

राजस्थान सिविल सेवा अपील अधिकरण, जयपुर

अपील संख्या :-2588 / 2025

अब्दुल खालिक खान

—अपीलार्थी

बनाम

राजस्थान राज्य जरिए प्रमुख शासन सचिव, स्वायत्त शासन
विभाग, शासन सचिवालय, जयपुर एवं अन्य।

—प्रत्यर्थागण

आदेश की दिनांक : 02.05.2025

उपस्थिति :-

अपीलार्थी की ओर से : श्री ललित शर्मा, अभिभाषक

प्रत्यर्था विभाग की ओर से : श्री संजीव सिंघल, राजकीय अभिभाषक

समक्ष :- विकास सीतारामजी भाले, अध्यक्ष
अनन्त भंडारी, सदस्य (न्यायिक)

आदेश

1. मामले की आवश्यक प्रकृति को देखते हुए राजस्थान सिविल सेवा (सेवा मामलों के लिए अपील अधिकरण) अधिनियम, 1976 की धारा 4ए के उपबन्ध में शिथिलता प्रदान करने की प्रार्थना स्वीकार कर अपील पर सुनवाई की गई।
2. अपीलार्थी के अधिवक्ता का तर्क है कि अपीलार्थी वर्तमान में वरिष्ठ सहायक के पद पर कार्यरत है। आलोच्य आदेश दिनांक 15.01.2025 (अनुलग्नक-1) के द्वारा अपीलार्थी का पदस्थापन/स्थानांतरण नगर निगम, कोटा से नगर परिषद, टोंक में किया गया है। अपीलार्थी के अधिवक्ता का कथन है कि अपीलार्थी की पत्नी राजकीय सेवा में कोटा जिले में ही कार्यरत है। राज्य सरकार की नीति के अनुसार पति-पत्नी दोनों के राजकीय सेवा में होने पर उन्हें यथासंभव एक स्थान पर अथवा निकटतम पदस्थापित रखा जाना चाहिए। परंतु इस नीति के विरुद्ध जाते हुए अपीलार्थी का स्थानांतरण किया गया है, जो उचित नहीं है। उनका आगे कथन है कि अपीलार्थी की माता 86 वर्ष की वृद्ध है, जो मस्तिष्क की बीमारी से ग्रसित है, जिनकी देखभाल की जिम्मेदारी अपीलार्थी पर है। अपीलार्थी की संतान कोटा जिले में ही अध्ययनरत हैं। ऐसे में अपीलार्थी का स्थानान्तरण दुरस्थ किये जाने अपीलार्थी को विभिन्न व्यक्तिगत एवं पारिवारिक समस्याओं का सामना करना पड़ेगा।
3. हमने अपीलार्थी के अधिवक्ता द्वारा दिये गये तर्कों पर विचार किया।

4. पत्रावली के अवलोकन से प्रकट होता है कि अपीलार्थी का वर्तमान स्थानान्तरण प्रशासनिक अति आवश्यकता को दृष्टिगत रखते हुए किया गया है। जहां तक अपीलार्थी की व्यक्तिगत एवं पारिवारिक समस्याओं का संबंध है तो हम इस आधार पर अपीलार्थी के स्थानांतरण आदेश में कोई हस्तक्षेप करना उचित नहीं पाते हैं। यह नियोक्ता के विवेक पर निर्भर करता है कि वह प्रशासनिक व राज्यहित में अपने किस कार्मिक की सेवाएं किस स्थान पर प्राप्त करें। नियोक्ता द्वारा लिये गये निर्णय में इस अधिकरण को हस्तक्षेप करने का अधिकार नहीं है, जब तक की उक्त निर्णय दुर्भावनापूर्ण या नियम-विरुद्ध तरीके से पारित नहीं किया गया हो। अपीलार्थी के अधिवक्ता का यह भी तर्क रहा है कि पति-पत्नी दोनों को यथासंभव एक ही स्थान पर पदस्थापित रखा जाना चाहिए है, तो हम पाते हैं कि सरकार के जो दिशा-निर्देश है, उसमें यह प्रावधान रखा गया है कि जहां तक संभव हो पति-पत्नी को एक ही जिले में अथवा निकटतम जिलों में स्थानान्तरित किया जाए। अपीलार्थी का स्थानान्तरण प्रशासनिक अति आवश्यकता के आधार पर किया गया है। ऐसे में स्थानान्तरण को केवल मात्र इसलिए अवैध होना नहीं माना जा सकता कि वह दिशा-निर्देश अनुरूप नहीं है। माननीय उच्चतम न्यायालय ने प्रकरण Union of India and others VS. S.L. Abbas, AIR 1993 SC 2444 में यह माना है कि सरकार के दिशा-निर्देशों के आधार पर किसी भी कर्मचारी को कोई Enforceable Right उत्पन्न नहीं होता है, जब तक कि स्थानान्तरण दुर्भावनापूर्वक न किया गया हो। माननीय उच्चतम न्यायालय ने प्रकरण State of UP and Others Vs. Gobardhan Lal, AIR 2004 (SC) 2165 में यह माना है कि स्थानान्तरण आदेश में इस आधार पर हस्तक्षेप किया जाना उचित नहीं है कि वह किसी नीति के विरुद्ध पारित किया गया है। माननीय राजस्थान उच्च न्यायालय की खण्डपीठ में प्रकरण डॉ. अर्चना पाटनी बनाम राजस्थान राज्य एवं अन्य डीबी सिविल स्पेशल अपील संख्या 1221/1997 (1998 (2) RLW (Raj.) 1280) में पति-पत्नी को अलग-अलग स्थान पर स्थानान्तरित किये जाने के आदेश को चुनौती दी गयी थी, जिसमें निम्न प्रकार से मत व्यक्त किया गया है:-

"No doubt the guidelines require the two spouses to be posted at one place as far as practicable but that does not able any spouse to claim such a posting as to right if the departmental authorities do not consider it feasible. The only ng required is that the departmental authorities should consider this aspect alongwith the exigencies of administration d enable the two spouses to live together at one station if it is possible without any detriment to the administrative eds and claim of other employees.

(18). Thus, it is clear that the transfer policy does not create any legal right in favour of the appellat. It is settled law at writ petition under

Article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when there is a complaint by the petitioner that there is a breach of the statutory duty on the part of the respondent. Therefore, there must be a judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke the writ jurisdiction. [State of Kerala vs K.G. Madhavan Pillai (22); State of Kerala vs. Smt. A. Laxmi Kutty (23); Mani Subrat Jain & Ors. vs. State of Haryana (24); and Calcutta Gas Company (Propriety Ltd.) vs. State of West Bengal & Ors. (25).

(19). In *Shilpi Boses* case (supra), the Apex Court has held that order of transfer/posting "issued by the competent authority did not violate any of her legal right. The employee holding a transferable post cannot claim any vested right for his posting at a particular place

(20). In support of his contention, Mr. Jain referred to and relied upon the judgment of this court in *John Virendra Kumar vs. State of Rajasthan & Anr.* (26), wherein this court has held that the competent authority is bound to decide the representation of an employee against transfer order considering that "living of the husband and wife together if both of them are employed as far as possible is an essential ingredient of dignified life as enshrined under Art 21 of the Constitution of India. Right to life means livable life by husband and wife even if they are in service of State or its instrumentality and they cannot be deprived of their livable life at the whim and fancy of transferring authority without following a fair procedure.

(21). We had given serious consideration to this proposition of law and we are of the opinion that the aforesaid observations made by the learned Single Judge in the aforesaid observations made by the learned Single Judge in the aforesaid case are per incuriam as the judgments of the Honorable Supreme Court referred to above were not brought to the notice of the learned Judge. The concept of doctrine of per incuriam has been explained by the Supreme Court in *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh vs. Presiding Officer, Labour Court* (27), wherein the Apex Court has observed as under:

"The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this court. It cannot be doubted that Article 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based.

(22). Similarly in the case of *State of Uttar Pradesh vs. Synthetics and Chemicals Ltd. & Anr.* (28), the Apex Court has observed as under:

"Incuria literally means carelessness. In practice per incuriam appears to mean per ignoratum. English courts have developed this principle in relaxation of the rule of stare decisis. The quod in law is avoided and ignored if it is rendered, in ignoratum of a statute or other binding authority. (*Young vs. Bristol Aeroplane Co. Ltd.*). Same has been accepted, approved and adopted by this court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law..... Any declaration or conclusion arrived at without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or

overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

(23). Therefore, no reliance can be placed on the judgment in John Virendra Kumar (supra) and the submission is devoid of any substance

(24). The next submission made by Mr. Jain is that appellants transfer from Sri Ganganagar to Jodhpur at a distance of about 500 kms. would cause great hardship to her and she would be forced to have a second establishment at a far distant place. This aspect was also considered by the Apex Court in State of M.P. vs. S.S. Kaurav (29), wherein it has been held that it is not permissible for the court to go into the relative hardship. It is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration. Thus, we are not indined to consider this submission at all.

(25). It is further submitted by Mr. Jain that transfer in mid academic session would adversely affect the education of her children. In Director of School Education, Madras vs. O. Karuppa Thevan (30), the issue of mid-academic transfer was considered by the Supreme Court and observed that the competent authority is to give due weight to the fact and to consider as to whether mid-academic transfer can be avoided, if it was going to affect the education of the children of an employee. However, the consideration of this aspect would also be subject to administrative exigency.

(26). In Union of India vs. D. Mohan (31), the Honble Supreme Court has held that where service of an employee is transferable even though within a limited area, in special circumstances, he can be transferred outside that area. This view has been approved and followed in Punjab National Bank & Ors. vs. All India New Bank of India Employees Federation & Ors.(32). It is also settled law that an employee must ensure compliance of the transfer order and if there is no justification for non-compliance, the employee runs the risk of exposing himself to disciplinary proceedings. [Vide Gujarat Electricity Board (supra)].

(27). Thus, transfer may be made considering suitability of the employee, administrative exigencies and manpower requirement. If transfer order is challenged on the ground of discrimination, arbitrariness or to accommodate a particular person, employee making such allegations has to prove by furnishing sufficient details as to when and under what circumstances, the other employee was transferred. Faimess in action is an established test to judge the validity of actions of the State or State instrumentalities.

(28). Thus, in view of the above, we find no ground which may warrant the interference by this court in this appeal. Hence dismissed. If the appellant is aggrieved by impugned transfer order, she may prefer a representation before the competent authority ventilating all her grievances. However, it is clarified that if such a representation is made, the authority will consider it expeditiously and will not brush aside the grievances of the appellant being personal in nature."

5. माननीय उच्चतम न्यायालय ने प्रकरण श्रीमती शिल्पी बोस एवं अन्य बनाम बिहार राज्य (1991 Supp (2) SCC 659) में निम्न प्रकार से मत व्यक्त किया गया है:-

"4. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in

violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High court over looked these aspects in interfering with the transfer orders."

6. माननीय उच्चतम न्यायालय ने यूपी राज्य एवं अन्य बनाम गोबरधन लाल एवं अन्य (2004)11 SCC 402, में निम्न प्रकार से आदेश पारित किया है :-

"7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

7. केन्द्रीय विद्यालय संगठन बनाम दामोदर प्रसाद पाण्डेय एवं अन्य (2004) 12 SCC 299 में माननीय उच्चतम न्यायालय ने निम्न प्रकार से मत व्यक्त किया है:-

"4. Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer (see Ambani Kanta Ray v. State of Orissa MANU/SC/1997/1995, 1995(6)SCALE41). Unless the order of transfer is visited by malafide or is made in violation of operative guidelines, the Court cannot interfere with it."

8. उपरोक्त न्यायिक दृष्टांतों का ध्यानपूर्वक अवलोकन करने से यह प्रकट हुआ है कि सरकार द्वारा जारी किये गये दिशा-निर्देश आज्ञापक प्रकृति के नहीं हैं और उससे अपीलार्थी के पक्ष में कोई Enforceable Right उत्पन्न नहीं होता है। प्रशासनिक दृष्टि से किये गये स्थानांतरण को केवल इस आधार पर गलत होना नहीं माना जा सकता है कि वह दिशा-निर्देश या नीति के विरुद्ध है। पति-पत्नी का स्थानांतरण अलग स्थान पर होने से उत्पन्न होने वाली पारिवारिक परेशानियों के संबंध में कार्मिक प्रत्यर्थी विभाग को अपना अभ्यावेदन प्रस्तुत कर सकता है। प्रशासनिक दृष्टि से किये गए स्थानांतरण में इस आधार पर हस्तक्षेप करना उचित नहीं है कि वह दिशा-निर्देश के विरुद्ध है। वर्तमान प्रकरण में अपीलार्थी को उसके पत्नी के पदस्थापित जिले से अन्य जिले में पदस्थापित किया गया है, जो प्रशासनिक दृष्टि से किया गया है और कोई दुर्भावना होना प्रकट नहीं हुआ है। अतः प्रशासनिक दृष्टि से किये गये स्थानान्तरण को सरकार के दिशा-निर्देशों के आधार पर गलत होना नहीं माना जा सकता।
9. उपरोक्त विवेचना के आधार पर हम अपीलार्थी के स्थानान्तरण आदेश में हस्तक्षेप करना उचित नहीं पाते हैं। इस अपील का निस्तारण इस आदेश के साथ किया जाता है कि अपीलार्थी द्वारा प्रत्यर्थी विभाग के समक्ष अपने पदस्थापन/स्थानांतरण के संबंध में अभ्यावेदन प्रस्तुत किया जाता है तो प्रत्यर्थी विभाग उस पर सहानुभूतिपूर्वक विचार करें एवं आख्यात्मक आदेश अभ्यावेदन प्रस्तुत होने की दिनांक से अधिकतम 30 दिवस की अवधि में पारित करें।

(अनन्त भंडारी)
सदस्य (न्यायिक)

(विकास सीतारामजी भाले)
अध्यक्ष