

(2015) 05 AHC CK 0044

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 3636 of 2005 and 3628, 3639, 3779, 5155, 5696, 5704, 9579, 12242, 14305, 15886, 17243, 19494, 20380, 26113, 27428, 27431, 27476, 45111, 33373, 34262, 36577, 37091, 38196, 38199, 38201, 38288, 38293, 39663, 39666, 39951, 4125

Jagdish Narayan Doharey

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 73, 73(1), 73(2), 76, 77

Citation : (2015) 8 ADJ 78 : (2015) 4 AWC 3987

Hon'ble Judges : M.C. Tripathi, J

Bench : Single Bench

Advocate : Vijay Gautam, for the Appellant; K.C. Sinha, S.K. Tyagi, Triloki Singh, Ashish Kumar, Archit Mehrotra, Shashi Kant Upadhyay, Ashok Mehta, A.S.G.I., H.P. Singh, Pankaj Rai, U.K. Uniyal, A.G., V.K. Shukla, K.C. Kaushik, A.S.G.I., Yashwant Verma, R.K. Tiwari

Judgement

M.C. Tripathi, J—Heard Shri Vijay Gautam, learned counsel for the petitioners; Shri Vijay Bahadur Singh, Advocate General assisted by Shri Uday Pratap Singh for the State of UP; Shri U.K. Uniyal, Advocate General assisted by Shri B.S. Negi, Additional Advocate General and Shri Hem Pratap Singh, Advocate for the State of Uttarakhand and Shri Ashok Mehta, Additional Solicitor General of India, assisted by Shri Triloki Singh for the Union of India. With the consent of learned counsels for the parties, the writ petitions are finally decided under the Rules of the Court at this stage.

2. By means of these writ petitioners, the petitioners have challenged the orders passed by the respondents communicating them their allocation to the State of Uttarakhand after the recommendation of Central Advisory Committee under Section 73(1) of U.P. State Re-organization Act, 2000.

3. The petitioners are serving on Class-III and IV posts in different departments

of the State Government.

4. Submission of learned counsel for the petitioners is that the Government has taken a decision that those persons, who have been allocated to the State of Uttarakhand, have been permitted to join there and they will remain there and rest of the persons, who have not been permitted to join, they will not be sent to the State of Uttarakhand.

5. Shri Vijay Gautam, appearing for the petitioners submits that neither the petitioners are resident of Uttarakhand nor they have given options for the State of Uttarakhand. The decision of the allocation of the employees of former State of UP to the newly created State of Uttarakhand has to be taken by the Central Government in consultation with the Advisory Committee constituted under the Reorganization Act, 2000. The impugned orders do not indicate that any consultation with the Advisory Committee has taken place. He submits that before passing the impugned orders, neither any notice was issued by the respondents nor the petitioners were afforded any opportunity and even the material, on the basis of which the impugned order was passed by the respondent authorities, was not disclosed to the petitioners at all. The impugned orders were passed without giving any opportunity to the petitioners.

6. Shri Vijay Gautam further submits that since the transfer of the petitioners from State of UP to newly created State of Uttarakhand was made without prior consent of the petitioners and as such, in view of provisions contained in Fundamental Rule, the transfer of the petitioners is illegal and arbitrary. The transfer will affect the entire career of the petitioners, children and family members. The petitioners belong to State of UP. The petitioners do not fall within the purview of the norms and guidelines enumerated in Government Orders dated 15.7.2002 and 31.7.2002 and further their allocation to another cadre, despite the fact that the petitioners have not given any option for the Uttarakhand and without considering the representation/objection or even before passing any reasonable order on the same, is without jurisdiction.

7. Shri Vijay Gautam submits that the Central Government can allocate the State of Uttarakhand to an employee of the State of Uttar Pradesh in exercise of the powers under Section 73(1) of the U.P. State Re-organization Act, 2000 only after having consultation with the Government of the successor State i.e. State of Uttarakhand, after a period of one year from the appointed day. From the impugned orders it is clear that while passing the aforesaid orders, the Central Government had not made any consultation with the State Government of UP and the State Government of Uttarakhand. Section 73(1) deals with the provisions relating to the employees serving in connection with the affairs of the existing State of Uttar Pradesh, who were working on the appointed day in the State of Uttar Pradesh provided that they will continue to serve in connection with the affairs of the State of Uttar Pradesh unless required by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttarakhand. Every employee working in connection

with the affairs of the State of Uttar Pradesh on the appointed day shall continue in the State of Uttar Pradesh. Section 73(2) provides that the Central Government shall by general or special order determine the successor State to which every person referred to in sub-section (1) of Section 73 shall be finally allotted for service, which will take effect accordingly. Section 77 provides that the Central Government may give directions to the State Governments as may be necessary for the purpose of giving effect to the provisions.

8. Shri Vijay Gautam submits that during the pendency of the aforesaid writ petitions, both the Governments have taken a policy decision and thereafter the State Government has issued a Government Order dated 13.1.2010, stating that those employees, who are not willing to go to the State of Uttarakhand, cannot be sent to the State of Uttarakhand. In this regard, the DGP, Headquarters, UP issued a Circular dated 25.1.2010 that the policy decision has been taken by the Chief Minister of State of Uttarakhand and UP for not relieving the police personnel, who could not report for joining instead equivalent number of vacant posts may be made available to the State of Uttarakhand. Following the Circular dated 25.1.2009 a bunch of writ petitions was disposed of on 5.2.2010 and 6.10.2010 with direction that so long as Government's decision not to relieve the police personnel, who are finally allocated to the State of Uttarakhand, continues, the petitioner shall also be entitled to continue in the State of UP even though they have been finally allocated to State of Uttarakhand.

9. Shri Vijay Gautam further submits that on 12.11.2007, in exercise of powers conferred under Section 76, the Central Government had decided to constitute a Committee under the Chairmanship of Dr. S.K. Sarkar, Joint Secretary (AT, A and CS) to consider the representations in connection with the allocation of the employees between the successor State of UP and Uttarakhand. A meeting was held of the State Advisory Committee on 11.2.2008 in which certain decision has been taken. He submits that thousand of similarly situated persons, who belong to the first and second category (optees and domicile), are still working in the State of UP and allocating the appellants/petitioners on the basis of junior most without following the procedure, which has been prescribed in Government Order dated 15.7.2002 and without following the procedure of pro-rate, the final allocation order has been issued by the Central Government.

10. In most of these writ petitions, the Court granted interim orders to the petitioners and in pursuance thereof, they are still working. In the leading writ petition, the stay application was rejected on 4.2.2005 and all the respondents were directed to file counter-affidavit. Against the rejection of interim application, the petitioner preferred a Special Appeal No. 139 of 2005, in which an interim order was granted in favour of the petitioners on 10.2.2005. Thereafter, the said Special Appeal was disposed of on 26.9.2012 with request to learned Single Judge to dispose of the writ petition expeditiously in accordance with law and till the decision of the writ petition, the interim order dated 10.2.2005 was directed to remain in operation. The similar and identical Special

Appeals have been allowed by this Court on 5.10.2009 and the petitioners, who are similarly situated persons, are also entitled for same protection. The entire bunch of writ petitions have been connected with leading Writ Petition No. 31414 of 2005 (Awadhesh Kumar and others v. State of U.P. and others) and in all the writ petitions, which are connected with the leading Writ Petition No. 31414 of 2005, the interim orders were granted by this Court in favour of the petitioners. The leading writ petition was disposed of by the Division Bench on 19.11.2009.

11. The Government of India issued a Circular dated 2.11.2007 with regard to the Class-IV employees and decided that the State Cadre Class-IV employees may be allotted to the successor State based on option only. In view of the said Circular, the Class-IV employees cannot be allocated without there being any option. Thousand of similarly situated persons, who belong to the first and second category (optees and domicile) are still working in the State of Uttar Pradesh and allocating the petitioners on the basis of junior most without following the procedure, which has been prescribed in Government Order dated 15.7.2002, and without following the pro-rate system, which has been prescribed in Appendix-I, is wholly illegal and arbitrary.

12. On 12.11.2007 in exercise of powers conferred under Section 76 of the Uttar Pradesh Reorganization Act, 2000, the Central Government had decided to constitute a Committee under the Chairman of Dr. S.K. Sarkar, Joint Secretary (AT, A & CS) of this department to consider the representations in connection with the allocation of the employees between the successor State of Uttar Pradesh and Uttarakhand. In the letter dated 12.11.2007 it is stated that the Committee will look into the representations received from the employees department-wise, where the allocation process has already been completed.

13. During the pendency of the writ petitions, a decision was taken at the level of both the Chief Ministers and thereafter the State Government has issued a Government Order on 13.1.2010 stating that those employees, who are not willing to go to the State of Uttarakhand, cannot be sent to the State of Uttarakhand. In this regard the Director General of Police, Headquarters, U.P. issued a Circular dated 25.1.2010 that a policy decision has been taken by the Chief Minister of State of Uttarakhand and Uttar Pradesh for not relieving the police personnel, who could not report for joining instead equivalent number of vacant posts may be made available to the State of Uttarakhand. Following the Circular dated 25.1.2009, a bunch of writ petitions led by Writ Petition No. 152(SS) of 2010 was disposed of on 5.2.2010 by Lucknow Bench of this Court. Following the Circular dated 25.1.2009 this Court also disposed of a bunch of writ petitions led by Writ A No. 13984 of 2008 (Km. Maya v. State of UP and others) on 6.10.2010 with directions that so long as Government's decision not to relieve the police personnel, who are finally allocated to the State of Uttarakhand, continues, the petitioners shall also be entitled to continue in the State of UP even through they have been finally allocated to the State of Uttranchal.

14. On 11.9.2013 and 29.10.2013 this Court passed following orders:

"Order dated 11.9.2013

An affidavit has been filed by the State of Uttarakhand indicating that the State of Uttar Pradesh and the State of Uttarakhand have agreed vide their letters dated 22nd April, 2013 and 8th August, 2013 with regard to the decision of the Central Government taken as per the decision dated 17th June, 2010 and in this regard the proposal of the State Governments will be considered in a meeting held by the Central Government on 17th September, 2013.

In the light of the aforesaid, the matter is being adjourned with the observation that the Central Government and the State Governments will endeavour and arrive at a final conclusion on that date itself and if for some reason the issue remains inconclusive, the three Governments will positively decide the matter and submit the result on or before 21st October, 2013.

List on 29th October, 2013 for further hearing.

Order dated 29.10.2013

The issue of allocation of employees working in the State of Uttar Pradesh and being transferred to Uttarakhand has been engaging the attention of the Court for more than a decade with no final solution in sight. The Government of Uttar Pradesh and the Government of Uttarakhand have taken a decision that all those persons who have obtained an interim order from any Court of law may remain in their respective State and the consequential vacancy may be allowed to be filled up by that State. This decision was arrived at in consonance with the observation of the Central Governments dated 17.10.2010.

This Court, by an order dated 11.9.2013 had directed the Central Government and the State Governments to make an endeavour and arrive at a final decision positively on or before 21.10.2013.

It transpires that the Central Government has forwarded a proposal to both the Governments to send their comments with regard to those employees, who have already been transferred and who wish to be return back to their parent State. In this regard, the Central Government has filed an additional affidavit today indicating that pursuant to the proposal submitted by the Central Government, no comment has been received from the State Governments so far and, consequently, the matter may be adjourned, so that a concrete policy decision is taken, which will cover all aspects of the matter.

The State of Uttarakhand has also filed an affidavit indicating that the proposal of the Central Government is under active consideration by the Uttarakhand State Government.

No affidavit has been filed by the State of Uttar Pradesh. Sri Pankaj Rai, learned Additional Chief Standing Counsel states that he has no instruction and that a date may be fixed so that the State Government may come up with some

suggestion.

From the aforesaid, it is clear that all the three Governments are not striving to come to a final decision and the matter is being adjourned for one reason or the other.

This Court, accordingly, adjourns the matter with a hope that the State Government of Uttarakhand and Uttar Pradesh will take a decision with regard to the proposal submitted by the Central Government and that all the three Governments will sit together and take a decision in the matter and bring it on the record of the case.

It is made clear that if no decision is taken, the Court will proceed and hear the matter on merits.

List this matter on 10.1.2014 for further hearing."

15. Shri Triloki Singh, Advocate, appearing on behalf of Union of India has filed an additional affidavit of Shri R. Venkatesan, Under Secretary in the Department of Personnel and Training, Government of India, Ministry of Personnel, P.G. and Pensions, New Delhi on 29.4.2015 stating that in pursuance of the observations of this Court in the orders dated 11.9.2013 and 29.10.2013, the issue was discussed in the meeting of the Advisory Committee held on 18.7.2014 and subsequently in a special meeting convened to discuss the issue on 1.9.2014 and in pursuance of the decision taken in the meeting held on 1.9.2014, draft guidelines were framed by the Central Government in consultation with the State Governments of Uttar Pradesh and Uttarakhand. Both the State Governments of Uttar Pradesh and Uttarakhand submitted their consent on these guidelines vide letters dated 4.3.2015 and 17.3.2015 respectively. The modified guidelines have been approved by the Competent Authority and circulated to both the State Governments for further necessary action in the matter as per the prescribed time schedule given therein. The revised allocation of all such eligible employees, duly agreed by both the State Governments, may be submitted as per the stipulated time limit for consideration of the Advisory Committee. After receipt of the recommendation of the Advisory Committee, the Central Government would issue necessary orders for revision of allocation of the employees, who opt to revise their allocation under the revised guidelines. The guidelines dated 27.3.2015 are reproduced herein below:

16. Shri U.K. Uniyal, Advocate General has made a categorical statement that the State of Uttarakhand has agreed to the extent that in lieu of 3000 posts, the concerned departments have already proceeded for their own recruitment and either they have completed the recruitment process or the process of recruitment is under progress.

17. Shri Vijay Bahadur Singh, Advocate General has also made a statement to the effect that the Government of U.P. has taken a decision that the employees, who are working in the State of UP for last so many years, will continue to work

in the State of U.P.

18. Shri Ashok Mehta, Additional Solicitor General of India states that as per provisions of the Act, the Central Government has already given time schedule and it is upto the both States to act upon as per the time schedule.

19. Alongwith the modified guidelines dated 27.3.2015, the aforesaid time schedule has been provided but the same has not been implemented. Accordingly, this Court modifies the said time scheduled, as under:

20. Once both the State Governments have agreed that those Class-III and IV employees, who were allocated to Uttarakhand against their options and have not complied with the allocation orders, are still continuing on the basis of interim orders of this Court, their allocation to Uttarakhand should be cancelled and they be allocated to the State where they are presently working, and once concurrence has taken place between the parties, then at this stage it would not be appropriate to displace the persons from one State and send to another State. It is also apparent from the record that in most of the cases the interim orders are operating and the petitioners are working in the departments with utmost their satisfaction. Therefore, this Court is of the view that at this stage, they may not be shifted to the State of Uttarakhand. In view of the above, all the writ petitions are allowed and the impugned orders are quashed. The respondents are directed to proceed as per the time schedule indicated as above.