

CASE NO.:
Appeal (civil) 4360 of 2007

PETITIONER:
Mohd. Masood Ahmad

RESPONDENT:
State of U.P. & Ors

DATE OF JUDGMENT: 18/09/2007

BENCH:
C.K. Thakker & Markandey Katju

JUDGMENT:
JUDGMENT

CIVIL APPEAL NO. 4360 OF 2007
(Arising out of Special Leave Petition (Civil) No.20797 of 2005)

MARKANDEY KATJU, J.

1. Leave granted.
2. This appeal has been directed against the impugned judgment & order dated 8.7.2005 passed by the High Court of Judicature at Allahabad in Writ Petition No.1110 (S/B) of 2005.
3. Heard learned counsel for the parties and perused the record.
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.
5. In State of Punjab vs. Joginder Singh Dhatt AIR 1993 SC 2486 this Court observed (vide paragraph 3 of the said AIR) :

"We have heard learned counsel for the parties. This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused"

6. In Abani Kanta Ray vs. State of Orissa 1995 (Supp.) 4 SCC 169; (1996 Lab IC 982), this Court observed (vide paragraph 10):

"It is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. (See N.K. Singh vs. Union of India)"

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.

8. Learned counsel for the appellant submitted that the impugned transfer order of the appellant from Muzaffarnagar to Mawana, District Meerut was made at the instance of an MLA. On the other hand, it has been stated in the counter affidavit filed on behalf of respondent Nos. 1 & 2 that the appellant has been transferred due to complaints against him. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State government is certainly within its jurisdiction to transfer such an employee. There can be no hard and fast rule that every transfer at the instance of an M.P. or MLA would be vitiated. It all depends on the facts & circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order.

22. The appeal is dismissed. There is no order as to costs.