
(2005) 02 AHC CK 0010
In the Allahabad High Court
Case No : Writ Petition No. 54 (S/B) of 2005

Provisional Medical Services Association and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 16-02-2005

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2005) 6 AWC 6366

Hon'ble Judges : Pradeep Kant, J;P.K. Chatterji, J

Bench : Division Bench

Advocate : H.P. Gupta, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kant and P. K. Chatterji, JJ.—Heard the learned Counsel for the Petitioner as well as the State. Learned Counsel for the State submitted that in view of the proposed order, the filing of the counter-affidavit is not necessary, therefore, we proceeded to decide the matter finally with the consent of the parties counsel.

2. This petition has been filed by the Association namely ; Provisional Medical Service"s Association, challenging the clarification issued by the State Government and communicated to the Director General, Medical and Health Services vide letter dated 17th December, 2004 saying that in response to the letter of the Director General, Medical and Health Services dated 12.8.2004 it has been directed to inform that in the matter of posting of the Medical Officer except for the tenure of stay at a particular place, the rest of the transfer policy as enunciated in the Government order dated 3.6.2004 shall be complied with. However, paragraph 10 of the aforesaid Government order dated 3.6.2004 can only be followed in case prior permission of the High Court is obtained, and therefore, if the Association so wishes may itself move to the High Court for seeking aforesaid desired relief.

3. It is in this background, the present petition has been filed by the Association challenging the said stand of the Government with respect to the implementation of paragraph 10 of the transfer policy. Paragraph 10 of the transfer policy dated 3.6.2004, provides that the office bearers of the Service Association may not be transferred within a period of two years from the date on which they assumed their respective offices.

4. The grievance of the Petitioner's Association is two fold namely ; that on the one hand the State Government of its own stayed the implementation of the provisions of the said transfer policy regarding transfer of physically handicapped officers and on the other hand in the same transfer policy paragraph 10 has been kept in abeyance on the ground that it requires prior permission from the High Court for which aforesaid direction has been issued to the Association to seek remedy itself.

5. Paragraph 10 of the transfer policy reads as under:

(10) Sarkari Karmcharion Key Manyata Prapta Sewa Sanghon Key Padadhikarion Key Esthanantran:

Sarkari Sewakon Key Manyata Prapta Sewa Sanghon Key Adhyaksha/Sachiv, Jinmey Zila Shakhaon Key Adhyaksha Evam Sachiv Bhi Sammil Hai, Key Esthanantran, Unkey Dwara Sangathan Mein Pad Dharit Karney Ki Tithi Sey Do Varsh Tak Na Keyey Jayen. Yadi Esthanantran Kiya Jana Apariharya Ho, To Esthanantran Hetu Adhikrat Adhikarion Sey Eka Estar Ooper Key Adhikari Ka Purva Anumodan Prapta Kiya Jayey. Zila Shakhaon Key Padaadhikarion Key Esthanantran Prakarnon Per Zila Adhikari Ki Purva Anumati Prapta Ki Jai.

6. In the Special Appeal No. 817 of 2004 in re: Provincial Medical Services Association and Ors. v. State of U.P. the Division Bench of the Court observed as under:

Secondly, the Government frames the transfer policy in respect of its employees from time to time, Doctors cannot claim to be of a separate class, nor it is their case that they are not to be governed by the said policy. The transfer policies framed by the State always provide a guideline to transfer an employee after serving three years generally at a particular place. The said transfer policy or any other guidelines issued by the State Government from time to time in respect of transfer of the Medical Officers, separately had not been implemented strictly in their cases. State Government considering the directions issued by this Court which have been held to be recommendatory only, framed the transfer policy of transferring the doctors who have served at a particular place for ten years. A Government servant does not have a right to, the State is required to enforce even without direction of any Court. It is not something which this Court has directed to do, which was not permissible in law or not known to the State Authorities. It was only a recommendation to wake up the so called administration from its deep slumber as under what circumstances the authorities were discriminating the other Government employees from the

medical officers by not transferring them from a particular place for the decades altogether ; and as to why the other officers are being transferred generally after serving at one place for three years. It cannot be a legal issue for examination by any Court when Appellants who are Government servants and know very well that transfer is an incidence of service. Be that as it may, it is for the State to adopt the policy and the Court has to keep its hands off unless the policy is found to be unreasonable and arbitrary. Framing the policy of transfer after 10 years" stay at one particular place may be a premium for the Doctors for flourishing their Nursing Homes at the place of their service or serving in the private Nursing Homes to the disadvantage of the society as a whole. The transfer policy framed by the State Government may be counter productive of its desired aims. It is strange that the Appellants have a grievance against a discriminatory policy framed by the State Government, which is totally to their advantage and discriminatory against all other employees and against the public interest. Thus, seeing the present state of affairs in the Medical Service, we have no hesitation to say that 10 years" stay policy may be counter-productive.

As the Division Bench of this Court has already held that the said directions are only recommendatory, we see no reason to take a view contrary to the same. Appeal is devoid of any merit. The facts of the appeal do not warrant any interference. It is accordingly dismissed.

7. The transfer policy is thus, to be implemented by the State Government and the Government servant or the Service Association has no legal obligation to ask for the permission from the Court for the implementation of the policy. It is altogether a different matter to consider that the Medical Officer, who has stayed at a particular place for more than the period prescribed in the policy, if on being again elected as an office bearer, he would still be entitled to the protection provided under paragraph 10 of the policy for a further extension of two years at that particular place from the date of election, even though he had already stayed there for more than the period prescribed or his such long stay, in itself may justify his transfer under the transfer policy.

8. In matters of transfer of the office-bearers, within a period of two years, from the date of their election if transferring such an officer is found necessary the same can be effected by following the guidelines given in paragraph 10 of the transfer policy.

9. Before parting we would like to clarify that the Petitioner has not challenged any other part of the transfer policy but since they felt aggrieved only by direction issued or in fact, advice given by the State Government through the Director General, Medical and Health Services to the Service Association for taking permission from the Court for implementation of paragraph 10 of the policy we have not addressed ourselves on any other issue. We have also not adjudicated upon the enforceability of the provision of para 10 aforesaid but we hold, that for implementing the said provision, the Service Association cannot be required to ask any permission from the High Court.

10. For the reasons stated above we do not find any justification for issuing the aforesaid letter dated 17.12.2004 by the State Government to the Director General Medical and Health Services nor there can be any justification for requiring the Service Association to seek clarification or any permission from the High Court for implementing the provisions of paragraph 10 of the transfer policy dated 3.6.2004. The direction issued in this regard by the State is superfluous.

11. The writ petition is disposed of accordingly.