

(1998) 01 AHC CK 0071
In the Allahabad High Court
Case No : Special Appeal No. 1015 of 1997

Sajid Hussain and another	Vs	APPELLANT
District Basic Shiksha Education Officer, Badaun and others		RESPONDENT

Date of Decision : 12-01-1998

Acts Referred:

Uttar Pradesh Basic Education Act, 1972 — Section 9, 9(1), 9(3)

Citation : (1998) 1 AWC 745

Hon'ble Judges : D.P. Mohapatra, C.J;G.P. Mathur, J

Bench : Division Bench

Advocate : S.K. Verma, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—The appellants No. 1 and 2 were appointed as Assistant Clerk/Routine Clerk in Nagar Palika, Badaun on 30.1.1968 and 30.6.1971 respectively. By the order dated 30.6.1997, appellant No. 1 was transferred to Pilibhit and appellant No. 2 was transferred to Shahjehanpur. The transfer order was challenged by the appellants by filing Writ Petition No. 21867 of 1997 which was disposed of by this Court on 15.7.1997 with the direction that they may make a representation against their transfer order to the Assistant Director of Education (Basic), Bareilly, which shall be disposed of within one month from the date of making representations. The appellants made representations which have been decided by the Assistant Director on 10.11.1997 and a direction has been issued to the District Basic Education Officer (for short B.S.A.), Badaun to transfer the appellants in the office of Up-Basic Shiksha Adhikari, Badaun. Feeling aggrieved by the aforesaid order, the appellants preferred Writ Petition No. 37779 of 1997 which was dismissed by learned single Judge on 13.11.1997. The present Special Appeal has been filed challenging the aforesaid order.

2. We have heard Sri S. K. Verma for the appellants and learned standing counsel for the respondents.

3. Sri S. K. Verma has submitted that the appellants were initially appointed in Nagar Palika. Badaun and after the constitution of Uttar Pradesh Board of Basic Education under U. P. Basic Education Act, 1972 (hereinafter referred to as the Act), their services were transferred to the Board upon the same terms and conditions of service as they would have held if the Board had not been constituted by virtue of sub-section (1) of Section 9 of the Act. It is urged that as an employee of Nagar Palika cannot be transferred outside its territorial limit, the impugned order transferring the appellants to the office of Up-Basic Shiksha Adhikari is clearly illegal as the effect thereof would be that the appellants will be required to work at a place which is beyond the territorial limits of Nagar Palika. Section 9 of the Act deals with transfer-and absorption of an employee serving with a local body after the constitution of U. P. Board of Basic Education and subsections (1) and (3) thereof, which are relevant for decision of the controversy in hand, are reproduced below:

Section 9 : (1) "On and from the appointed day every teacher, officer and other employees serving under a local body exclusively in connection with basic schools (Including any supervisory or inspecting staff) immediately before the said day shall be transferred to and become a teacher, officer or other employee of the Board and shall hold office by the same tenure at the same remuneration and upon the same other terms and conditions of service as he would have held the same if the Board had not been constituted and shall continue to do so unless and until such tenure, remuneration and conditions are altered by rules made by the State Government in that behalf:

Provided that any service rendered under the local body by any such teacher, officer or other employee before the appointed day shall be deemed to be service rendered under the Board.

Provided further that the Board may employ any such teacher, officer or other employee in the discharge of such functions under this Act as it may think proper and every such teacher, officer or other employee shall discharge those functions accordingly."

(2) (Omitted).

(3) Notwithstanding anything in sub-section (1), any person referred to therein, who becomes an employee of the Board shall be liable to be transferred from the school or from the local area in which he was employed immediately before the appointed day to any other school or institution belonging to Board or, as the case may be, to any other local area at the same remuneration and on the same other terms and conditions of service as governed him immediately before such transfer until such tenure, remuneration and other terms and conditions are altered by the rules referred to in sub-section (1) :

Provided that no teacher of a basic school which before the appointed day belonged to a local body shall be transferred to a basic school belonging to any other local body except with his consent.

(4) (Omitted).

(5) (Omitted).

(6) (Omitted).

Sub-section (1) of Section 9 no doubt provides that on and from the appointed day every employee serving under a local body exclusively in connection with basic school shall be transferred to and become an employee of the Board and shall hold office by the same tenure, at the same remuneration and upon the same other terms and conditions of the service as he would have held if the Board had not been constituted. However, sub-section (3) clearly provides that any person referred to in sub-section (1) who becomes an employee of the Board shall be liable to be transferred from the local area in which he was employed before the appointed day to any other local area. In view of specific provision regarding transfer having been made in sub-section (3), the appellants cannot contend that they cannot be transferred outside the limit of Nagar Palika, Badaun. The expression "conditions of service" used in sub-section (1) cannot be read in isolation and it has to be read along with sub-section (3) which clearly permits transfer of an employee. Sub-section (3) is in the nature of an exception to sub-section (1) in the matter relating to transfer. There was no compulsion on the appellants to become employees of the Board and in case they so wanted they could have given a notice in writing to the State Government within a period of two months from the appointed day as contemplated by sub-section (2) of Section 9 of the Act. The appellants having not done so and having opted to become employees of the Board, they cannot challenge the order of transfer on the ground that at the time of their appointments in Nagar Palika which is a local body, their services were not transferable. Thus, there is no illegality in the order passed by Assistant Director.

4. Shri Verma has next contended that the competent authority for passing a transfer order was B.S.A. but in the present case a direction had been issued by the Assistant Director (Basic) and it will amount to transferring the petitioners at the dictate of some other authority. There is no dispute that the Assistant Director (Basic) is a higher authority and a B.S.A. works under him. No illegality is committed if a higher authority of the department passes an order directing a subordinate authority to transfer an employee. In the impugned order dated 16.9.97 of the Assistant Director, it is mentioned that there was serious complaint against the appellants and, therefore, it is not in public interest to keep them in the office of B.S.A. In our opinion, the Assistant Director was fully competent to pass such an order and the same does not suffer from any error of law.

5. The appeal lacks merit and is dismissed summarily at the admission stage.