
(2007) 03 AHC CK 0188
In the Allahabad High Court

Radhey Shyam

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 4 ADJ 235 : (2007) 6 AWC 6577

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Singh, J.—Heard counsel for the petitioner and Sri Prem Chand for the respondents.

2. The petitioner was working as a Junior Engineer "Jal" in Nagar Palika Parishad Pilkhua in district Ghaziabad. Citing illness of his wife, he approached the Commissioner, Meerut Division, Meerut and on his request, he was transferred to the Municipal Corporation, Ghaziabad vide order dated 30.6.2006. In pursuance thereof he was relieved and joined at his new posting. However, the State Government vide its order dated 5.9.2006 required the Commissioner to cancel the transfer order. The Commissioner in compliance thereof has cancelled the transfer order vide order dated 26.9.2006 and directed the petitioner to report back to Pilkhua. These two orders dated 5.9,2006 and 26.9,2006 are under challenge.

3. The only argument raised is that the Commissioner was within his jurisdiction to transfer the petitioner within his division exercising powers , under Rule 25(2) of the U.P. Palika (Centralized) Service Rules, 1966 (here-in-after referred to as 1966 Rules) and thus, the cancellation order passed merely on the dictates of the State Government was colourable exercise of powers and thus should be quashed. However, Sri Prem Chand appearing for the respondents contends that the services of the petitioner are governed by U.P. Palika and Jal Sansthan Jalkal

Abhiyantran (Kendriya) Sewa Niyamawali, 1996 (here-in-after referred to as 1996 Rules) and not by 1966 rules.

4. The 1996 Rules applies to all Nagar Nigams, Nagar Palika Parishads and Jal Sansthans vide Rule 1(2). Rule 2 defines centralized service as post created under Rule 3 and common to all Nagar Nigams and Water Works of Nagar Palika Parishad. Sub-rule 2 of Rule 3 mentions that the post of Junior Engineers belongs to centralized service under the rules. Further Rule 22 provides that the State Government is the appointing authority of such Junior Engineers under the rules and it has the power to transfer the officers from one Palika to another vide Rule 27. In the entire rules, there is no power assigned to the Commissioner to make any order of transfer.

5. Rule 3 of 1966 Rules extends its application to Palika Engineering Service, Palika Mechanical Service and Palika Traffic Engineering Service but the Palika Water Works Service is not covered by it.

6. Learned Counsel for the petitioner has failed to demonstrate as to how the Commissioner could have passed the order dated 30.6.2006 transferring him from Pilkhua to Municipal Corporation, Ghaziabad. Therefore, since the initial order of transfer was dehorse the rule, the State Government was well within its jurisdiction to have directed the Commissioner to cancel the illegal order.

7. On these facts, this is not a fit case for interference under Article 226 of the Constitution of India. Rejected.