

(1993) 09 AHC CK 0005
In the Allahabad High Court
Case No : Special Appeal No. 554 of 1993

Prabhu Nath

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 02-09-1993

Acts Referred:

Citation : (1994) 1 AWC 46

Hon'ble Judges : S.C. Mathur, Acting C.J.;Sudhir Narain, J

Bench : Division Bench

Advocate : B.N. Tiwari, for the Appellant;

Final Decision : Allowed

Judgement

S.C. Mathur, A.C.J.

1. This Special Appeal is directed against the judgment and order of a learned single judge who dismissed the appellant's writ petition directed against the order passed by the Settlement Officer (Consolidation), Ballia in the directions of the Director of Consolidation, U.P., Lucknow, transferring him from Ballia to Mirzapur. The Appellants is a Consolidation Lekhpal. The appellant's plea was that his service conditions were governed by Lekhpals Service Rules, 1958 under which an order of transfer could be passed only by the Collector of the Assistant Collector in the situations specified in Rule 21. It is asserted that no authority other than the one specified in Rule 21 could exercise power of transfer.

2. In the year 1978 the State Government promulgated the Uttar Pradesh Consolidation Lekhpals Service Rules, 1978. These rules make provisions for sources of recruitment, reservation, age" qualification, academic qualification, professional qualification and certain other matters. There is no specific provision relating to transfer. In Rule 24 it is mentioned that in regard to the matters not specifically covered by these rules or by special orders, persons appointed to the service, shall be governed by the rules, regulations and orders" applicable generally to Government servants serving in connection with affairs of the State.

Learned single judge has placed reliance upon these provision's for rejecting the claim of the Appellants. He has held that since 1978 rules do not contain any specific provisions regarding transfer, the general rule relating to transfer of a Government servant will apply in the present case and under the general law the Appellants could be transferred from one district to another.

3. The learned counsel for the Appellants has submitted that the reliance placed by the learned single judge on rule 24 was misconceived as the Appellants was appointed at the time 1958 rules were in operation and his service condition will continue to be governed by the said rules. It is also submitted that 1978 rules have not abrogated 1958 rules.

4. In respect of the proposition that the Appellants will continue to be governed by 1958 rules, the learned counsel has cited *The Commissioner of Wealth-tax v. Smt. Hashmatunnisa Begum* AIR 1989 SC 1024 and *R.S. Raghunath Vs. State of Karnataka* and another, .

5. We proceed on the assumption that the petitioner's service conditions shall continue to be governed by 1958 rules. Rule 21 upon which strong reliance has been placed by the learned counsel for the Appellants reads as follows:

21. Transfer (a) The Collector may at his discretion transfer a Lekhpal from one halqa to another within the district and the Assistant Collector may similarly transfer a Lekhpal within the sub division.

(b) When any tract is under survey, record or settlement operation. or under the operations for consolidation of holdings, the transfer of a Lekhpal outside the area under the aforesaid operations, shall not be made by the Collector or the Assistant Collector without consulting the Records or Settlement Officer, or the Settlement Officer of Consolidation, as the case may be.

6. The appellant's employer is the State Government. According to the learned counsel, he was appointed by Settlement Officer (Consolidation). If this is so, Settlement Officer (Consolidation) was the appointing authority; thereby the Appellants did not cease to be an employee of the State Government. It is right of employer to post its employee at any place. This is subject to statutory restrictions. Except rule 21, our attention has not been drawn to any provision which puts restriction on the right of the State Government or Settlement Officer to direct transfer of Government servants from one place to another. So far as Section 21 is concerned, it deals with the powers of the Collector and the Assistant Collector. It does not deal with the powers of superior officers like Director of Consolidation and the Settlement Officer (Consolidation). In respect of the Collector, it is provided that he can transfer Lekhpal from one haiga to another within the district. Obviously, a Collector cannot exercise jurisdiction beyond his district. The provision is therefore in accord with the normal jurisdiction of a Collector. Similarly in respect of Assistant Collector, it is provided that he could transfer a Lekhpal within the Sub Division. An Assistant Collector exercises jurisdiction not over the entire district but only over the Sub Division.

Accordingly this provision does nothing more than indicate the normal jurisdiction of the Assistant Collector. On the basis of the provision contained in rule 21 (a) it cannot be said that the Director of Consolidation was incompetent to issue direction for the appellant's transfer.

7. Reliance was placed by the learned counsel on clause (b) of rule 21 for submitting that consultation with the records or Settlement Officer or Settlement Officer (Consolidation) was required before transferring the Appellants. Clause (b) is referable to clause (a) which deals with exercise of power of transfer by the Collector and the Assistant Collector. It has no application when the power of transfer is exercised by any other competent authority. Reliance placed on clause (b) is therefore misconceived.

8. In view of the above, the Special Appeal lacks merit and is hereby dismissed. There shall be no order as to costs.