
(2014) 09 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 111 of 2014

Ashwini Kumar and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Citation : (2015) LabIC 1309

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

Advocate : Rajendra Dobhal, Senior Advocate, assisted by Pratul Kumar, Sudhir Kumar, Navneet Kaushik, K.N. Joshi, Deepak Bisht, G.C. Kandpal and Parikashit Saini, for the Appellant; B.S. Negi, Deputy Advocate General and B.P.S. Mer, for the Respondent

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.?All the petitioners before this Court are aggrieved by similar orders passed in their respective cases by which they are being sent back to their parent departments from various Panchayats, which are under the Panchayatraj Department. After the (73rd Amendment) Act, 1992 added part IX titled "The Panchayats" in the Constitution of India on 01.06.1993, there was restructuring of "Panchayats" everywhere in the country. In the erstwhile State of Uttar Pradesh vide notification dated 12.04.1999, it was decided to decentralize and to implement the 73rd Amendment in the Constitution of India in the State (at the relevant time Uttarakhand was a part of Uttar Pradesh). Two important amendments were made in the Uttar Pradesh Panchayat Raj Act, 1947 (in short "Act"), which are Section 25 and Section 25A of the Act, which reads as under:--

"25. Staff.--(1) 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 employee 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 Panchayats of a district shall be made by such authority in such a manner as may be notified by the State Government;

(b) the employee or employees on being so transferred and posted in a Gram 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 others 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 State 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 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 persons 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 sub-section (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 (1) 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."

2. The above provisions were incorporated in the Act in order to make the Panchayats more efficient. Immediately thereafter the petitioners, who are working in the various departments at village level in the erstwhile State of Uttar Pradesh like Irrigation Department, Health Department, Education Department, Cane Department etc., were transferred to the various Panchayats under the Panchayat Department under Section 25(1)(a) of the Act. Initially they were given a nomenclature of Multi Purpose Employees. Thereafter most of them were working as a "Secretary" in various Gram Panchayats in the State (in the erstwhile State of Uttar Pradesh). In the year 2003 or near about, the Government of Uttar Pradesh transferred back all such employees from various departments to their parent departments. The matter went up to the Hon"ble Apex Court in which it was held that such repatriation to be just, and its validity was also upheld.

3. In the case of Uttar Pradesh Gram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others, , the argument of the petitioners before the Hon"ble Apex Court was that they have transferred under Section 25 of the Act and there is no provision under Section 25 of the Act to re-transfer them to their parent departments, and they are now the employees of Gram Panchayat. The finding given by the Hon"ble Apex Court, however, was that though under Section 25 of the Act the word used "transfer" but what has actually happened is not a transfer of the petitioners from the parent department to the Panchayat or the Panchayat Raj Department, but it is a deputation and the status of the petitioner was of a "deputationist". This finding was given by the Hon"ble Apex Court on the basis of the admitted fact that such employees (as are the petitioners before this Court) continue to get their salaries and allowances from their parent departments. Moreover relying upon earlier order of the Hon"ble Apex Court in Kunal Nanda Vs. Union of India and Another, (which was quoted in U.P. Gram Panchayat Adhikari Sangh & others) the Hon"ble Apex Court came to the conclusion that the educationists can be repatriated to his parent department at any time and he has no lien in the borrowing department. The Hon"ble Apex Court in Kunal Nanda Vs. Union of India and Another, has held as under:--

"The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and

there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation."

4. The petitioners after reorganization of the State of Uttarakhand, their contemporaries or similarly situated persons, now in terms of the order of the Hon"ble Apex Court have stood repatriated to their parent departments. No decision, however, was taken by the Government of Uttarakhand in this regard.

5. At this juncture necessary to state that some of the employees of the Panchayatraj Department had earlier filed a writ petition (being WPSS No. 1214 of 2004) before this Court with the following prayer:--

"Issue a writ, order or direction in the nature of Certiorari quashing the order dated 28.10.2003 by which the transfer of the employees to their parental department had been suspended.

Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents either absorb the petitioners in Gram Vikas and Panchayat Raj Vibhag where others are working or the employees will be relieved immediately like the petitioners to their parental department.

Issue any other order or direction which this Hon"ble Court may deem fit and proper under the circumstances of the case."

6. The WPSS No. 1214 of 2004 (decided on 06.04.2007) was allowed, in view of the decision of Hon"ble Apex Court in Uttar Pradesh Gram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others, . The operative portion of the judgment passed by this Court reads as under:--

"Since the issue, that the employees whose services were taken by the Panchayati Raj Department, has already been settled by the Apex Court in the aforesaid judgment, it is expected from the respondents that they will take decision on the representation of the petitioners dated 15.09.2004, Annexure 2 to the writ petition in view of the judgment passed by the Apex Court aforesaid within a period of three months from the date of production of a certified copy of this order.

With this direction, the writ petition is finally disposed of."

7. It appears, however, that the petitioners against whom such a direction was given were not repatriated to their parent department immediately thereafter. They are being repatriated now.

8. The case of the petitioners is that they were sent to the various Panchayats where they are presently working as a "Secretary" under Section 25A of the Act (referred above) and after so many years they cannot be sent back to their parent departments. Moreover, a Secretary, under Section 25A of the Act, can only be appointed from amongst the employees who have been transferred from other Departments to the Panchayatraj Department in view of reading of Section 25A and Section 25(1)(b) of the Act.

9. The State counsel on the other hand would argue that the status of the petitioners is that of a deputationist and this aspect has already been settled by the Hon"ble Apex Court. The petitioners have no lien in the Panchayat or the Panchayat Raj Department and though the repatriation has been delayed but the petitioners cannot get benefit of it and they have to go and join their parent departments.

10. Having heard arguments of both the counsels and keeping in view the fact that the petitioners have been working for a long period i.e. more than 10 years and they have repatriated recently. The fact remains that their status in the Panchayatraj Department, in view of the decision of the Hon"ble Apex Court, is that of a "deputationist". Deputationists have no right of being absorbed in the borrowing department. The repatriation cannot be held to be bad or illegal and consequently no interference can be made to the impugned orders.

11. Though the contention of the petitioners that "Secretary" i.e. the post which they are holding, can only be appointed from amongst the transferred employees of other departments such as the petitioners. In view of clear language of Section 25A and Section 25(1)(b) of the Act, and therefore, the contention of the respondents that they have to be appointed Development Officer/Secretary.

12. However, before this Court this is not the issue of appointment of the new Development Officer under challenge. This Court is giving its finding on a very limited issue as to the status of the present petitioners for being repatriated to the original department, in view of the decision of Hon"ble Apex Court's clear finding that the petitioners are only working as a deputationist, no interference can be granted in the writ petition and no relief as is being sought by them can be given to them. Accordingly, all these writ petitions are fails and are hereby dismissed. Since the joining of the petitioners to their parent departments was stayed by this Court in all these writ petitions are hereby vacated. In case, the petitioners give their joining to their parent departments, they may do so within a period of three weeks from the date of production of a certified copy of this order.