

(2003) 07 RAJ CK 0104
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3108 of 2003

Amardeep Dube and Another	Vs	APPELLANT
State of Rajasthan and Another		RESPONDENT

Date of Decision : 28-07-2003

Acts Referred:

Rajasthan Urban Improvement Trust Act, 1959 — Section 24, 24A, 8

Citation : (2004) 1 RLW 303 : (2003) 4 WLC 547

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Rajesh Joshi, for the Appellant; Sanjeev Johari and Anil Upadhyay, for the Respondent

Final Decision : Partly Allowed

Judgement

Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioners on 8.7.2003 against the respondents with the prayer that by an appropriate writ, order of direction, the impugned transfer order dated 3.7.2003 passed by the Dy.Secretary, Local Self Government Department, Jaipur transferring the petitioners Amardeep Dube and Kailash Joshi from Urban Improvement Trust, Jodhpur to Municipal Corporation, Jodhpur and Jaitaran respectively be taken on record and it may be quashed and set aside and further, the order Annex. 2 dated 4.7.2003 passed by the respondent No. 2 Secretary, Urban Improvement Trust, Jodhpur by which both the petitioners were relieved in pursuance of transfer order dated 3.7.2003, be quashed and set aside.

(2). The case of the petitioners as put forward by them in this writ petition is as follows:-

The case of the petitioners is that under the provisions of Section 8 of the Rajasthan Urban Improvement Trust Act, 1959 (hereinafter referred to as "the Act of 1959"), the Urban Improvement Trust (hereinafter referred to as "the Trust") was incorporated as a Trust in which the petitioners were appointed on

the post of LDCs on daily wages basis by the Secretary of the Trust. The petitioner No. 1 Amardeep Dube was appointed on 1.4.1983 and the petitioner No. 2 Kailash Joshi was appointed on 20.10.1990 and thereafter, their services were regularised.

The further case of the petitioners is that under the provisions of the Act of 1959, the Trusts in various districts were constituted and they are autonomous bodies.

In the Act of 1959, Section 24A was added by the Act No. 16 of 1992 published in Rajasthan Gazette Extraordinary 4 (Ka) dated 5.5.1992 and the same reads as under:-

"24A Power of transfer.-The officers and employees of a Trust may be transferred, by the State Government from one Trust to another or to the JDA in accordance with the rules made u/s 74."

Thus, a bare perusal of Section 24A of the Act of 1959 clearly reveals that officers and employees of a Trust may be transferred by the State Government from one Trust to another or to the JDA in accordance with the rules made u/s 74.

The further case of the petitioners is that in the State of Rajasthan, there are two developing wings of different cities, one is called Urban Development and Housing Department and another is called as Local Self Government Department. In the first category, UIT and Housing Board are governed whereas in the second category, only Municipalities are governed in Local Self Government Department.

The further case of the petitioners is that through impugned transfer order dated 3.7.2003, which was not served upon the petitioners, they were transferred from Urban Improvement Trust, Jodhpur to Municipal Corporation, Jodhpur and Jaitaran and in pursuance of that transfer order dated 3.7.2003, they were relieved through order Annex. 2 dated 4.7.2003 and according to the petitioners, the impugned transfer order dated 3.7.2003 is bad in law as it was passed in violation of Section 24A of the Act of 1959, just quoted above, inasmuch as, the petitioners could have been transferred in any of the Trust through out Rajasthan, but they could not have been transferred in the Municipal Corporation of the State of Rajasthan and thus, the impugned transfer order dated 3.7.2003 is wholly illegal and it is liable to be quashed and set aside and consequently, the order Annex. 2 dated 4.7.2003 relieving the petitioners in pursuance of impugned transfer order dated 3.7.2003 is also liable to be quashed and set aside. Hence, this writ petition with the prayer as stated above.

A reply to the writ petition was filed by the respondents and their case is that the respondents have power to make transfer and as the impugned transfer order dated 3.7.2003 was passed in administrative exigencies, therefore, it was rightly passed and the petitioners were rightly relieved through order Annex. 2 dated 4.7.2003 in pursuance of impugned transfer order dated 3.7.2003. Hence, the writ petition filed by the petitioners be dismissed.

3. I have heard the learned counsel appearing for the petitioners and the learned

counsel appearing for the respondents and gone through the materials available on record.

4. There is no dispute on the point that the impugned transfer order dated 3.7.2003 passed by the Dy.Secretary, Local Self Government Department, Jaipur by which the petitioners were transferred from Urban Improvement Trust, Jodhpur to Municipal Corporation, Jodhpur and Jaitaran respectively has not been placed on record and the case of the petitioners in this respect that they were relieved through order Annex. 2 dated 4.7.2003 without serving upon them the impugned transfer orders appears to be correct one. Thus, it is a case where transfer order has not been served, but the petitioners have been relieved. This is one of the aspects of the matter.

5. There is also no dispute on the point that the petitioners are in service of the Urban Improvement Trust, Jodhpur, but by the impugned transfer order dated 3.7.2003, they have been transferred to Municipal Corporation, Jodhpur and Jaitaran respectively.

6. Section 24A of the Act of 1959, just quoted above, provides that the officers and employees of a Trust can be transferred by the State Government from one Trust to another or to the JDA. Section 24A nowhere, states that an employee of Trust can be transferred to any Municipal Corporation of the State of Rajasthan.

7. In view of this, whether present transfer of the petitioners from Trust to Municipal Corporation vide impugned transfer order dated 3.7.2003 can be justified or not.

8. It may be stated here that if there are statutory provisions including rules governing transfer then the employer has to exercise the power of transfer according to such rules.

9. Thus, it is axiomatic that if a transfer order has been made in violation of a statutory rule or regulation it will be illegal.

10. The Hon''ble Supreme Court in *Rajendra Roy v. Union of India* (1), has observed that the transfer order is liable to be struck down if it is made in violation of the rules.

11. In the present case, through impugned order dated 3.7.2003 the petitioners were transferred from Urban Improvement Trust, Jodhpur to the Municipal Corporation, Jodhpur and Jaitaran respectively and it is strange that the said transfer order dated 3.7.2003 was not served upon the petitioners and without serving it, they were relieved through order Annex. 2 dated 4.7.2003 and therefore, it was not produced by the petitioners and it is also strange that the said transfer order has not been produced by the respondents.

12. In my considered opinion, the impugned transfer order dated 3.7.2003 transferring the petitioners from Urban Improvement Trust, Jodhpur to the Municipal Corporation, Jodhpur and Jaitaran respectively cannot be said to have

been passed by the competent authority and it appears that it was passed in violation of Section 24A of the Act of 1959. As per Section 24A of the Act of 1959, the employees of a Trust can be transferred by the State Government from one Trust to another or to the JDA, but it does not empower the State Government to transfer employees of the Trust to the Municipal Corporation and therefore, in view of thus, the impugned transfer order dated 3.7.2003 issued by the Dy.Secretary, Local Self Government Department, Jaipur transferring the petitioners from Trust to Municipal Corporation, which is not permissible under the provisions of Section 24A of the Act of 1959 is wholly illegal and in violation of the provisions of Section 24A of the Act of 1959 and thus, it cannot be sustained.

13. Apart from this, in this case, the impugned transfer order dated 3.7.2003 was issued by the Dy.Secretary, Local Self Government Department, Jaipur, while the petitioners are in the service of the UIT and as already stated above, there are two wings in the State of Rajasthan, one is called Urban Development and Housing Department in which UIT comes and the second wing is Local Self Government Department in which UIT does not come and Municipality comes and since the UIT does not come in the Local Self Government Department, therefore, from this point of view, the impugned transfer order dated 3.7.2003 passed by the Dy.Secretary, Local Self Government Department, Jaipur transferring the petitioner from Trust to Municipal Corporation, Jodhpur and Jaitaran respectively was wholly without jurisdiction and liable to be quashed and set aside.

14. For the reasons stated above, the impugned transfer order dated 3.7.2003 passed by the Dy.Secretary, Local Self Government Department, Jaipur is liable to be quashed and set aside and consequently, the order Annex. 2 dated 4.7.2003 relieving the petitioners in pursuance of transfer order dated 3.7.2003 also cannot be sustained and liable to be quashed and set aside and this writ petition deserves to be allowed.

Accordingly, this writ petition filed by the petitioners is allowed and the impugned transfer order dated 3.7.2003 passed by the Dy.Secretary, Local Self Government Department, Jaipur is quashed and set aside and consequently, the order Annex. 2 dated 4.7.2003 relieving the petitioners in pursuance of transfer order dated 3.7.2003 is also quashed and set aside.

No order as to costs.