
(2013) 05 AHC CK 0332

In the Allahabad High Court

Case No : Special Appeal Defective No. 266 of 2013

Shiv Prakash Misra and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Citation : (2013) 5 ADJ 335 : (2013) 5 ALJ 72

Hon'ble Judges : Uma Nath Singh, J; Mahendra Dayal, J

Bench : Division Bench

Advocate : H.G.S. Parihar and Sanjay Kumar Mishra, for the Appellant;

Final Decision : Allowed

Judgement

1. We have heard learned counsel for parties and perused the pleadings of Special Appeal. As there is no objection to the application for condonation of delay (C.M. Application No. 46051 of 2013), being allowed, the same is allowed and the delay in filing the Special Appeal against the order dated 9.1.2013 passed in Writ Petition No. 7942 (SS) of 2007, as pointed out by the office, is thus condoned.

2. Coming to the merit of the case, learned counsel for appellants submitted that though the case of appellants is different but the Court under the impression that the cause of action is similar to the one as impugned in Writ Petition No. 8464 (SS) of 2007 (Satish Chandra Bajpai v. State of U.P. and others) passed the same order vide order dated 9.1.2013, in the absence of learned counsel for appellants. However, it is admitted that the writ petition of appellants had been clubbed with the aforesaid writ petition No. 8464 (SS) of 2007?

3. Learned counsel for appellants submitted that by filing review petition (Review Petition Defective No. 221 of 2013), the error as aforesaid was brought to the notice of the Court. However, the Court has dismissed the review petition vide the order dated 23.4.2013 while holding that the service on deputation is an exigency of service which is contrary to the provisions of U.P. Fundamental Rules

110, therefore, the order suffers from a serious legal infirmity.

4. Shri Shobit Mohan Shukla, learned counsel, appearing for the State also agrees that the order being contrary to the settled position in law is not sustainable.

5. In view of rival submissions, the provisions of U.P. Fundamental Rule 110, and the settled position in law that the deputation is always optional subject to the consent of the employee as well as the employers, namely the one that relieves and the other that receives, the impugned order is not sustainable in law. The U.P. Fundamental Rule No. 110 clearly provides that contrary to the wishes of an employee, he cannot be sent on deputation. The said Rule, on reproduction, would read as:

Rule 110. (a) No Government servant may be transferred to foreign service against his will:

Provided that the provisions of this sub-rule shall not apply to the transfer of a Government servant to the service of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government.

(b) No Government servant shall be transferred to foreign service out of India without the sanction of the Government.

(c) Except to the extent the power of sanctioning transfer to foreign service in India may be delegated to authorities subordinate to the Government, the transfer of a Government servant to foreign service in India also requires the sanction of the Government.

In view of the aforesaid discussions, we set aside the impugned judgement and order dated 23.4.2013 as well as 9.1.2013 and allow the Special Appeal.