

**Reserved on: 24.09.2020**

**Delivered on: 19.01.2021**

**Court No. - 20**

**Case :-** SERVICE SINGLE No. - 9678 of 2020

**Petitioner :-** Laxmi Kant Misra

**Respondent :-** State Of U.P. & Ors

**Counsel for Petitioner :-** Gaurav Mehrotra, Rani Singh, Utsav Mishra

**Counsel for Respondent :-** C.S.C., Ashim Kumar Singh, Asim Kumar Singh, Umesh Chandra Tripathi

**Hon'ble Chandra Dhari Singh, J.**

1. The petition seeks issuance of a writ in the nature of certiorari quashing impugned transfer order dated 11.06.2020 passed by respondent no.2/Principal Secretary, Department of Transport, U.P. Civil Secretariat, Lucknow, which is appended with the petition as Annexure - 1.

2. Brief facts of the case as follows:

(i) The petitioner after being selected through open competition conducted by Uttar Pradesh Public Service Commission (for short 'UPPSC') was initially appointed on the post of Assistant Regional Transport Officer (for short 'ARTO') in the year 1987 in the Department of Transport, Government of U.P. under the quota reserved for candidates with disability. Thereafter, the petitioner was promoted to the post of Regional Transport Officer (for short 'RTO') on 27.07.2006 and subsequently promoted to the post of DTC on 29.06.2018.

(ii) Subsequent to petitioner's promotion on the post of DTC in the Department of Transport, Government of U.P., the petitioner vide Government Order No.99/2019/1891/30-3-2019 dated 27.06.2019 issued by respondent no.2 was transferred to the post of DTC, Varanasi Zone, Varanasi. Copy of transfer order dated 27.06.2019 is appended with the petition as Annexure - 2.

(iii) Thereafter, vide order dated 11.06.2020 (Annexure - 1 of the writ petition), the petitioner has been transferred from the post of DTC, Varanasi Zone, Varanasi to the post of DTC, Headquarters, Lucknow on the ground of public interest.

3. Learned counsel for the petitioner has submitted that vide impugned order dated 11.06.2020, the petitioner has been transferred from the post of DTC, Varanasi Zone, Varanasi to DTC, Headquarters, Lucknow in completely arbitrary and mechanical manner. It is submitted that the petitioner has a case of PPRP of lower right limb with 50% permanent disability, which is latent symptoms of poliomyelitis (polio) and a neurological disorder characterized by new and progressive muscular weakness, pain and fatigue many years after the occurrence of acute paralytic polio, which is certified by Disability Certificate dated 07.07.1987 (Annexure - 3 to the writ petition).

4. Learned counsel has submitted that the petitioner, who was transferred to Varanasi as DTC Varanasi Zone on 27.06.2019 has again, vide the impugned transfer order dated 11.06.2020, been transferred to the Headquarters, Department of Transport, Lucknow as DTC after merely 11 months of service at Varanasi. It has been submitted that while the petitioner was discharging his duties as DTC, Varanasi Zone, Varanasi, his performance was exemplary and for the financial year 2019-20, the petitioner achieved 87.51% revenue against the target fixed for the relevant financial year by Department of Transport, Uttar Pradesh.

5. Learned counsel has submitted that parliament enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the 'Act of 1995') to give effect to the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific Region.

6. It has been submitted that Act of 1995 was replaced by a new enactment in 2016 namely Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the 'Act of 2016') to give effect to the United

Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

7. Learned counsel has submitted that law on the point is well settled that even though the petitioner has no right to remain posted at a particular place, however, when any authority issues policies or guidelines, the same are intended to be followed and complied with and the same cannot be ignored or avoided at the whims and convenience of the authority until and unless such policy is superseded or amended in accordance with law.

8. It is submitted that in a similar matter viz. Writ Petition No.30306 (SS) of 2018 titled 'Om Prakash v. State of U.P. & Ors.', transfer of a physically disabled employee of the State Government in contravention of transfer policy dated 29.03.2018 as well as Government Order dated 15.12.2003 issued by Chief Secretary, Government of U.P., was assailed.

9. Learned counsel has further submitted that Department of Personnel, Government of Uttar Pradesh vide Government Order bearing No.3/2018/1/13/96-ka-4-2018 dated 29.03.2018 has framed transfer policy applicable on the employees of the State Government wherein under clause 11(v), it has been categorically provided that physically disabled persons, such as the petitioner, shall be exempted from normal conditions of transfer applicable on other employees of the State Government and shall only be transferred in case of extreme administrative exigencies, such as serious complaint against such employee or other inevitable causes.

10. Learned counsel has submitted that in view of the aforesaid facts, impugned order dated 11.06.2020 is arbitrary and illegal, and deserves to be quashed.

11. *Per Contra*, learned counsel for the State has vehemently opposed the submissions made by learned counsel for the petitioner and submitted that the proposal for transfer of the petitioner has been sent on account of vacancy arisen out of retirement of one Mr. Dinesh Kumar Pandey from

the post of Deputy Transport Commissioner on 30.09.2019 and for the said reason, a request was made by Transport Commissioner vide letter dated 10.10.2019, 21.11.2019 and 10.12.2019 for filling up the vacant post of Deputy Transport Commissioner, Passenger Tax and Deputy Transport Commission, Tribunal. The Transport Commissioner sent the proposal vide letter dated 14.08.2019 to the effect that amongst the newly promoted Deputy Transport Commissioners including one Shri Jai Shankar Tiwari and Shri Rajeev Srivastava, the vacant posts be filled up. In furtherance of the said proposal of Transport Commissioner, the instructions were received to seek fresh proposal after issuance of list of all promotes Deputy Transport Commissioners so that matter may be considered in wide aspects. The proposal for transferring the writ petitioner to head office has also been sent as he had completed more than 10 years in Varanasi region, keeping in view of the transfer policy.

**12.** Learned counsel for the State submitted that the posting of the petitioner on the post of Deputy Transport Commissioner, Headquarter Lucknow has been so done strictly in accordance with the provisions contained in the transfer policy and Government orders. It is also submitted that being the State capital there are better medical facilities in Lucknow in comparison to earlier place of posting i.e. Varanasi. Learned counsel has also submitted that it is settled law that transfer and posting of any employee is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. It is submitted that transfer is not only an incident but an essential condition of service and it does not affect the condition of service in any manner. It is vehemently argued that the employees does not have any vested right to be posted at a particular place. It is also submitted that a government servant cannot disobey a transfer order by not reporting at the place of posting where he is transferred. It is submitted that the petitioner was posted in Varanasi division for a long period of about 16 years in different districts in the Varanasi region in different capacities. The petitioner is posted at a

transferable post and therefore, he cannot claim as a matter of right for posting at a particular place being a government servant and he is under obligation to comply with the transfer order passed by the State Government.

**13.** Learned counsel has submitted that several complaints were received against the petitioner while he was posted at Varanasi as one Shri Shashi Kant Singh and others had made a complaint vide letter dated 28.08.2019, Shri Virendra Chaurasia had made a complaint vide letter dated 09.09.2019 and 26.09.2019 and in these complaints there were allegations of corruption and illegal gratification have been levelled against the petitioner. It is submitted that in the transfer policy for the year 2018-19 to 2021-22 dated 29.03.2018 in the point no.1(ka), it is specifically provided that for administrative exigency, transfer can be made and the transfer of the petitioner has been made as per transfer policy after taking approval from the competent authority for better administration in the interest of government work.

**14.** Learned counsel for the State has vehemently submitted that in the point no.11(v) of the Transfer Policy dated 29.03.2019, it is provided that disabled persons are left from general transfer, but they can be transferred on complaint and other administrative exigency. There were several complaints against the petitioner, therefore, he was transferred from Varanasi to Lucknow as per transfer policy.

**15.** Learned counsel for the State has submitted that in view of the above facts and circumstances, the petitioner has failed to establish any case for invoking extraordinary jurisdiction under Article 226 of the Constitution of India. The writ petition is devoid of merit and be dismissed as such.

**16.** Counter and Rejoinder affidavits have been exchanged and are available on record.

**17.** I have heard learned counsel for the parties and perused the record.

**18.** The Government Order dated 15.12.2003 issued by Chief Secretary, Government of U.P. categorically exempts the employees who are physically challenged from routine transfer. The petitioner is a physically challenged person with 50% disability. The Government Order dated 15.12.2003 (supra) provides that such person with disability ought to be given compassionate treatment while dealing with transfer and other exigency in service, as such persons with disability, being not as privileged to go about their daily routines in normal manner, generally become accustomed to a certain living arrangement which is suited to their disability. It is well settled law that any employee has no right to remain posted at a particular place, however it is equally well settled that when any authority issues policies or guidelines, the same are intended to be followed and complied with and the same cannot be ignored or avoided at the whims and convenience of any authority until and unless such policy is superseded or amended in accordance with the law. Here in this case, the petitioner is admittedly a disabled person and therefore, he is entitled to the protection of the aforesaid government order dated 15.12.2003 (supra) which is still in operation.

**19.** In view of the aforesaid facts and circumstances, the Transfer Order dated 11.06.2020 (Annexure - 1) passed by respondent no.2/Principal Secretary, Department of Transport, U.P. Civil Secretariat, Lucknow is set aside.

**20.** The petition is accordingly *allowed*.

**21.** Respondents are directed to let the petitioner work at the place from where he was transferred i.e. Varanasi.

**Order Date :-** 19.01.2021

*nishant/-*