
(1997) 01 AHC CK 0085

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 26066 & 37614 of 1996

Sita Ram Yadav; Madhav Sharan

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 07-01-1997

Acts Referred:

Uttar Pradesh Nagar Palika (Centralised) Service Rules, 1966 — Rule 2, 25(1)

Citation : (1997) 01 AHC CK 0085

Hon'ble Judges : S.K.Phaujdar, J

Final Decision : Disposed Of

Judgement

S. K. Phaujdar, J.—In the above writ petitions controversy over a single subject matter is in question and accordingly these two writ petitions were heard together and are being disposed of by the present order.

2. Shri Sita Ram Yadav, petitioner, in Writ Petition No. 26066 of 1996 had prayed for quashing an order dated 22796 (Annexure No. 2 to the writ petition), the order having been passed by the Commissioner Gorakhpur Region, Gorakhpur, (respondent No. 3 in the writ petition).

It was stated in this writ petition that the petitioner had been an employee of the Nagar Panchayat at Salempur district Deoria. His services were covered under the Town .Area Centralized Services Rules, 1976, as amended from time to time. His initial appointment was made by the Government as a Buxi Secretary, a post now designated as Executive Officer of the Nagar Panchayat. He had been working as the Executive Officer of the Nagar Panchayat and was transferred by respondent No. 3 by his order dated 22796 from Salempur district Deoria to Anand Nagar in the district of Maharajganj. It was stated that the Government being the appointing authority for the petitioner the power of transfer and suspension of the petitioner lay with the Director of Local Bodies and the Commissioner of Gorakhpur Region, Gorakhpur, had no authority to record the transfer order. Reference was made to a Government Order dated 17596 to say that the transfer of an employee was to be made only after completion of serving

the Nagar Panchayat for five years. It was the case of the petitioner that he came to Nagar Panchayat, Salempur, only in the year, 1994 and the present transfer was violative of the Government Order. It was further averred that the children of the petitioner were studying at Salempur and a mid term transfer would have hampered their studies. The petitioner made a representation before the Director of Local Bodies on 25.7.96 which was not decided.

3. Upon this writ petition an order was passed on 27.8.96 disposing of the matter finally with a direction to the Director of Local Bodies U. P. (respondent No. 2) to decide the representation of the petitioner within a particular time frame and the order dated 22.7.96 was kept in abeyance till such decision.

4. This order dated 27.8.96 was challenged by Madhav Sharan (the petitioner in the connected writ petition) in special Appeal No. 691 of 1996 on the ground that the appellant, Madhav Sharan, was transferred from Anandnagar to Salempur by the same order by which Sita Ram Yadav was transferred from Salempur to Anand Nagar. It was stated that Madhav Sharan should have been made a party in the writ petition and it was further pleaded that before the order dated 27.8.96 was recorded in the Writ Petition the transfer order had already been given effect to. The Division Bench allowed special Appeal No. 691 of 1996 by its order dated 17.9.96 and directed that Madhav Sharan be impleaded as an opposite party in writ petition No. 26066 of 1996 and the matter be disposed of after giving an opportunity of hearing to both the parties. Accordingly, the matter was placed before this Court for fresh hearing and Madhav Sharan was made a party to the writ petition No. 26066 of 1996.

5. The aforesaid Madhav Sharan also filed another Writ Petition No. 37614 of 1996 which is also under consideration before this Court. In this writ petition Madhav Sharan impleaded the State of U. P., the Director of Local bodies and others including the Commissioner Gorakhpur Region as also the aforesaid Sita Ram Yadav. This Sita Ram Yadav had also filed a caveat prior to the presentation of the writ petition by Madhav Sharan. In this writ petition the petitioner, Madhav Sharan, prayed for a writ of certiorari quashing a transfer order dated 7.11.96 passed by the Additional Director of Local Bodies as per annexure No. 17 to this writ petition. By this order dated 7.11.96, it was directed that Madhav Sharan, Executive Officer, Nagar Panchayat, who was attached with the District Magistrate Deoria, by an order dated 7.9.96 was transferred to Gola Bazar with immediate effect. It was indicated that the Additional Director had recorded this order with consent of the Director of Local Bodies. On the presentation of the writ petition an order was recorded on 28.11.96 by the High Court that the status quo as on that date in respect of posting in question was to be maintained and implementation of the impugned order dated 7.11.96 would remain stayed.

6. In this Writ Petition No. 37614 of 1996 Madhav Sharan had stated that he was posted at Nagar Panchayat, Anandnagar, Maharajganj, as an Executive Officer while Sita Ram Yadav was posted as an Executive Officer, Nagar Panchayat, Salempur, Deoria. By a common order of the Commissioner Gorakhpur Region,

Gorakhpur, dated 19796 communicated on 22796, Madhav Sharan was transferred from Anandnagar to Salempur while Sita Ram Yadav was transferred from Salempur to Anandnagar. Madhav Sharan was relieved from his post at Anandnagar on 13896 and he submitted his joining report at Salempur on 19896 on that very date Sita Ram yadav was relieved from the post''of Secretary Nagar Panchayat, Salempur. The joining report of Madhav Sharan was intimated to the Commissioner Goiaxhpur Region, Gorakhpur, by the Chairman of the Nagar Panchayat, Salempur. The fact of relieving Sita Ram yadav was also intimated, although the relieved Sita Ram Yadav allegedly refused to make over charge to Madhav Sharan despite specific orders of the District Magistrate, Deoriaand Chairman of the Nagar Panchayat, Salempur. Accordingly, there was a direction on 21896 to the S.D.M. Salempur, to put his lock over the Almirah and other official records of the Secretary of the Nagar Panchayat. A lock was accordingly put arid subsequently charge was made over Madhav Saharan on 7996 after breaking open the lock. there after the petitioner, Madhav Sharan, started functioning as the Executive Officer, Nagar Panchayat, Salempur. By an order dated 7996 itself recorded by the Commissioner/Director the transfer order of Sita Ram Yadav was cancelled in view of his representation which was ordered to be considered by the High Court in the first mentioned writ petition. It was directed that Sita Ram Yadav would continue to work in Salempur and Shri Madhav Sharan who was posted in place of Shri Yadav would, awaiting further orders be attached to the District Magistrate Officer at Deoria. Only there after the aforementioned Special Appeal No. 691 of 1996 was presented and not only the order dated 27896 in the Writ Petition No. 26066 of 1996 was set aside but the consequential order dated 7996 cancelling the transfer of Sita Ram Yadav and posting Madhav Sharan in the office of the District Magistrate, Deoria, was also set aside. The order in the special appeal was duly communicated to the authorities concerned. This order was passed in presence of the learned counsel for Sita Ram Yadav.

7. It is stated that after the order in the special appeal Madhav Sharan continued to function as an Executive Officer, Nagar Panchayat, Salempur, papers were placed on record to show that he had duly signed official documents even after 7996. The writ petition filed by Sita Ram Yadav was pending after being remanded by the Division Bench and no interim order was passed there inn. A subsequent transfer order was passed at the behest of Sita Ram Yadav on 71196 w here by Madhav Sharan was transferred from Deoria, Nagar Panchayat, to Gola Bazar, Gorakhpur. This order referred to the order dated 7996 through which the petitioner was attached to the office of the District Magistrate, Deoria, but this made no reference, to the order in the special appeal w here by the order dated 7996 stood set aside. It was averred that after the order in the special appeal the petitioner Madhav Sharan, had approached the Director as well as the Commissioner Gorakhpur Region, Gorakhpurand they had written to the District Magistrate on 91096 directing him to comply with the order of the Hon''ble Court passed in the special appeal. It was stated that the order dated 71196 was

passed on a presumption that the order dated 7996 was in existence although that order stood set aside by the order passed in the special appeal. Madhav Sharan also pleaded that his services were governed by the U. P. Palika (Centralized services) Rules, 1966 and reliance was placed on Rule 25 thereof. It was stated that the commissioner was competent to record a transfer order and the subsequent order was therefore, a nullity.

8. The facts that are undisputed may now be stated. Both Madhav Sharan and Sita Ram Yadav had been Executive Officer under Nagar Panchayat governed by the same set of rules as pleaded by them. By a single order Sita Ram Yadav was transferred from Salempur to Anandnagar and Madhav Sharan was transferred from Anandnagar to Salempur. Both were relieved from their posts. Madhav Sharan had also joined at Salempur. Without making Madhav Sharan a party and without disclosing that Madhav Sharan had taken charge or that both Madhav Sharan and Sita Ram Yadav had been relieved of their erstwhile posts, a writ petition was filed by Sita Ram Yadav and an order was passed in his favour staying the operation of the transfer order. This in fact had created the subsequent administrative difficulties by orders which were contradictory to each other. On the basis of the order of the single Judge on the writ petition filed by Sita Ram Yadav the authorities considered the representation of Sita Ram Yadav and cancelled the transfer order. That cancellation order indicates that Madhav Sharan had taken charge as an Executive Officer, Salempur, Nagar Panchayat and it was necessary therefore, to attach him with the office of the District Magistrate, Deoria, awaiting further orders. On an appeal by Madhav Sharan the order of the Single Judge dated 27896 as well as the consequential order dated 7996 were set aside. The subsequent order dated 71196 was passed under a belief that the order dated 7996 attaching Madhav Sharan with the District Magistrate was under existence although it was quashed in the special appeal. Before entering into the merits of the case on the questions of validity of the transfer orders it must be mentioned that the present impasse has been created due to the haste on the part of Sita Ram Yadav to steal a march over Madhav Sharan and that too in his absence. Had he made Madhav Sharan a party whom he knew to be likely to be affected by any order on his writ petition, the Court would have heard Madhav Sharan also. This tendency must be deprecated.

9. In the two writ petitions, two orders are challenged, one is the original order of transfer dated 19796/22796 which is impugned by Sita Ram Yadav. The other is an order dated 71196, impugned by Madhav Sharan, in which reference was made to a non-existent order. Madhav Sharan does not challenge the authority of the Officer making the subsequent order but he challenges the propriety of the order as this order failed to take into account, another order which was set aside by the Special Appeal Court and this order fails to note, according to Madhav Sharan, the facts that the order dated 19796 was passed by a proper authority.

10. The relevant rules that were relied by the parties are known as U. P. Palika Centralized Services Rules, 1966. Rule 25 herein speaks of transfer. Under this

Rule the State Government may transfer an officer under the Centralised Service from one Palika to another Palika. Palika means either a Municipal Board or a Municipal corporation. Rule 25 empowers the Commissioner of the Division to transfer an officer of the Centralised Services (not being of a senior service) from the Paliaka to another Palika with in its own region. It is not disputed that the Director of Local Bodies has been authorized by the State Government to exercise its power under Rule 25(1). The initial order dated 19 796 was recorded by the Commissioner Gorakhpur Division, Gorakhpur, on 19796 and was communicated by the Additional Commissioner (Administration) on 22796. Through this letter, as aforesaid, Sita Ram Yadav was transferred from Salempur in the District of Deoria to Anandnagar in the district of Maharajganj and for Madhav Sharan it was vice versa. There is no dispute that the Municipalities of Salempur and Anandnagar in the district of Deoria and Maharajganj are both in Gorakhpur Division. There is a no challenge that the Executive Officers were of superior service and were, therefore, not liable to be transferred by the Commissioner. The order impugned in Writ Petition No. 26066 of 1996 cannot, therefore, be challenged on the ground of lack of jurisdiction. Reference was made to a Government Order dated 17596 to say that a person could be transferred from one Nagar Panchayat to another after completion of five years at the station. This Government Order is Annexure No. 4 to the writ petition No. 26066 of 1996. It states that for those officers under the Palika Centralized Services whose transfer ought to be made by the Director of Local Bodies, transfer shall be ordered only after completion of five years at the station. It does not in any way curb the right of the Commissioner to make a transfer under Rule 25(2) subject to the condition that the transfer shall be made with in his Division. The law creates two forums, one is the State Government for transfer from any place to any other without any reservation of the category, the other is the Commissioner whose power is limited to such officer of the Centralized Service who are not in the senior cadre and this power can be exercised only with in the Division of the Commissioner. It is true that the State Government, may delegate power under Rule 42 to the Director of Local Bodies but by that notification the power of the Commissioner under Rule 25(2) may not be curtailed. Rules are statutory in nature. By a delegation of power, that is, by a delegated legislation this power cannot be taken away. It must, therefore, be held that the transfer order dated 19796/22796 cannot be challenged on this second score also. The third attack to the transfer order was on the ground of the personal hardship. The representation in this regard was directed to be considered and was considered but nothing was spoken of this hardship. The representation of Sita Ram Yadav is at Annexure No. 6 to his writ petition this is a matter which is to be taken note of by the employer and the Court would not normally interfere in this matter.

11. The order impugned in the writ petition of Madhav Sharan is the one recorded on 71196 as per Annexure No. 17 to hjs writ petition. This order was passed by the Additional Director and paragraph 3 of the order indicates that this

order was recorded with the consent of the Director of Local Bodies. It does not say that the order in question was just a communication of any order passed by the Director. Undoubtedly, the Director of Local Bodies was delegated the powers under Section Rule 25(1) but there is no averment that even the Additional Director was so empowered. The consent of the Director is not sufficient. An order by the Director was necessary. Moreover, this order dated 71196 makes a reference to an order dated 7996 which was certainly not in existence on 71196. This order, therefore, cannot be sustained.

It was urged on behalf of Sita Ram Yadav that if he has been relieved from Salempur he is to go to Anandnagar but in the meantime the post at Anandnagar has also already been filled up and he would have no post to join if at all this writ petition is not accepted. This situation is to be solved by the persons in charge of the administration by putting Sita Ram Yadav in any suitable post and no direction can be flow from this Court in this regard. Once it is held that the transfer order dated 19796/22796 was a valid one and it is further held that the order dated 71196 cannot be sustained, the writ petition of Sita Ram Yadav must be dismissed and that of Madhav Sharan must be allowed.

12. It is, accordingly, ordered that the Writ Petition No. 26066 of 1996 stands dismissed. The Writ Petition No. 37614 of 1996 stands allowed. The order dated 71196 recorded by the Additional Director transferring Madhav Sharan to Gola Bazar is set aside. The two petitioners in these two cases are relegated to the situation that existed after the passing of the transfer order dated 7996 and after their being relieved from their prior posts. They are to act according to the directions that may be given by the authorities from that stage.

W.P.No.2606611996dismissed, W.P.No. 3761411996 allowed.