

(2005) 08 AHC CK 0161
In the Allahabad High Court
Case No : Writ Petition No. 49763 of 2005

Bhuvendra Kumar

APPELLANT

Vs

The State of U.P. and Settlement Officer Consolidation

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Constitution of India, 1950 — Article 309
Lekhpals Service Rules, 1958 — Rule 21, 4, 7
Uttar Pradesh Consolidation Lekhpal Services Rules, 1978 — Rule 11, 14, 15, 2, 24
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 3(2B), 54
Uttar Pradesh Group D Employees Service Rules, 1985 — Rule 2, 4, 6
Uttar Pradesh Land Revenue Act, 1901 — Section 23

Citation : (2005) 4 AWC 3665 Supp : (2005) 4 AWC 3665 : (2005) 99 RD 372 : (2005) 2 RD 372

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : A.K. Gupta, Hari Om Khare, W.H. Khan, W.A. Siddiqui, R.B. Singh, R.K. Singh and A.K. Mishra, for the Appellant; Suresh Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Since the issues involved In all the writ petitions are common. the same are being decided together by a common judgment, For facility, the facts in the wait petition of Bhuvendra Kumar is begin taken into consideration. The petitioner is a Consolidation Lekhpal and has been transferred by an order dated 30.6.2005 by the Consolidation Commissioner, Lucknow to another place outside the district.

2. The submission of the learned counsel for the various petitioners is, that the Consolidation Commissioner had no power to transfer the petitioners outside the district The learned counsel for the petitioners submitted that there is no provision for transfer of a Consolidation, Lekhpal under The U.P. Consolidation Lekhpals, Services Rules, 1978 (hereinafter referred to as the Rules of 1978). It

was further submitted that since Rule 2 of the aforesaid Service Rules of 1978 provides that the status of a Consolidation Lekhpal would be that of a group "D" post, therefore, the Group "D" Employees Service Rules 1985 (hereinafter referred to as the Rules, 1985). Would be applicable to the case of the petitioners and even these Rules of 1985 do not provide for any provision for a transfer of an employee on a Group "D" post to any place outside the District. The learned counsels. for the petitioners submitted that the work performed by the petitioners as a Consolidation Lekhpal is similar to that performed by a Lekhpal appointed under the U.P. Land Revenue Act, 1901 (hereinafter referred to as the Act of 1901) and, therefore, the. Lekhpal Services. Rules 1958 (hereinafter referred to as the Rules of 1958) framed under Article 309 of the Constitution of India would be applicable to the petitioners. Rule 21 of 1958 Rules provides for a transfer of a Lekhpal from one halka to another halka within district. The learned counsel for the petitioners therefore submitted that since Rule 21 of the Lekhpals Service Rules, 1958 provides only for a transfer of a Lekhpal from one halka to another halka within the district. the Consolidation Commissioner had no power to transfer the. petitioners outside the district. In support of their submission, the learned counsels for the petitioners have relied upon the decision of this Court in the case of Govind Ram v. Land Record Officer, Pauri Garhwal and Ors. 1999(3) ESC 2136, in which it was held that the Commissioner had no power to transfer the Lekhpals from one district to another district.

3. On the other hand, the learned Standing Counsel submitted that the Lekhpals Service Rules, 1958 are not applicable to the case of the petitioners who have been appointed as Consolidation Lekhpal under the U.P. Consolidation of Holdings Act 1953 (hereinafter referred to as the Act 1953) by the Settlement Officer and the Uttar Pradesh Consolidation Lekhpals Services Rules 1978 has been specifically framed for the Consolidation Lekhpals. Learned Standing Counsel further submitted that transfer is an incident of service and that in view of the Rules 11 and 15 of the Fundamental Rules read with Rule 24 of the 1978 Rules, the Consolidation Commissioner had power and authority to transfer the Petitioners from one district to another district.

4. Heard Sri A.K. Gupta. Sri Hari Om Khare, Sri W.H. Khan, Sri W.A. Siddiqui, Sri R.B. Singh, Sri R.K. Singh and Sri. A.N. Mishra, the learned counsels for the petitioners and Sri Suresh Singh the learned Standing Counsel appearing for the responclails in all the writ Petitions

5. Admittedly, the petitioner is a Consolidation Lekhpal appointed under The U.P. Consolidation of Holdings Act 1953, Section 3(2-B) of the Act of 1953 defines the Consolidation Lekhpal, which is quoted hereunder:

Consolidation Lekhpal means a person appointed as such by the Stale Government to perform the duties of Consolidation Lekhpal under this Act or the rules made thereunder and shall, in areas as under Consolidation operations include a lekhpal appointed under the U.P. Land Revenue Act 1901."

6. The: Stats Government in. exercise of powers u/s 54 of the Act 1953.framed the U.P. Consolidation Lekhpals Service Rules, 1978.Rules 2 and 4 states as under.

"2., Status- The Uttar Pradesh Consolidation Lekhpal Service

4 Consolldation Lekhpal means the Consolidation Lekhpal as defined in Section 3(2-B) of the Act and Includes a Lekhpal appointed under the U.P. Lard Revenue Act, 1901.

7. Rule 15 provides that the appointing authority in respect of a consolidation Lekhpal would be the Settlement Officer Consolidation Rule 24 of the Rules of 1978 reads as under.

" 24. Regulation of other matters- in regard to the matters not specifically covered by these rules or by special order, persons appointed to the service shall be governed by the rules regulations and with affairs of the State"

8. From the aforesaid Rule, it is clear that with regard to the matters not specifically provided by these Rules, the service condition of those persons appointed under the Act of 1953 would be governed by the Rules and Regulations and orders applicable generally to a government servant

9. Section 23 of U.P. Land Revenue Act, 1001 provides for appointment of a Lekhpal by the State Government Section 23 reads, as under:

"23. Appointment of lekhpals The State Government shall appoint A Lekhpal to each halka for the preparation of records specified by or under she Act and for the "purpose of such other duties as may be prescribed"

10. The service conditions of the Lekhpals appointed by the State ; Government under the Land Revenue Act have been framed under Article 309 of the Constitution of-. India known as the Lekhpals Service Rules 1958. The status of the service of a Lekhpal is a non gazetted subordinate service and the cadre of Lekhpals is district-wise as contemplated under Rule 4 of the Rules, Under Rule 7, the appointing authority is the Assistant Collector. Rule 21 provides a provision for a transfer of a Lekhpal which reads as under.

"21. Transfers:- (a) The Collector may at his discretion transfer a Lekhpal from on haiqa to another within the district and the Assistant Collector may similarly transfer a Lekhpal within the sub division."

(b) When any tract is under survey, record or settlement operation or under the operations for consolidation of holdingh the transfer of a Lekhpal outside the area under the " aforesaid operations, shall not be made by the Collector or the Assistant Collector without consulting the Records of Settlement Officer, or the Settlement Officer of Consolidation, as the; case may be."

11. From the aforesaid, it is clear that a Consolidation Lekhpal is appointed by the Settlement Officer Consolidation under the U.P. Consolidation of Holdings Act,

1953 to perform the duties of Consolidation Lekhpal. On the other hand, a Lekhpal under the Land Revenue Act is appointed by an Assistant Collector. The educational qualifications for both the posts are different the duties of a Consolidation Lekhpal and that of a Lekhpal appointed under the Land Revenue Act are different. The service conditions of a Consolidation Lekhpal is governed by the Consolidation Lekhpals Service Rules 1978. whereas Service Condition of a Lekhpal appointed under the Land Revenue Act is governed by the Lekhpals Service rules 1958.

12. In my view, the petitioners are squarely governed by the U.P. Consolidation Lekhpals Service Rules, 1978. The petitioners are the Consolidation Lekhpals and belongs to a different class. Their service conditions are not governed by the Lekhpals Service Rules, 1958, but provision in the rules of 1978. Even though, there is no specific provision in the Rules of 1978 for the transfer of a Consolidation Lekhpal, nonetheless, the authorities were competent to transfer the petitioners from one district to another district in view of the Rule 25 of Rules of 1978 which provides that with regard to the matters not specifically covered by these rules or by special order, persons appointed to the service shall be governed by the rules and Regulations and orders applicable generally to Government servant serving with in connection with the affairs of the State. In view of Rule 24 of the Rules of 1978, regulations and orders framed by the Government for transferring a government employee would be attracted to the case of Consolidation Lekhpals.

13. Chapter III of Vol. II (Parts 2 to 4) of the Financial Hand Book provides general condition of service relating to a government servant. Rules 11 and 15 provides as under:

"11 Unless in any case it be otherwise distinctly provided, the whole time of a Government servant is at the disposal of the Government and he may be employed in any manner required by proper authority, without claim for additional remuneration, whether the services required of him are such as would ordinarily be remunerated from the revenues of the State or from a local fund or from the funds of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government.

15(a) A Government servant may be transferred from one post to another, provided that, except-

- (1) on account of inefficiency of misbehaviour, or
- (2) on his own request.

a Government servant shall not be transferred substantively to, or, except in a case covered by Rule 49, appointed to officiate in, a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14.

(b) Notwithstanding anything to the contrary contained in these rules, the

Government may in the Public interest transfer a Government servant to a post in another cadre or to an ex-cadre post.

(c) Nothing contained in clause (a) of this Rule or in clause (13) of Rule 9 shall operate to prevent the retransfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provision of clause (a) of Rule 15."

14. From the aforesaid, it is clear that a government servant is at the disposal of the government and can be employed in any manner required by the authority and that he could be transferred from one post to another post. In my view, the aforesaid Rules would also be applicable to the case of Consolidation Lekhpals. Consequently, in the view of the Rule 24 of the Rules of 1978 read with Rule 11 and 15 of the Fundamental Rules, the Consolidation Commissioner was empowered to transfer the petitioners from one district to another district. In view of the aforesaid Rules, the transfer of a Consolidation Lekhalpal from one district to another district was permissible in law.

15. In view of the aforesaid, the Lekhpals Service Rules 1958 are not applicable to the case of the petitioners who are appointed as Consolidation Lekhpals under the U.P. Consolidation of Holdings Act, 1953 and who are governed by the U.P. Consolidation Lekhalpal Service Rules, 1978.

16. The Contention of the learned counsels for the petitioners that the petitioners are also governed by the Group "D" Employees Service Rules 1985 is wholly misconceived. As per Rule 2 of the Rules of 1985, the said Rules applies to those persons appointed as peons, Messengers, Chaukidars, Malis, Farrashes, etc., under Rule 6 and who work in the subordinate office as defined under clause (h) of Rule 4. A Consolidation Lekhalpal does not come in any of the category as specified in Rule 6 and, therefore, the Rules of 1985 are not applicable.,

17. In *Union of India and Others Vs. S.L. Abbas*, the Supreme Court held that under Rule 11 of the Fundamental Rules, a government servant is at the disposal of the Government. The Supreme Court held.

5. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority." Fundamental Rule 15 says that "the President, may transfer a Government Servant from one post to another" that the respondent is liable to transfer anywhere in India is not in dispute."

18. In *Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others*, held-

" It is needless to emphasize that a Government employee or any servant of a Public Undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that the respondent holds a transferable post and unless specifically provided in his service conditions he has no choice in the

matter of posting."

19. Similar view was given by this Court in the case of Prabhu Nath v. State of U.P., 1993 AWC 1569, wherein, this court held, that the service condition of Consolidation Lekhpals is governed by the Rules of 1978 and that the Lekhpals Service Rules 1958 had no application.

20. In view of the aforesaid, I do not find any infirmity in the order of transfer issued by the Consolidation Commissioner. The writ petition fails and is dismissed. However, there shall be no order as to cost.