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MOHD. MASOOD AHMAD

v.

STATE OF U.P. & ORS.

SEPTEMBER 18, 2007

B

[C.K. THAKKER AND MARKANDEY KATJU, JJ.]

*Service Law:*

C

*Transfer—Transfer of public servant from one place to another—Allegation that transfer order at the instance of MLA—Interference with—Held: Transfer is an exigency of service and is an administrative decision—Public servant was on transferable post—Transfer order at the instance of MLA by itself would not vitiate the transfer order—It depends on the facts of the case—Thus, High Court rightly did not interfere with the transfer order—Constitution of India, 1950—Article 226.*

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The question which arose for consideration in this appeal was whether the High Court rightly dismissed the Writ Petition filed by appellant-Executive Officer, Nagar Palika Parishad challenging his transfer order from Muzaffarnagar to Mawana, District Meerut.

E

Dismissing the appeal, the Court

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**HELD:** 1.1. Since the petitioner was on a transferable post, 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. [Para 4] [74-A-B]

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*B. Varadha Rao v. State of Karnataka, AIR (1986) SC 1955, Shilpi Bose v. State of Bihar, AIR (1991) SC 532, Union of India v. N.P. Thomas, AIR (1993) SC 1605 and Union of India v. S.L. Abbas, AIR (1993) SC 2444, relied on.*

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*State of Punjab v. Joginder Singh Dhatt, AIR (1993) SC 2486, Abani Kanta Ray v. State of Orissa, [1995] Supp. 4 SCC 169, Rajendra*

*Rao v. Union of India*, [1993] 1 SCC 148, *National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan*, [2001] 8 SCC 574, *State Bank of India v. Anjan Sanyal*, [2001] 5 SCC 508, *Vijay Pal Singh v. State of U.P.*, (1997) 3 ESC 1668 and *Onkarnath Tiwari v. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow*, (1997) 3 ESC 1866, referred to.

1.2. Even if the allegation of the appellant that he was transferred on the recommendation of an MLA is correct, 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 and circumstances of an individual case. Thus, there is no infirmity in the impugned transfer order.

[Para 8] [75-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4360 of 2007.

From the Judgment and Order dated 08.07.2005 of the High Court of Judicature at Allahabad in Writ Petition No. 1110 (S/B) of 2005.

Dinesh Kumar Garg and V.K. Biju for the Appellant.

S.B. Upadhyay, Chandan Ramamurthi, Sandeep Singh, Manoj Kr. Dwivedi, G. Venketesh Rao, Shiv Mangal Sharma, Shubra and Jatinder Kumar Bhatia for the Respondents.

The Judgment of the Court was delivered by

**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.

A 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  
 B 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 v. State  
 of Karnataka*, AIR (1986) SC 1955, *Shilpi Bose v. State of Bihar*, AIR  
 C (1991) SC 532, *Union of India v. N.P. Thomas*, AIR (1993) SC 1605,  
*Union of India v. S.L. Abbas*, AIR (1993) SC 2444, etc.

5. In *State of Punjab v. Joginder Singh Dhatt*, AIR (1993) SC  
 2486 this Court observed (vide paragraph 3 of the said AIR) :

D “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  
 E 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”  
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6. In *Abani Kanta Ray v. State of Orissa*, [1995] Supp. 4 SCC  
 169; (1996) Lab IC 982, this Court observed (vide paragraph 10):

G “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 v. Union of India*)”

H 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 v. Union of India*, [1993] 1 SCC 148; AIR (1939) SC 1236, *National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan*, [2001] 8 SCC 574; AIR (2001) SC 3309, and *State Bank of India v. 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 v. State of U.P.*, (1997) 3 ESC 1668; (1998) All LJ 70 and *Onkarnath Tiwari v. 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.

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

N.J.

Appeal dismissed