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**(2005) 08 AHC CK 0271**

**In the Allahabad High Court**

**Case No :** Writ Petition No. 4779 (SS) of 2005 connected with 2 W.Ps.

Mushahid Beg and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 04-08-2005

**Acts Referred:**

Constitution of India, 1950 — Article 166, 166(1), 166(2)  
Uttar Pradesh Panchayat Raj Act, 1947 — Section 25, 25A

**Citation :** (2006) 2 AWC 1330

**Hon'ble Judges :** N.K. Mehrotra, J

**Bench :** Single Bench

**Advocate :** Rakesh Kumar Srivastava, Seema Srivastava and Ram Raj, for the Appellant; Vinod Kumar Singh, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

N.K. Mehrotra, J.—The petitioners of all these three writ petitions were initially appointed as Tubewell Operators in the Irrigation Department, After the 73rd amendment in the Constitution of India, the State Government issued an order on 12.4.1999 in order to implement the scheme of decentralization of powers wherein the work of several department of the State Government namely Primary Education, Anaupcharik Shiksha, Government Tubewell, Rural Water Supply, Medical Health and Family Planning, Veterinary Medical Services, Youth Welfare and Social Welfare, Women Welfare and Child Development, Cane Land Development and Water Resources, Agriculture, Food, Rural Development and Panchayat Raj Department were given under the complete control of Gram Panchayats. The Tubewell Operators, Seenchpal (Tubewell) and Seenchpal (Canal) were appointed on the post of multipurpose employee by way of transfer of their services from the Irrigation Department of the State Government and the petitioners were also appointed as multipurpose employee/Gram Panchayat Vikas Adhikari. The Tubewell Operator cadre was declared as dying cadre on 5.5.1999 as contained in Annexure-3. Later on, U.P. Panchayat Raj Act, 1947 was amended. Since the earlier order dated 12.4.1999 was technically defective, the

State Government after exercising the power under the Amending Act issued fresh orders in accordance with the provisions of Sections 25 and 25A (as amended). Under the Amending Act, the State Government was empowered to transfer any employee or class of employee serving in connection with the affairs of the State to serve under the Gram Panchayat. On 20.7.2004, certain group of employees namely Kisan Sahayak of Agriculture Department, Cane Supervisor of Cane Development and Gram Vikash Adhikari of Rural Development were sent back to their parent department and the remaining employees of the other department including the petitioners were required to be posted for the purpose of formation of clusters of the Gram Panchayat. In this Government order also, it was provided that the employees of these departments who have been sent to the parent department will continue to perform their function under the administrative and financial control of the Gram Panchayat. It is alleged that now after elapse of more than six years, State Government has issued an order dated 19.7.2005, Annexure-1 by which the petitioners tubewell operators have been sent back to the Irrigation Department. According to the direction in this Government order, all the Government Tubewells along with its belongings have been returned back to the Irrigation Department and the persons working as Gram Panchayat Vikas Adhikari likewise the petitioners have been posted as Tubewell Operators/Part time Tubewell Operators under the control of the Irrigation Department. It is this Government order dated 19.7.2005 which has been challenged in all the three writ petitions.

2. The main ground to challenge this order is that the opposite parties had no occasion to make any provision to keep the petitioner under the control of the Gram Panchayat after their repatriation and on this score, the impugned Government order dated 19.7.2005, is liable to be struck down. It is also contended by the petitioners that since the cadre of tube-well operators is not revived and therefore, the impugned Government order dated 19.7.2005, cannot be implemented. The next contention of the petitioner is that all the part time tubewell operators were declared full time tubewell operators by this Court in Writ Petition No. 3558 (S/S) of 1992 : Suresh Chandra Tiwari and Ors. v. State of U.P. and Ors.

3. Uttar Pradesh Gram Panchayat Adhikari Sangh through its President have moved an application for their impleadment to oppose the Writ Petition No. 4779 (S/S) of 2005.

4. I have heard Shri Rakesh Kumar Srivastava, counsel for the petitioner, Shri Vinod Kumar Singh Additional Advocate General for the opposite parties and Shri Ram Raj advocate for the applicants for impleadment.

5. After hearing the learned Counsel for the parties, I find that there are certain facts which are not disputed by either parties. Earlier on 6.6.2001 and by subsequent orders on 21.9.2001 and 19.11.2001 : Seenchpal (Canal Division), Male Health Workers and Seenchpal (Bhumi Vikas and Jal Sansathan) were sent back to their parent department by issuing the repatriation order and they were

also kept under the control and supervision of Gram Panchayat. These three orders were challenged by the employees of those departments in bunch of writ petitions. Civil Misc. Writ Petition No. 22874 of 2001, Krishna Kant Tiwari and Another Vs. State of U.P. and Others, . It was held by this Court that the employees who were transferred by the Government order dated 1.7.2001 are not being absorbed in any new service but they were on deputation to Gram Panchayats. They can always be transferred back to their parent department. It was also held that there is no illegality in transferring the Seenchpal (Canal Division), Male Health Workers (Medical Department) and Seenchpal (Bhumi Vikas Evam Jal Sansadhan). The provision under the Government order dated 6.6.2001 and 19.11.2001 transferring them back to their parent department are valid. A special appeal against this judgment and the SLP filed before the Supreme Court have been dismissed.

6. Later on, the Government decided to transfer Kisan Sahayak of Agriculture Department, Cane Supervisor of Cane Development Department and Gram Vikas Adhikari of Rural Development Department were sent back to their parent department vide Government order dated 20.7.2004, Annexure-8 in the aforesaid Writ Petition No. 4779 (S/S) of 2005. This Government order dated 20.7.2004 was challenged in Gauri Shankar and Others Vs. State of U.P. and Others, . Along with this writ petition, a bunch of writ petitions was decided by this Court. These writ petitions were dismissed subject to the condition that the petitioner shall not be compelled to discharge the duties under the administrative and financial control of gram panchayat. It was also directed that the State Government shall pass proper Government orders forthwith in the light of the observations made in the judgment. Gauri Shanker and others filed a Special Appeal No. 1005 of 2004 against the judgment dated 7.8.2004, passed by the Hon'ble single Judge of this Court. The judgment of the Hon'ble single Judge dismissing the writ petition was upheld in special appeal but the condition imposed, that the petitioner shall not be compelled to discharge duty under the administrative and financial control of the Gram Panchayat, was set aside by the Division Bench. The relevant portion of this judgment is as follows:

The words "subject to condition that the petitioner shall not be compelled to discharge duty under the administrative and financial control of the Gram Panchayat" in effect nullifies that part of the Government order dated 20.7.2004, in which it has been held that the employees posted at the Gram Panchayat level will work under the administrative and financial control of the Gram Panchayat. We do not agree with this condition placed by the learned single Judge in his order dated 6.8.2004. It is always open to an employer to tell an employee under whose supervision and control the employee will work. For instance, if A appoints a servant and tells him to work in the house of B under the supervision and control of B, that servant continues to be the servant of A because A appointed him, A pays him salary and A can terminate his service even if his servant is working under the supervision and control of B. B cannot terminate his service; he can only send him back to A. Hence, since the appellants are the

servants of the Government is for the Government to decide under whose supervision and control they will work. The Government is the master and the Government can send its servants to work under the control of the Gram Panchayat. We see nothing strange or arbitrary in this. However, we make it clear that the Gram Panchayat cannot terminate the service of the appellants.

7. Further the Government order dated 20.7.2004, was challenged in Subash Chand Pandey and Others Vs. State of U.P. and Others, . In this writ petition also, Kisan Sahayaks had challenged their repatriation to the parent department and a bunch of writ petitions were dismissed by this Court on 20.8.2004. In this judgment, this Court had discouraged the dual administrative control but after the judgment in Special Appeal No. 1005 of 2004 it is of no importance and the Government can be guided by the observation of the Division Bench of this Court in Special Appeal No. 1005 of 2004 referred to above.

8. The next contention of the petitioners is that the cadre of tubewell operator was declared dying cadre and therefore till the cadre is revived, the petitioners cannot be sent back to their parent department. This aspect has already been considered in Subhash Chandra Pandey and Ors. v. State of U.P. and Ors. (supra) by making a distinction in the "dying cadre" and "dead cadre". Since the cadre of the Tubewell Operators was never declared as "dead cadre", therefore, this argument has also no force in view of the earlier judgment of this Court in Subhash Chandra Pandey and Ors. v. State of U.P. and Ors.

9. The last contention of the petitioners is that in the Irrigation Department, the part time tubewell operators were declared at par with the full time tubewell operators in the earlier judgment of this Court referred to above. Therefore, the petitioners cannot be sent back as part time tubewell operators. This contention has also no force because of the reason that the Government will abide by the earlier decision in this regard and it cannot be said at this stage that the earlier judgment of this Court in the matter of part time tubewell operator shall not be followed by the Government.

10. Before closing my judgment I would like to observe that the Government order dated 19.7.2005 is a letter written by Mrs. Neera Yadav, the Chief Secretary, U.P. Government addressed to all the Divisional Commissioners and the District Magistrates. The Government orders are issued in the name of the Governor as provided under Article 166(1) of the Constitution. It is provided in this Article that all Executive action of the Government of the State shall be expressed to be taken in the name of the Governor. It is made clear that every Executive decision need not be formally expressed in the name of the Governor and this is particularly so when a superior officer directs his subordinate to act in a particular way. It is also made clear that the Chief Secretary has communicated the decision of the Government to all her subordinate Divisional Commissioners and the District Magistrates in the State of Uttar Pradesh. But since it repatriates the tube-well operators to their parent department and which in effect supersedes the earlier orders issued in the name of the Governor, there must be

an order in the name of the Governor as provided under Article 166(1) of the Constitution. At the same time, I make it clear that in P. Joseph John Vs. The State of Travancore-Cochin, , it has been held by the Supreme Court that an order signed by the Chief Secretary on behalf of the Government, is substantial compliance with Article 166 of the Constitution even though, it has not been expressed to be made in the name of the Governor. Since Mrs. Neera Yadav has written this letter in the capacity of the Chief Secretary and she has communicated the decision of the Government, it need not be interfered merely on this ground that this order has not been issued in the name of the Governor. Moreover, it is also made clear that the provisions under Article 166(1) is only directory as has been held in R. Chitrlekha and Another Vs. State of Mysore and Others, . Therefore, this impugned order is not required to be quashed on this technicality but the Government can be advised to issue the Government order after making compliance of the provisions of Article 166(1) of the Constitution so that the compliance may give immunity to the order as provided under Article 166(2) of the Constitution.

11. In view of the above, all the three writ petitions are devoid of any merit and consequently, these writ petitions are dismissed at admission stage.