
(2008) 11 AHC CK 0060
In the Allahabad High Court

Om Prakash Asthana

APPELLANT

Vs

Uttar Pradesh Power Corporation Limited

RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:

Citation : (2009) 1 UPLBEC 543

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Petitioner was an employee of the respondents in the capacity of Computer/ Technical Assistant (Engineer Grade). Through order dated 30.07.2002 he was transferred from Electricity urban distribution Division I to Division II. The distance between both the offices is less than 2 K.M. However petitioner challenged the transfer order on the ground of incompetence of the authority who passed the transfer order to pass such orders. The transfer order was challenged through writ petition No. 33805 of 2002 filed on 14.08.2002

3. In the said writ petition on 10.10.2002 an interim order was passed to the following effect:

List in the week commencing 28.10.2002. Until the next date of listing the operation of the transfer order dated 30.07.2002 shall remain stayed unless it has already being giving effect to.

4. Thereafter the said writ petition was finally decided on 13.12.2002. Transfer order was upheld. It was directed as follows:

However if the petitioner has any genuine problem in being shifted from Electricity Distribution Division - I to Electricity distribution Division II he may make a representation to that effect before respondent No. 2, the Chief Engineer who may pass appropriate order preferably within a period of three weeks from the date a certified copy of this order along with representation is submitted

before him. Till the disposal of the representation status quo as regards place of posting of the petitioner existing as on today shall be maintained.

With the aforesaid direction this writ petition is disposed of.

5. Thereafter, petitioner joined his duty at the transferred place on 15.01.2003. The grievance of the petitioner is that he has not been paid his salary from 09.08.2002 till 14.1.2003. In this regard through an order passed in a Special Appeal Chief Engineer was directed to decide the representation. Chief Engineer decided the matter through order dated 31.03.2006, Annexure 10 to the writ petition holding that the petitioner was not entitled to the salary for the aforesaid period. The said order has been challenged through this writ petition.

6. Through the said order it has been held that petitioner is not entitled to the salary for the aforesaid period as he did not join his duty. Counter affidavit has also been filed. In the impugned order as well as counter affidavit it has been stated that in pursuance of transfer order dated 30.07.02, petitioner was relieved from his duty on 08.08.2002 but he refused to receive the relieving order which was again sent through registered post dated 12.08.2002 and was again refused.

7. Thereafter it was published in daily Hindi Newspaper Amar Ujala dated 28.09.2002 copy of the newspaper has been annexed as Annexure CA 1. In the stay order dated 10.10.2002 operation of transfer order was stayed unless it had already been given effect to. In the final judgment dated 13.12.2002 it was directed that till the disposal of the representation status quo as regards place of posting of the petitioner existing on the said date namely 13.12.2002 shall be maintained.

8. In my opinion as petitioner had not joined on the transferred post hence w.e.f. the date of stay order i.e. 10.10.2002 he is entitled to his salary. I am further of the opinion that w.e.f. 09.08.02 till 20.10.2002 petitioner is not entitled to his salary as he refused to receive the transfer order and it was also published in newspaper.

9. Accordingly, writ petition is allowed in part. It is held that petitioner is not entitled to his salary from 09.08.02 till 10.10.02 as he did not join on the transferred post. For the said period he did not work. However, he is entitled to salary from 10.10.02 till 14.1.03 in view of the stay order dated 10.10.2002 and the final order dated 13.12.2002 passed in writ petition No. 33805 of 2002. Let the salary for this period be paid within two months failing which interest @ 1% per month shall be payable thereupon.