
(1999) 07 AHC CK 0157
In the Allahabad High Court
Case No : C.M.W.P. No. 27937 of 1999

Smt. Shobha Sharma

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-07-1999

Acts Referred:

Constitution of India, 1950 — Article 213(2), 243G, 309

Citation : (1999) 3 AWC 2500 : (1999) RD 525 : (1999) 2 UPLBEC 1586

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : Dinesh Dwivedi and S.D. Kautilya, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard Shri Dinesh Dwivedi learned counsel for the petitioner and learned Advocate General for respondents,

2. The petitioner is challenging Ordinance No. 14 of 1999 known as U. P. Panchayat Raj (Amendment) Act, 1999, copy of which is Annexure-1 to the writ petition. The petitioner claims to be a Government servant and she has alleged that by the impugned Ordinance, she has been transferred on permanent basis to the Gram Panchayat.

3. Sri Dinesh Dwivedi learned counsel for petitioner has submitted that the petitioner is a Government servant and hence without her consent, she cannot be transferred and placed under the Gram Panchayat. He has relied on the decision of Supreme Court in Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others, , and he has placed emphasis on para 7 of the aforesaid decision. In my opinion, this decision does not apply to the facts of the present case for two reasons. Firstly, that was a case of a transfer of an employee from the Jawahar Lal Nehru University to Manipur University and it was not a case of a Government servant. Article 309 of the Constitution states :

"Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State."

4. Thus Article 309 itself makes it clear that the service rules of the Government employees can be changed by an enactment of the appropriate Legislature. Secondly, the aforesaid decision of the Supreme Court is also distinguishable because in that case, the very service of the respondent had been transferred from Jawahar Lal Nehru University to Manipur University, whereas in the present case the petitioner continues to remain a Government servant but she has been placed under the supervision and control of the Gram Panchayat. Hence it is not case where her employer has been changed. Hence for both these reasons the aforesaid decision of the Supreme Court is distinguishable.

5. Shri Dwivedi then relied upon the decision of Gujarat High Court in Bhagwati Prasad v. State of Gujarat. 1979 (3) SLR 805. In my opinion, this decision is also distinguishable because this was not a case where the person had been transferred by an Act of the Legislature. Shri Dwivedi further relied upon the decision Bhagwati Prasad v. State of Gujarat and others, 1977 (2) SLR 551. In my opinion, this decision is also distinguishable as it was not a case of sending a person on deputation by an enactment.

6. In my opinion, had the petitioner been sent on deputation by a simple Government Order, it possibly could have been argued that this could not be legally done without her consent, but where the transfer has not been done by a Government Order but by an Act of the Legislature, then the position becomes different, because an Act stands on a higher footing than a mere Government Order. As already mentioned above. Article 309 itself contemplates that the service conditions of a Government employee can be changed by an Act of the Legislature. Sri Dinesh Dwivedi urged that the petitioner cannot be transferred without her consent. I do not agree. An Act of the Legislature, to which an Ordinance is equivalent vide Article 213(2), does not require the consent of the persons to whom it is to be applicable, in order to come into force. The impugned Ordinance also does not require the consent of the individuals before their transfer.

Moreover it is settled law that contract can be superseded by Statute.

7. Learned Advocate General has invited my attention towards Article 243(G) which states as under :

"243 (G) Powers, authority and responsibilities of Panchayats.--Subject to the provisions of the Constitution, the Legislature of the State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level subject to such conditions as may be specified therein with

respect to-

(a) the preparation of plans for, economic development and social justice :

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in Eleventh Schedule."

8. The impugned Ordinance appears to be made under this provision and also under Article 309 of the Constitution. Hence under both these Constitutional provisions, the impugned Ordinance to my mind, is valid and constitutional. Learned counsel for the petitioner has not been able to show that the impugned Ordinance violates any constitutional provision.

9. I may also mention that the impugned Ordinance appears to be a commendable step. Learned Advocate General has placed before me the "Swaraj Scheme" prepared in 1923 by the great Lawyer and freedom fighter Deshbahdhu Chittaranjan Das who advocated self-government as the basis of Swaraj. The impugned Ordinance is in consonance with this Scheme (photocopy of the Scheme shall be kept on the record).

10. Hence there is no force in this petition and it is dismissed.