





6

A2  
2

-: 2 :-

31.7.1988 at about 12 O'Clock in the afternoon one K.N. Tripathi and one K.N. Katiyar came to the residence of the applicant and enquired<sup>by</sup> the reasons from him for not taking charge from Sri Sharma. The matter was explained to them by the applicant. The applicant also told them that he was not aware under whose direction the said Sri Sharma handed over charge to Sri Srivastava. After he had clarified<sup>by</sup> to his position to APO, Allahabad he was given an order in the evening transferring him from Allahabad to Chunar. It is this order which has been challenged by the applicant on the ground that not only it is a punishment for the alleged disobeying of the orders but the order is also mala fide. It has been made in mid-session and it results in the separation of husband and wife because the wife of the applicant is employed as a teacher under the State Government. It was further alleged that the transfer was not for administrative reasons.

3. I have heard the learned counsel for the parties at length and<sup>by a</sup> catena of judgments have been relied upon by either side to support their cases. The learned counsel for the applicant contended that the mala fides<sup>by</sup> in the order is also proved by the fact that the respondents had ordered two persons to take the charge from Sri Sharma and perhaps that is why Sri Sharma was not present when the applicant went to take charge from him and that<sup>the</sup> quickness with which the transfer order has been issued shows the mala fides<sup>by</sup> of the order and further that there was a conspiracy to get the applicant punished. According



-: 3 :-

to the learned counsel <sup>or whether</sup> ~~whether~~ the transfer is by way of punishment or not will depend on the circumstances and the court <sup>or should</sup> ~~tear~~ <sup>or veil</sup> ~~the~~ <sup>veil</sup> to assess the situation. It was further contended by the learned counsel that the allegation made by Sri Sharma that when no-body took over charge from him he went to see DRM at the Rest House and met him and was directed to go to DPO is also not supported by the facts because DRM was not in station on that date which further proves that the <sup>or conduct</sup> ~~conduct~~ of the respondents is not straight. According to the learned counsel the transfer has been made for extraneous considerations and arbitrarily and is, therefore, bad in law. On behalf of the respondents' submissions were made that it could not be presumed that if an employee is asked to explain his conduct and thereafter an order is issued the order is mala fide. According to the learned counsel for the respondents the applicant never went to take over charge and the said Sri Sharma was always present. He further contended that the Government's instructions in regard to the mid-session transfers and the posting of the husband and wife at the same station will also have no applicability in the case of the applicant because the applicant's wife is working with the State Govt. and the applicant is working under the Central Govt. Moreover, since the applicant had already worked for about 9 years at Allahabad and the fact that his wife who is working at Allahabad will continue to look after his children, thus the mid-session transfer has no meaning. <sup>or</sup> ~~were~~ <sup>or</sup> ~~further~~ <sup>or</sup> ~~steps~~ <sup>or</sup> ~~taken~~ <sup>or</sup> ~~by~~ <sup>or</sup> ~~the~~ <sup>or</sup> ~~learned~~ <sup>or</sup> ~~counsel~~. He further said that no allegation of mala fide



8

A3  
U

-: 4 :-

has been made in the entire petition and there is no loss of emoluments in the transfer and, therefore, the transfer cannot be challenged.

4. The facts that are not under dispute are that the applicant was required to take over charge from a brother teacher who was retiring but he could not take charge for one reason or the other. He was then asked to explain and give his clarification which he did. It is not known what orders were passed on this clarification <sup>order</sup> but a transfer/was handed over to the applicant in the evening of the day when he was asked to clarify why he did not take over charge from the said brother teacher. The law on the subject of transfers is ~~also~~<sup>is</sup> very clear. So long as the transfer is made in the exigencies of service, is not to a lower post with discriminatory preference of a junior for the higher post, It would be a valid transfer and will not be open to attack. Orders of transfer are also normally outside the perview of the courts of law. Transfer is also an implied condition of service and it has been held in various judgments which have been relied upon by the parties that the Controlling ~~Offix~~ Authority will be the best judge to post a person and to utilise his services at a particular place which they may consider as the best utilisation of the man power under their control. After all the responsibility of good administration has to rest with the Government and the courts would not judge the propriety or sufficiency of such opinion by objective standards except where the subjective process is violated by mala fides<sup>is</sup> etc. Courts



-: 5 :-

can interfere if the legal provisions are violated and arbitrary use of power is found to have been exercised. It is also very clear that the power to transfer should be exercised reasonably and fairly and in the best of interest of the administration and where it is exercised without due regard to the interest of administration or the interest of the public or the provisions of law or for extraneous irrelevant considerations or as a punishment the jurisdiction of the court would be wide enough to strike down the offending order. If a power is exercised perversely or improperly or unreasonably it will be subject to a judicial review.

31 ✓ 5. It was submitted by the learned counsel for the respondents that the applicant has been at Allahabad for nearly 9 years and, therefore, he has no right to continue to be at this station. This contention was <sup>31</sup>repeled by the learned counsel for the applicant on the ground that there are other persons who have got longer stay than the applicant and who are still working at Allahabad. This fact was not denied specifically by the learned counsel for the respondents. *I do not think this ground has much force.* <sup>31</sup>  
6. In E.P. Royappa v. State of Tamil Nadu

(AIR 1974 S.C. 555) the Hon'ble Supreme Court had made the following observations :-

"Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State Action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but



10

H3/6

-: 6 :-

is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice; in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."

Similarly in S.R.Venkataraman v. Union of India (1979 SLJ 1) the following observations were made by the Hon'ble Supreme Court :-

21/ ✓  
"(5) It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard C.J., in Pilling v. Abergele Urban District Council, (1950) 1 KB 636 where a duty to determine a question is conferred on an authority which state their reasons for the decision, "and the reasons which they state show that they have taken into account matters which they ought not to have taken into account or that they have failed to take matters into account which they ought to have taken into account, the Court to which an appeal lies can and ought to adjudicate on the matter.

(6) The principle which is applicable in such cases has thus been stated by Lord Esher M.R. in the Queen on the Prosecution of Richard Westbrook v. Vestry of St. Pancras, (1980) 24 QBD 371 at p. 375 :-

"If people who have to exercise a public duty by exercising their discretion take into account matters which the Court consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion".

This view has been followed in Sedler v. Sheffield Corporation, 1924 (1) Ch. 483.

(7) We are in agreement with this view. It is equally true that there will be an error of fact when a public body is promoted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another.

(8) The influence of extraneous matters will be undoubted where the authority making



-: 7 :-

the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of Government servants only in the 'public interest', to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an abuse of power."

The above observations apply squarely in the case of the applicant. The applicant's transfer has been innocuously mentioned on administrative grounds but I do not find any such grounds. Nothing has been shown to me as to in what way the administration is going to gain by his posting at Chunar<sup>34</sup> ~~and~~ where already a school is functioning and there is no vacancy. Moreover, the applicant and his family will definitely be disturbed if he is transferred now without following any principles, e.g. the period of ~~his~~<sup>34</sup> stay at station or transfer to bring ~~the~~<sup>34</sup> improvement in the working at a particular ~~his~~<sup>34</sup> place where a person may be more suitable than the existing incumbents etc. Though the instructions issued by the Government are ~~xxxx~~ for guidance yet once they have been issued the key note thought behind such instructions cannot be lost sight of. <sup>34</sup>Once the Govt. has issued instructions that efforts should be made to keep the husband and wife together and in the cases where one's spouse is employed under the Central Govt. and the other under the State Govt. the spouse employed under the Central Govt. according to the Ministry of Personnel's letter of 3.4.1986, has to apply to the competent authority and the competent authority may post the said officer to the said station or if there is no post ~~at~~<sup>34</sup> the said station



-: 8 :- <sup>31</sup>

<sup>31</sup> or ~~if there~~ <sup>then</sup> as no post to the <sup>nearest place to</sup> ~~main~~ station where the other spouse is posted. These instructions which have been issued on the basis of certain circular of the Department of Social Welfare lay down that <sup>31</sup> ~~once~~ consideration to the question of posting husband and wife at the same station has to be given and they were <sup>31</sup> ~~also~~ issued in the background of representations having been received from the Department of Women's welfare in the Ministry of Human Resources Development where the women were seeking intervention of that department for a posting at a place where their husbands are posted. Thus it cannot be said that these instructions are merely on paper and they are to be sweetly ignored.

7. With no ingredients of longer stay or any other adverse comment on the working of the applicant which might be disturbing the congenial atmosphere of the school where he is working having been highlighted and the foundation of the order being the fact that he did not take over charge from his brother teacher for whatever reason the order can only be termed arbitrary and without any administrative interest, and, therefore, the order of transfer is bad and is liable to be quashed.

8. I accordingly allow the application and quash the transfer order dated 1.8.1988. Parties will bear their own costs.

*श्रीमती जी*

MEMBER (A).

Dated: September 30<sup>th</sup>, 1988.

PG.