
(2000) 03 AHC CK 0043
In the Allahabad High Court
Case No : Special Appeal No. 496 of 1999

Shashi Dutt Pandey

APPELLANT

Vs

Sri Baleshwar Tyagi and others

RESPONDENT

Date of Decision : 03-03-2000

Acts Referred:

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

Citation : (2000) 2 AWC 1535 : (2000) 2 UPLBEC 1094

Hon'ble Judges : G.P. Mathur, J;A.K. Yog, J

Bench : Division Bench

Advocate : Dinesh Dwivedi, for the Appellant; N.D. Rai, for the Respondent

Judgement

G. P. Mathur, J.—The appellant, an employee of U. P. Basic Shiksha Parishad was transferred from district Ballia to district Gonda by the order dated 8.2.1999 passed by Secretary, U. P. Basic Shiksha Parishad, Allahabad. This order was challenged by him by filing Writ Petition No. 15098 of 1999, which was dismissed by a learned single Judge on 15.7.1999. Feeling aggrieved by the dismissal of the writ petition, the appellant has preferred this special appeal.

2. Sri Dinesh Dwivedi has submitted that the appellant was appointed as Assistant Clerk in Zila Parishad. Ballia on 4.7.1967 and after the enforcement of U. P. Basic Education Act, 1972, he became an employee of U. P. Basic Shiksha Parishad. Thereafter, he could not be transferred to any place outside Ballia. The relevant parts of subsections (1) and (3) of Section 9 of U. P. Basic Education Act. 1972, read as follows :

"Transfer of Employees.--(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 other terms and conditions are altered by the rules made by the State Government in that behalf.

Provided.....under the Board. (Omitted as not relevant) Provided..... accordingly. (Omitted as not relevant)

(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.....consent. (Omitted as not relevant)"

3. Sub-section (3) of Section 9 of the Act is a complete answer to the submission made by the learned counsel for the appellant. It clearly provides that after the appointed day, any teacher, officer or an employee of a Zila Parlishad, who becomes an employee of the Board, can be transferred from one local area to another local area. Therefore, the transfer of the appellant from Ballia to Gonda is clearly permissible under the provisions of the Act by which he is governed.

4. Sri Dwivedi has next urged that the transfer order had been passed by the Minister and, therefore, the same is illegal. The record of the writ petition shows that the Secretary of U. P. Basic Shiksha Parishad had earlier transferred the appellant from Ballia to Firozabad by order dated 26.11.1997. By the order dated 1.1.1998, the transfer order was cancelled. Thereafter, another order was passed by the Secretary of U. P. Basic Shiksha Parishad, Allahabad. on 8.2.1999 by which the appellant was transferred from Ballia to Gonda and another person Ajay Kumar was transferred from Ballia to Agra. Annexure-5 to the writ petition purports to be an extract of an order dated 5.2.1999 passed by Sri Baleshwar Tyagi. Minister of State. Basic Education (Independent Charge). Lucknow, and addressed to Additional Director. Basic Shiksha. Allahabad. It mentions that the appellant Shashi Dutt Pandey and Ajay Kumar. who were working in Ballia may be transferred outside the district. The document filed as Annexure-5 does not appear to be a complete copy of the original order but merely an extract thereof. It is no where stated in the writ petition as to how the appellant secured a copy of an order passed by the Minister, which was addressed to Additional Director, Basic Shiksha. Allahabad. The appellant being a clerk in the office of Basic Shiksha Parishad at Ballia could not have got a copy of an order passed by the Minister of the department which was addressed to Additional Director. Basic Shiksha, Allahabad. That apart, as already stated, the document annexed as Annexure-5 to the writ petition is not a complete copy of the whole order but is

merely an extract running into three and half lines. We are, therefore, not prepared to place reliance upon the aforesaid document. Even assuming that the Minister had passed an order for transferring the appellant outside the district, we do not find any illegality in the same. Annexure-5 to the writ petition shows that it has been passed by Sri Baleshwar Tyagi, Minister of State, Basic Education (Independent Charge), Lucknow. Sri Baleshwar Tyagi is the Minister of the same department, namely. Basic Education. If the Minister receives some complaints against an employee of his department. It will be perfectly within his jurisdiction to issue any direction, which the interest of administration may require. We are fortified in our view by a Full Bench decision of our Court rendered In Tara Prasad Misra v. State of U. P. 1990 (2) UPLBEC 905.

5. For the reasons mentioned above, we do not find any ground which may warrant Interference with the impugned Judgment and order of the learned single Judge. The special appeal lacks merit and is dismissed at the admission stage.