

**(1995) 09 AHC CK 0042**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 23454 of 1995**

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|---------------------------------------|------------|
| Rajendra Kumar Singh Yadav and Others | APPELLANT  |
| Vs                                    |            |
| State of U.P. and Others              | RESPONDENT |

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**Date of Decision :** 19-09-1995

**Acts Referred:**

**Citation :** (1996) AWC 310 Supp

**Hon'ble Judges :** Paritosh K. Mukherjee, J

**Bench :** Single Bench

**Advocate :** V.K. Jaiswal, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Paritosh K. Mukherjee, J.—This Joint writ petition was moved on behalf of five Petitioners, namely Rajendra Kumar Singh Yadav, Sita Ram Yadav, Shant Prakash Yaduvanshi, Puranmasi Yadav and Surendra Singh Yadav, all belonging to Yadav community, inter alia, praying for cancellation of the impugned order of transfer dated 9.8.1995, whereby they have been transferred from Jhansi to different places.

2. This writ petition was initially moved before me on 29.8.1995, when this Court required the appearance of Sri P. P. Srivastava, learned Addl. Advocate General to argue in the matter. Learned standing counsel was informed about the same accordingly.

3. It is really unfortunate on the part of the State Administration that "one brief has been prepared to be shared by Sri P. P. Srivastava, learned Addl. Advocate General and learned standing counsel appearing before the court. Time and again when Sri P. P. Srivastava appeared, learned standing counsel was in helpless position and not in position to assist the court. State of U.P. is contesting this litigation in "forma pauperis".

4. This Court does not think that State of U.P. has been reduced to such a

position after the change of the management of the Government with effect from June 3, 1995.

5. Further, it appears that the State is not taking the matter with utmost sincerity. In defending this type of cases, in which certain order of transfer was alleged to have been passed on policy matter decision, after the change of the Government with effect from June 3, 1995.

6. The facts of the case are being narrated herein below:

Petitioner No. 1, Rajendra Kumar Singh Yadav is working as a Stenographer in the office of Deputy Director of Agriculture (Soil Conservation), Matatila, Yojana, Jhansi.

Petitioner No. 2, Sita Ram Yadav is working as a Junior Clerk in the office of District Agriculture Officer, Jhansi. Petitioner No. 3. Shant Prakash Yaduvanshi is working as a Senior Clerk in the office of Deputy Director of Agriculture (Plant Protection), Jhansi.

Petitioner No. 5, Surendra Singh Yadav is working as Junior Clerk in the office of Joint Director of Agriculture (Extension), Jhansi Region Jhansi.

7. It is the case of the Petitioners that one Sri Ranjeet Singh Judev, Ex-State Home Minister of Uttar Pradesh and presently local M.L.A. of Jhansi, wrote a letter to the present Chief Minister of U.P., copy of which was also forwarded to one Ram Lakhan Verma, Minister of State of U.P., by which Sri Ranjeet Singh Judev requested the Chief Minister to transfer the Petitioners as well as other persons, who are by caste Yadav, and are working in the Department of Agriculture in Jhansi. The aforesaid Ex-Minister also alleged in his letter that these Government servants are the men of erstwhile Chief Minister, Sri Mulayam Singh Yadav, and, they give their assistance to the men of erstwhile Chief Minister, Sri Mulayam Singh Yadav. Sri Judev also requested to the present Chief Minister that by calling personal files of each Petitioner and other mentioned Government servants, disciplinary action may be drawn against them.

8. After receipt of the aforesaid complaint, the present Chief Minister of U.P. Government, directed the Respondent No. 1, namely Secretary to Government of U.P., Agriculture Department for transferring the persons, out of Jhansi Region, whose names were mentioned in the complaint of Sri Judev, M.L.A

9. In his turn, Respondent No. 1, vide Government Order dated 7.8.1995, issued by Under Secretary, Government of U.P., directed the Director of Agriculture, U.P. to transfer the fifteen persons out of Jhansi Region, and after such transfer the situation to be reported to the present Chief Minister.

10. In compliance of the aforesaid Government Order dated 7.8.1995 the Respondent No. 2, Additional Director of Agriculture (Administration), U.P., passed order of transfer dated 9.8.1995, whereby the Petitioners have been transferred out of Jhansi Region, Copy of the aforesaid transfer order has been

annexed as Annexures-3, 3-A and 3-B to the writ petition.

11. Since this matter, prima facie, caused anxiety in the mind of the court as to whether the order of transfer can be passed by the Head of the State, i.e., the present Chief Minister after the change of the Government. Secondly, it was also the anxiety of the court as to whether the Petitioners, who are five in numbers, belonging to the Yadav community, have managed to get their posting at Jhansi, at the behest of Sri Mulayam Singh Yadav, the Ex-Chief Minister.

12. Somehow or the other, on earlier occasion, this Court directed Sri P. P. Srivastava, Addl. Advocate General to assist the court and the same was followed by putting appearance from time to time by Sri P.P. Srivastava before me. But learned Additional Advocate General as well as the learned standing counsel are in handicapped position to assist the court.

13. Apart from above, the Respondent authorities have not paid any heed to file counter-affidavit, although the matter is still pending before this Court since first week of August, 1995.

14. This Court further feels that in a case like this, when the order of transfer was procured at the instance and at the behest of the highest authority of the State Government, this case should not be continued in most perfunctory manner as It has been depicted before me.

15. This Court is constrained to make observation against the State Government, in the matter of handling of cases in the High Court. Ever since taking oath of office as Judge of Allahabad High Court, I have a bad experience as I find that in most of the cases, the court does not get proper assistance from the State Government. Either the counter-affidavits are not filed despite several opportunities to the standing counsel and even to the Additional Advocate General, or they are not properly briefed. The result of such carelessness on the part of the Government is that in many cases, this Court has to render its judgment without counter-affidavit on behalf of the State Government. This Court has piling arrears. So it is not in the Interest of litigant public to give time for uncertain period and to wait for the counter-affidavit from the State Government. It is well-known that in three fourth litigations, the State Government is necessary party.

16. When this Court delivers judgment without counter-affidavit, or without proper assistance from the side of State Government, then the State Government awakes from its slumber and either it files review petition or it goes to Apex Court with the innocent plea that it has not been heard by High Court.

17. A sizable amount of public money goes to the litigation cell of the State Government to defend the cases. Whole revenue of the State Government is dependant on the verdict of courts of law. The taxpayers and common men should not be cheated by the State machinery in such a negligent way.

18. Before joining Bench, I had also conducted many many cases, defending the

Union Government or State Government, involving Chief Minister, Ministers and many higher dignitaries. From my past experience, I am sorry to record my opinion about the State of U.P. that it is most negligent so far as conducting its cases in this Court is concerned. Therefore, it is high time that proper attention should be drawn of the concerned persons who are over the helms of affairs. I, therefore, direct the Registrar of this Court to send through Fax a copy of this judgment and order to the Chief Secretary, Government of U.P. and the Principal Secretary to the Chief Minister for necessary action at their end.

19. Now coming to the case in hand, without a counter-affidavit this Court is at a fix to assess the Justification of keeping persons of Yadav community at one place by previous Government, namely Jhansi. When persons belonging to a particular caste are posted at one place and said persons belong to the caste of Head of the State (the Chief Minister in the present case), naturally it puts a question mark in the mind of a man of common prudence. Here the proverb "Justice should not only be done but It should be shown to have been done" applies. The aforesaid proverb does not only apply to the courts of law, but also to the Executive and Legislature. Every action of Government should be fair, honest, sincere and to the welfare of the people of the State.

20. If persons of a particular community, by erstwhile Government have been shifted to different places by the present Government, the action of the Government cannot be assailed by any stretch of Imagination. It is rather the action of the erstwhile Government by placing large number of the persons of the same community at the same place, which cannot, but be castigated as arbitrary and fraudulent exercise of power. On the other hand, the present action of the Government, by transferring the aforesaid persons is fully Justified and it is in accordance with law.

21. Thus, this Court is of the firm view that If the earlier Government could pass an order, placing a group of members of Yadav community at Jhansi station, the successor Government has every right and justification to change such postings.

22. The order of transferring persons of Yadav community is perfectly in the exigencies of service because if the said persons, namely the Petitioners, are allowed to remain at Jhansi, there is every possibility of malting conspiracy and foul play by them, in the performance of their official duties.

23. Before parting with, I am of the considered view that Chief Minister or any Minister of the State have the pious duty of delivering goods to the people of the State. They can do so only when they may be able to supervise each and every action of public servants. If Director of Agriculture is competent to pass an order of transfer in respect of the present Petitioners, why not the Chief Minister? The Chief Minister, being the Head of the State has every right and authority to issue Instructions to the Director of Agriculture to pass necessary order of transfer, by application of mind, in public Interest, which has been done in the facts of the present case.

24. In view of what has been stated above, writ petition lacks merits. The impugned order dated 9.8.1995, passed by the Additional Director of Agriculture (Administration), Krishi Nideshalaya, Uttar Pradesh, Lucknow, contained in Annexures-3, 3-A and 3-B to the writ petition cannot and should not be Interfered by this Court.

Accordingly, writ petition is dismissed without costs.