

18.08.2015

Shri Shashank Shekhar, learned Counsel for the petitioner.

Heard on the question of admission.

This writ petition under Article 226 of the Constitution of India takes exception to the order dated 19.05.2015 (Annexure P-2) by which the petitioner is transferred from one place to another. The petitioner is working as Tahsildar and is sought to be transferred from Anooppur to Rewa on administrative exigency and his name finds place at S.No.128 of the order impugned.

It is contended by learned Counsel for the petitioner that the order of transfer is violative of the policy made by the State Government as also it runs contrary to the instructions issued by the respondents-State in respect of posting of officers in the tribal area. It is contended that the petitioner has not been relieved on account of the fact that nobody has been posted in place of the petitioner. Further it is alleged that order of transfer is issued in mid session and since the petitioner is not relieved as yet, in case any effect is given to the order of transfer, the children of the petitioner would be disturbed. Further the petitioner is office bearer of a recognized service association and is exempted from transfer under the policy of the State Government. Ignoring all these facts, the order of transfer has been issued. The petitioner has made a representation to this effect but the same is not considered as yet, therefore, this writ petition is filed before this Court. The following reliefs are claimed in the writ petition :

- “(i) That this Hon'ble Court may kindly be pleased to quash order impugned dated 19/5/2015 (Annex.P/2) so far as it relates to the petitioner.
- (ii) That this Hon'ble Court may kindly be pleased to direct the respondent No.3 to not to relieve the petitioner from the present place of posting.
- (iii) Any other relief/reliefs order/orders, direction/directions which this Hon'ble Court may deems fit and proper may kindly be granted to the petitioner including the cost of petition.”

It is the settled position of law that the transfer is an exigency in service and the same can be challenged before the Courts of law seeking judicial review of such an action only on three counts, namely (i) the competence of the transferring authority, (ii) mala fide action taken in respect of transfer, and (iii) if the order of transfer is in violation of any statutory provisions of law or rules governing the service of the concerned employee. None of such allegations are available on record. The grounds urged in the writ petition simply indicate that the petitioner being an office bearer, is not to be transferred against the provisions made in the transfer policy of the State Government. Other grounds taken are personal difficulties of the petitioner in carrying out the order of transfer.

All these contingencies cannot be looked into by the Court while exercising the power of judicial review of an administrative order of transfer. It is the prerogative of the employer to post any person serving under the

employer on any post in accordance to the requirement and administrative exigency of the employer. That aspect cannot be looked into by this Court in exercise of power of judicial review in a petition under Article 226 of the Constitution of India.

Facing such situation, learned Counsel for the petitioner submits that the petitioner has already made a representation against the order of transfer and the said representation has not yet been decided by the employer. True it is that if a representation is made, the same has to be decided in terms of the policy made by the State Government. For that reason, it is necessary to direct the authorities to decide the representation of the petitioner expeditiously.

At this stage learned Counsel for the petitioner again submits that since the petitioner has not yet been relieved from the post, the operation of the impugned order may be stayed till the representation of the petitioner is considered by the respondent-employer.

Such a prayer made by the petitioner, though looks attractive at the first blush but has to be rejected outrightly in terms of the decision of the Apex Court in the case of ***Gujarat Electricity Board and another vs. Atmaram Sungomal Poshani, (1989) 2 SCC 602***, wherein in paragraph 4, the Apex Court has observed thus :

“4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incidence of service. No government servant or employee of Public Undertaking has legal

right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other”

(emphasis supplied)

These aspects have been considered by the Division Bench of this Court in **W.A. 552/2015, Mridul Kumar Sharma vs. The State of Madhya Pradesh & others**, decided on 13.08.2015. The Division Bench has held that the interim stay in such circumstances cannot be granted by this Court as it is in the domain of the employer to consider continuance of any employee on the place from where he is transferred, till the representation is decided. The Division Bench has held in paragraph 5 of the said judgment, which reads thus :

“5. Be that as it may, in the present case, it is not as if the two writ petitions were kept pending and inconsistent “interim relief” granted therein. In fact, both the writ petitions have been finally disposed of. However, in one case limited protection has been given to the writ petitioner therein by another Bench. In our opinion, in the light of the principle expounded by the Supreme Court, referred to above, the Court must eschew from issuing such direction – as it inevitably results in dictating the concerned Authority in respect of administrative matter within his domain. Accordingly, the decision pressed into service, cannot be treated as a binding precedent on the matter in issue and will be of no avail to the appellant.”

In view of the aforesaid, prayer for interim relief cannot be considered at this stage, which stands rejected. However, as has been stated herein above, it would be expedient for the respondents-State to decide the representation of the petitioner, preferably within a period of four weeks from the date of receipt of certified copy of the order passed today.

The writ petition stands disposed of finally in above terms.

(K.K. Trivedi)
Judge

Skc