

A KENDRIYA VIDYALAYA SANGATHAN  
v.  
DAMODAR PRASAD PANDEY AND ORS.

SEPTEMBER 20, 2004

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

*Service Law:*

C *Transfer—A teacher under Kendriya Vidyalaya Sangathan challenging his transfer from State of M.P. to J&K alleging mala fides—Tribunal found the allegations not established—High Court holding that there was no illegality in the order of transfer and that there was no reason to disturb the teacher who replaced the applicant—However, High Court directing that applicant be given a posting in State of MP—Held, High Court's direction not sustainable and is vacated.*

D *Ambani Kanta Ray v. State of Orissa, [1995] Suppl. 4 SCC 169; Union of India v. S.L. Abbas, AIR (1993) SC 2444 and Union of India & Ors. v. Janardan Debanath & Anr., [2004] 4 SCC 245; relied on.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6207 of 2004.

From the Judgment and Order dated 31.10.2003 of the Madhya Pradesh High Court in C.W.P. No. 3496 of 2003.

F Rakesh K. Khanna, Ms. Rashmi Khanna, Shashank Shekhar and Surya Kant for the Appellant.

Raj Kumar Gupta and Ms. Mridula Ray Bharadwaj for the Respondents.

The following Order of the Court was delivered :

G ARIJIT PASAYAT, J. : Leave granted.

Heard learned counsel for the parties.

H The respondent No. 1, while working as a teacher in Sanskrit in Kendriya Vidyalaya Sangathan, (AOC) Jabalpur, M.P. questioned his transfer to J & K. Smt. Sushila Pandey, respondent No. 5 in the present appeal was

transferred to Jabalpur in place of respondent No. 1. The respondent No. 1 filed Original Application before the Central Administrative Tribunal, Jabalpur (in short 'Tribunal'). The transfer order was mainly assailed on the ground of alleged *malafides* and to be a punitive transfer issued in colourable exercise of power. The Tribunal noticed that the allegations of *malafides* were not established and the transfer was not vitiated on any score. Plea of the present respondent No. 1 that he and wife should be posted at same place was also held to be not acceptable. It was observed that the situation where the husband and the wife can be kept together would always depend upon the availability of vacancies and administrative exigencies. It was noted that the present respondent No. 1 and his wife had worked together for nearly 17 years at a particular place. It was noticed that respondent No. 5 had worked in J & K for about 15 years and she was being given a posting to come back to M.P., i.e., to her original place of posting. The original application was dismissed. The order of dismissal was challenged before the High Court of M.P. at Jabalpur. The High Court noted that there was no reason to disturb the transfer of 5th respondent and also held that there was no illegality in the order of transfer so far as the respondent No. 1 is concerned. After having come to such a conclusion, the High Court gave a direction that the present respondent No. 1 shall be given a posting in the State of M.P. It is this part of the direction given by the High Court which is assailed by the appellant Kendriya Vidyalaya Sangthan. There is no appearance on behalf of the respondent. There was an interim order of stay passed by this Court on 19.3.2004 so far as the order of the High Court is concerned.

Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by *malafide* or infraction of any prescribed norms of principles governing the transfer (see *Ambani Kanta Ray v. State of Orissa*, [1995] Suppl 4 SCC 169). Unless the order of transfer is visited by *malafide* or is made in violation of operative guidelines, the Court cannot interfere with it. (see *Union of India v. S.L. Abbas*, AIR (1993) SC 2444. Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by *malafide* or is made in violation of operative any guidelines or rules the courts should not ordinarily interfere with it. In *Union of India & Ors. v. Janardan Debanath & Anr.*, [2004] 4 SCC 245 it was observed as follows :

“No government servant or employee of a public undertaking

A 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 another 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 Corpn. Ltd. v. Shri Bhagwan*, [2001] 8 SCC 574".

D In the present case, the Tribunal categorically came to hold that *malafides* were not involved and the High Court did not disturb that finding. That being so, the High Court's further direction that the respondent No. 1 shall be posted somewhere in M.P. is clearly not sustainable. No reason has been indicated to justify the direction. That part of the order of the High Court is vacated. Appeal is allowed to the aforesaid extent. No costs.

E

R.P.

Appeal allowed.