
(2013) 12 AHC CK 0042
In the Allahabad High Court
Case No : C.M.W.P. No. 50503 of 2008

Smt. Sunita Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2014) 2 ADJ 779 : (2014) 3 ALJ 514 : (2014) 103 ALR 188 : (2014) 141 FLR 217 : (2014) 1 UPLBEC 775

Hon'ble Judges : Rakesh Tiwari, J; Bharat Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rakesh Tiwari and Bharat Bhushan, JJ.—Rejoinder affidavit, filed today, is taken on record.

Heard Sri Uma Nath Pandey, learned Counsel for the petitioner and learned Standing Counsel on behalf of State.

A short question for decision of this Court is whether an employee of Chandra Shekhar Azad Agriculture and Technical University, Kanpur (In short University) can be transferred at the instance of U.P. Scheduled Castes and Scheduled Tribes Commission/respondent No. 6. (in short "the Commission").

2. Shorn of details the facts are that petitioner was initially appointed on to the post of Training Assistant/Project Assistant Thariyan, district Fatehpur in 1992. Thereafter she was attached to the Agriculture Centre, Etawah on the said post. The Agriculture Science Centre Thariyan, district Fatehpur and at Jalaun are recognized and affiliated centres of the University which are directly under the control and supervision of the Vice-Chancellor of the University at Kanpur. The petitioner was attached to the Agriculture Science Centre, Etawah in the year 2005 on her own request as she wanted to be close to her husband who was working as a Lecturer of Biology in Theosophical Inter College, Etawah.

3. Smt. Pushpa Devi, respondent No. 5, working at Krishi Vigyan Kendra, Etawah allegedly requested the Vice-Chancellor of the University to transfer her to Krishi Vigyan Kendra, Jalaun as her husband Dr. Kamal Kant was posted at Krishi Vigyan Kendra, Jalaun. Subsequently, respondent No. 5 was transferred to the Krishi Vigyan Kendra, Jalaun and petitioner was adjusted on the post of Subject Matter Specialist (SMS) which had fallen vacant on account of transfer of respondent No. 5. It is stated by the Counsel for the petitioner that subsequent to her joining at Jalaun, respondent No. 5 again sought transfer from Krishi Vigyan Kendra Jalaun to Krishi Vigyan Kendra Etawah on personal ground. Sri Ashok Kumar Dohare, the then Minister U.P. Government recommended her transfer from Jalaun to Etawah vide his letter dated 14.8.2008 (Annexure-4 to the writ petition).

4. As respondent No. 5 failed to get any favourable response, therefore she sought help of the U.P. Scheduled Castes and Scheduled Tribes Commission Lucknow on ground of her harassment on caste basis. The Commission took cognizance of her complaint and summoned the Chief Executive Officer of the University. Para-12 of the counter-affidavit discloses that the Commission also summoned Registrar/Vice-Chancellor of the University on one date and subsequently respondent No. 5 was initially attached to the Krishi Vigyan Kendra, Etawah. Thereafter the University was compelled by it to transfer respondent No. 5 to the Krishi Vigyan Kendra, Etawah and petitioner to the Krishi Vigyan Kendra, Jalaun. Aggrieved, petitioner has filed the instant writ petition.

5. Petitioner has reiterated her claims by filing rejoinder-affidavit. The transfer policy of the State Government and the provisions of U.P. Commission for Scheduled Castes and Scheduled Tribes Act, 1995 (in short "the Act") has also been placed on record through supplementary-affidavit on behalf of the petitioner.

6. Respondent No. 5, Smt. Pushpa Devi has submitted her counter-affidavit stating that she was working peacefully at Krishi Vigyan Kendra, Etawah since her joining. She has denied making any request for her transfer from Krishi Vigyan Kendra, Etawah to Krishi Vigyan Kendra, Jalaun either by herself or by her husband to the University. Respondent No. 5 claims that the letter allegedly written by her husband seeking her transfer from Etawah to Jalaun has been fabricated by some person to effectuate her transfer from Etawah to Jalaun. She has stated that her husband immediately informed the University that he had not made any such request seeking transfer of his wife from Etawah to Jalaun. Respondent No. 5 further claims that she was being harassed on account of her caste therefore, she had no option but to invoke the jurisdiction of the Commission which is well within its right to render proper assistance to her.

7. Respondent No. 6. The U.P. Scheduled Castes and Scheduled Tribes Commission has also filed its counter-affidavit supporting the averments made in the counter-affidavit filed by respondent No. 5, narrating the entire sequence of events and disclosing that during the course of hearing the Chief Executive Officer of University was summoned initially. That subsequently the matter was

adjourned for 12.9.2008 summoning the Registrar/Vice-Chancellor in person on next date fixed. The Registrar did appear before the Commission on 12.9.2008. It however appears that on the direction of the Commission, impugned transfer order was passed transferring respondent No. 5 to the Krishi Vigyan Kendra, Etawah and Ms. Sunita Mishra, petitioner back to Krishi Vigyan Kendra, Jalaun in view of her personal difficulties attaching her services at Krishi Vigyan Kendra, Etawah till further orders. This order is under challenge before this Court inter alia on the ground that Commission has no power or authority to order transfer of employees of University.

8. In this connection, it would be appropriate to examine the powers and authority of the Commission which is a statutory body and derives its authority and powers constituted under the provisions of U.P. Commission for Scheduled Castes and Scheduled Tribes Act, 1995. It is trite that Commission cannot and should not exercise powers which have not been granted by the Act.

9. Section 11 of the Act provides for the functions and powers of the Commission which are reproduced as under:

11. Duties and functions of the Commission.--(1) It shall be the duty of the Commission:

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the State Government and to evaluate the working of such safeguards;

(b) to enquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(c) to participate and advice on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development;

(d) to present to the State Government annually and at such other time as the Commission may deem first, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the State Government for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection welfare, development and advancement of the Scheduled Castes and Scheduled Tribes as may be referred to it by the State Government.

(2) The State Government shall cause the reports of the Commission to be laid before each House of the State Legislature alongwith a memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for the non-acceptance, if any, of any of such recommendations.

10. A careful perusal of aforesaid provision reveals that Commission is constituted primarily to advise the State Government for socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development to investigate and monitor all matters relating to the safeguards provided to them under the Constitution or under any other law for the time being in force or under any order of the State Government and to evaluate the working of such safeguards. The authority of Commission is wide as far as its power to investigate and monitor all matters relating to the safeguards provided for Scheduled Castes and Scheduled Tribes are concerned. It can investigate whether all measures and safeguards relating to the SC/ST are being implemented by the employees of the State or not. The Commission is also authorized and duty bound to submit annual report regarding working of these safeguards. It February can also recommend the measures that should be taken by the State Government for effective implementation of those safeguards etc.

11. Section 11(1)(b) authorizes the Commission to enquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes. This provision can be used to make proper inquiries into specific complaint by the Commission with respect to the deprivation of rights and safeguards of Scheduled Castes and Scheduled Tribes but this authority can be used only to provide safety and succor only to the members of Scheduled Castes and Scheduled Tribes. It is not a Court of law nor can it substitute the Court of law. Transfer of employee is certainly not within the domain of Commission. It cannot ask the State and its instrumentalities including its functionaries to give a particular posting to a particular person at a particular place merely because he or she belongs to the scheduled caste or tribe category and has made a complaint in this regard.

12. Once the employees recruited from any sources or in any manner are working for the State or its instrumentalities they are governed by the same set of departmental rules and conditions of service (except where specifically excluded) including transfer. No employee can seek assistance of the Commission for seeking his posting at a particular place nor can the Commission direct State, or its instrumentalities, to transfer a particular person at a particular post or at a particular place merely because he or she belongs to a particular community. The Commission has absolutely no such power or authority to direct either University or any other department for that matter to transfer a particular person to the particular post or to a particular place. If an employee of Scheduled Castes and Scheduled Tribes category is being deprived of his or her rights merely on the basis of his community then of course Commission can step in to safeguard the interest of such person but other than this the Commission has no power as far as employees of State Government or employees of Universities are concerned. If respondent No. 5 was unhappy with her transfer, she could have approached the competent authorities for redressal of her grievance. She could have even approached the Courts but invocation of Commission's jurisdiction is neither justified nor legally sustainable.

13. As a Writ Court ordinarily we do not decide the disputed question of facts. We are not aware whether the respondent No. 5 or her husband sought the transfer from Etawah to Jalaun or not. Ordinarily, we do not interfere with the transfer orders as they are part and parcel of the employment. The University is capable of handling the transfer policy of its employees but we believe that the transfer of any employee at the instance of Commission cannot be given effect to. All these matters can be addressed at the level of University as we are dealing with the limited question of legality of the impugned order of transfer and we are of the view that transfer of petitioner at the instance of Commission is not valid. In view of the above, the writ petition is allowed. The impugned transfer order dated 12.9.2008 (Annexure-6 and 7 to the writ petition) passed by the respondent No. 3 at the instance of U.P. Scheduled Caste and Scheduled Tribes Commission, is quashed. It would be open to the University to take independent decision in this regard at their own level in accordance with Rules.