

(2014) 03 UK CK 0017
In the Uttarakhand High Court
Case No : Writ Petition No. 247 (SS) of 2014

Munnibala Rawat

APPELLANT

Vs

Uttarakhand Bahuuddeshiya Vitta Evam Vikas Nigam and
Others

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 UC 257

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : D. Barthwal, Advocate, for the Appellant

Final Decision : Disposed off

Judgement

Alok Singh, J.?Petitioner has knocked the door of this Court while invoking Article 226 of the Constitution of India assailing the impugned transfer order dated 30.10.2013 (Annexure No. 1 to the writ petition) whereby petitioner was transferred from Uttarkashi to Tehri Garhwal, on the same post. Undisputedly, petitioner had been working in District Uttarkashi for last more than 10 years and by the impugned order, she was transferred to Tehri Garhwal, on the same post.

2. Mr. D. Barthwal, Advocate, appearing for the petitioner while placing reliance on the judgment rendered by Full Bench of this Court in the case of Smt. Damyanti Bisht Vs. State of Uttarakhand and Others, vehemently contended that if transfer is being made on administrative ground, authority competent to transfer, should arrive at and record his satisfaction upon due verification and confirmation about the existence and truthfulness of allegations warranting the transfer of the person concerned.

3. He further contended that before passing the impugned transfer order on administrative side, neither petitioner was made aware of any allegation levelled against her nor the competent Authority recorded any satisfaction about

truthfulness of any such allegation against the petitioner. He further contended that merely writing that transfer is being made on administrative ground is not sufficient. therefore, transfer order is bad in law and liable to be quashed.

4. Government of Uttarakhand has made Transfer Policy, which was notified vide Government Order No. 588/XXX(2)/2008 dated 29.05.2008 (Annexure No. 5 to the writ petition). Clause 3 of Government Order dated 29.05.2008 provides that except in the case of transfer, on administrative ground before completion of the tenure in a particular district, ordinarily, for Government Servant of Group "A" and "B" tenure would be 3 - 5 years for accessible areas, however, for inaccessible areas, ordinarily, tenure would be 2-3 years.

5. Combined reading of Clause 3 of the Transfer Policy and judgment rendered by Full Bench of this Court in the case of Damyanti Bisht (supra) reveals that Government Servant of Group A and B shall remain posted in accessible area for 3-5 years and in inaccessible area shall remain posted for 2-3 years. However, before completion of tenure, as provided in the Government Order, if Government desires to transfer an employee on administrative ground competent authority must examine and record his satisfaction, as to why transfer is desirable before completion of tenure. In my considered opinion, after completion of tenure, as per Government Order, incumbent has to be transferred. In that event, competent authority is not required to assign any reason, in view of the fact that main reason of transfer is, in fact, that incumbent has completed his tenure of posting.

6. This is no more res integra that ratio decidendi of any judgment should be understood in the peculiar facts and circumstances of that case and cannot be made applicable in each and every case. Ratio of the judgment rendered by Full Bench in the case of Damyanti Bisht (supra) would mean only that if an incumbent is being transferred before completion of tenure, in any particular district, on administrative ground, reasoning and satisfaction must be recorded by the competent authority, on the question as to why his posting is undesirable in a particular district and why his transfer is desirable before completion of his tenure in a particular district.

7. In the case in hand, petitioner is posted in Uttarkashi for last more than 10 years i.e. beyond the ordinary tenure in a particular district, therefore, her transfer was desirable, as per Transfer Policy. In view of the above, since petitioner has completed more than 10 years, therefore, her transfer was necessary and no reason was required to be recorded, therefore, no fault can be attributed to the impugned order. Petition is devoid of merit and hence, is dismissed. CLMA No. 1669 of 2014 also stands disposed of.