
(2018) 07 UK CK 0135

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 300 of 2018

Nikhilesh Ojha & Others

APPELLANT

Vs

State of Uttarakhand & Others

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Uttarakhand Annual Transfer for Public Servants Act, 2017(Uttarakhand Act No. 1 of 2018), — Section 21(3), 23, 23(8)

Citation : (2018) 07 UK CK 0135

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Tapan Singh, Pradeep Joshi

Final Decision : Dismissed

Judgement

K.M. JOSEPH, C.J. (ORAL)

SHARAD KUMAR SHARMA, J.

1. Since a similar question of law is involved in both these writ petitions, we are disposing of both these writ petitions by the following common

judgment. We take Writ Petition (S/B) No. 300 of 2018 as the leading case. The petitioner is working as a Transport Tax Officer-I. By virtue of the

impugned order dated 05.07.2018 passed by respondent No. 2, he stands transferred from Roorkee to Tehri. It is this transfer which is impugned

before us.

2. The Legislature of Uttarakhand has enacted an Act called the Uttarakhand Annual Transfer for Public Servants Act-2017 (Uttarakhand Act No. 1

of 2018) (hereinafter referred to as "the Act"). The case of the petitioner is based on the alleged violation of Section 23 of the Act. Section 23,

inter alia, provides that for general transfer in each year, a time table as provided therein has to be observed. The time table, inter alia, provides that

the last date of issuing of transfer order by the competent authority is 10th of June of a year. In this case, the impugned transfer order was passed on

05.07.2018, therefore, the order is bad runs the argument of the learned counsel for the petitioner.

3. This is sought to be countered by Mr. Pradeep Joshi, learned Standing Counsel for the State of Uttarakhand / respondents by pointing out that time

schedule provided under Section 23 of the Act could be altered in relation to Group A and Group B employees, on the basis of approval of

the Chief Minister under Section 21(3) that the period has been extended and it is on that basis that the transfer order of the petitioner has been

passed and it is valid. Section 21(3) of the Act reads as follows:

(3) After the date indicated as per time table mentioned in Section 23 the transfers of officers of Group A and Group B transfers

may be made with the approval of the Chief Minister and of employees of Group C and Group D shall be made by the authority of

one rank higher of the competent authority for making such transfers.

4. Communication dated 05.07.2018 with regard to change of time schedule is also brought to our notice, where there is specific reference to Section

21(3) also. It is also argued by Mr. Pradeep Joshi, learned Standing Counsel for the State that, in fact, the Chief Minister has also given his approval

on 05.07.2018.

5. Mr. Tapan Singh, learned counsel for the petitioner, thereupon, would point out that still there is an obstacle for the Government to succeed due to

the restrictions imposed under Section 23 of the Act, namely, admittedly, even according to the learned Standing Counsel for the State the first

meeting of the Committee took place on 30.05.2018. This was followed by next meeting on 5.06.2018 and finally the last meeting of the Committee

took place on 03.07.2018. Mr. Tapan Singh, learned counsel for the petitioner would draw our

attention to the time table fixed in Section 23 of the Act for the purposes of meeting of the Transfer Committee and the period of giving

recommendations to competent authority. Section 23(8) provides as follows:

Meeting of transfer committee and period of giving recommendations to

competent authority - 25th May to 5th June.â??

6. It is, undoubtedly, true that the time period has been overshoot in the matter of holding of meeting of the Committee. We proceed on the factual basis

as supplied even by Mr. Pradeep Joshi, learned Standing Counsel that the last meeting of the Committee took place on 03.07.2018.

7. But, we would think that having regard to the express provision contained in Section 21(3), which, in fact, has been invoked by the petitioner for

challenging the impugned order dated 5.07.2018, the argument of the learned counsel for the petitioner cannot be accepted. It may be true that the last

date for issuing the order of transfer is to be treated as mandatory. In this regard, we may be re-enforced by the provisions contained in Section 21(3)

of the Act, which we have adverted to and also another provision which, in fact, is also sought to be invoked by the learned Standing Counsel; the said

provision is the proviso in Section 23. It reads as under:

â??Provided that the State Government from time to time, may make necessary amendment in the time table by issuing an order.â??

8. In fact, initially, an attempt was made to invoke the said provision, but, it is quite clear that it is not a case of amendment in the time table issued by

an issuing order under the proviso to Section 23. Therefore, having regard to the purport of the Act, namely, that the orders of transfer should be

issued within a particular deadline so as to secure the interest of the employee and the members of his family so that arrangements can be made for

example, for admitting children to educational institutions, making another arrangements, a deadline has been prescribed. We may be inclined to accept

that the deadline for issuing the order of transfer is mandatory, but we cannot proceed to further accept the contention that every step in the time

table, which culminated in the order of transfer being issued must also be given an imperative character, which result we would be justified in arriving

at, having regard to Section 21(3), which, we have adverted to, as it provides that after the date indicated in the time table, transfers can be made with

the approval of the Authorities, which are mentioned therein.

9. In this case, the petitioners are Group â??Bâ?? officers; it is to be done with the approval of the Chief Minister which as per the argument of

learned Standing Counsel was strictly complied with. We are inclined to proceed on the basis that the order of transfer, though issued beyond the time

limit prescribed under Section 23, it is supported by the provision of Section 21(3) and therefore the orders are only to be sustained. The writ petition will stand dismissed. No order as to costs.