
(2019) 07 UK CK 0157

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 301 Of 2019

Dr. Nirmal Singh Basera

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 18-07-2019

Acts Referred:

Uttarakhand Annual Transfer For Public Servants Act, 2017 — Section 6, 10(a), 18, 18(1), 18(2), 18(3), 18(4), 18(5)

Citation : (2019) 07 UK CK 0157

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Lalit Samant, Vikas Pandey

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri Lalit Samant, learned counsel for the petitioner and Sri Vikas Pandey, learned Standing Counsel for the State Government and, with their consent, this writ petition is disposed of at the stage of admission.

2. The petitioner has questioned his transfer order dated 25.06.2019, and relieving order dated 08.07.2019, as arbitrary and illegal.

3. The petitioner was appointed as a Child Development Project Officer, through the Uttarakhand Public Service Commission, on 28.12.2017, and was posted at the Child Development Project, Barakot in Champawat district. He joined duty in the said post on 8.01.2018. He was, however, transferred from the remote area of Barakot, to an accessible area in District Bageshwar, by the impugned order of transfer.

4. The petitioner has invoked the jurisdiction of this Court contending that such a transfer violates Section 10(a) of the Uttarakhand Annual Transfer for Public Servants Act, 2017 (for short the '2017 Act'), which requires only employees who

are posted at a particular place for three years or more to be compulsorily transferred to accessible areas, and not before. The petitioner has, admittedly, completed just a year and a half after he joined service at Barakot in Champawat district on 28.12.2017.

5. When the matter came up before us on 15.07.2019, Sri Vikas Pandey, learned Standing Counsel for the State Government, sought time to obtain instructions. Today Sri Vikas Pandey, learned Standing Counsel for the State Government, would submit that there are four posts of Child Development Project Officers in Champawat district, and three such posts are in Bageshwar district; while all the four posts in Champawat district were filled up (which included the petitioner), only one of the three posts in District Bageshwar was filled-up and other two posts were vacant; with a view to streamline the functioning of these projects, the petitioner was transferred from District Champawat to District Bageshwar; the petitioner was identified as a person to be transferred to Bageshwar district, since he had served the longest among the four Child Development Project Officers in Champawat district; and such a power is available, to be exercised by the competent authority, under Section 18(2) of the 2017 Act.

6. While Section 6 of the 2017 Act provides for three kinds of transfers i.e. (a) compulsory transfer from accessible area to remote area; (b) transfer on the basis of request; and (c) compulsory transfer from remote area to accessible area, any request for compulsory transfer from a remote area to an accessible area can only be made, if an employee has worked for at least three years at a particular place. The petitioner's transfer does not, therefore, fall within any of the three categories specified in Section 6 of the 2017 Act. Section 18 of the 2017 Act, however, makes an exception and provides for transfer, other than the aforesaid three categories, to be effected for administrative or other grounds. Since there are no adverse entries, or any allegation of misconduct, against the petitioner, his transfer does not, evidently, fall within the ambit of Section 18(4) of the 2017 Act.

7. Section 18(5) of the 2017 Act enables the competent authority to issue posting / transfer orders besides transfer to be made as per Clauses (1) to (4) of Section 18 of the 2017 Act in separate and different periods also, and it shall not be necessary to bring such cases before the transfer committee.

8. It does appear that the competent authority has exercised its power under Section 18(5) of the 2017 Act considering the fact that there was an urgent need to fill-up one of the two vacant posts of Child Development Project Officer in District Bageshwar.

9. The power conferred under Section 18(5) is not unfettered, and must be exercised for just and valid reasons. The reasons forthcoming for effecting such transfers, in our view, cannot be said to be unreasonable. We see no reason, therefore, to interfere with the impugned order of transfer.

10. While Sri Lalit Samant, learned counsel for the petitioner, would submit that

one Sri Laxmi Tamta, who was earlier transferred to District Bageshwar, did not join duty despite relieving order having been issued to him and, instead, the petitioner has been chosen to be posted thereat, this contention cannot be examined behind the back of the officer and, since the petitioner has not arrayed Sri Laxmi Tamta as a respondent in the writ petition, it would be wholly impermissible for us to examine such a contention. Suffice it, therefore, while making it clear that we have not interfered with the impugned order of transfer of the petitioner, to permit the petitioner, if he so chooses, to make a representation to the competent authority. In case any such representation is made, the competent authority shall consider the same in accordance with law and take a decision thereupon at the earliest and, in any event, within three weeks from the date of receipt of such a representation.

11. Subject to the aforesaid observations, the writ petition fails and is, accordingly, dismissed. No costs.