
(1999) 12 AHC CK 0116
In the Allahabad High Court
Case No : Writ Petition No. 803 (SB) of 1998

State of U.P. and others

APPELLANT

Vs

State Public Service Tribunal and another

RESPONDENT

Date of Decision : 17-12-1999

Acts Referred:

Citation : (2000) 2 AWC 1741

Hon'ble Judges : U.K. Dhaon, J; M. Katju, J

Bench : Division Bench

Advocate : S.C. Misra, for the Appellant; D.K. Pandey and S.M. Nasir, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order passed by the U. P. Public Service Tribunal on 6.4.98 a copy of which is Annexure-1 to the writ petition. By that order the claim petition filed by the respondent No. 2 was allowed and the State Government was directed to pay the respondent No. 2 salary and allowances including the revised pay and promotional pay with effect from July. 1990, with interest at 18% per annum from the due date till the final payment is made.

2. The facts of the case are that respondent No. 2 was a lecturer in Hindi in a Government Inter College, Being a Government servant he was on a transferable job. He was posted in district Unnao as lecturer from 1960 to 1990. By order dated 5.5.90, he was transferred from Unnao to Government Inter College, Umrada, district Farrukhabad and he was relieved on 14.5.90. The said order was modified and he was directed to Join at Government Inter College, Sitapur vide order dated 23.6.90. Thereafter another order dated 3.8.90 was issued transferring the respondent No. 2 from Sitapur to Government Inter College Chamraull. district Unnao. It is alleged that the aforesaid order dated 3.8.90 was issued by mistake and hence it was cancelled on realisation of the mistake vide order dated 12.8.90. Against the order dated 12.8.90, the respondent No. 2 filed

a Writ Petition No. 8193 of 1990 which was decided on 21.8.90 by this Court. True copy of the said judgment is annexed as Annexure-3 to the writ petition. By that judgment, the authorities were directed to consider the representation of the respondent No. 2. In pursuance of the aforesaid judgment and order dated 21.8.90, the representation was considered and rejected on 29.8.90. In connection with the order dated 29.8.90, a contempt petition was filed by the respondent No. 2 which was dismissed on 22.10.91 vide Annexure-4 to the writ petition. The respondent No. 2 then filed another Writ Petition No. 7566 of 1991 which was dismissed on 22.11.91 vide Annexure-5, and respondent No. 2 was directed to report for duty at Sitapur by the order dated 14.1.92 issued by the Assistant Director on behalf of the Director. The respondent No. 2 was directed to immediately Join at Sitapur against the vacant post in compliance of the High Court's order. Instead of joining at Sitapur, the respondent No. 2 filed another representation to the authorities that he may not be compelled to work at Sitapur. Then he filed a third Writ Petition No. 3068 of 1992 which was dismissed on 24.7.92 vide Annexure-6A. In that judgment, this Court held that the writ petition was misconceived and the respondent No. 2 must first comply with the judgment and order dated 22.11.91. Thereafter a sympathetic view was taken and the transfer order was modified and respondent No. 2 was directed to Join at Government Inter College, Jayas. Raebareli as lecturer in Hindi. Instead of joining at Raebareli, respondent No. 2 filed Special Appeal No, 275 (SB) of 1992 which was dismissed on 18.12.1992 vide Annexure-8. Thereafter the respondent No. 2 filed fourth Writ Petition No. 1180 of 1991 which was dismissed on 18.8.1993 vide Annexure-9. In compliance of the direction of this Court, the Principal, Government Inter College, Sitapur passed an order dated 18.10.1993 directing respondent No. 2 to proceed to Government Inter College, Jayas, Raebareli, and join there, but instead of complying with this direction, respondent No. 2 filed another special appeal against the Judgment dated 18.8.1993 which was dismissed by a Division Bench on 6.9.1993 vide Annexure-11. Against that Judgment, respondent No. 2 filed SLP in Supreme Court which was also dismissed on 15.9.1995.

3. A perusal of the above facts discloses that respondent No. 2 was avoiding his duty as a teacher and was not Joining at the places where he was transferred and he filed repeated writ petitions and special appeals right from 1990 onwards, except for a short period at Sitapur, although he was given repeated orders to Join duties at Jayas. Raebareli.

4. We have gone through the petition and counter-affidavit and have also perused the impugned order of the Tribunal.

5. It is settled law that transfer is an exigency of service and hence the respondent No. 2 should have joined at the place where he was transferred. Instead of doing so, he kept avoiding compliance of the transfer orders by filing repeated petitions in this Court and special appeals, which were all dismissed.

6. The Tribunal has overlooked the legal position that transfer is an exigency of

service and has gone on sympathies Instead of law. In paragraph 16 of its order, it observed :

"I find that the petitioner been dealt with improperly and harshly by his immediate superior authorities."

7. In our opinion, the respondent No. 2 was not at all dealt with harshly, rather it was he who was avoiding the transfer orders by filing repeated petitions which were all dismissed. Surprisingly, the Tribunal has overlooked the fact that it is gross judicial indiscipline to interfere in matters which have been adjudicated on by the High Court. The Tribunal has held that the authorities have not been able to show under what circumstances the respondent No. 2 was repeatedly transferred from one place to another. In our opinion, since the transfer order had been adjudicated upon by the High Court, it was not open to the Tribunal to have questioned the transfer orders which had been upheld by the High Court several times. In fact, the order of the Tribunal amounts to judicial indiscipline as it practically supersedes several judgments of the Hfgh Court. Once the matter relating to transfer has been decided by the High Court, the Tribunal should have kept its hand off the matter and it had no right to Interfere.

8. In the circumstances, this writ petition is allowed. The impugned order dated 6.4.1998 passed by the U. P. Public Service Tribunal is quashed.