
(1993) 05 AHC CK 0072
In the Allahabad High Court
Case No : Spl. Appeal No. 284 of 1993

Girraj Kishore Sharma

APPELLANT

Vs

U.P. State Electricity Board and Others

RESPONDENT

Date of Decision : 11-05-1993

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6E

Citation : (1994) 1 LLJ 1035

Hon'ble Judges : S.C. Mathur, Acting C.J.; Sudhir Narain, J

Bench : Division Bench

Advocate : Yogesh Kumar Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

S.C. Mathur, Ag. C.J.

1. These two Special Appeals arise from two separate writ petitions directed against orders of transfer passed against two employees of the U.P. State Electricity Board. Both the appellants were posted at Agra. Appellant, Girraj Kishore Sharma, was posted as Junior Meter Tester and Repairer. He has been transferred to Kanpur. Appellant Dinesh Chandra Sharma was posted as Routine Grade Clerk and he has been transferred to Jhansi. The transfer orders in respect of both were passed on December 18, 1992 by the Chief Engineer, Hydrel (Respondent No. 2).

2. The appellants challenged the transfer orders on three grounds - (i) They were vitiated by mala fides, (ii) They were by way of punishment and (iii) They violated the provisions of Section 6 (E) of the U.P. Industrial Disputes Act and Rule 29 (2) of the Rules framed thereunder. Learned Single Judge negatived the pleas while dismissing the writ petitions. Thereafter review applications were made raising an additional ground. The additional ground related to the challenge against U.P. State Electricity Board (Employees Transfer) Regulations, 1980. It was sought to be made out that the Regulations had not been notified u/

s 13B of the Industrial Employment (Standing Orders) Act and therefore they were not applicable to industrial workmen like the appellants. Learned Single Judge rejected the review application on the ground that fresh ground could not be raised through review application.

3. Aggrieved by the two orders passed by the learned Single Judge, the appellants have preferred the instant appeals.

4. None of the grounds of challenge raised by the appellants against their transfers needs to be considered as they have over stayed at Agra. Learned counsel for the U.P. State Electricity Board, Sri Ranjit Saxena, has pointed out that, both the appellants have remained posted at Agra for more than 15 years. This fact has not been disputed by the learned counsel for the appellants. However, the grounds raised may also be examined.

5. The order of transfer has been passed by the Chief Engineer, Hydel (Respondent No, 2). No allegation of bias or prejudice has been made against him. The allegation of mala fides has been made against the Senior Superintendent of Police, Sri Arvind Kumar Jain, who has been impleaded as respondent No. 5. It is asserted that it was on his report that the transfer orders were passed. The Chief Engineer was not an officer subordinate to Senior Superintendent of Police. The Senior Superintendent of Police was not in a position to dominate the will of the Chief Engineer. The challenge based on mala fides, is, therefore, misconceived.

6. Learned counsel has not invited our attention to any rule prevailing in the U.P. State Electricity Board under which transfer is prescribed as a punishment imposable against a delinquent officer. Accordingly it is not possible to hold that the order of transfer is by way of punishment. It has been held by their Lordships of the Supreme Court that transfer is an incident of services (See Dr. N.C. Singhal Vs. Union of India (UOI) and Others, .

7. Section 6-E of the U.P. Industrial Disputes Act provides that the condition of service of an Industrial Worker shall not be altered during the pendency of any conciliation proceeding before a Conciliation Officer or Board or any proceeding pending before the Labour Court or Tribunal in regard to the matters specified in Clauses (a) and (b). Learned counsel for the appellant admitted that no proceeding of the nature referred to in Section 6-E was pending against either of the two appellants. Accordingly this Section is not attracted in the present case. Therefore the impugned order cannot be said to be violative of the provision.

8. Rule 29 of the U.P. Industrial Disputes Rules, 1957 deals with recognition of protected workman. It provides that a Union desirous of recognition of its officer or officers as protected workmen shall submit an application in Form XII to the Registrar, Trade Union, U.P. Kanpur appointed by the State Government under the Indian Trade Unions Act, 1926. Under Clause (2), on receipt of such an application, the Registrar is required to make enquiries and pass appropriate orders. Under Clause (3) the names of protected workmen recognised under

Clause (2) are required to be entered in a register to be maintained in Form XII. The consequences of such recognition are provided in Sub-section (3) of Section 6-E wherein it is laid down that no action against a protected workman shall be taken during the pendency of any proceeding of the nature specified in the section. As already mentioned learned counsel for the appellants has admitted that no proceedings of the nature referred to in the section were pending against the appellants on the date the transfer orders were passed. Accordingly Rule 29 is also not attracted in the present case.

9. U.P. State Electricity Board has framed the Uttar Pradesh State Electricity Board (Employees Transfer) Regulations, 1980. These Regulations have been framed in exercise of the power conferred under Clause (c) of Section 79 of Electricity (Supply) Act, 1948. Regulation 3 provides that notwithstanding anything contained in any standing order framed under the Industrial Employment (Standing Orders) Act, 1946, services of the employees of the Board shall be liable to transfer at any place under the Board in Uttar Pradesh or outside Uttar Pradesh. In view of this provision, the services of all the employees of the Board are transferable. Learned counsel, however, submits that these Regulations would be effective only after they have been notified u/s 13B of the Industrial Employment (Standing Orders) Act, 1946 but in the present case the Regulations have not been so notified. Learned counsel for the Board has invited our attention to the State Amendment of Section 79 of the Electricity (Supply) Act, 1948, and has submitted that in view of the amended third proviso, the Regulations framed under Clause (c) have overriding effect and accordingly the said Regulations will have effect notwithstanding anything contained in The Industrial Employment (Standing Orders) Act, 1946. The amendment was made through the Electricity Laws (Uttar Pradesh Amendment) Act, 1983 (U.P. Act No. 12 of 1983). Clauses (a) to (k) of Sub-Section (1) of Section 79 enumerate the matters in respect of which the Board may make Regulations not inconsistent with the Act and the Rules framed thereunder. Clause (c) reads "the duties of officers and other employees of the Board, and their salaries, allowances and other conditions of service. "Under this clause the Electricity Board is competent to frame Regulations concerning conditions of service of its employees. The proviso existing prior to the amendment read "Provided that the Regulations under Clauses (a), (d) and (jj) shall be made only with the previous approval of the State Government and Regulations under Clauses (h) and (i) shall be made with the concurrence of the authority." The amended proviso reads as follows:

"Provided further that the regulations made under Clause (c) in regard to conditions of services of officers and servants of the Board:

(i).....

(ii).....

(iii) shall, in relation to such servants of the Board as are workmen, employed in any industrial establishment under the contract of the Board, have effect

notwithstanding anything contained in any other law for the time being in force." This proviso deals specifically with industrial workers which the appellants have claimed themselves to be. The Regulations framed in respect of such industrial workers of the Board have been given overriding effect over other laws. Accordingly the Regulations of 1980 will have effect even though they have not been notified u/s 13B of the Industrial Employment (Standing Orders) Act. As already seen under Regulation 3, the Board is competent to transfer its industrial workers from one place to another.

10. As already stated the appellants had overstayed at Agra, Despite this fact they approached this Court making misconceived grievances. They were not satisfied with the dismissal of their writ petitions and they have chosen to file the present appeals. They must, therefore, pay costs of the Special Appeals to the U.P. State Electricity Board (Respondent No. 1). The costs of the Board are assessed at Rs. 500/- in each appeal. It will be open to the Board to realise the costs by making deductions from the appellants' salary so, however, that from the salary of any one month not more than 1/3 of the basic salary is deducted.

11. The appeals are accordingly dismissed with costs as stated hereinabove.