

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 1305 (S/S) year 2003

Khajaan Singh S/o Sru Surjan Singh

Versus

Executive Engineer, Uttarakhand

Jal Sansthan Uttarkashi and another.

Approved for reporting.

~~Not approved for reporting~~

Date of decision. 31.10.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ petition No. 1305 (S/S) 2003

Khajaan Singh S/o Sru Surjan Singh	----	Petitioner
Vs.		
Executive Engineer, Uttaranchal Jal Sansthan		
Uttarkashi, and another.	----	Respondents.

Mr. S.K. Posti, counsel for the petitioner.
Mr. Rakesh Thapliyal, counsel for respondent No. 1 & 2.

Judgment Dated: October 31, 2003:

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has challenged the order of transfer dated 14th August 2003 (annexure-1 to the writ petition) by which the petitioner has been transferred from the Sub Division Barkot to Branch Office Uttaranchal Jal Sansthan Uttarkashi.

Brief facts given rise to the present writ petition are that the petitioner was initially appointed as peon on 1st April, 1979 in the office of Assistant Engineer, Garhwal Jal Sansthan, Barkot which is not called the Uttaranchal Jal Sansthan. From time to time, the petitioner was transferred from Barkot of Uttarkashi and thereafter in August 1990 the petitioner was transferred from Uttarkashi to Tehsil Purola in the office of Assistant Engineer. Thereafter the petitioner was transferred from Tehsil Purola to Barkot in the year 1993. Now the petitioner was again transferred from Barkot to Uttarkashi, therefore, the present petition has been filed challenging the same.

Heard Sri S.K. Posti, learned counsel for the petitioner and Sri Rakesh Thapliyal, learned counsel for respondent No. 1 & 2.

According to the petitioner, the transfer order was passed on 14th August 2003, which has been served upon the petitioner on 19th September 2003. Immediately when the petitioner has come to know, regarding his transfer he made a representation to the respondents stating therein that due to natural calamity at Uttarkashi and due to landslide, it is not possible to join at Uttarkashi. Further, the petitioner has stated in his representation that his wife is suffering from typhoid, which has been converted into acute jaundice.

The petitioner has also stated that although the transfer order was served on 19th September 2003 but the petitioner was relieved on 18th August 2003 unilaterally even without serving the transfer order on the petitioner. On 18.08.2003 he has again made a representation to the Executive Engineer, Uttaranchal Jal Santhan, Uttarkashi informing him about serious illness of his wife as well as the medical treatment regarding his wife right from 17th August 2003 to 14th September 2003 at Govt. Doon Hospital, Dehradun.

Sri Thapaliyal, learned counsel for respondents has stated that the petitioner has already been relived.

Considering the rival submissions of both the parties, there is no explanation on the part of the respondents as to why the transfer order was served in September 2003. The transfer order has also been passed in the middle of session.

Normally in the matter of transfer, no interference is made in view of the judgment of the Apex Court reported in the case of Mrs. Shilpi Bose & others Vs. State of Bihar & others, AIR 1991 Supreme Court, page 532 that the transfer order passed in the public interest and for administrative reasons are not amenable to interference under Article 226 of the Constitution of India. The observations of the Apex Court to that effect are quoted below:-

“In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected partly should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspect in interfering with the transfer orders.”

Similar view has been taken by the Apex Court in (2001) 5 Supreme Court Cases page 508 State Bank of India Vs. Anjan Sanyal and others which is quoted below:-

“An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction 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 order, had not the competence to pass the order.”

I find no infirmity in the order of transfer, which has been passed on 14th August 2003

Considering the facts and circumstances that the transfer order was passed in the middle of the session and the children of the petitioner are studying in class 9th, 8th, 5th and 3rd as stated in paragraph 12, the same is quoted below:-

“That under the Government Transfer Policy an employee is generally transferred in the May-June of the year but the respondents are transferring the petitioner in the September, 2003 when the petitioners have settled his family and his four children are studying in Class 9th, or 8th 5th and 3rd standard.”

In paragraph 13 of the writ petition, the calamity held at Uttarkashi has also been mentioned in the writ petition, the same is also quoted below:-

“That the Govt. of Uttaranchal have also issued a direction to the Authority of Co-operate with their subordinate, principally the people living at District Uttarkashi. The Govt. have taken several measures and one of the for which the Government is considering his shifting the entire township of the Uttarkashi to some where else but the respondent authority are adamant to the transfer the petitioner of such a place which is at present dangerous to the human life.”

Learned counsel for the petitioner has also referred the judgment of the Apex Court in Director of School Education, Madras and others Vs. O. Karuppa Thevan and another, reported in 1996 (1) UPLBEC 347 where the employee concerned has been accommodated, till the end of the current academic year The observation are quoted below:-

“The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the

learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent.

The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellate should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

The right to life as contained under Article 21 of the constitution of India has been held to be a fundamental right. It has been held in the case of *Kapila Hingorani Vs. State of Bihar*, 2003 (7) AIC 18 (S.C.) page 194 that the power of the State in the sphere of exercise of its constitutional power including those contained in Article 298 of the Constitution of India. The State is duty bound to protect the interest of the citizens. The observations are quoted below:-

"35. The power of the State in the sphere of exercise of its constitutional power including those contained in Article 298 of the Constitution of India inheres in it a duty towards public, whose money is being invested. Article 298 of the Constitution of India confers a prerogative upon the State to carry on trade or business. While doing so the state must fulfil its constitutional obligations. It must oversee protection and preservation of the rights as adumbrated in Article 14, 19, 21 and 300-A of the Constitution of India.

48. Yet again in M/s Shantistar Builders Vs. Narayan Khimalal Totame and others, this Court observed:

Basis needs of man have traditionally be accepted to be three- food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.....

*50. The term 'life' used in article 21 of the Constitution of India has a wide and far-reaching concept. It includes livelihood and so many other facets thereof. 'Life' as observed by Field, J. In *Munn Vs. Illinois*, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. See *Board of Trustees of Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and others* and *Olga Tellis and other Vs. Bombay Municipal Corporation and others.*"*

So far as the transfer of the petitioner at Uttarkashi is concerned, there being a natural calamity, the petitioner will be provided sufficient safeguard as held by me in the case of Smt. Usha Sharma Vs. State of U.P. in W.P. No. 589/2000. I have already held that the District Administration shall consider as to whether a suitable accommodation is available at Uttarkashi.

The petitioner has already made a representation before the respondent authority and the respondent's authorities shall consider the same in the light of the observations made above within a period of six weeks from the date of filing a certified copy of this order.

In case no one has come to join in place of the petitioner, the transfer order shall remain in abeyance for a period of six weeks.

The District Administration will also provide protection to the petitioner at Uttarkashi in the light of observation made above.

With the aforesaid observations, the writ petition is disposed of accordingly. There will be no order as to costs.

(Rajesh Tandon, J.)

NCM: