

CASE NO.:
Appeal (civil) 5005 of 2004

PETITIONER:
State of U.P. and Anr.

RESPONDENT:
Siya Ram and Anr.

DATE OF JUDGMENT: 05/08/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

(Arising out of SLP) No. 2196/2004)

ARIJIT PASAYAT, J

Leave granted.

While respondent No.1 was functioning as an Executive Engineer (Mechanical), Irrigation Division-I, Government of U.P., he was transferred from the Tubewell Division-I, Ghazipur to the office of Joint Chief Engineer, Tubewell East, Faizabad. The transfer order dated 23.10.2002 shows that the transfer was on administrative grounds.

The said order of transfer of respondent No.1 having been quashed by a Division Bench of the Allahabad High Court, State of U.P. is in appeal. The respondent filed a writ petition in the Allahabad High Court questioning the order of transfer. The primary stand taken in the writ application was that the order of transfer was as a measure of punishment. An enquiry in a departmental proceedings had been initiated. Without affording him an opportunity of being heard, the transfer was done as a measure of punishment. The disciplinary action which was taken against respondent No.1 pursuant to the enquiry conducted was referred to the Uttar Pradesh Public Service Commission for approval. But it was not approved. The present appellant-State filed a counter affidavit taking the stand that the transfer of the writ petitioner was on administrative grounds and merely because the writ petitioner was transferred to a non-working post that did not in any way vitiate the order of transfer.

The writ petition was allowed by the impugned judgment dated 5.11.2003 holding that the order of transfer was punitive in nature and had been passed by the State Government without awaiting the decision in the disciplinary proceedings.

The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, 1950 (in short the 'Constitution') had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. 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 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 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 Corporation Ltd. v. Shri Bhagwan and Anr. (2001 (8) SCC 574).

The above position was recently highlighted in Union of India and others v. Janardhan Debanath and another (2004 (4) SCC 243). It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an iota of material to arrive at the conclusion. No mala fides could be attributed as the order was purely on administrative grounds and in public interest.

In view of the settled position in law the judgment of the High Court is indefensible and is set aside.

Learned counsel for respondent No.1 submitted that respondent shall file a representation highlighting the various difficulties which may or have resulted from the transfer and the non-desirability thereof. If such representation is made to the appropriate authorities, it goes without saying that the same shall be considered in its proper perspective and in accordance with law. We do not express any opinion in that regard. The appeal is allowed to the extent indicated with no order as to costs.