

(2014) 02 AHC CK 0101

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 2425 of 2011

Lok Prahari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Constitution of India, 1950 — Article 256, 257, 309

Citation : (2014) 3 ADJ 145

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Devendra Kumar Arora, J

Bench : Division Bench

Advocate : S.N. Shukla (Party-in-Person), Advocate for the Appellant; Alka Verma, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

1. The petition has been filed in public interest by Lok Prahari, which is a society registered under the Societies Registration Act, 1860 in order to complain of frequent, arbitrary and premature transfers of officers belonging to the All India Services, namely, the Indian Administrative Service, Indian Police Service and Indian Forest Service. The petitioner has submitted that these transfers have an adverse effect on the governance of the State. The petition was filed for the enforcement of the provisions of Articles 256 and 257 of the Constitution and for the implementation of the amendment which was carried in the year 2006 in the cadre rules governing the three All India Services, noted above. At the outset and before we consider the grievance on merits, it is necessary for the Court to have due regard to the credentials and track record of the petitioner society in view of the provisions, particularly of sub-rule (3A) of Rule 1 of Chapter XXII of the Allahabad High Court Rules, 1952. Sub-rule (3A) was inserted following the judgment of the Supreme Court in State of Uttaranchal Vs. Balwant Singh Chaufal and Others, . The petitioner has disclosed that most of its members are retired senior civil servants having deep interest and concern in public

governance. The former Chief Election Commissioner and former Governor of Gujarat Shri R.K. Trivedi is the Chief Patron of the society. The petitioner has also disclosed that several prior petitions have been instituted by the society and have been entertained by the Supreme Court and by this Court on important aspects of public governance. Having regard to these disclosures, we have considered it appropriate to entertain the petition on merits.

2. During the pendency of the petition which was filed in 2011, the Supreme Court has dealt with the issue pertaining to (i) the constitution of a Civil Services Board both at the Centre and State level; and (ii) the provision of a fixed tenure for officers in the All India Services.

3. In the judgment of the Supreme Court in T.S.R. Subramanian and Others Vs. Union of India (UOI) and Others, , the Supreme Court held as follows:

CSB, consisting of high ranking in service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State Level, could be a better alternative (till the Parliament enacts a law), to guide and advise the State Government on all service matters, especially on transfers, postings and disciplinary action etc., though their views also could be overruled, by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in Governmental functions. Parliament can also under Article 309 of the Constitution enact a Civil Service Act, setting up a CSB, which can guide and advise the political executive (on) transfer and postings, disciplinary action, etc. CSB consisting of experts in various fields like administration, management, science, technology could bring in more professionalism, expertise and efficiency in Governmental functioning.

Accordingly, the following directions were issued to the Union and State Governments and to the Union Territories:

We, therefore, direct the Centre, State Governments and the Union Territories to constitute such Boards with high ranking serving officers, who are specialists in their respective fields, within a period of three months, if not already constituted, till the Parliament brings in a proper legislation in setting up CSB.

4. The second aspect, pertaining to the grant of stability of tenure to civil servants particularly in the State Governments was dealt with in the aforesaid judgment of the Supreme Court as follows:

We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective

instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.

On this aspect, a direction was issued both to the Union and State Governments and to the Union Territories to issue appropriate directions to secure the provision of minimum tenure of service to various categories of civil servants within a period of three months.

5. After the judgment of the Supreme Court and in compliance with the directions, the Union Government, by a notification dated 28 January 2014 which has been published in the Gazette of India, notified the Indian Administrative Service (Cadre) Amendment Rules, 2014 to amend the Indian Administrative Service (Cadre) Rules, 1954. Rule 7 has been now substituted in the Indian Administrative Service (Cadre) Rules, 1954 which reads as follows:

7. Postings.--(1) All appointments of cadre officers shall be made on the recommendation of the Civil Services Board as specified in the Schedule annexed to these rules.

(2) All appointments to cadre posts referred to in sub-rule (1) shall be made-

(a) in the case of a State Cadre, by the State Government; and

(b) in the case of a Joint Cadre, by the State Government concerned:

(3) A cadre officer, appointed to any cadre post shall hold the office for at least two years unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.

(4) A cadre officer, appointed to any ex-cadre post shall hold office for such period as may be specified by the State Government for that post, unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.

(5) The Central Government or the State Government as the case may be, may transfer a cadre officer before the minimum specified period on the recommendation of the Civil Services Board as specified in the Schedule annexed to these rules:

Provided that the Competent Authority may reject the recommendation of the Civil Services Board by recording the reasons therefore.

6. Rule 7A, as notified, stipulates that the Rules shall have effect notwithstanding anything contrary contained in any other notifications for the time being in force. The Schedule has been also amended by the Amending Rules, as notified. Under the Schedule as amended, the composition of the Civil Services Board has been provided for in the following terms:

Composition of the Civil Services Board:

Every State Government shall constitute a Civil Services Board which shall consist of-

7. The Board is to make recommendations for all appointments of cadre officers. The Board is also required to examine the cases of officers who are proposed to be transferred before completion of the minimum period of tenure fixed in sub-rules (3) and (4) of Rule 7 based on such circumstances as it thinks fit. The Board is empowered to recommend to the competent authority the names of officers for transfer before completion of the minimum tenure with reasons to be recorded in writing. The procedure which has to be followed by the Board has also been prescribed. The Board has to seek a detailed justification from the Administrative Department of the concerned State Government for the transfer of an officer before the specified tenure. Apart from this, the Board is under a mandatory duty to (i) consider the report of the Administrative Department alongwith any other inputs it may have from other reliable sources; (ii) obtain the comments or views of the officers proposed to be transferred based on the circumstances presented to it in justification of the proposal; and (iii) not to make a recommendation for premature transfer of cadre officers unless the Board has been satisfied of the reasons for such premature transfer. The Board has to submit a quarterly report to the Central Government setting out details of officers who are recommended for transfer before the minimum specified tenure. The competent authority thereafter may reject the recommendation of the Board for reasons to be recorded in writing.

8. Each provision of the Rules has been designed to protect the independence of cadre officers and to obviate frequent transfers of officers which, as the Supreme Court has noted, were being effected for extraneous considerations having no bearing on the efficiency of the administration or the ability of the officers. Firstly, a minimum period of two years has been provided for a cadre officer, the exception being if the officer is, in the meantime, promoted, superannuated or has been sent on deputation outside the State or on training for a period exceeding two months. Secondly, the power of the Central and the State Governments to transfer a cadre officer before the minimum specified period is conditioned on the recommendation of the Board as specified in the Schedule annexed to the Rules. Thirdly, the composition of the Board is not left to the arbitrary discretion of any of the respective Governments either at the Centre or at the State level. Fourthly, the functions of the Board have been specified. Fifthly, the procedure which the Board has to follow has been specified. Sixthly, the competent authority can reject the recommendation of the Board only for reasons to be recorded in writing.

9. At this stage, it would be necessary to dwell on the functions of the Board and the procedures which have to be followed. The Board is required to examine the cases of officers who are proposed to be transferred before the completion of a minimum period of service, namely, two years under Rule 7(3) of the Rules, as

amended. Before a recommendation is made by the Board, it must seek a detailed justification from the Administrative Department of the concerned State Government for the transfer of an officer before completion of the specified tenure. The Schedule to the Rules which is a part of the Rules, prescribes the nature of the material and the sources from which information can be elicited. These include the Administrative Department which has to submit a report, inputs from other reliable sources and comments or views of the officers who are proposed to be transferred. These provisions must be strictly complied with by the authorities to ensure that the power to transfer a cadre officer before completion of the fixed tenure is not exercised arbitrarily or for extraneous considerations. The Board is under an obligation to consider the report of the Administrative Department where the officer is posted and the justification of the proposal for repatriation or transfer before the term is over and also to obtain his or her comments. The Board, undoubtedly, is in a recommendatory position but here again the Rules provide that the competent authority may reject the recommendations of the Board for reasons to be recorded in writing. Reasons ensure a due application of mind to objective facts and circumstances of the case.

10. Now, since the Rules have been brought into force by the Union Government, the State Government is duty bound to ensure that -

(i) the constitution of the Board must be in accordance with the Schedule to the Rules as amended by the notification dated 28 January 2014;

(ii) the transfer of cadre officers prior to the completion of the minimum specified tenure must abide by the rigour of the Rules and be made only in the manner which is prescribed by the Rules;

(iii) after 28 January 2014, every proposal for transfer of a cadre officer before completion of the specified period of tenure is processed in accordance with the provisions of the Rules; and

(iv) the Board in making its recommendations must follow the procedure prescribed.

11. The State Government is now directed to ensure that the constitution of the Board is strictly in accordance with the provisions of the Schedule, as amended. The Board, after its constitution, shall process all proposals for premature transfers of cadre officers before completion of the specified minimum tenure in accordance with the mandate of the Rules and abide by the procedure which has been prescribed in the Rules. The Court is informed that similar notifications have been issued by the Central Government in respect of the Indian Police Service and Indian Forest Service, save and except with certain modifications in respect of the composition of the Board. What has been stated in the course of this judgment shall necessarily apply mutatis mutandis in respect of other All India Services in respect of which a notification has now been issued by the Central Government. The petition is, accordingly, disposed of. There shall be no order as to costs.