
(2011) 04 AHC CK 0496
In the Allahabad High Court
Case No : Special Appeal No. 738 of 2011

Kalyan Sansthan

APPELLANT

Vs

State of U.P and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Citation : (2011) 7 ADJ 818

Hon'ble Judges : R.K. Agrawal, J;Bharati Sapru, J

Bench : Division Bench

Judgement

1. The present appeal has been filed against the judgment and order dated 5th April 2011 passed by the learned single Judge whereby the writ petition preferred by the Appellant challenging the Government Order dated 28.10.2010 has been dismissed by following the judgment and order dated 14.9.2010 passed by this Court in Civil Misc. Writ Petition No. 25016 of 2010 -Jagannath Prasad Gaur v. State of U.P. and Ors..

2. We have heard Sri Hari Om Khare, Learned Counsel for the Appellant and Sri M.C. Chaturvedi, the learned chief standing counsel, who represents the Respondents and have perused the impugned judgment and order dated 5.4.2011 passed by the learned single Judge giving rise to the present appeal, the grounds taken in the memo of appeal and the documents filed alongwith it.

3. Sri Hari Om Khare, Learned Counsel submitted that in the writ petition of Jagannath Prasad Gaur, Government Orders dated 19.2.2010, 21.4.2010 and 26.4.2010 was under challenge whereas in the writ petition preferred by the Appellant, the Government Order dated 28.10.2009 was under challenge which was not the subject matter of challenge in the earlier writ petition and, therefore, the learned single Judge was not justified in dismissing the writ petition by holding that the issue raised herein is covered by the decision in the case of Jagannath Prasad Gaur wherein competence of the Government in issuing the Government Order has been upheld.

4. The submission is wholly misconceived. In the earlier writ petition, the validity of the powers of the Government in issuing the Government Order challenged in the writ petition was up for consideration and also the validity of the Government Order dated 25.3.1995 was considered. Herein also, the challenge to the Government Order dated 28.10.2009 is made relying upon the validity of the Government Order dated 25.3.1995. In the case of Jagannath Prasad Gaur, the genuineness of the Government Order dated 25.3.1995 was doubted and the Court proceeded on the basis of the decision taken by the State Government as contained in the Government Order dated 29th October 2009. That being the position, we are of the considered opinion that the learned single Judge did not commit any illegality in following the decision of this Court in the case of Jagannath Prasad Gaur while dismissing the writ petition.

5. Sri Khare then submitted that the Government Order dated 11.7.1986 had been issued by the State Government and it was amended vide order dated 27.5.2009 issued by the Director General by applying the Government Order dated 25.3.1995 and, therefore, the State had no power to cancel the amendments made in Clause 5 of the Government Order dated 11.6.1986.

6. The submission is wholly misconceived. The Director General vide order dated 27.5.2009 had given effect to the alleged Government Order dated 25.3.1995 which provided that the Constables and Head Constables should be posted in their home districts or adjoining district. The genuineness of the said Government Order dated 25.3.1995 had been doubted by the State Government on the ground that in the opening part of the said Government Order sender's name has been mentioned as Sri Mumtaz Ahmad, Special Secretary whereas it has been signed by Sri H.C. Gupta, Principal Secretary (Grah) and, further it does not bear any letter number, etc. These facts do establish that the alleged Government Order dated 25.3.2009 is not a genuine order and appears to be a forged and fictitious as in our opinion if the Government Order is issued, the sender and the author are the same.

7. That being the position, we are of the considered opinion that the Government Order dated 25.3.1995 which was made basis for amending the Clause 5 of the earlier Government Order dated 11.7.1986 as given effect to by the Director General of Police in his letter dated 27.5.2009 is of no consequence.

8. We may further mention here that Sri Khare has not been able to establish that the State Government had in fact issued such a Government Order dated 25.3.1995. In fact, Sri Khare had proceeded to argue the matter on the assumption that the said Government Order is genuine.

9. In view of the foregoing discussions, we are of the considered opinion that the order passed by the learned single Judge does not suffer from any legal infirmity.

10. The appeal fails and is dismissed.