
(2004) 08 AHC CK 0172

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 29630, 29631, 29632, 30054, 30056, 30058, 30061, 30064, 30075, 30078, 30082, 30085, 30091, 30101, 30282, 30285, 30367, 30378, 30379, 30380, 30381, 30388, 30395, 30527, 30707, 30714, 30735, 30736, 31095, 31096, 31131, 31191,

Gauri Shankar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-08-2004

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 23, 25, 25A

Citation : (2004) 3 UPLBEC 2759

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Advocate : Ashok Khare and V.D. Chauhan, for the Appellant; Sudhir Agarwal, A.A.G. and S.C., for the Respondent

Judgement

Devi Prasad Singh, J.—On 6th August, 2004 while dismissing the writ petition, I have pronounced and pass the following order:

"For the reasons and observations to be followed the writ petition is dismissed, subject to condition that the petitioner shall not be compelled to discharge duty under the administrative and financial control of the Gram Panchayat. State Government shall pass appropriate Government Orders forthwith in the light of observation made in the judgment."

Now the reasons and observations in dismissing the writ petition are as under :

2. Heard Shri Ashok Kharc, Senior Advocate assisted by Shri V.D. Chauhan learned Counsel for the petitioners and Shri Sudhir Agarwal, learned Additional Advocate General.

3. The admitted fact of the cases is that the petitioners were working as Kisan Sahayak in the Agricultural Department and in pursuance to Government Order dated 12th April, 1999 they were appointed as Gram Panchayat Vikas Adhikaris.

Now by the impugned order petitioners have been reverted back to their parent departments on the post of Kisan Sahayak.

4. The factual matrix of the case is that the State Government with intention to strengthen the functioning of Panchayati Raj Vibhag had issued an order dated 12th April, 1999. It was provided in the said order that persons working in various departments shall be appointed on the Gram Panchayat. It was further provided in the Government Order that the post of Tube-Well Operator will be a dead post in the Department of Agriculture. At a later stage State Government found that appointment and posting of persons of various departments in Panchayati Raj in pursuance to Government Order may not meet out the legal requirements, hence U.P. Panchayat Raj Act was amended and notification was issued On 22nd June, 1999 introducing Sections 25 and 25-A in the U.P. Panchayat Raj Act. By the amended provision it was provided that persons, who are transferred to Panchayati Raj Vibhag will retain their lien in the respective departments of the State Government. Thereafter, by order dated 30th June, 1999 the Government Order dated 12th April, 1999 was cancelled. Again on 1st July, 1999 Government Order was issued indicating 8 departments, namely Gram Vikas, Panchayati Raj, Agriculture, Medical and Health, irrigation, Social Welfare, Cane and Land Development and Water Resources from where the officers were to be transferred and posted in the Village Panchayat. However, while having posting in the Village Panchayat such officers will enjoy the status of Government servant, which they were enjoying in the parent department. Later on, after receipt of some representations Government felt that appointment or continuance of the employees of certain departments like Seenchpal, etc. are practically hampering the functioning of their own department, hence, by another Government Order dated 12th April, 1999 the earlier Government Order dated 1st July, 1999 was amended and the posts of Seenchpal etc., were excluded from the field of eligibility to be posted in Gram Panchayat. Accordingly, by order dated 6th June, 2001 Seenchpal of Canal Division and Male Health Workers were sent back to parent departments. Government Order dated 6th June, 2001 was further amended by Government Orders dated 6th July, 2001 and 21st September, 2001. Accordingly, by another Government Order dated 19th November, 2001, Seenchpals of Bhumi Vikas and Jal Sansodhan Departments were repatriated to parent departments. Government Order dated 19th November, 2001 was impugned before this Court by filing of bunch of writ petitions. Those bunch of writ petitions were decided finally and the decision is reported in *Krishna Kani Tiwari v. State of U.P. and Ors.* (2002) 1 UPLBEC 475. The writ petitions were allowed only to the extent that the employees of all the departments shall be eligible to be appointed as Secretary of the Gram Panchayat. Special Appeal filed against that order was also dismissed on 28th January, 2002. Accordingly, the judgment of Single Judge rendered in the aforesaid writ petitions attains finality. Meaning thereby the repatriation of employees from the post of Gram Panchayat Vikas Adhikari to their parent departments was upheld by this Court.

5. It appears that subsequently some other representations were received by the Government on the ground that continuance of officer of their department as Gram Panchayat Vikas Adhikari in the Gram Panchayat Raj Vibhag is creating problem and work in the parent department arc suffering. Accordingly, by the Government by order dated 20th July, 2004 a decision was taken to revert back the employees of three categories namely Kisan Sahayak of Agricultural department, Cane Supervisor and Gram Vikas Adhikari of Gram Vikas Department to their parent departments.

6. Learned Senior Advocate, Shri Ashok Khare while assailing the order dated 20th July, 2004, submitted that post of Kisan Sahaika has been declared dead not only in pursuance to Government Order dated 1.7.1999 (which has been cancelled by order dated 30-6-1999) but by another Government Order dated 20th April, 1999 issued by Agriculture department itself, a copy of order dated 20th July, 1999 has been filed as Annexure-2 to the writ petition. Accordingly, submission is that petitioners cannot be reverted back to a post, which does not exist in accordance to circular issued by Agricultural department itself. Learned Counsel for the petitioners further assailed the impugned order on the ground that by the impugned order all Kisan Sahaika had been placed under the administrative and financial control of Gram Panchayat Vikas Adhikari of which Tube-Well Operators arc Secretary. He further submits that the qualification of Tube-Well Operator is much inferior to Kisan Sahaikas, who arc Science graduate. Shri Ashok Khare had further submitted that persons working in one cadre cannot be placed under the administrative and financial control of an officer of other cadre unless he is sent on deputation in accordance to provision contained in Financial Handbook. Petitioners" Counsel also submits that the Government Order is arbitrary and is not in public interest. Shri V.D. Chauhan, while arguing on behalf of petitioners in W.P. No. 30067, had assailed the impugned order on the basis of statement contained in Clause 14 of the Government Order dated 1-7-1999.

7. Sections 25 and 25-A of the U.P. Panchayat Raj Act, 1947 are relevant to decide the present controversy. For convenience relevant Sections 25 and 25-A of the U.P. Panchayat Raj Act, 1947 (hereinafter referred as Act) is reproduced as under:

"Section 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 employees 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 Panchayats of a District shall be made by such authority in such 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 other matters including promotion as would have been applicable to him immediately before such transfer and shall perform such duties as any be specified from" time to timed 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 employee 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 restriction 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 employees 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 Sub-section (7) to an authority appointed in this behalf by the State Government.

Section 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 subsection (1) or Sub-section (2) of Section 25, whose, 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 Panchayat 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."

8. A plain reading of the aforementioned provisions shows that persons transferred to Nyaya Panchayat will retain their lien and rights in their parent department. However, it further provides that a Nyaya Panchayat will have administrative control once an employee is transferred to it, from other department.

9. In the Government Order dated 12th April, 1999 which was later on cancelled by an order dated 30th June, 1999 the lien of all Government employees who are transferred to Panchayati Raj Department were maintained in their parent department.

10. Lien of a post co-relates with the permanent service of an employee and force out of titled to all permanent servant. A lien is not suspended automatically on appointment of a person outside. The order for suspension of lien as such is essential. In a case reported in Parshotam Lal Dhingra Vs. Union of India (UOI), Hon"ble Supreme Court had defined the lien as a title to hold a permanent post unless his lien is transferred in accordance with the rules.

In one another case reported in Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others, Hon"ble Supreme Court had reiterated the same principle. In S. Pratap Singh Vs. The State of Punjab, again Apex Court held that even if an employee is suspended he shall continue to hold lien on the permanent post and his lien may be transferred only in accordance to Rules.

11. In view of above, all the persons who were working on the post of Kisan Sahiyka in Agricultural Department and whose services were transferred on the post of Gram Panchayat Vikas Adhikari had retained their lien in their parent department as there is nothing on record which may indicate that their lien was also transferred.

12. The submission of the learned Counsel for the petitioner Shri Ashok Kharc is that the post of Kisan Sahiyka has been declared as a dead by Government Order dated 24th April, 1999 as contained in Annexure No. 2 to the writ petition seems to extend have no help to protect the petitioner's claim under the present writ petition. Para "7" of the Government Order dated 24th April, 1999 is reproduced as under :

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R;kx&i= ;k vU; fdlh izdkj ls gksus okyh fjdRk ds foijhr dksbZ ubZ fu;qfDRk ugha
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13. Since the petitioner's lien has been not transferred by earlier Government Order as well as by Statutory provision contained in Section 25 of the Act, even if

they are reverted back to their parent department, it will make no difference. Para "7" of the Government Order dated 24th April, 1999 declares that the post of Kisan Sahiyka has been declared dying cadre and prohibits future new appointment in the said cadre. It further provides that no vacancy shall be filled up on account of retirement, death or resignation of any person working in the cadre. It does not mean that the persons who are serving in the cadre or have been sent on deputation or transferred to other department in case come back to their parent department will not be entitled to hold the post of Kisan Sahiyka. Para "7" protects the right of persons who are serving in the cadre. In view of provisions discussed hereinabove the petitioners' lien has been maintained in their parent department on the post of Kisan Sahiyka, their transfer to parent department and post will not be illegal as argued by learned Counsel for the petitioner. Here it is not a case where a person has been reverted back to a dead post which may be deemed to be abolished but he has been reverted back to their original post with the same scale, status and other consequential benefits. Their line has been maintained. Accordingly argument advanced by the learned Counsel for the petitioner is not sustainable.

14. So far as second submission of the learned Counsel for the petitioner that by the impugned order the petitioner has been directed to discharge certain duties under the administrative and financial control of Gram Panchayat seems to have got force to some extent. A person can be placed under administrative or financial control of other department only in case he is sent on deputation in pursuance to provision contained in Financial Handbook or in case he is transferred in accordance to provision contained in Section 25 of the Act. It can be done only in the manner provided in the Act or Statute or any law then being in force.

It has been settled by Hon'ble Supreme Court in a case reported in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, that in case authorities want to do certain thing then they have to do in the manner provided in the Act or Statute. Section 25 of the Act empowers the Gram Panchayat to exercise administrative and financial control over the persons transferred to it in compliance of the provision contained in Section 25 itself. Since the petitioner has been reverted back to their parent department, the respondents have got no right to place them under the administrative and financial control of the Gram Panchayat.

15. It is settled law that what may not be done directly, cannot be done indirectly. Once the petitioners have been reverted back to the parent department by the impugned order from the Gram Panchayat then the respondents have got no right to place them under the administrative and financial control of the Gram Panchayat by exercising the same power which are vested in pursuance to provision contained in Section 25 of the Act.

16. However, learned Additional Advocate General submits that the relevant provision can be amended keeping in view the facts and circumstance and

provision of law. Accordingly, the State Government is directed to amend the impugned order appropriately so that the petitioners while working in their parent department may not be placed under administrative or financial control of Gram Panchayat. However, it shall be open to opposite-parties to proceed in accordance to provision contained in Financial Handbook or keeping in view the letter and spirit of Section 25 of the Act.

17. Moreover Section 23 of the Act empowers the Gram Panchayat to take suitable action relating to Tube-Well Operator and other certain employees. For convenience Section 23 is reproduced as under:

"Section 23. Power to enquire and report about the misconduct of certain officials.-On receiving a complaint from any person, residing within the jurisdiction of a (Gram Panchayat) about any misconduct in the discharge of (his) officials duties by any amin, process-server, vaccinator, constable, (Village Chowkidar), patwari, patrol; and Tube- Well Operator of the Irrigation Department, forest guard, forest chowkidar, teacher of a primary school, pound keeper, (Village stockman) of peon of any Government Department such Panchayat may, if there be prima facie evidence, forward the complaint to the proper authority with the own report, the authority shall, after such further enquiry which may be required, take suitable action and inform the (Gram Panchayat) of the result."

18. Accordingly, the provision contained in Section 23 of the Act also render the impugned order as arbitrary and bad in law empowering the Gram Panchayat to place the petitioner under their financial and administrative control.

19. The validity of Section 25 of the Act was impugned in this Court. This Court in a case reported in *Manbodh Kumar Lal and Ors. v. State of U.P. and Ors.* (2000) 1 SAC 349, upheld the validity of Section 25 of the Act. It has been settled by Division Bench of this Court in *Manbodh Kumar Lal* case (*supra*) that in case persons is sent in Gram Panchayat Vibhag in pursuance to provision contained in Section 25 of the Act the incumbent will enjoy the status of Government servant.

20. The validity of Government Order dated 1-7-1999 was upheld in *Manbodh Kumar*'s case. For convenience relevant portion from *Manbodh Kumar Lai*'s case (*supra*) is reproduced as under :

"(7) It is a matter of policy decision of the State Government as to what kinds of Government functions are to-be transferred to Panchayat, the decision taken by the Government under clause (a) of Section 25(1) would not be open to judicial review by this Court so long as it is an consonance with clause (b) of Sub-section (1) of Section 25 of the Act and Article 243G of the Constitution.

(8) The question remains whether clauses (a) and (b) of Sub-section (1) of Section 25 of the U.P. Panchayat Raj Act, 1947 as substituted by U.P. Act 27 of 1999, infringe upon Articles 14, 16 and 311 of the Constitution of India, the

bottomline argument advanced by Sri Dinesh Dwivcdi is that the transfer of a Government employee to serve under Gram Panchayat with full supervision and control of the Gram Panchayat as fraught with the consequence of a transfer from one service to another service and such transfer, proceeds the submission, is discountenanced as impermissible.

(9) It brooks no dispute that, such employees on being so transferred and posted in as Gram Panchayat shall serve under the supervision and control of the Gram Panchayat subject to the same terms and conditions and same rights and privileges as to retirement benefits and other matters relating to promotion as would have been available and accrued to them immediately before such transfers and shall inform such duties as may be specified from time to time by the State Government.

(10) The submission made by the learned Counsel that the transfer visualized under clause (a) of Sub-section (1) of Section 25 is violative of Articles 14, 16 and 311 of the Constitution, cannot be countenanced in approval inasmuch as it has been very clearly provided in Section 25(1) (b) of the Act that the service conditions of the transferee employees of the concerned department will continue to be the same and they will continue to be the Government employees and governed by the same service conditions which were applicable to them prior to transfer of the departments to the Gram Panchayat.

(11) The decision in *State of Gujarat v. Ramanlal Keshavlal Sam* (1993) 2 SCC 33, reliance on which was placed by Sri Dinesh Dwivcdi cannot be taken aid of as the ratio decidendi of that case flows from different perspective. In that case, Gujarat Panchayat Third Amendment Act, 1978 was declared unconstitutional as it offered Articles 311 and 14 of the Constitution inasmuch as a result of the Amendments, certain Government servants therein, ceased to be the Government servants with retrospective effect and their allocation to the Panchayat Service was cancelled and they were made servants of Gram and Nagar Panchayats with retrospective effect and they were treated differently from those working at Taluka and District Panchayats and under the amended provisions their service conditions were to be prescribed by Panchayats by resolution whereas the condition of service of others were to be prescribed by the Government. Their promotional prospects were completely wiped out and all advantages which they could derive as a result of judgment of the Court in their favour were taken away and it was under these circumstances, that the Supreme Court held that their status as a Government servant would not be extinguished so long as the posts were not abolished and the services were not terminated in accordance with the provisions of Article 311 of the Constitution nor was it permissible to enable them out for differential treatment in violation, of Article 14 of the Constitution, In the present case, it would be evident from clause (b) of Sub-section (1) of Section 25 of the Act that the service condition of the existing Government employees of the Departments transferred to Gram Panchayats have not at all been altered as it is very clearly provided in clause (b) of Sub-

section (1) of Section 25 that they would continue to be governed and the same set of rules as Government servants would, pro tanto, apply to them as were applicable to them on the date of devolution of power. In such view of the matter, we find no infirmity in the view taken by the learned Single Judge dismissing the writ petition nor do we find any substance in the writ petition filed by and on behalf of Gram Panchayat Adhikari challenging the validity of the amended Sections 25 and 25-A of the U.P. Panchayat Raj Act, 1947 and the G.O. dated 1.7.1999."

21. In view of Manbodh Kumar Lal's case the petitioners who were sent to Gram Panchayat as Gram Panchayat Vikas Adhikari shall be deemed to be working as transferable employee retaining their right available to them as Government Servant. Once it is settled by this Court that such persons shall retain their status of Government Servant: then sending them back to their parent department with all rights and privilege shall be valid action on the part of State Government. In one another case reported in Krishna Kant Tiwari and Anr. v. State of U.P. and Ors. (2002) 1 UPLBEC 475, the validity of Government Order dated 6th June, 2001 and 19th November, 2001 were impugned by Seenchpal of Bhumi Vikas. and Jal Sansodhan employees against an order of repatriation to their parent department. The order was upheld by this Court in Krishna Kant Tiwari's case (supra) with the provision that all persons who are sent to Gram Vikas Vibhag shall be entitled to be appointed on the post of Secretary.

22. It was also held by this Court that order of repatriation to their parent department is not against the public policy or public interest. The relevant portion from Krishna Kant Tiwari's case is reproduced as under ;

"26. Here the employees from different departments have been sent to Gram Panchayats to perform the functions that they were earlier performing, as Gram Panchayats neither had experience, nor employees to do the work. This was done in public interest. In view of Umapati's case, the transferred employees are on deputation to Gram Panchayats.

29. It is correct that by G.O. dated 1st July, 1999 employees of 8 departments were transferred and were to perform the work of all departments. The fact that employees of 8 departments were transferred and were designated, as Gram Panchayat Evam Vikas Adhikari does not meant that all of them merged into one cadre. All of the maintained seniority of their department and were to be promoted in their own department. All workers of three departments were" being sent back as difficulties were being faced. There is no discrimination.

36. All employees holding particular posts in 8 departments were transferred by Government Order dated 1-7-2001. It is not disputed that they did not have minimum educational qualification at the time of appointment over the posts. The classification (on the basis of educational qualification) is made only in two departments. In other 6 departments persons that arc qualified up to High School can perform multi-purpose functions and become the Secretary. If the

persons of other 6 departments qualified up to High School can become Secretary then there is no justification for denying the persons equally qualified in these two departments. In the facts of these cases transferred employees have sufficient educational qualification to act as a Secretary and higher educational qualification cannot be a valid reason for classification."

23. Whether the persons are treated as employees sent to Gram Panchayat Vibhag in pursuance to an order of transfer discharging duty in view of provision contained in Section 25 of the Act or they are treated as person working on deputation they have got no right to claim continuance on the post of Gram Panchayat Vikas Adhikari or any other post in the Gram Panchayat and the Government will have always right to transfer the petitioner to their parent department with same right privilege and status of the Government servant. The Apex Court in a case reported in S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, had held that an officer in case repatriated to their parent department shall enjoy all facilities, status and benefits which was available to him as the Government servant as discussed hereinabove. Para "7" of the Government Order dated 24th April, 1999 does not reflect that the post has been abolished but on the other hand protects the services of the persons working in the cadre; Since the petitioners have been repatriated to their original cadre of their parent department they shall deem to continue in their service of their cadre with all benefits and perks including the seniority.

24. Learned Counsel for the petitioner had drawn attention of this Court towards the order passed by this Court at Lucknow in W.P. No. 4116 of 2004 whether the operation of the impugned order dated 28th July, 2004 has been stayed the interim order passed by this Court at Lucknow is not a reasoned order. I have heard parties' Counsel for the purpose of admission and granting of interim relief in the writ petition at length. I do not find any ground to admit the writ petition and stay the impugned order which shall create stagnation in the functioning of the Department and proceeded to decide the writ petition on the ground discussed hereinabove. Accordingly, the operative portion of the order was pronounced on 6th August, 2004. While passing the impugned order dated 28th July, 2004 at Lucknow, the grounds and provisions of law discussed hereinabove were not considered by this Court.

25. In view of above, I reaffirm the operative portion of the judgment pronounced on 6-8-2004. The bunch of writ petitions in which the same Government Order has been, impugned is decided accordingly. No order as to costs.