



2026:AHC:48322

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 2676 of 2026

Sanjay Kumar Maurya

.....Petitioner(s)

Versus

State Of U.P. And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Siddharth Khare
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Himanshu Singh (A/H 0277/2019) Advocate holding brief of Sri Siddharth Khare, learned counsel for the petitioner and Sri Gaya Prasad Singh, learned Standing Counsel, who appears for State-respondents.

2. Instructions have been supplied by Sri Gaya Prasad Singh, learned Standing Counsel, submits that he is well equipped with the instructions and the instructions are self-sufficient for disposal of the writ petition and he does not propose to file any further affidavit and the petition be decided on the basis of the documents available on record, thus with the consent of the parties, writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that he happens to be a Junior Engineer in the Irrigation Department of the State of U.P., on 13.06.2025 an order came to be passed by the Engineer-in-Chief (Project), Irrigation & Water Resources Department, U.P. transferred the writ petitioner to Saryu Nahar Maintenance Division, Gonda from Sinchai Nirman Khand, Siddharth Nagar and thereafter the writ petitioner alleged to have been relieved on 23.06.2025. Questioning the transfer order, the writ petitioner preferred Writ-A No. 9224 of 2025 (Sanjay Kumar Maurya v. State of U.P. and 5 others) in which on 10.07.2025, the following orders were passed:

"The submission advanced by learned Senior Advocate appearing for petitioner is that the order of transfer impugned herein this petition passed by the Chief Engineer Project dated 13.06.2025 is stigmatic in nature as it casts aspersion regarding work and conduct of the petitioner at the current place of posting.

He submits that some recommendation by way of complaint was made on 05.06.2025 by the Superintending Engineer which has been taken as a ground to transfer the petitioner with the allegation that petitioner has not been taking interest in discharge of his administrative duties. Learned Senior Advocate submits that such an order of transfer would be punitive in nature in the event it is made upon some recommendation by way of complaint made by the authorities in the matter of discharge of duties of the employee at a place of posting.

Learned Standing Counsel at this stage seeks time to have instructions in the matter. Accordingly he is allowed two weeks time to have instructions in the matter.

Connect this case with Writ A No.9142 of 2025 and list on the date fixed in the said case.

In the meanwhile no action shall be taken against the petitioner pursuant to the order of transfer dated 13.06.2025."

4. Thereafter the writ petitioner post grant of interim order, the writ petitioner preferred an application on 23.07.2025 before the Executive Engineer, Sinchai Nirman Khand, Siddharth Nagar for joining, ultimately the Writ-A no. 9224 of 2025 came to be allowed in terms of the orders passed in Writ-A No. 9142 of 2025, on 31.07.2025, the order passed in Writ-A No. 9224 of 2025 is being quoted hereinunder:

"1. The controversy involved in this case leading to the transfer of the petitioner, is identical to the one involved in Writ-A No.9142 of 2025 which has been allowed today.

2. In the circumstances, this writ petition also stands allowed in terms of the order of the date passed by this Court in Writ-A No.9142 of 2025.

3. The order of transfer dated 13.06.2025 is hereby quashed with the same directives and principles as given in the order passed by this Court in Writ-A No.9142 of 2025."

5. The order passed in Writ-A No. 9142 of 2025 (Shambhoo Nath Kushwaha v. State of U.P. and 5 others) is being quoted hereinunder:

"1. Learned Standing Counsel has obtained instruction in the matter which is taken on record, copy whereof has been supplied to learned counsel for the petitioner.

2. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri

Himanshu Singh, Advocate holding brief of Sri Siddharth Khare, learned counsel for the petitioner and learned Standing Counsel.

3. By means of this petition filed under Article 226 of the Constitution of India, petitioner has assailed the order dated 13.06.2025, whereby, he has been transferred from Siddharth Nagar to Ayodhya to be stigmatic in nature and hence punitive.

4. It Is submitted that very recitals contained in the order show that petitioner has been subjected to transfer by way of disciplinary action for alleged violation or non-compliance of the directives issued by the higher authorities, which was claimed to have amounted to an alleged misconduct. Learned counsel for the petitioner submits that transfer is bad for two obvious reasons: firstly, petitioner being office bearer of the Employees' Union ought not to have been transferred in the first instance in view of the relevant Clause 12 of the Transfer Policy dated 06.05.2025 that carves out union leaders to be exceptional cases; and secondly, transfer cannot be done by way of a punitive action.

5. In support of his above second submission, learned counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in the case of Somesh Tiwari vs. Union of India and Ors. AIR 2009 Supreme Court 1399.

6. Learned Standing Counsel has obtained instructions in the matter and as per the instructions, petitioner has been subjected to transfer in full compliance of the provisions contained in the Clause 12 of the Transfer Policy dated 06.05.2025, according to which, if there are complaints against the office bearers and if they are found to be involved in an activity resulting in indiscipline and which affects the performance of duty and is also indication of misconduct, in such cases the office bearers can also be transferred. He has placed Clause 12 of the Transfer Policy dated 06.05.2025 before the court, which runs as under:

"12. सरकारी कर्मचारियों के मान्यता प्राप्त सेवा संघों के पदाधिकारियों के स्थानान्तरण:- सरकारी सेवकों के मान्यता प्राप्त सेवा संघों के प्रदेश / मण्डल / जिला स्तर के अध्यक्ष एवं सचिव के स्थानान्तरण उनके द्वारा संगठन में पदधारित करने की तिथि से 2 वर्ष तक न किये जायें। किन्तु उक्त पदाधिकारियों को यह सुविधा देने का अर्थ यह नहीं है कि जनहित के विरुद्ध कार्य करने, कदाचार अथवा भ्रष्ट आचरण करने पर भी उनका स्थानान्तरण नहीं किया जा सकता।

लापरवाही, भ्रष्टाचार व आपराधिक कृत्य, अनुशासनहीनता व दुराचरण में लिप्त होने के पुष्टिकारक तथ्य लाये जाने पर या ऐसे मामलों में अनुशासनिक कार्यवाही प्रारम्भ होने पर निम्न प्रक्रिया का पालन करते हुये उक्त पदाधिकारियों को पूरे सत्र में कभी भी स्थानान्तरण किया जा

सकेगा:-

1. जनपद में तैनात सेवा संघों के पदाधिकारियों का स्थानान्तरण संबंधित जिलाधिकारी एवं मण्डल में कार्यरत पदाधिकारी का स्थानान्तरण मण्डलायुक्त की संस्तुति पर सक्षम स्तर से किये जा सकेंगे।

ii. मुख्यालय स्तर पर सेवा संघों के पदाधिकारियों का स्थानान्तरण विभागाध्यक्ष की संस्तुति के उपरांत शासन स्तर से किया जा सकेगा।

उपरोक्त के अतिरिक्त सेवा संघों के उक्त पदाधिकारियों का शासनादेश दिनांक 13 मई, 2022 के अनुसार पटल / क्षेत्र परिवर्तन अवश्य किया जायेगा तथा इसकी संपूर्ण जिम्मेदारी नियंत्रक प्राधिकारी की होगी।"

(emphasis added)

7. From the instructions it further transpires that some work was allotted to the petitioner under the order of a higher authority dated 19.03.2025 for the purposes to construct a dam but instead of complying with the directives issued by the higher authority, petitioner wrote back to authority that such double duties and attachment orders have already been held to be not permissible and hence he cannot be forced to discharge duties as per the directives issued. Upon this letter being written the Executive Engineer took seriously and as an exception and required the petitioner to submit his explanation to which the petitioner states that he had offered his explanation by letter dated 29.05.2025 but that remained unanswered and, instead of holding meeting and cooperating with the employees, the authorities proceeded to recommend transfer of the petitioner.

8. It is thus contended that if the petitioner was to be transferred by way of punitive action then show cause notice was a must, inasmuch as the transfer can not be made by way of action as a result of some departmental proceedings. Paragraph 19 and 20 of the judgment that has been relied upon in the case of **Someshwar Tiwari (Supra)** is reproduced hereunder:

"....19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where *inter alia* mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law.

20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the

appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

(emphasis added)

9. Having heard learned counsel for the respective parties and having perused the record, pleadings raised in the writ petition and the instructions placed before the court, I find that it is because of certain correspondence that had taken place between the petitioner and respondent authorities in the District that spelled off the controversy leading to alleged indiscipline or misconduct on the part of the petitioner, more so in the circumstances when he was office bearer of the Employees' Union. Ultimately instead of holding talks and peacefully resolving the issues, the authority proceeded to get rid of the office bearer and hence passed an order of transfer giving a reason therein that petitioner was guilty of gross indiscipline.

10. From the observations made by the Supreme Court as quoted above, there can be no doubt about this legal position that an action adverse to an employee as a result of authority forming a view qua such an employee to have committed misconduct, to transfer him, would render such an exercise of administrative power to be vitiated for malice in law. In the present case action to transfer taken appears to be clearly by way of punishment as the authorities being assigned reason of indiscipline and for violating directives of the higher authorities by the petitioner.

11. In the circumstances, therefore, the order of transfer would definitely fall within the mischief of principle of law laid down by the Supreme Court in the case of Somesh Tiwari and hence liable to be held unsustainable.

12. However, it is always open for the respondent authorities to transfer an employee in administrative exigency if they find such an employee has become a nuisance value but for this, only simple transfer order should be passed transferring an employee in administrative exigency. In such cases, therefore, even the office bearers of the Employees' Union would not fall in exception clause of the transfer policy and so they can also subjected to transfer taking the recourse to the Clause 12 of the Transfer Policy dated 06.05.2025.

13. In the circumstances, writ petition succeeds and is allowed.

14. Order dated 13.06.2025 is hereby quashed.

15. However, it will remain open for the authorities to pass transfer order in administrative exigency if it so desire in the next session 2026-2027."

6. Since according to the writ petitioner, he is not allowed to join so the writ petitioner preferred another representation/ request letter before the Engineer-in-Chief, Head of the Department, Irrigation and Water Resources Department, Lucknow on 19.08.2025 followed by another representation/ request letter dated 09.09.2025. The writ petitioner in this regard also preferred a Contempt Application (civil) No. 5560 of 2025 in which notices were issued. Thereafter the writ petitioner was allowed joining on 25.10.2025, however, when the writ petitioner stakes his claim for payment of salary and benefits for the period from 24.06.2025 till 24.10.2025, the same came to be negated on 02.01.2026 by the Executive Engineer, Sinchai Nirman Khand, Siddharth Nagar mentioning therein that the writ petitioner is to apply for sanctioning of the leave for the said period, particularly, when despite being advised to join on 04.10.2025 and 13.10.2025, the writ petitioner did not join immediately, however, he joined on 25.10.2025.

7. Questioning the same, the writ petitioner has been filed the present writ petition.

8. Post passing of the order, today instructions have been forwarded under the signature of Executive Engineer, Sinchai Nirman Khand, Siddharth Nagar dated 07.03.2026 which is taken on record and marked as Appendix A.

9. Learned counsel for the writ petitioner has submitted that the order impugned cannot be sustained for the simple reason that the same omits the crucial aspect of the matter that the writ petition so preferred by the writ petitioner questioning the transfer order dated 13.06.2025 came to be entertained and interim came to be passed on 10.07.2025 followed by allowing of the writ petition and setting aside of the transfer order dated 13.06.2025 on 31.07.2025. Submission is that once a transfer came to be quashed then in the eyes of law, it will be presumed then there is no transfer order passed and the writ petitioner from the very inception was ready and willing to serve the department but he is not allowed to join and post filing of contempt petition and issuing of notice, the writ petitioner was accorded

joining on 25.10.2025.

10. Learned Standing Counsel on the other hand submits that though there happens to be important aspect of the matter going into the root of the issue relatable to the staying of the transfer order and setting aside of the same but the same has not been considered. He submits that the order be set aside and the matter be remitted back to the authority to pass fresh orders.

11. I have heard learned counsel for the parties and gone through the records carefully.

12. Facts are not in issue. It is not in issue that the writ petitioner came to be transferred on 13.06.2025 from Siddharth Nagar to Gonda and the writ petitioner was relieved on 23.06.2025. The transfer order came to be stayed in Writ-A No. 9224 of 2025 preferred by the writ petitioner on 10.07.2025 and ultimately the writ petition came to be allowed on 31.07.2025 while quashing the transfer order. The writ petitioner claims that he was not allowed joining so preferred contempt application and issuing of notice, the writ petitioner was accorded joining on 25.10.2025. The order impugned proceeds upon the fact that despite allowing the writ petitioner to join the post in question on 04.10.2025 and 13.10.2025, the writ petitioner joined on 25.10.2025, thus, the writ petitioner is to apply for sanctioning of the leave cannot be said to be a correct approach, particularly, when the crucial aspect of the matter relatable to the import and the impact of staying of the transfer order and consequential setting aside of the same has not been adverted too. The law is well-settled that once an order is set aside then it is presumed that it was never in-existence. Since the aforesaid crucial aspect of the matter has not been adverted, thus, the order cannot be sustained and needs to be revisited.

13. Accordingly, the writ petition is being decided in the following manner:

(a). The order dated 02.01.2026 passed by the respondent no.6, Executive Engineer, Irrigation Construction Division, Siddharth Nagar is set aside.

(b). The matter stands remitted back to pass fresh order strictly in accordance with law after putting notice to the writ petitioner. within a period of two months from the date of presentation of the certified copy of the order.

14. Accordingly, the writ petition stands **disposed of**.

15. Instructions filed today are taken on record and marked as appendix A.

March 10, 2026

Ashu

(Vikas Budhwar,J.)