

A

STATE OF U.P. AND ORS.

v.

SIYA RAM AND ANR.

AUGUST 5, 2004

B

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Service Law :

C *Transfer of employee on administrative ground—Challenge to—*
Allowed by High Court—On appeal, Held : Transfer of an employee
appointed against transferable post is a condition of service necessary in
public interest and efficiency in public administration—Employee cannot
claim as a matter of any legal right to be posted at a particular place of
his choice—No material available to link the transfer with the outcome of
D *departmental proceedings pending against—No mala fides could be*
attributed to the order of transfer—Hence, Order of High Court indefensible.

Respondent-employee was transferred from one place to another by the employer-State Government on administrative ground. Respondent challenged the Order, which was quashed by the High Court on the ground that it was punitive in nature and had been passed by the State Government without awaiting the decision in the disciplinary proceedings against the employee. Hence the present appeal.

Allowing the appeal, the Court

F **HELD : 1.1. 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 an 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
G **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
H **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. [350-D, E, F] A

National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan & Anr., [2001] 8 SCC 574 and *Union of India & Ors. v. Janardhan Debanath & Anr.*, [2004] 4 SCC 243, relied on. B

1.2. 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. [350-H; 351-A] C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5005 of 2004.

From the Judgment and Order dated 5.11.2003 of the Allahabad High Court in Writ Petition No. 1557 (SB) of 2002. D

Ravi Prakash Mehrotra and Garvesh Kabra for the Appellant.

Rajesh Kumar for the Respondents. E

The Judgment of the Court was delivered by

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. F

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 H

A 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.

C 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.

D 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.

H 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 A
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 B
file a representation highlighting the various difficulties which may or have
resulted from the transfer and the non-desirability thereof. If such repre-
sentation 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 C
allowed to the extent indicated with no order as to costs.

S.K.S.

Appeal allowed.