

(1988) 12 AHC CK 0069
In the Allahabad High Court
Case No : Civil Misc. Writ No. 24399 of 1988

Rama Shanker Rai and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 16-12-1988

Acts Referred:

Constitution of India, 1950 — Article 162, 309
Lekhpals Service Rules, 1958 — Rule 21, 4

Citation : (1989) 1 AWC 399

Hon'ble Judges : S.K. Dhaon, J; B.L. Yadav, J

Bench : Division Bench

Advocate : R.G. Padia, for the Appellant;

Final Decision : Dismissed

Judgement

By the Court

1. By a common order dated 30th June, 1988, no less than 276 Lekhpals have been transferred from one sub-division to another sub-division in the same district. The two Petitioners before this Court are amongst the affected Lekhpals, Hence this petition.

2. In the purported exercise of power under Article 309 of the Constitution the Lekhpal Service Rules, 1958 (hereinafter referred to as Rules) have been made. Rule 21 alone deals with transfers of Lekhpals. Clause (a) of this Rule is material. It reads:

(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 Lekhpal within the sub-division.

Rule 4 of the Rules provides, amongst others, that the cadre of Lekhpals shall be districtwise and the districtwise allocation of strength will be made by the State Government. Judicial notice can be taken of the fact that in a particular district

there are number of halqas. Halqas in English language means "circle". Thus, in Rule 21 the Collector is empowered to transfer one Lekhpal from one halqa (circle) to another halqa (circle) within the district. This is precisely what has been done by the Collector concerned, Who passed the order dated 30th June, 1988.

3. The order dated 30th June, 1988, purported to have been passed by the Collector has not been produced before us. However, an order of the same date passed by the Chief Revenue Officer has been filed. In this order it is stated that in pursuance of the Government Order dt. 14th March, 1988, the Collector passed the order of transfer.

4. The submission is that under Rule 21 the Collector has been given a discretion to pass an order of transfer or not to pass an order of transfer. In the instant case, the Collector did not exercise his discretion and passed the order in obedience to the Government order dated 14th March, 1988. This submission is not tenable.

5. The Government order dated 14th March, 1988 states that it has been brought to the notice of the State Government that there are some Lekhpals "who have been posted for more than 10 years in those very Tahsils of which they are the residents. In accordance with the Government Order some such Lekhpals had been transferred outside the Tahsils, but lateron they were retransferred to their original Tahsils. This was contrary to the Government policy. The Under Secretary, who authenticated the Government Order requested the Board of Revenue, the Commissioners of various Divisions and the various District Magistrates in the State to transfer the Lekhpals Who had put in more than 10 years of service in their home Tahsils.

6. The State Legislature can legislate with respect to matters under Entry 41, List II. The proviso to Article 309 enables the Governor to frame rules pertaining to the recruitment and conditions of service. This is an enabling provision. The position, therefore, is that under the Constitution neither any duty has been cast on the legislature to legislate nor has any duty been cast upon the Governor to make Rules. In the absence of any legislation or Rules, executive directions or instructions can be issued within the framework of the Constitution (Article 162). The only limitation is that no executive directions or instructions can be issued either to amend or supersede or superimpose any existing Rule. Furtherance, nor directions or instructions can be issued inconsistent with the Rules. It follows that directions or instructions can be issued not to supplant but to supplement the existing Rules. The power under Article 162 to issue an administrative direction can also be exercised to fill up gaps in an existing statutory Rule or to supplement the same.

7. In Sant Ram Sharma Vs. State of Rajasthan and Another, certain Rules framed under Article 309 were in existence. Those Rules did not lay down the principle of promotion of junior or senior grade officers to selection grade posts. Paragraph 7

of the judgment, which is relevant, may be quoted:

We proceed to consider the next contention of Mr. N.C. Chatterji that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede, statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

See also *State of Gujarat Vs. Akhilesh C. Bhargav and Others*, .

8. Rule 21, as quoted above, does not lay down any guideline or criterion for exercising powers of transfer. It has left the matter in the realm of the sole discretion of the Collector. It is absolutely silent on the question as to whether a Lekhpal, who has put in more than ten years service in his home Tahsil should or should not be transferred from one sub-division to another sub-division. Therefore, the question of there being any inconsistency between the terms of the Government Order and the said Rule does not arise. The Government Order, therefore, is valid. It is within the ambit of Article 162 of the Constitution and will operate on its on force inspite of Rule 21.

9. The petition has no merits. It is dismissed summarily.