

(2000) 02 AHC CK 0068

In the Allahabad High Court

Case No : C.M.W.P. No. 33929 of 1999 and Special Appeal No's. 591 and 709 of 1999

Manbodh Kumar Lal and Others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 243G, 311, 40
United Provinces Panchayat Raj Act, 1947 — Section 25, 25(2), 25A
Uttar Pradesh Panchayat Raj (Amendment) Act, 1999 — Section 25(1)

Citation : (2000) 2 AWC 869 : (2000) 2 UPLBEC 1056

Hon'ble Judges : N.K. Mitra, C.J;S.R. Singh, J

Bench : Division Bench

Advocate : Dinesh Dwivedi and Rakesh Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Singh, J.—In the writ petition as also in the special appeals on hand, the challenge is to the validity of the Uttar Pradesh Panchayat Raj (Amendment) Act, 27 of 1999 and the G. O. dated July 1, 1999 pursuant to which the services of the village level employees of the State Government serving in the departments referred to in the G.O. aforesaid were transferred to Gram Panchayats. The learned single Judge dismissed the Writ Petition Nos. 27939 of 1999. U. P. Basic Health Workers and another v. State of U. P. and others and 27937 of 1999, Smt. Shobha Sharma v. State of U. P. and others, by means of the judgment and order dated 13.7.1999, the correctness of which has been canvassed in the instant special appeals. Writ Petition No. 3329 of 1999 has been instituted on behalf of the U. P. Gram Panchayat Adhikari Sangh whereas Writ Petition No. 27939 of 1999 from which stemmed the Special Appeal No. 591 of 1999 was instituted on behalf of the U. P. Basic Health Workers Association and Writ Petition No. 27937 of 1999 giving rise to Special Appeal No. 709 of 1999 was instituted by appellant Smt. Shobha Sharma, claiming herself to be the President of Mahila Karamchari Sangh, Uttar Pradesh--an Association of Auxiliary Nurses

and Mid-wives. Since these cases are knit together by common questions of law, they are amenable to common disposal and accordingly have been taken up together for disposal by a composite order.

2. Sri Dinesh Dwivedi, learned counsel appearing for the appellant began his submission assailing the transfer of the employees under the Gram Panchayats while Sri R. P. Goel, Advocate General appearing for the State articulated his submissions in vindication of the U. P. Panchayat Raj (Amendment) Act, 1999 and the consequent transfer of services of the village level employees of the concerned departments.

3. In order to get a hang of the controversy involved in the case, a brief sketch leading to enactment of the U. P. Panchayat Raj (Amendment) Act, 1999, is necessary. It is by seventy third Amendment made in the year 1992 that Article 243G was inserted in the Constitution, which dwells upon powers, authority, and responsibility of Panchayats. It may be abstracted below as under :

"243G. Powers, authority and responsibilities of Panchayats.--Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to-

(a) the preparation of plans for economic development and social justice ;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."

4. A glance at Article 243G would crystallise that the Legislature of a State has been ceded the power to endow the Panchayats. by law, with such powers and authority as may be necessary to enable them to function as institutions of self-Government and such law, it is further envisaged therein, may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level with respect to--(a) the preparation of plans for economic development and social justice ; and (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule ; health and sanitation, including hospitals, primary health centres and dispensaries ; Family Welfare ; and woman and child development, are the matters enumerated respectively at Item Nos. 23, 24 and 25 of the Eleventh Schedule of the Constitution. With intent to actualising the objective engrafted in Article 243G of the Constitution, the State Legislature enacted U. P. Panchayat Raj (Amendment) Act, 27 of 1999 whereby the following sections came to be substituted in place of Sections 25 and 25A of the United Provinces Panchayat Raj Act, 1947 :

"25. (1) Notwithstanding anything contained in any other provisions of this Act, any Uttar Pradesh Act, Rules, Regulations, or Bye-laws or in any judgment, decree or order of any Court ;

(a) The State Government may, by general or special order, transfer any employee or class of employees serving in connection with the affairs of the State to serve under Gram Panchayats with such designation as may be specified in the order and thereupon posting of such employee or employees in Gram Panchayats of a district shall be made by such authority in such manner as may be notified by the State Government.

(b) the employee or employees on being so transferred and posted in as Gram Panchayat, shall serve under the supervision and control of the Gram Panchayat on the same terms and conditions and with the same rights and privileges as to retirement benefits and other matters including promotion as would have been applicable to him immediately before such transfer and shall perform such duties as may be specified from time to time by the State Government.

(2) Subject to the provisions of sub-section (1), a Gram Panchayat may, after prior approval of the prescribed authority, appoint from time to time such employee as may be considered necessary for efficient discharge of its functions under this Act in accordance with such procedure as may be prescribed :

Provided that the Gram Panchayat shall not create any post except with the previous approval of the Prescribed Authority.

(3) The Gram Panchayat shall have power to impose punishment of any description upon the employees appointed under subsection (2) subject to such conditions and restrictions and in accordance with such procedure as may be prescribed.

(4) The Gram Panchayat may delegate to the Pradhan or to any of its Committee, subject to such conditions and restrictions as may be prescribed, the power to impose any minor punishment upon the employees appointed under subsection (2).

(5) An appeal from an order imposing any punishment on an employee under sub-section (3) shall lie to such officer or committee as may be specified by the State Government by notification.

(6) The prescribed authority may, subject to such conditions as may be prescribed, transfer any employee referred to in clause (b) of sub-section (1) from one Gram Panchayat to any other Gram Panchayat within the same district and the State Government or such other officer as may be empowered in this behalf by the State Government may similarly transfer any such employee from one district to another.

(7) A Nyaya Panchayat may, with the previous approval of the prescribed authority, appoint any person on its staff in the manner prescribed. The person

so appointed shall be under the administrative control of the prescribed authority who shall have power to transfer, punish, suspend, discharge or dismiss him.

(8) Appeal shall lie from an order of the Prescribed Authority punishing, suspending, discharging or dismissing a person under subsection (7) to an authority appointed in this behalf by the State Government.

25A. The State Government, or such officer or authority as may be empowered by it in this behalf shall appoint a Secretary from amongst the employees referred in clause (b) of sub-section (1) or sub-section (2) of Section 25, who shall act as secretary of such Gram Panchayat or Gram Panchayats, the Gram Sabha concerned and the Nyaya Panchayats within whose territorial limits such Gram Panchayats are situated and perform such other duties as may be prescribed by the State Government or such officer or authority as may be empowered in this behalf by the State Government."

5. Antecedent to Act 27 of 1999, an Ordinance captioned as Uttar Pradesh Panchayat Raj (Amendment) Ordinance, 1999 was promulgated on June 27, 1999 for the self-same purpose. This Ordinance stood repealed by aforesaid U. P. Act, 27 of 1999. The focus of challenge herein is to the validity of clauses (a) and (b) of sub-section (1) of Section 25 of the U. P. Panchayat Raj Act, 1947, as it stood substituted by U. P. Panchayat Raj (Amendment) Act, 1999 and that of the G. O. No. 3467/33-1-99-222/99 Panchayat Raj Anubhag-1 Lucknow dated July 1, 1999 issued in exercise of power under sub-section (1) of Section 25 of the U. P. Panchayat Raj Act, 1947, whereby certain State functions hitherto being performed by Government Departments have been delegated to Gram Panchayats. In other words, the functions of various Government departments referred to in the G. O. dated 1.7.1999. came to be transferred to Gram Panchayats.

6. The Uttar Pradesh Panchayat Raj (Amendment) Ordinance, 1999, that subsequently exalted itself to become U. P. Act No. 27 of 1999 does not detract from legislative competence and in fact, the submission of Sri Dinesh Dwivedi does not weave round the question that the State Legislature was not competent to make the enactment in question. Entry No. 5 of List 2 empowers the State Legislature to make law in respect of local Government, i.e., the constitution and powers of Municipal Corporation, Improvement Trust, District Boards, Mining Settlement Authorities and other local authorities for the purposes of local self-Government or village administration and Entry No. 6 empowers the State Legislature to make law in respect of public health, sanitation, hospital and dispensary. Organisation of village Panchayats with such powers and authority as may be necessary to enable them to function, as unit of self-Government has been one of the directive principles of State policy as enshrined in Article 40 of the Constitution. Article 243G inserted by Constitution (Seventy third Amendment) Act, 1992, enjoins upon a State Legislature to endow the Panchayats with such powers and authority as may be necessary to enable them to function as institution of self-Government by means of appropriate legislation

which may contain the provisions for devolution of powers and responsibilities upon the Panchayat at the appropriate level subject to such restriction as may be specified therein with respect to the preparation of plans for economic development and social justice; implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. The impugned enactment, namely, the U. P. Panchayat Raj (Amendment) Act, 1999 is well within the legislative competence of State Legislature, Sections 25 and 25A are intended to achieve the objective enshrined in Articles 40 and 243G of the Constitution. Transfer of Government Department to the Gram Panchayats vide G. O. dated July 1, 1999. cannot be demurred to.

7. It is a matter of policy decision of the State Government as to what kinds of Governmental functions are to be transferred to Panchayats. The decision taken by the Government under clause (a) of Section 25 (1) would not be open to judicial review by this Court so long as it is in consonance with clause (a) of sub-section (1) of Section 25 of the Act and Article 243G of the Constitution.

8. The question remains whether clauses (a) and (b) of sub-section (1) of Section 25 of the U. P. Panchayat Raj Act, 1947. as substituted by U. P. Act No. 27 of 1999. infringe upon Articles 14, 16 and 311 of the Constitution of India. The bottomline argument advanced by Sri Dinesh Dwivedi is that the transfer of a Government employee to serve under Gram Panchayat with full supervision and control of the Gram Panchayat is fraught with the consequence of a transfer from one service to another service and such transfer, proceeds the submission, is discountenanced as impermissible.

9. It brooks no dispute that such employees on being so transferred and posted in as Gram Panchayat shall serve under the supervision and control of the Gram Panchayat subject to the same terms and conditions and same rights and privileges as to retirement benefits and other matters relating to promotion as would have been available and accrued to them immediately before such transfers and shall perform such duties as may be specified from time to time by the State Government.

10. The submission made by the learned counsel that the transfer visualised under clause (a) of subsection (1) of Section 25 is violative of Articles 14, 16 and 311 of the Constitution. cannot be countenanced in approval inasmuch as it has been very clearly provided in Section 25 (1) (b) of the Act that the service conditions of the transferee employees of the concerned department will continue to be the same and they will continue to be the Government employees and governed by the same service conditions which were applicable to them prior to transfer of the departments to the Gram Panchayats.

11. The decision in Pashora Singh and another Vs. State of Punjab, . reliance on which was placed by Sri Dinesh Dwivedi cannot be taken aid of as the ratio decidendi of that case flows from different perspective. In that case. Gujarat

Panchayat Third Amendment Act, 1978, was declared unconstitutional as it offered Articles 311 and 14 of the Constitution inasmuch as a result of the Amendments, certain Government servants therein, ceased to be the Government servants with retrospective effect and their allocation to the Panchayat service was cancelled and they were made servants of Gram and Nagar Panchayats with retrospective effect and they were treated differently from those working at Taluka and district Panchayats and under the amended provisions, their service conditions were to be prescribed by Panchayats by resolution whereas the condition of service of others were to be prescribed by the Government. Their promotional prospects were completely wiped out and all advantages which they could derive as a result of judgment of the Court in their favour were taken away and it was under these circumstances, that the Supreme Court held that their status as a Government servant would not be extinguished so long as the posts were not abolished and their services were not terminated in accordance with the provisions of Article 311 of the Constitution nor was it permissible to single them out for differential treatment in violation of Article 14 of the Constitution. In the present case, it would be evident from clause (b) of sub-section (1) of Section 25 of the Act that the service conditions of the existing Government employees of the Departments transferred to Gram Panchayats have not at all been altered as it is very clearly provided in clause (b) of subsection (1) of Section 25 that they would continue to be governed and the same set of rules as Government servants would, pro tanto, apply to them as were applicable to them on the date of devolution of power. In such view of the matter, we find no infirmity in the view taken by the learned single judge dismissing the writ petition nor do we find any substance in the writ petition filed by and on behalf of Gram Panchayat Adhikari challenging the validity of the amended Sections 25 and 25A of the U. P. Panchayat Raj Act, 1947 and the G.O. dated 1.7.1999.

12. Accordingly, the appeals and the writ petition aforesaid fail and are dismissed. We make no order as to costs.