[2024] 3 S.C.R. 407 : 2024 INSC 200

Sri Pubi Lombi
v.
The State of Arunachal Pradesh & Ors.

(Civil Appeal No. 4129 of 2024)

13 March 2024

[J.K. Maheshwari* and Sanjay Karol, JJ.]

Issue for Consideration

In absence of plea of malafide and no averment regarding violation of statutory provision taken by the private respondent before the High Court, whether the interference made by the Division Bench of the High Court in setting aside the judgment of the Single Judge was justified merely on the pretext that the proposed modification (in transfer order) is arbitrary or without application of mind for the sole reason that it was mooted by a MLA.

Headnotes

Service Law – Modified transfer order – Challenge to – The Single Judge of the High Court by upholding modified order of transfer dated 20.04.2023 observed that transfer made on the basis of UO Note dated 28.02.2023 put up by the MLA itself cannot be held to vitiate the transfer until there is an allegation of any malafide exercise of powers by the respondents-authorities in issuing the order – However, the Division Bench of the High Court set aside the order of the Single Judge – Propriety:

Held: It is settled that the person challenging the transfer ought to prove on facts that such transfer is prejudicial to public interest – The interference is only justified in a case of malafide or infraction of any professed norm or principle – In view of the judicial decisions of the Supreme Court, it is clear that in absence of (i) pleadings regarding malafide, (ii) non-joining the person against whom allegation are made, (iii) violation of any statutory provision (iv) the allegation of the transfer being detrimental to the employee who is holding a transferrable post, judicial interference is not warranted – In the instant case, in absence of plea of malafide and no averment regarding violation of statutory provision taken by the private respondent before the High Court, interference as made by

* Author

the Division Bench setting aside the well-reasoned judgment of the Single Judge is not justified merely on the unsubstantiated pretext that the proposed modification is arbitrary or without application of mind for the sole reason that it was mooted by the MLA – The Division Bench has committed an error in setting aside the judgment of the Single Judge of the High Court. [Paras 9.2, 10, 14]

Judicial Review – Scope – Transfer orders – Discussed. [Paras 9.2 - 9.5]

Case Law Cited

Union of India and others v. S.L. Abbas, [1993] 3 SCR 427 **: (1993) 4 SCC 357;** *N.K. Singh v. Union of India and others,* [1994] Suppl. 2 SCR 772 **: (1994) 6 SCC 98;** *Mohd. Masood Ahmad v. State of U.P. and others,* [2007] 10 SCR 72 **: (2007) 8 SCC 150;** *State of Punjab v. Joginder Singh Dhatt,* **AIR 1993 SC 2486;** *Ratnagiri Gas and Power Private Limited v. RDS Projects Limited and Ors.,* [2012] 9 SCR 690 **: (2013) 1 SCC 524 – relied on.**

Union of India and another v. N.P. Thomas, **1993 Suppl. (1) SCC 704 – referred to.**

List of Keywords

Service Law; Transfer order; Modified transfer order; Plea of malafide; Violation of statutory provision; Judicial interference; Judicial Review; Transfer prejudicial to public interest.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4129 of 2024

From the Judgment and Order dated 22.09.2023 of the Gauhati High Court in WA No. 266 of 2023

Appearances for Parties

B.K. Sharma, Sr. Adv., Kaushik Choudhury, H.K. Das, S.P. Sharma, Saksham Garg, Jyotirmoy Chatterjee, Kasif Ahmed, Advs. for the Appellant.

Saurabh Mishra, Sr. Adv., Gagan Sanghi, Rameshwar Prasad Goyal, Abhimanyu Tewari, Ms. Eliza Bar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

J. K. Maheshwari J.

1. Leave granted.

2. The judgment dated 22.09.2023 passed by the Division Bench of the Gauhati High Court in Writ Appeal No. 266/2023 reversing the judgment of the learned Single Judge dated 11.07.2023 passed in Writ Petition (Civil) No. 199 (AP) 2023 has been assailed by the appellant (respondent No. 5 in Writ Court). The learned Single Judge by upholding order of transfer dated 20.04.2023 observed that transfer made on the basis of UO Note dated 28.02.2023 put up by the Member of the Legislative Assembly, 29-Basar (ST) Assembly Constituency (MLA) itself cannot be held to vitiate the transfer until there is an allegation of any malafide exercise of powers by the respondents-authorities in issuing the order.

3. Writ Petition (Civil) No. 199 (AP) 2023 was filed before the High Court by respondent No. 5 herein challenging the modified order of transfer dated 20.04.2023. Learned Single Judge dismissed the writ petition in absence of having any allegation of malafide, being transfer is one of the ingredients of the service. The relevant part of the said order is reproduced as thus: -

> "17. Taking note of the law laid down by the Hon'ble Supreme Court in the case of Mohd. Masood Ahmad (supra); the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar (ST) Assembly Constituency, requesting the competent authority for transfer of the Respondent No. 5 as Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, cannot be faulted with.
>
> Accordingly, even if the respondent authorities had modified the earlier order of transfer, dated 15.11.2022, issued by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar, vide the impugned order, dated 20.04.2023, issued by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar, acting on the U.O. Note, dated 28.02.2023, put up by

> the Member of Legislative Assembly, 29- Basar(ST) Assembly Constituency; that itself, cannot be held to vitiate the impugned order, dated 20.04.2023, issued by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar.
>
> XXX XXX XXX
>
> 19. Accordingly, in the absence of any mala fide exercise of power by the respondent authorities or violation of any statutory provision in issuing the impugned order, dated 20.04.2023, by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar; I am, therefore, not inclined to interfere with the impugned order, dated 20.04.2023, issued by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar, in the facts and circumstances of the instant case, even if the aforesaid order, dated 20.04.2023, has been issued by the authority acting on the basis of the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, having regard to the law laid down by the Hon'ble Supreme Court in Mohd. Masood Ahmad (supra).
>
> 20. In that view of the matter; I do not find any merit in this writ petition and the same is hereby dismissed."

4. On filing writ appeal by the Respondent No. 5 the Division Bench of the High Court while setting aside the order of learned Single Judge observed that the UO Note of the MLA was approved without application of mind and any remark of administrative exigencies by department to substantiate that it was in public interest or in exigency of the service. The relevant excerpt of the impugned judgment reads as:

> " 27. The appellant who was already under order of transfer is having a legitimate expectation to join and continue in the transferred place of posting. However, his transfer order was suddenly modified without any proposal being mooted by his employer but acting on the proposal of the Local MLA and in favour of respondent No.5. In the above backdrop, this court is of the considered opinion that such order of transfer is neither issued in the exigencies of

service nor in public interest, rather the same is a result of arbitrary exercise of power.

XXX XXX XXX

29. This Court cannot approve such kind of sheerly lackadaisical administrative procedure adopted in the decision-making process inasmuch as the proper administration under the Constitutional scheme of governance, every State action must be supported by reason. In the present case, the fact cannot be ignored that the appellant was already under order of transfer and he was released on 19.04.2023 and he joined at the place of transfer on 20.04.2023 and therefore, in the present case, it was further necessary to have the decision impugned supported by reason in cancelling the earlier transfer order that too when the proposal of transfer of respondent No. 5 was initiated not by the administrative department in public interest or in exigencies of services rather it was purely on the basis of U.O. Note given by local MLA. Therefore, in the considered opinion of this Court, the impugned order cannot be said to be an order of transfer in public interest or in exigencies of services."

5. The judgment of the Division Bench has been questioned before us, inter-alia, contending that in the matter of transfer scope of judicial review is limited, only when such transfer is in violation of the statutory provisions or due to malafide reasons. As a corollary, it is not open to the Court to interfere with the orders of transfer on a post which is transferrable, in absence of any malafide alleged or infraction of any professed norms if such transfer is not detrimental. Further, it was canvassed that transfer on the instance of MP/MLA always would not per se vitiate the order of transfer.

6. Per contra learned counsel appearing for respondent No. 5 who was Writ Petitioner before the High Court submits that the malafide is of two kinds: - one malice in fact and the second malice in law, in the peculiar facts of this case the Division Bench has rightly set aside the order which do not warrant interference.

7. Conversely, learned counsel for the State has supported the contention of the appellant and urged that after consideration of the UO Note of the MLA, modified order of transfer has been passed in

public interest after due application of mind, and the Division Bench has committed an error in setting aside the well-reasoned judgment of learned Single Judge.

8. We have heard learned counsel for the parties and first we wish to appreciate the law and principles laid-down in the matter of transfer persuading judicial review.

9. In the case of ***Union of India and others v. S.L. Abbas; (1993) 4 SCC 357***, it is clearly observed by this Court that the scope of judicial review is only available when there is a clear violation of statutory provision or the transfer is persuaded by malafide, non-observation of executive instructions does not confer a legally enforceable right to an employee holding a transferable post. The relevant paragraph reads as under:

> "7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject……."

9.1 Further, following the footsteps of ***S.L. Abbas*** (supra) this Court in the case of ***Union of India and another v. N.P. Thomas; 1993 Supp (1) SCC 704*** held that the interference by the Court in an order of transfer on the instance of an employee holding a transferrable post without any violation of statutory provision is not permissible.

9.2 This Court further curtailed the scope of judicial review in the case of ***N.K. Singh v. Union of India and others; (1994) 6 SCC 98*** holding that the person challenging the transfer ought to prove on facts that such transfer is prejudicial to public interest. It was further reiterated that interference is only justified in a case of malafide or infraction of any professed norm or principle. Moreover, in the cases where the career prospects of a person challenging transfer remain unaffected and no detriment is caused, interference to the transfer must be eschewed. It is further held that the evidence requires to prove such transfer is prejudicial and in absence thereof interference

is not warranted. The law reiterated by this Court is reproduced, in following words: -

"9. Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer. Accordingly, this aspect requires consideration at the outset.

XXX XXX XXX

"23. .....Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

"24. …Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by courts should be rare, only when a judicially manageable and permissible ground is made out. This litigation was ill-advised."

9.3 The issue involved in the present case is somewhat similar in the case of ***Mohd. Masood Ahmad v. State of U.P. and others; (2007) 8 SCC 150*** wherein this Court in paragraph 8 has observed as thus: -

"8. ….. 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……"

9.4 It is not tangential to mention that this Court in the case of ***State of Punjab v. Joginder Singh Dhatt; AIR 1993 SC 2486*** observed as thus: -

"3……..It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting……"

9.5 It is also imperative to refer the judgement of this Court in the case of ***Ratnagiri Gas and Power Private Limited v. RDS Projects Limited and Ors.; (2013) 1 SCC 524*** where it reiterated one of the pertinent principles of administrative law is that when allegations of malafide are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer. The relevant excerpt is reproduced as thus:

"27. There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned……."

10. In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in absence of (i) pleadings regarding malafide, (ii) non-joining the person against whom allegation are made, (iii) violation of any statutory provision (iv) the allegation of the transfer being detrimental to the employee who is holding a transferrable post, judicial interference is not warranted. In the sequel of the said settled norms, the scope of judicial review is not permissible by

the Courts in exercising of the jurisdiction under Article 226 of the Constitution of India.

11. On examining the facts of the present case, it is apparent that respondent No. 5 herein was transferred from the Government Higher Secondary School (GHSS) Kanubari, Longding district to Leparada as Deputy Director of School Education (DDSE) vide order dated 15.11.2022 and was directed to join in the last part of April, 2023. The UO Note dated 28.02.2023 has been written by the MLA specifying the administrative exigency and public interest in posting the appellant on the post of DDSE, Leparada. The said UO Note has been examined and competent authority has exercised its discretion in favour of the appellant, and the respondent No. 5 herein has been retained on the same post in the same district in same status which he was holding prior to order of transfer dated 15.11.2022 un-affecting his salary. Besides, it is also averred by the State that the modified order dated 20.04.2023 was passed prior to effective period during which respondent no. 5 was directed to join i.e., in the last part of April, 2023.

12. As per the counter affidavit filed by the State Government, even before us it is specifically averred that the order of transfer dated 20.04.2023 modifying the previous order dated 15.11.2022 has been issued in public interest after due application of mind and without any malafide intentions. As far as the stance of respondent no. 5 herein is concerned, the plea of malafide against transferring authority has not been agitated even before this Court or the High Court. Further, the impugned transfer order is also not alleged to be violative of any prescribed statutory provision.

13. In view of the stand taken by the Government and in absence of plea of malafide and no averment regarding violation of statutory provision taken by the private respondent before the High Court, interference as made by the Division Bench setting aside the well-reasoned judgment of the Single Judge is not justified merely on the unsubstantiated pretext that the proposed modification is arbitrary or without application of mind for the sole reason that it was mooted by the MLA. In our view the Division Bench has committed an error in setting aside the judgment of the learned Single Judge.

14. Accordingly, the Civil Appeal is hereby allowed, the judgment and order dated 22.09.2023 passed by the Division Bench of the High

Court is hereby set aside, restoring the order dated 11.07.2023 of the learned Single Judge. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal allowed.