

**Reserved on 14.11.2024**  
**Delivered on 25.11.2024**

**Court No. - 3**

**Case :-** SPECIAL APPEAL No. - 782 of 2024

**Appellant :-** Rahul Kumar

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Appellant :-** Kapil Dev Singh Rathore, Rahul Agarwal, Vikram Dev Singh Rathore, Vinay Bhushan Upadhyay

**Counsel for Respondent :-** Abhishek Srivastava, Adarsh Bhushan, C.S.C.

**Hon'ble Anjani Kumar Mishra, J.**

**Hon'ble Jayant Banerji, J.**

1. Heard learned counsel for the appellant and Shri Adarsh Bhushan and Shri Abhishek Srivastava, for the respondents.
2. This Special Appeal is directed against the order dated 20.08.2024 passed by the learned Single Judge in Writ Petition No. 9702 of 2024 and other connected matters. The writ petition filed by the appellant in this appeal was the leading case in the bunch, which has been decided by the order dated 20.08.2024.
3. The contention of learned counsel for the appellant is that two persons have been transferred to one circle namely Electricity Distribution Circle, Maharajganj and both are Executive Officers. There is only one post of Executive Officer in Electricity Distribution Circle, Maharajganj. This aspect has not been considered by the Single Judge in the judgement under Appeal while dismissing the petition filed by the appellant.
4. The second contention raised is that the appellant is an office-bearer of the Union and as per the transfer policy, such person should not be transferred from the place of posting prior to the expiry of two years. He has referred to page 108 of the paper book which contains an order where the transfer of a person working at Gopiganj to Sonbhadra was modified on account of the aforesaid policy. He was transferred to Electricity Distribution Division, Bhadohi, which is in the same District.

5. It is next contended that the spouse of the petitioner-appellant is also posted in Varanasi and therefore, also the transfer order is bad as the appellant has been transferred to District-Gorakhpur from District Varanasi. Normally, transfer should be made to adjoining district but in the case of the petitioner-appellant he has been transferred almost 400 kilometers away.

6. It is lastly submitted that the son of the appellant is a student of class X and therefore, also the transfer order should not have been passed as the same is likely prejudice to career of his son.

7. Learned counsel for the respondents have supported the order under challenge. Moreover, the submission of Shri Adarsh Bhushan as regards the first submission of learned counsel of the appellant, that two persons have been transferred where only one post is available, is that once the mistake was detected, an order was passed on 03.07.2024 granting the second person namely one Sudhir Kumar Singh, additional charge of Electricity Distribution Circle, Nautanwa and therefore, the petitioner-appellant has no reason to be aggrieved.

8. We have considered the submissions made by learned counsel for the parties and perused the record.

9. The judgment under appeal wherein the transfer order of the petitioner-appellant was under challenge has upon consideration of the material on record, held as under:-

(i) Transfer is an exigency of service and that a person working on a transferable post has no fundamental right or vested right to claim a particular place or station or posting of his choice. For this purpose, reliance has been placed upon the judgment passed by the Single Judge in ***Union of India v. S. L. Abbas (1993) 4 SCC 357***.

(ii) The appellant and the other petitioners before the Single Judge were employees of the Purvanchal Vidhut Vitaran Nigam Ltd., which is a company registered under the Companies Act. Although earlier they were employees of U.P. State Electricity Board and by Scheme of 2000, they were transferred to the company. Since the company did not frame regulations, the existing service conditions of Board continued to apply as was provided under the clauses 6(9), (10) and (11) of the U.P. State Electricity Reforms Transfer Scheme, 2000. Besides, the service rules of employees will be governed under the Contract Law.

(iii) Since no regulations have been framed regarding the transfer of the employees within the DISCOM, the executive

instructions issued by the Company will have binding force.

(iv) A transfer order can be challenged only on the ground of violation of a statutory rule or on the ground of mala fides.

(v) There is no requirement of a company registered under the Companies Act to have any statutory regulations and any administrative direction issued by the competent authority has binding force. This has been so held relying upon the Division Bench of this Court in **Rajeev Kumar Jauhary v. State of U.P. and others, 2007 (2) AWC 1726** and **S. K. Naushad Rahaman and others v. Union of India and others (2022) 12 SCC 1**.

10. Insofar as the contention that the spouse of the petitioner-appellant was posted in Varanasi and therefore, the petitioner should not have been transferred to another district, the said aspect has been considered by the Single Judge in paragraph 44 of the judgment and reliance has been placed upon the judgment of the Apex Court in **Union of India v. S. L. Abbas (1993) 4 SCC 357** which reads as follows:-

*"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. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and the wife must be posted at the same place. The said guideline, however does not confer upon the government employee a legally enforceable right."*

11. Moreover, the Government orders that have been relied upon by the petitioner in the writ petition, are with regard to the State Government employees. It is not in dispute that the petitioner is an employee of a Company. Even an employee of a company of which 100 per cent share-holding is with the Government is a distinct corporate entity having perpetual seal and succession and therefore, it does not entitle to claim benefit of Government Orders pertaining to transfer where specific administrative/executive instructions governing transfer exist in the Company.

12. The last argument of learned counsel for the appellant is that before the Single Judge, reliance has been placed upon an interim order in Writ A No. 11856 of 2022.

13. It emerges from the perusal of the order that reliance has been placed upon an another order in **Writ A No. 16454 of 2019 (Rajiv Mishra and 19 others v. Uttar Pradesh Power**

***Corporation Ltd., and 04 others)*** which has distinguished interim order of a Co-ordinate bench in ***Writ- A No. 11856 of 2022 (Ashutosh Kumar Singh v. Uttar Pradesh Power corporation)***.

14. In view of the above, we are constrained to hold that not only have the issues raised before this Court, been duly considered by the learned Single Judge in the judgment under Appeal, we do not find any error in the reasoning given while dismissing the petition of the appellant.

15. In our considered opinion, no good ground exists for interfering in the findings returned in the order under appeal.

16. This Special Appeal is found to be without merit and is dismissed.

**Order Date :- 25.11.2024**

Aditya Tripathi/Mayank