
(2020) 01 UK CK 0034
In the Uttarakhand High Court
Case No : Special Appeal No. 1037 Of 2019

Jawahar Lal

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Uttarakhand Annual Transfer For Public Servants Act, 2017 — Section 3(d), 15, 17
Constitution Of India, 1950 — Article 162

Citation : (2020) 01 UK CK 0034

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

Bench : Division Bench

Advocate : Shakti Singh, Vikas Pande

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Shakti Singh, learned counsel for the appellant and Mr. Vikas Pande, learned Standing Counsel for the State of Uttarakhand-

respondents.

2. This appeal is preferred by the petitioner in WPSS No.2726 of 2019, aggrieved by the order passed by the learned Single Judge dated 11.12.2019

dismissing the Writ Petition. The petitioner invoked the jurisdiction of this Court seeking a writ of certiorari to question the transfer order dated

30.11.2019, passed by the 4th respondent, by which the petitioner was transferred from the Government Primary School, Kahnapur, Roorkee, District

Haridwar to the Government Primary School, Paali, Dholadevi, District Almora; and a writ of mandamus directing the respondents not to transfer the

petitioner from the present place of posting i.e. the Government Primary School, Kahnapur, Roorkee, District Haridwar.

3. Facts, to the limited extent necessary, are that the appellant-writ petitioner joined service in the post of Assistant Teacher at the Government

Primary School Paali, Dholadevi, District Almora on 27.09.2008. He was relieved from District Almora to join duty in District Haridwar on

18.02.2017. The appellant-writ petitioner, an Assistant Teacher, held a post in the District Cadre and, since he was appointed in District Almora and

was posted in a Government Primary School thereat on 27.09.2008, he belongs to cadre of Assistant Teachers in Almora District.

4. By the Office Memorandum dated 21.11.2016, the Principal Secretary to the Government permitted transfer of employees, from one district to

another, on condition that there would be no change in their cadre and, after completion of the period of transfer, they would have to go back to the

original district; and to the original cadre to which they belong. The Additional Director, Primary Education was instructed, by proceedings dated

02.01.2017, to give effect to the Office Memorandum dated 21.11.2016; and consequently several employees, including the appellant-writ petitioner

herein, were permitted to seek transfer outside the district, even though they held posts in a district cadre.

5. It is in terms of this Office Memorandum dated 21.11.2016 that the appellant-writ petitioner was transferred, at his request, to District Haridwar by

proceeding dated 22.08.2017. While matters stood thus, the Secretary, Elementary Education, by proceedings dated 25.04.2018, cancelled the earlier

office order dated 21.11.2016. The order dated 25.04.2018 was subjected to challenge before the learned Single Judge in WPSS No.933 of 2018 and

batch. On the writ petition being dismissed, by order dated 26.10.2018, the petitioner in WPSS No.933 of 2018 preferred Special Appeal No.935 of

2018.

6. A Division Bench of this Court, in its order in Special Appeal No. 935 of 2018 dated 04.12.2018, held that both the proceedings dated 21.11.2016,

and the subsequent proceedings dated 25.04.2018, did not have the force of law; they were not even execution/administrative instructions or guidelines

referrable to Article 162 of the Constitution of India, since they had not been issued under the orders of the Governor; setting aside the order dated

25.04.2018 would result in revival of the earlier Office Memorandum dated 21.11.2016, whereby employees were permitted to be transferred from

one Primary School to another beyond the district/block; and transfer of employees, from one district to another, would violate the cadre rules since

employees in the cadre of Assistant Teachers belong to a District Cadre, and could not have been transferred beyond the District. Holding that the

Court would not exercise its discretionary jurisdiction to set aside an order, which would result in revival of an earlier illegal order, the Division Bench

saw no reason to interfere with the order passed by the learned Single Judge.

7. On the appellant-writ petitioner therein submitting that he suffered from genuine difficulty, and he be permitted to work in Haridwar till the end of

the academic year, the Division Bench, while observing that it saw no reason to accede to such a request, made it clear that the order passed by them

would not disable the appellant-writ petitioner from making a representation to the authority concerned, and for the authority to pass orders thereupon

in accordance with law.

8. Relying on the order of the learned Single Judge, in WPSS No.933 of 2018 and batch dated 26.10.2018, the petitioner herein filed WPSS No.2726

of 2019. In the order under appeal dated 11.12.2019, the learned Single Judge observed that Section 17 of the Uttarakhand Annual Transfer for Public

Servants Act, 2017 (here in after referred as, 'the 2017 Act') was inapplicable since the petitioner had been repatriated back to his parent cadre

in Almora District; it was governed by the terms and conditions under which the employee was posted to a post other than the post to which he had an

actual lien; this was accepted by him, and pursuant thereto he moved from the earlier posting to the present place of posting; even otherwise, Section

3(d) of the 2017 Act defines a serious patient and enumerates the diseases which would qualify the persons, suffering therefrom, to be categorized as

a serious patient; and none of the diseases pointed out fell within the scope of a serious ailment. With regards the appellant-writ petitioner's claim

that a mid-session transfer was impermissible, the learned Single Judge observed that Section 15 of the 2017 Act was inapplicable, since the petitioner

had only been repatriated and not transferred. While holding that the interim order passed by a co-ordinate Bench did not constitute a binding

precedent, the learned Single Judge expressed his disinclination to interfere, and dismissed the writ petition as without merits.

9. As noted hereinabove, the petitioner was initially appointed in District, Almora

as an Assistant Teacher. The posts of Assistant Teachers is a District cadre post i.e. an Assistant Teacher can only be transferred from one place to another within a District, and not beyond. Despite such a restriction, Office Memorandum dated 21.11.2016 was issued permitting transfer of such employees from one District to another on condition that there will be no change in their cadre, and, after completion of the period of transfer, they would have to come back to the original District. In effect, the proceedings dated 21.11.2016 permitted an employee to be posted beyond his/her cadre with the rider that he/she would remain in the original cadre; and after completion of the period of transfer he/she would come back to the original District. In other words, the proceedings dated 21.11.2016 permits an employee working in District Almora, and who belongs to the District cadre of Assistant Teachers in Almora District, to be transferred to Haridwar District without his cadre in Almora District being changed.

10. Realizing its earlier error in issuing the Office Memorandum dated 21.11.2016, the Government issued proceedings dated 25.04.2018 cancelling the earlier Office Memorandum dated 21.11.2016. As a consequence of the proceedings dated 25.04.2018, the situation which prevailed, prior to the date on which the Office Memorandum dated 21.11.2016 was issued, stood revived; and, consequently, transfer of employees, belonging to the District cadre, is now confined to posts within the same District, and not beyond. This order dated 25.04.2018 was affirmed by the learned Single Judge in WPSS No. 933 of 2018 and batch dated 26.10.2018. It is, indeed, disconcerting that, despite the proceedings dated 25.04.2018, the petitioner was permitted to continue to work in Haridwar District, and was repatriated only by the proceedings dated 30.11.2019 which was subjected to challenge in the writ petition.

11. The very transfer of the petitioner from District Almora to District Haridwar, in terms of the Office Memorandum dated 21.11.2016, is illegal since it violates the rules which required an Assistant Teacher to be transferred only within the District in which he/she is appointed. We are satisfied, therefore, that the learned Single Judge was not in error in refusing to interdict the proceedings dated 30.11.2019. As has been rightly held by the learned Single Judge, the appellant-writ petitioner has been repatriated to his

parent cadre in Almora District, such repatriation does not amount to a transfer and, consequently, the 2017 Act has no application.

12. Reliance is placed by Mr. Shakti Singh, learned counsel, on the observations of the learned Single Judge, in WPSS No. 933 of 2018 and batch

dated 26.10.2018, that the representation of such employees be considered sympathetically. As noted here in above, the order of the learned Single

Judge, in WPSS No. 933 of 2018 dated 26.10.2018, was subjected to challenge in Special Appeal No.935 of 2018 and, consequently, it is the order

passed by the Division Bench in Special Appeal No. 935 of 2018 dated 04.12.2019 which would constitute a binding precedent.

13. Following the observations of the Division Bench in Special Appeal No. 935 of 2018 dated 04.12.2018, we also make it clear that, while we see no

reason to accede to the appellant-writ petitioner's request that his representation be considered, we make it clear that the order now passed by us

shall not disable the appellant-writ petitioner from making a representation to the authorities concerned, and for the authorities to pass an order

thereupon in accordance with law.

14. Subject to the aforesaid observations, the Special Appeal fails and is, accordingly, dismissed. No costs.