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O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicants, who are employees of the Directorate of Sugarcane Development, are aggrieved by the orders dated 21.6.95, 14.9.95 and 18.9.95 (Annexures A-1, A-2 and A-3) by which the Directorate and the employees have been shifted from Ghaziabad to Lucknow.

2. According to the applicants they are working as Director, Group 'C' and 'D' employees with the Directorate of Sugarcane Development at Ghaziabad. They state that all of them have been provided with Govt. accommodation allotted by the respondents and their children are studying in schools and colleges at Ghaziabad in various classes. They submit that in terms of the notification issued by Respondent No. 1 on 21.6.95 (Annexure A-1), Crops Development Directorates of Department of Agriculture and Cooperation were reorganised and a new Directorate viz. Directorate of Wheat ¹⁸ and Development was to be set up at Ghaziabad. The applicants submit that the Secretary of the Trade Union representing them had submitted representation to Respondent No. 1 bringing out their hardships in the transfer. In this

representation they had suggested that instead of their being shifted to Lucknow they may ^{be} ~~be~~ considered for absorption in the Directorate of Wheat ~~and~~ Development and their options in this regard may be taken. They submit that Respondent No.2 had issued a notice to them on 14.9.95 about the shifting to Lucknow and on 18.9.95 the order to resume their duties at Lucknow w.e.f. 26.9.95 was issued (Annexure A-2 and A-3).

3. The Tribunal by order dated 22.9.95 had given an ad interim stay of the transfer of the applicants till 6.10.95 which has been continued.

4. Shri B.S. Mainee, learned counsel for the applicants has submitted that the applicants will be put to great hardships and financial loss if the transfer orders to Lucknow are implemented, as their children are already studying in the mid session in schools/colleges. He also submits that since the Directorate of Wheat Development is to be established at Ghaziabad, the applicants could have been given an option to work in that Directorate instead of being transferred to Lucknow to the Directorate of Sugarcane Development. He submits that this is so because the applicants are only Class III and IV staff and could

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be accommodated in the Directorate of Wheat Development at Ghaziabad itself. He further submits that Respondent No.2 i.e. the Director, Directorate of Sugarcane Development had not informed the applicants of the transfer of the Directorate with malafide intentions although he himself has taken necessary steps to put his own children in schools at Lucknow. He relies on the observations of the Hon'ble Supreme Court in Director of Education, Madras and others Vs. O. Karuppa Thevan and another (1994(28)ATC 99) in which the Court had held that although there is no such rule in effecting the transfer, the fact that the children of an employee are studying should be given due weight, which according to the learned counsel had not been taken into account in the facts of this case. In the circumstances, the applicants have prayed that the impugned orders transferring them from Ghaziabad to Lucknow be quashed and set aside.

5. We have seen the reply filed by the respondents. They contend that the shifting of the Directorate of Sugarcane Development from Ghaziabad to Lucknow was done in pursuance of a policy decision of the Government to reorganise the existing Crop Development Directorate, which includes Rice, Sugarcane, Oilseeds etc. and the setting up of a new

Directorate, namely ^{the} Directorate of Wheat Development. In the Annexure A-1 order dated 21.6.95, they submit that in the measures to be taken by the Directorates in accordance with Crop Development Programmes, the re-allocation of the Directorate of Sugarcane Development at Lucknow was indicated. They have also given the reasons for locating this Directorate at Lucknow, namely that they will be closer interaction with other Research Institutes which are located at Kanpur. Similarly, they have stated that one of the reasons for location of the Wheat Development Directorate at Ghaziabad was that it would be near to ICAR Research Institute outfit i.e. Directorate of Wheat Research at Karnal. In the order dated 21.9.95 the Directorate of Sugarcane Development has already shifted from Ghaziabad to Lucknow on 21.9.95 as part of the reorganisation programme. According to them, the applicants were well aware of the order dated 21.6.95 which they themselves have annexed to the O.A. regarding shifting of the Directorate. This had been issued before the commencement of the current academic year and hence, they submit that ^{the} shifting has not come as a matter of surprise to the applicants. Another relevant point the respondents have pointed out is that 11 of the employees from among 13 applicants in this case had actually applied for the withdrawal of advances as admissible under the rules on

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account of shifting to Lucknow (Annexure A-3) and the advances were drawn by them on 18.9.95 (Annexure A-4). In addition, they were also granted admissible advance pay of two months by order dated 18.9.95 (Annexure A-5) which they have received on 21.9.95 except for three applicants mentioned in para 3(c). Shri C. Hari Shanker, learned counsel for the respondents submits that the applicants have deliberately failed to bring these relevant facts before the Tribunal before the interim order was passed on 22.8.95. Having received the advances, they were required to report at Lucknow latest by 26.9.95. However, instead of doing that the respondents' counsel submits that the applicants have filed this O.A. ^{as such} after thought, ^{and} without any justification and suppressing material facts. On this ground alone he submits that the O.A. is liable to be dismissed, apart from the fact that the decision to shift the Directorate of Sugarcane Development from Ghaziabad to Lucknow is a policy decision and there was no question of malafide. The representations of the applicants had been duly considered regarding their request for option to be absorbed in the Directorate of Wheat Development but the decision had been taken in the public interest that the Directorate alongwith ^{SD} the staff should be shifted to Lucknow. Shri Hari Shanker

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relies on the judgements of the Supreme Court in K. Ramachandran Vs. Director General, All India Radio, New Delhi and others - (1994(27)ATC 650); V.R. Datania Vs. UOI & ors (1989(9) ATC 211) and State of Rajasthan v. Sevanivatra, Karamchari Hitkari Samiti. Para. 24 (1995(2) SCC 117)

6. The applicants have filed a rejoinder reiterating the averments made in the application. Shri Mainee submits that although the applicants had indeed applied for the withdrawal of advances by shifting to Lucknow, the amounts were received by them only on 21.9.95 and they have, in fact, offered to refund the said amounts to the Directorate vide their application dated 22.9.95. He, therefore, submits that there has been no suppression of material facts as on the date when the applicants verified the O.A. i.e. on 19.9.95 they have not received the advance amount.

7. We have carefully considered the arguments of both the learned counsel, the pleadings and record.

8. In this case the applicants have challenged the impugned transfer orders, transferring them together with the Directorate of Sugarcane Development from Ghaziabad to Lucknow. From the perusal of the order dated 21.6.95

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it is clear that the Directorate of Sugarcane Development has been transferred in pursuance of a policy decision of the Government. The arguments of the applicants that they could very well be accommodated in the Directorate of Wheat Development which is to be set up in Ghaziabad so that they need not be transferred to Lucknow cannot also be accepted as this is also a policy decision. It is not for the applicants to chose the Directorate they will work in depending only on their convenience without regard to the public interest or ~~or~~ the interest of efficient administration. In the circumstances, the grievance of the applicants that they were not given the option to be absorbed in the Directorate of Wheat Development at Ghaziabad is rejected.

9. The other main ground taken by the applicants is that the transfer orders requiring them to report at Lucknow on 26.9.95 has been done during the mid academic session of their children. From the reply filed by the respondents, it is seen that the respondents state that seven of the applicants do not have children studying at Ghaziabad. This has been denied by the applicants in the rejoinder, wherein they state that some of the children are, in fact, studying at Shahdara, Delhi, Trilokpuri, Rohtak and children of two of the applicants at Ghaziabad itself. This confirms that not all the children of the applicants are not studying at Ghaziabad.

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The respondents have also stated that 11 of the applicants had taken the advance for effecting their transfer from Ghaziabad to Lucknow before coming to this Tribunal and obtaining an interim stay order on 22.9.95. It is admitted by the applicants that they have not disclosed this fact at the time of hearing the case on 22.9.95 which it was incumbent on them, to disclose at least the fact that they had applied for the advance before filing the O.A. The mere fact that they are now prepared to refund the advances does not entitle them to remain at Ghaziabad or show that they have not suppressed material facts. On this ground alone this application is liable to be dismissed.

10. The decision taken by the respondents to shift the Directorate of Sugarcane Development from Ghaziabad to Lucknow is a policy decision and the same has been taken in the public interest. It is well settled law that the policy decision taken by the Government for valid reasons which is not shown to be either arbitrary or unreasonable is not justiciable unless it is shown to be against the statutory provisions or the Constitution. No such reasons have been advanced by the applicants in this case. Whether the applicants should have been given an option to be absorbed in the Wheat Development Directorate at Ghaziabad is also a policy matter and we see no good grounds to direct the respondents to give any such directions for their absorption. The action of the Director in admitting his children in schools at Lucknow does not establish any malafides and this argument is also rejected.

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11. The decision of the Supreme Court in Director of School Education, Madras and others Vs. O. Karuppa Thewan and another (supra) does not also assist the applicants. In that case the Supreme Court has held that although there is no such rule, while effecting the 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. In this case the decision to shift the Sugarcane Development Directorate has already been taken by the respondents in June 1995 and the office had already been shifted from Ghaziabad to Lucknow on 21.9.95. By the applicants remaining at Ghaziabad not only they are sitting idle without any work but this would also have the effect of the Directorate being unable to function at Lucknow which is totally against public interest. In the emergent circumstances, the submission of the applicants cannot be considered as overriding the public interest so as to justify continuance of the interim order any further.

12. In the result, the application is dismissed. The interim order dated 22.9.95 is hereby vacated. No order as to costs.

~~R.K. AHD03A~~
(R.K. AHD03A)
Member(A)

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~~Lakshmi~~
(SMT. LAKSHMI SWAMINATHAN)
Member(J)
8/12/95