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**(2005) 08 AHC CK 0214**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 52527 of 2005

Ashok Kumar Pandey and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 03-08-2005

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 243G

Uttar Pradesh Panchayat Raj Act, 1947 — Section 125, 15, 25, 25(1), 25(12)

**Citation :** (2005) 4 AWC 3674

**Hon'ble Judges :** Shishir Kumar, J

**Bench :** Single Bench

**Advocate :** S.P. Pandey and O.P. Singh, for the Appellant; Sudhir Agrawal, Adil. A.G., S.M.A. Kazmi, C.S.C. and V.K. Rai, S.C., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Shishir Kumar, J.—By means of this writ petition the petitioners have approached this Court for issuing a writ of certiorari quashing the impugned circular dated 19.7.2005 issued by the Chief Secretary, Government of U.P., Annexure-3 to the writ petition and further in the nature of mandamus commanding the respondents not to interfere in the working of the petitioners as Gram Panchayat Vikas Adhikari.

2. The facts arising out of the writ petition are that the petitioners initially appointed as regular Tube Well Operators in the Irrigation Department. All the petitioners were confirmed employees and were getting pay scales and other benefits payable to the regular Tube Well Operators. That vide 73rd Amendment in the Constitution a new Sub Article 243G was inserted in the Constitution, which reads as under:

"Article 243G. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayat with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities

upon Panchayat at the appropriate level, subject to such conditions as may be specified therein, with respect to-

(a) the preparation of plans for economic development and social justice.

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the eleventh Schedule. "

3. Considering the discharge of function by Gram Panchayat more effectively a Government Order was issued on 1.7.1999 wherein apart from the other aims and objects, terms and conditions, a policy decision was taken to appoint employees of as many as 8 government departments including the employees like, the petitioners (Regular Tube Well Operators) and all such employees were designated as multi purpose Panchayat workers. A copy of the said Government Order has been filed as Annexure-1 to the writ petition. That consequent upon the Government Order, the petitioners were appointed in the Gram Panchayats and they were working as Gram Secretaries of the respective Gram Panchayats. It is submitted that in order to cope up with the object sought to be achieved through the 73rd Amendment in the Constitution as provided under Article 243-G and Amended Act i.e. U.P. Act No. 27 of 1999 was enacted by which new sections i.e. Section 25 and Section 25-A were inserted in the U.P. Panchayat Raj Act 1947 which are being reproduced below:-

"25, Staff- (I) Notwithstanding anything contained in any other provisions of this Act, any Uttar Pradesh Act, rules, regulations, or bye-laws or in any judgment, decree or order of any court,-

(a) The State Government may, by general or special order, transfer any employee or class of employees serving in connection with the affairs of the state to serve under Gram Panchayats with such designation as may be specified in the order and thereupon posting of such employee or employees in Gram Panchayat; of a district shall be made by the authority in such a manner as may be notified by the State Government.

(b) the employee or employees on be inn so transferred and posted in a dram Panchayat, shall serve under the supervision and control of the Gram Panchayat; on the same terms and conditions and with the. same rights; and privileges as to retirement benefits and other matters including promotion as would have been applicable to him immediately before such transfer and shall perform such duties as may be specified from time to time by the Stale Government.

2. Subject to the Provisions of sub-section (1), a Gram Panchayat may, after prior approval of the prescribed authority, appoint from time to time such employees as may be considered necessary for efficient discharge of its functions under this Act in accordance with such procedure as may be prescribed:

Provided that the Gram Panchayat shall not create any post except with the previous approval of the prescribed authority.

(3)The Gram Panchayat shall have power to impose punishment of any description upon the employees appointed under sub-section.

(2) subject to such conditions and restrictions and in accordance with such procedure as may be prescribed.

(4) The Gram Panchayat may delegate to the Pradhan or to any of its committees, subject to such conditions and restrictions as may be prescribed, the power to impose any minor punishment upon the; power to impose any minor punishment upon the; employees appointed under sub-section (2).

(5)An appeal from an order imposing any punishment on an employee under sub-section (3) shall lie to such officer or committee as may be specified by the State Government by notification.

(6)The prescribed authority may, subject to such conditions as may be prescribed, transfer any employee referred to in clause (b) of sub-section (1) from one Gram Panchayat to any other Gram Panchayat within the same district and the State Government or such other officer as may be empowered in this behalf by the State Government may similarly transfer any such employee from one district to another.

(7) A Nyaya Panchayat may, with the previous approval of the prescribed authority, appoint any person on its staff in the manner prescribed. The person so appointed shall be under the administrative control of the prescribed authority who shall have power to transfer, punish suspend, discharge or dismiss him.

(8)Appeal shall lie from an order of the Prescribed Authority punishing, suspending, discharging or dismissing a person under subsection (7) to an authority appointed in this behalf by the State Government).

(25-A. Secretary:- The State Government or such officer or authority as may be empowered by it in this behalf shall appoint a Secretary from amongst the employees referred in clause (b) of sub-section (12) or sub-section (2) of Section 25, who shall act as Secretary of such Gram Panchayat; or Gram Panchayats, the Gram Sabhas concerned and the Nyaya Panchayats within whose territorial limits such Gram Panchayats are situated and perform such other duties as may be specified by the State Government or such officer or authority as may be empowered in this behalf by the State Government.).

4. It has been submitted on behalf of the petitioners that in view of the aforesaid provision it is evident that the petitioners were transferred from Irrigation Department to the Gram Panchayat under the provisions of Section 25 (1) (a) of the Act and they became employees of Gram Panchayat as specially provided u/s 25 (1)(a) of the Act. The petitioners were discharging their duties with sincerity and devotion. There was no complaint against the petitioners. In the mean time, the State Government took a decision and issued a Government Order dated 20.7.2004. In the said Government Order it was decided to send employees of some departments earlier transferred to Gram Panchayat, back to their original

department. However, the State Government decided to keep the employees like the petitioners in the Gram Panchayat. From the perusal of the Government Order dated 20.7.2004, it clearly demonstrates that the candidates like the petitioners were designated as Gram Panchayat Vikas Adhikari. It has further been provided that the petitioners will be given appointment under the Gram Panchayat on the existing substantive vacancies according to the strength of cadre of Gram Panchayat Vikas Adhikari duly sanctioned by the department. Clause 5 of the said Government Order further provides that if there are more employees like the petitioners in a particular district, then the sanctioned strength in the cadre, the Divisional Commissioner can appoint such surplus employees in other districts where the surplus vacancies are available. It is obviously clear that the status of the petitioners after their transfer to the Gram Panchayat was entirely changed by means of the Government Order dated 20.7.2004. Now the impugned decision has been taken and a circular has been issued on 19.7.2005 where the petitioners have again been directed to send back to the Irrigation Department. A copy of the same has been filed as Annexure-3 to the writ petition.

5. The argument on behalf of the petitioner is that it is well settled that once a decision has been taken by the Government, it cannot be superseded by a circular issued by the Chief Secretary. Therefore, the Circular dated 19.7.2005 is contrary to the Government Order dated 20.7.2004 and as such is liable to be quashed. Further submission has been made that the Government Order dated 20.7.2004 was issued by the Governor in exercise of powers conferred by Section 125 of the U.P. Panchayat Raj Act 1947 which cannot be nullified or amended by the Chief Secretary by issuing a Circular dated 19.7.05. The petitioners while working as Gram Panchayat Vikas Adhikari in the Gram Panchayat were also supervising the operation of Tube Wells apart from discharging other duties, hence the restricting and confining the petitioners to work as Tube Well Operators will have no rational nexus with the object sought to be achieved particularly when the petitioners have been asked by the impugned circular to remain under control of the Gram Panchayat and Water Management Committee of the respective Gram Panchayats.

6. It has been submitted on behalf of the petitioners that in view of the provisions of the Act i.e. 25 (1) (b) and in view of Clause 4 of the Government Order dated 20.7.04 the services of the petitioners have been absorbed and they became the employees of the Gram Panchayat, as such they cannot be sent back to the Irrigation Department, It has also been stated that the judgment which has been passed in various writ petitions and the special appeals is not applicable in the case of the petitioners as in the Government Order dated 20.7.2004, the rights of the petitioners have been protected and it has clearly been stated that they will be directly in the control of the Gram Panchayat. Further argument raised on behalf of the petitioner are that as the petitioners have been appointed in the Gram Panchayat and the over all control was of the Gram Panchayat, therefore, it will be presumed that the services of the petitioners have been

terminated from their parent department and they have been absorbed in the Gram Panchayat, Therefore by circular dated 19.7.2005 issued by the Chief Secretary the petitioners cannot be repatriated to their parent department. Now the petitioners have got no lien in their parent department i.e. in the Irrigation Department and in view of the Government Order dated 20.7.2004, the services of the petitioners have been absorbed with the Gram Panchayat. The reliance has been placed by the petitioners on a judgment of the Apex Court reported in 1989 (4) SLR 243, Ram Lal Khurana v. State of Punjab and has referred to para 8 of the said judgment which is reproduced below:

"8. The other contention urged for the appellant that he was not confirmed in the Excise Department and unless confirmed, he acquired no lien cannot also be accepted. Lien is not a word of art. It just connotes the "right of a civil servant to hold the post substantively to which he is appointed. Generally when a person with a lien against a post is appointed substantively to another post, he acquires""a lien against the latter post. Then the lien against his previous post automatically disappears. The principle being that no government servant can have simultaneously two liens against two posts in two different cadres. It is a well accepted principle of service jurisprudence. "

7. In such a way the petitioners submit that in view of the aforesaid fact as the lien from the Irrigation Department has come to an end, in view of the appointment given to the petitioners in the Gram Panchayat, therefore, the petitioners cannot be sent back to their parent department. It has also been submitted on behalf of the petitioners that whether by a circular which has been issued repatriating the petitioner from Gram Panchayat to Irrigation Department can be issued without issuance of a Government Order by the Governor. As it has been done in 2004 by which certain employees of the various departments have been directed to go back to their parent department, in such a way the petitioners submitted that the order passed by the Chief Secretary dated 19.7.2005 by which the petitioners have been directed to go back to their department is without jurisdiction and is liable to be set aside.

8. On the other hand Sri Sudhir Agrawal, Additional Advocate General who has put in appearance on behalf of the respondents has submitted that in the writ petition only a question of law is involved and this controversy has already been settled by this Court in various judgments of the Hon"ble Single Judge confirmed in the Special Appeals , as such the matter be heard and decided on merits.

9. A submission on behalf of the respondents has been made that the validity of the Government Order dated 20.7.2004 by which certain employees were sent to their parent department has already been considered and it has been held that they can be sent to their parent department as admittedly liens to their parent department have not been terminated and their services have not been absorbed in the Gram Panchayat, therefore, it is well settled that if a person has been sent on deputation can be repatriated to the parent department and he cannot challenge his repatriation to his parent department unless and until it is shown

that his services have been absorbed in the department where he has been sent on deputation or his lien has been terminated from the parent department. The respondents' counsel has placed reliance upon the judgment of Special Appeal No. 1005 of 2004. Gauri Shanker and Ors. v. State of U.P. and has submitted that a Division Bench of this Court has not accepted the contention raised on behalf of the petitioners and has submitted that the Division Bench has observed that "Accordingly we are of the view that the appellants and other similar employees were only on deputation to the Gram Panchayat. It is well settled that a deputationist has no right to remain on deputation and he can be sent back to his parent department at any time vide Kunal Nanda Vs. Union of India and Another, State of Punjab and Others Vs. Inder Singh and Others, , Mahesh Kumar K. Parmar and Others Vs. S.I.G. of Police and Others, , Ratilal B. Soni and others Vs. State of Gujarat and others, . Hence the appellants have no right to remain on deputation in the Gram Panchayats."

10. Even the Division Bench has not accepted the contention of the appellant to the effect that though the employees have been sent to the parent department, i.e. the State Government and if a condition has been mentioned regarding the administrative and financial control of Gram Panchayat. the same can be done, held by the Division Bench and has recorded a finding that "it is always open to an employer to tell an employee under whose supervision and control the employee will work. For instance, if "A" appoints a servant and tells him to work in the house of "B" under the supervision and control of "B", that servant continues to be the servant of "A" because "A" appointed him. "A" pays him salary and "A" can terminate his service even if his servant is working under the supervision and control of "B", "B" cannot terminate his services. "B" can only send him back to "A". Hence since the appellants are servants of the Government, it is for the Government to decide under whose supervision and control they will work". Further reliance has been placed by the counsel for the respondents on the judgment of the Division Bench reported in 2000 (2) L.B.E.S.R. 128, Allahabad Manbodh Kumar Lal and Ors. v. State of U.P. and Ors. and has referred to para 10 of the said judgment and has submitted that in view of the decision rendered in the aforesaid case, it is clear that they will always be treated to be Government Servant with the service condition.

11. I have heard Sri Sudhir Agrawal , additional Advocate General, assisted by Sri S.M.A. Kazmi, learned Chief Standing Counsel and Sri V.K. Rai, Standing Counsel and have noted the contentions. It is clear that in the year 1999 in pursuance of the amendment of Section 15 of the U.P. Panchayat Raj Act 1947 and in pursuance of Article 243G the powers and authority of Gram Panchayat were enlarged and the basic functions and duties, to fill up the purpose of 73rd Amendment of the Constitution of India stood transferred to Gram Panchayat. The functions continued to be entrusted to Gram Panchayat was to be performed to the employees serving in the State Government by their transfer to Gram Panchayat with such designation as may be specified. The provision of transfer was made in Section 25 of the Panchayat Raj Act. In such a way various

employees of the State Government working in various organizations were transferred to Gram Panchayat for efficient working. Counsel for the petitioner was not able to show before this Court that the posts held by the petitioners have been abolished and the petitioners are not holding lien to their parent department so long they continue in service. It has also been submitted on behalf of the respondents that the issue has already been considered in two cases of this Court i.e. Manbodh Kumar Lal's case and Krishna Kant Tiwari's case and the case of Krishna Kant Tiwari has been upheld by the Supreme Court. The petitioners on their transfer to the Gram Panchayat did not lose their lien with the parent department, as such in my opinion there is no illegality in transferring them back to their parent department. Since cadre of each department constitutes a separate class, the question of discrimination or violation of Articles 14 and 16 does not arise. The functions and duties of the petitioners may not be confined only to Gram Panchayat. As an employee of the parent department the petitioners can be asked to perform the functions and responsibility of the department in any other large area. In case of Gauri Shanker and Ors. v. State of U.P. and Ors. Special Appeal No. 1005 of 2004, the Division Bench of this Court while considering all the relevant aspects which are being raised by the petitioners have been considered in that case and the main issue before the Court was which is before this Court that whether the employees who have been sent to Gram Panchayat whether they can be sent back to their parent department or not. The Division Bench of this Court has considered all the issues and has recorded a finding and held that sending these employees to Gram Panchayat is to be treated on deputation as their services have not been terminated with the parent department and lien in the parent department still exists and no specific order for absorption has been passed, therefore, it will always be presumed that lien in the parent department has not yet come to an end and the employees will always be treated to be on deputation and it is well settled that a deputationist has no right to remain on deputation and he can be sent back to his parent department at any time in view of the judgment reported in Judgment Today 2000 (6) S.C. 574, Kunal Nanda v. Union of India. The fundamental Rules Chapter III Rules 12 and 13 clearly deals with termination or suspension of the lien, which is being held by an employee. From the perusal of the aforesaid provisions it is clear that unless and until the lien is suspended or terminated, an employee will hold the lien to his parent department unless and until he is appointed substantively to any permanent post. In view of the aforesaid provisions the judgment cited by the counsel for the petitioners in the case of Ram Lal Khurana (Supra), it is clear that the said case is not applicable in the present case. In the aforesaid case the fact of the case was different. The appellant who was a clerk in the police department he appeared for selection to the post of excise sub-Inspector in the Excise Department. He was selected and appointed as Excise sub Inspector. He continued in the post for a number of years and after a long time he was repatriated to his parent department and the Apex Court has held that the appellant had not gone to Excise Department on deputation from the Police Department but he held a fresh appointment as an

Excise sub-Inspector, therefore, repatriation of that employee to the parent department is not permissible as the lien against his previous post automatically disappears.

12. In view of the aforesaid fact, I find no merit in the writ petition and as the controversy of all the questions raised on behalf of the petitioners has already been settled by this Court in three Single Judge Judgments and the Division Bench judgment of this Court, the writ petition is devoid of merits and is hereby dismissed. No order as to costs. 3.8,2005