disclosed from certain proceedings said to have been brought before the Court as well as some of the newspaper reports. As part of its attempts and endeavours to obviate such happenings, the High Court has not only directed the respondent to approach the Chief Secretary with a representation as to his grievance besides making a consequential direction to Chief Secretary to dispose of the same, but also issued the following directions: -

“Hence in such cases it is better for the government servant to approach the Chief Secretary, U.P. Government, and this internal mechanism will be better for this purpose. The Chief Secretary is a very senior government officer with sufficient maturity and seniority to withstand political or other extraneous pressure and deal with the issue fairly

A and we are confident that he will do justice in the matter to civil servants. This will also avoid or reduce the floodgate of litigation of this nature in this Court. As regards Class-I Officers, the Civil Service Board shall be constituted for dealing with their transfers and postings (as already directed by us above).”

B Hence, this appeal.

**Civil Appeal No.409 of 2004:**

C This appeal has been filed by the appellant, who was respondent No.3 in the High Court in Civil Misc. Writ Petition No.7429 of 2000, which came to be filed by the first respondent herein challenging the promotion and appointment of the appellant as Director of U.P. Local Fund and Audit Department. It is unnecessary for us to advert to the respective claims of parties for the reason that when the Writ Petition came up for hearing, the very Division Bench, which dealt with the other Writ Petition giving rise to the other appeal, after noticing the fact that highly disputed facts are involved

D in this case, made reference to the judgment rendered by them in the other case and directed that the first respondent, the appellant herein and any other person concerned may also make a representation before the Chief Secretary, which may be considered by the Chief Secretary or his nominee and pass appropriate orders thereon. It is in such circumstances that one of the

E respondents before the High Court has come up before this Court by way of this appeal. During the course of hearing, apart from reiterating the stand taken in the pleadings, it has been further stated that the first respondent is no longer in service and he came to be dismissed as a sequel to the disciplinary proceedings initiated against him and that, therefore, nothing survives in the

F appeal so far as the first respondent is concerned. But yet it has been urged that the general observations and directions made and liberties granted to Government Servants, as a class, by the High Court in the order under challenge ought not to be allowed to stand.

G The learned counsel appearing for the appellant-State contended that once the High Court had come to the conclusion that disputed questions of facts have been raised rendering it not possible to adjudicate on the facts as to whether the transfer order was passed due to political pressure or not as also in the other case relating to the promotion, the High Court ought to have rejected the Writ Petitions leaving liberty with the parties concerned, if they felt so aggrieved, to vindicate their rights, if any, in any other manner known

H to and in accordance with law and ought not to have embarked upon

generalising the problems stated to be prevailing in the State with reference to transfer of public servants or promotions and given such sweeping directions whittling down the existing well-settled policies and guidelines regulating transfers and overriding the competence, authority and powers vested with the concerned and competent authorities of the State to deal with transfers of their subordinates, as was permissible in law. It has been also contended that pursuant to the directions of the Court, the relevant Government Orders laying down the norms and principles for regulating transfers, etc. have already been brought to the notice of the Court and in spite of it some sweeping observations, which cannot be countenanced in law, came to be passed by the Court. So far as the other appeal is concerned, it has been urged by the counsel for the State as well as the appellant that the rights relating to conditions of service have got to be asserted and adjudicated in accordance with law availing of the avenues of remedies provided therefor and the same could not be short-circuited by relegating everything to the Chief Secretary to be dealt with on mere administrative side, *de hors* the relevant service rules, as well as other governing provisions of law and binding instructions relating to the conditions of service of a Government servant.

Per contra, the learned counsel for the respondents, having regard to the efflux of time and also the subsequent developments and changed circumstances, were not that serious as to defending the general directions of the nature given in this case by the High Court. Keeping in view all this, we find it necessary to deal with the legality and propriety of the directions issued and also the desirability or otherwise of the Court embarking upon such ventures, without affecting the rights of individual parties, who approached the Court for relief in these matters. Since, as pointed out earlier, having regard to the efflux of time the respondent in Civil Appeal No.408/2004 could not claim to continue in the same place forever. apart from the fact that we have been told that he has already been serving in a different station. Likewise, so far as the first respondent in Civil Appeal No.409/2004 is concerned, it is stated that he is no longer in service and if he or any of the parties have any rights to be vindicated, our orders in these appeals shall not stand in the way of their rights to pursue the same in accordance with and as is permissible in law. We reiterate that the prime concern in these appeals, at the present stage, is only with reference to the omnibus and general directions issued by the High Court placing an embargo on the right of the competent and concerned authorities of the Government to pass orders of transfers and also as to the remedial or other measures, if any, to be provided for in such cases, apart from those as are available in law.

A 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.

E 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.

G The very questions involved, as found noticed by the High Court in these cases, being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write ups in journals or newspaper reports. Conditions of service or rights, which

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are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any Authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities effecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the concerned authorities, the Courts and Tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalised directions as have been given by the High Court could ever be given leaving room for an inevitable impression that the Courts are attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously courts endeavour to safeguard the rights of parties.

For all the reasons stated above, we set aside the judgments of the High Court under challenge. The appeals are allowed accordingly, with no order as to costs.

V.S.S.

Appeals allowed.