

RAJENDRA SINGH

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v.

STATE OF U.P. AND ORS.

(Civil Appeal No. 4975 of 2009)

JULY 31, 2009

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[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

Service Law – Transfer – Limited scope of judicial review
– Held: Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other – He is liable to be transferred in administrative exigencies – Transfer not to be interfered with, unless such transfer was vitiated by violation of statutory provisions or suffered from malafides.

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One 'K', working as Sub-Registrar, Ghaziabad was transferred to Hapur-II, and in his place, one 'R', working as Sub-Registrar, Hapur-II was transferred to Ghaziabad. 'K' challenged the transfer order on the ground that the order was arbitrary, stigmatic and suffered from non-application of mind and also on the additional ground that 'R' did not have a good service record. The High Court upheld the order of transfer of 'K' but quashed the order of transfer of 'R'. Both 'K' and 'R' were aggrieved by the order of High Court and hence the present appeals.

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Allowing the appeal of 'R' while dismissing the appeal of 'K', the Court

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HELD: 1. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer is not only an incident inherent in the terms of appointment but also

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- A implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or
- B position as long as he desires. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. [Paras 5 and 6] [247-G-H; 248-A-C]
- C *State of U.P. v. Gobardhan Lal (2004) 11 SCC 402; Shilpi Bose (Mrs.) &Ors. v. State of Bihar & Ors. AIR (1991) SC 532 and N.K. Singh v. Union of India & Ors. (1994) 6 SCC 1998*, relied on.
- D 2.1. Insofar as the transfer of 'K' from Ghaziabad-IV to Hapur-II is concerned, the High Court found that the transfer order has not affected his service conditions and pay and other benefits attached to the post which was held by him. As a matter of fact, the High Court did not
- E find any flaw in the transfer of 'K' from Ghaziabad-IV to Hapur-II. [Para 8] [249-B-C]
- F 2.2. It is difficult to fathom why the High Court went into the comparative conduct and integrity of 'K' and 'R' while dealing with a transfer matter. The High Court should have appreciated the true extent of scrutiny into a matter of transfer and the limited scope of judicial review. 'R' being a Sub-Registrar, it is for the State Government or for that matter Inspector General of Registration to decide about his place of posting. As to
- G at what place 'R' should be posted is an exclusive prerogative of the State Government and in exercise of that prerogative, 'R' was transferred from Hapur-II to Ghaziabad-IV keeping in view administrative exigencies. [Para 9] [250-C-D]

2.3. The High Court seriously erred in deciding as to whether 'R' was a competent person to be posted at Ghaziabad-IV as Sub-Registrar. The exercise undertaken by the High Court did not fall within its domain and was rather uncalled for. One is unable to approve the direction issued to the State Government and Inspector General of Registration to transfer a competent officer at Ghaziabad-IV as Sub-Registrar after holding that 'R' cannot be said to be an officer having a better conduct and integrity in comparison to 'K' justifying his posting at Ghaziabad-IV. The High Court entered into an arena which did not belong to it and thereby committed serious error of law. The only question required to be seen was whether transfer of 'R' was actuated with malafides or otherwise in violation of statutory rules. The transfer of 'R' was not found to suffer from any of these vices. The High Court went into the competence and suitability of 'R' for such posting. It is here that the High Court fell into a grave error. As a matter of fact, the impugned order of the High Court casts stigma in the service of 'R' which may also act prejudicial to his interest in the pending appeal against the adverse remarks. [Para 10] [250-E-H; 251-A-B]

2.4. The transfer of 'K' from Ghaziabad-IV to Hapur-II cannot be said to be stigmatic and any observation made in the impugned order about the work and conduct of 'K' shall not be read adversely by the authorities against 'K'. The order passed by the High Court quashing the transfer of 'R' from Hapur-II to Ghaziabad-IV is set aside. [Paras 11 and 12] [251-B-D]

Case Law Reference:

(2004) 11 SCC 402	relied on	Para 5
AIR (1991) SC 532	relied on	Para 6
(1994) 6 SCC 1998	relied on	Para 7

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4975 of 2009.

From the Judgment & Order dated 22.8.2007 of the High Court of Judicature at Allahabad Bench at Lucknow, in Civil Misc. Writ Petition No. 929 (S/B) of 2007.

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WITH

C.A. No. 4976 of 2009.

C Yatish Mohan, Vinita Y. Mohan, E.C. Vidya Sagar, Dr. Suman Bharadwaj, Mridula Ray Bharadwaj, Amit Verma for the Appellants.

Shail Kr. Dwivedi, AAG, Vandana Mishra, Gunnam Venkateswara Rao for the Respondents.

D The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted.

E 2. These two appeals are directed against the Judgment and Order passed by the High Court of Allahabad at Lucknow on August 22, 2007 whereby the High Court although upheld the order of the transfer of Karvendra Singh (hereinafter referred to as, "Writ Petitioner") but quashed the order of transfer of Rajendra Singh (hereinafter referred to as, "Respondent No. 5").

F Both, Writ Petitioner and Respondent No. 5, are aggrieved by the order of the High Court and hence, these two appeals by special leave.

G 2. The Writ Petitioner and Respondent No. 5 are in the revenue service of the State of Uttar Pradesh. Both of them are Sub-Registrar. By an Office Order dated July 31, 2007 issued by I.G. Registration, Writ Petitioner, working as Sub-Registrar, Ghaziabad has been transferred to Hapur-II while Respondent No. 5, working as Sub-Registrar, Hapur-II has been transferred to Ghaziabad-IV. The transfer order dated July 31, 2007 came H to be challenged by the Writ Petitioner before the High Court

of Allahabad, Bench Lucknow. While challenging the legality of the transfer order, Writ Petitioner set up the grounds that he joined as Sub-Registrar, Ghaziabad, Sadar-IV only a month back; that the transfer order has been issued on the complaint of one Radhey Lal, Sanyojak Dalit Morcha Sangharsh Samiti, Lucknow and that the order of transfer was arbitrary, stigmatic and suffers from non-application of mind. The Writ Petitioner also set up the case that Respondent No. 5, who has been transferred in his place as Sub-Registrar, Ghaziabad-IV did not have good service record; that there was vigilance enquiry pending against Respondent No. 5 on charges of corruption and that his service record bears adverse entry in the year 2005.

3. Respondent No. 5 as well as the State Government vehemently opposed the writ petition. On behalf of the State Government, it was submitted that although a complaint came to be received from one Radhey Lal against the Writ Petitioner but Ghaziabad-IV being an important Sub-District from the point of view of registration of deeds/instruments as well as revenue collection, the transfer of Writ Petitioner from Ghaziabad-IV to Hapur-II was done on administrative grounds. The State Government emphatically refuted the allegation of mala fides and denied that the order of transfer was stigmatic or punitive.

4. Respondent No. 5 filed a separate counter affidavit in opposition to the writ petition. He set up the plea that he has rich experience as Sub-Registrar having worked at places such as Allahabad, Kanpur, Varanasi and Ghaziabad. He stated that vigilance enquiry against him has been closed and his appeal against the adverse entry made in his service record in 2005 is pending and that pending disposal of that appeal, no effect has been given to the said adverse entry.

5. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to

- A the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in
- B a particular place or position, he should continue in such place or position as long as he desires [see *State of U.P. v. Gobardhan Lal*; (2004) 11 SCC 402].

- C 6. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of *Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors.*¹, this Court held :

- D "4. In our opinion, the courts should not interfere with a transfer order which is 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 party 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 overlooked these aspects in interfering with the transfer orders."
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- H 7. In *N.K. Singh v. Union of India & Ors.*², this Court

1. Air 1991 SC 532.

2. (1994) 6 SCC 1998.

reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision. A

8. Insofar as the transfer of Writ Petitioner from Ghaziabad-IV to Hapur-II is concerned, the High Court found that the transfer order has not affected his service conditions and pay and other benefits attached to the post which was held by him. As a matter of fact, the High Court did not find any flaw in the transfer of the Writ Petitioner from Ghaziabad-IV to Hapur-II. As regards Respondent No. 5, the High Court considered the matter thus : B

“.....in our view, it is evident that the respondent No. 5 also can not be said to be an Officer having a better conduct and integrity in comparison to the petitioner justifying his posting at Ghaziabad and in this regard, it appears that I.G. (Stamps) did not give correct information to the Principal Secretary. However, it can not be held that the respondent No. 1 in passing order dated 31st July, 2007 has acted maliciously or for extraneous reasons amounting to malafide. Once the basic ground of challenge to the impugned order of transfer that the same is malicious in law falls, we do not find any reason to interfere with the impugned order of transfer, transferring the petitioner from Ghaziabad to Hapur. It is not the case of petitioner that his transfer is contrary to rules or has been issued by an authority who is not competent. It is well settled that an order of transfer is amenable for judicial review on limited grounds namely it is contrary to rules or has been passed an incompetent authority or is a result of malafide. In view of admission on the part of the respondent No. 1 in his Counter Affidavit that the respondent No. 5 has been found guilty of serious misconduct for causing loss to the Government revenue by G H

A acting without jurisdiction and colluding evasion of stamp duty, in our view transfer of the respondent No. 5 to Ghaziabad can not be sustained in view of further admission on the part of the respondent No. 1 that the interest of department requires posting of an honest and efficient person at Ghaziabad."

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9. It is difficult to fathom why the High Court went into the comparative conduct and integrity of the petitioner and Respondent No. 5 while dealing with a transfer matter. The High Court should have appreciated the true extent of scrutiny into a matter of transfer and the limited scope of judicial review. Respondent No. 5 being a Sub-Registrar, it is for the State Government or for that matter Inspector General of Registration to decide about his place of posting. As to at what place Respondent No. 5 should be posted is an exclusive prerogative of the State Government and in exercise of that prerogative, Respondent No. 5 was transferred from Hapur-II to Ghaziabad-IV keeping in view administrative exigencies.

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E 10. We are pained to observe that the High Court seriously erred in deciding as to whether Respondent No. 5 was a competent person to be posted at Ghaziabad-IV as Sub-Registrar. The exercise undertaken by the High Court did not fall within its domain and was rather uncalled for. We are unable to approve the direction issued to the State Government and Inspector General of Registration to transfer a competent officer at Ghaziabad-IV as Sub-Registrar after holding that Respondent No. 5 cannot be said to be an officer having a better conduct and integrity in comparison to the petitioner justifying his posting at Ghaziabad-IV. The High Court entered into an arena which did not belong to it and thereby committed serious error of law. The only question required to be seen was whether transfer of Respondent No. 5 was actuated with malafides or otherwise in violation of statutory rules. The transfer of Respondent No. 5 was not found to suffer from any of these vices. The High Court went into the competence and suitability

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of Respondent No. 5 for such posting. It is here that the High Court fell into a grave error. As a matter of fact, the impugned order of the High Court casts stigma in the service of Respondent No. 5 which may also act prejudicial to his interest in the pending appeal against the adverse remarks. A

11. We may also observe that transfer of the Writ Petitioner from Ghaziabad-IV to Hapur-II cannot be said to be stigmatic and any observation made in the impugned order about the work and conduct of the Writ Petitioner shall not be read adversely by the authorities against the Writ Petitioner. B

12. Consequently, the order dated August 22, 2007 passed by the High Court quashing the transfer of Respondent No. 5 from Hapur-II to Ghaziabad-IV is set aside. Appeal of Rajendra Singh is allowed while appeal of Karvendra Singh stands dismissed with clarification as indicated above. The parties shall bear their own costs. C D

B.B.B.

Appeals disposed of.