
(2014) 05 AHC CK 0127

In the Allahabad High Court

Case No : Special Appeal Nos. 924 of 2011 and 469 of 2014

State of U.P.

APPELLANT

Vs

Rajesh Kumar Yadav

RESPONDENT

Date of Decision : 30-05-2014

Acts Referred:

Citation : (2014) 5 ADJ 450 : (2015) 1 ALJ 15 : (2014) 105 ALR 627 : (2014) 5 AWC 4482 : (2014) 143 FLR 323 : (2014) 3 UPLBEC 2453

Hon'ble Judges : Ranjana Pandya, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : Suresh Singh, A.C.S.C. and S.C, Advocate for the Appellant; Moti Lal, Santosh Kumar Giri and Meera, Advocate for the Respondent

Judgement

Ranjana Pandya, J.—Special Appeal No. 469 of 2014 has been preferred against the order dated 15.4.2014 passed in Writ Petition No. 21546 of 2014 dismissing the writ petition of the appellant Rajesh Kumar Yadav, and Special Appeal No. 924 of 2011 has been filed against the order dated 20.1.2009 passed in Writ Petition No. 376 of 2009 dismissing writ petition. Since the questions involved in both the cases is common, hence, both the cases are being taken up together.

2. We have heard the learned counsel for the petitioner, learned Standing Counsel and also perused the record.

3. The main controversy, which cropped up in both these appeals, is whether Rajesh Kumar Yadav, who is petitioner in Special Appeal No. 469 of 2014 and respondent in Special Appeal No. 424 of 2011, is working on the post of Messenger or not.

4. Brief facts of the case are that initially the petitioner filed Writ Petition No. 376 of 2009 with the following prayers:

(a) Issue an order, direction or writ in the nature of certiorari, call for record and quash the order dated 20.10.2008 passed by Respondent No. 3 so far as it

relates to demotion of the petitioner from the post of Sandeshwahak to Prahari on transfer (Annexure-1).

(b) Issue an order, direction or writ in the nature of mandamus and stay the execution and direct the respondents not to give effect to the order dated 20.10.2008 so far as it relates to demotion of petitioner from the post of Sandeshwahak to Prahari on transfer (Annexure-1).

(c) Issue any other writ, order or direction, which this Hon"ble Court may deem just and expedient in the interest of justice.

(d) Award cost of this petition in favour of the petitioner.

5. This writ petition (bearing No. 376 of 2009) was filed way back on 15.12.2008. Following order was passed by the learned Single Judge in the said writ petition:

Heard learned counsel for the petitioner. Learned standing counsel appears for the respondents.

By this writ petition, the petitioner is challenging the transfer order dated 20.10.2008, by which he has been transferred from Handia as Messenger (Sandesh Wahak) to Allahabad as a Guard (Prahari) in the office of the Weights and Measurement.

Learned counsel for the petitioner contends that the duties of the Sandesh Wahak (Messenger) and Prahari (Chowkidar) are entirely different. The petitioner has been working as Sandesh Wahak for last 18 years. He has relied upon U.P. Group "D" Employees Service Rules 1985, in which the posts of Chowkidar Sandesh Wahak; Mali etc. have been included in Rule 6(a) to be filled up by direct recruitment. He submits that in case he is allowed to work as Chowkidar, he will lose an opportunity to be promoted on the posts of Daftary/Zildsaj/ Cyclostyle which are promotional posts under Rule 6(c) of the Rules of 1985.

The petitioner has not placed on record or relied upon any Government orders or office orders which may define the duties of a messenger or chowkidar. Prima facie it appears that the duties are interchangeable. The submission, that the petitioner may lose an opportunity for promotion, however appears to have some substance.

Ordinarily a transfer order cannot be challenged on the ground that petitioner's duties have been assigned on an interchangeable post. However, in the present case since the petitioner has a reasonable apprehension of losing a chance of promotion, the writ petition is disposed of with directions that the office of the Assistant Controller, Vidhik Map Vigyan, Allahabad Mandal Allahabad will treat the petitioner as a messenger and so far as possible assign him duties as messenger. In case of promotion, the petitioner's work and duties shall be treated as the work and duties of a messenger.

6. Feeling aggrieved the State filed the special appeal (bearing No. 924 of 2011).

The petitioner Rajesh Kumar Yadav challenged the orders dated 29.1.20014 and 20.10.2008 in Writ Petition No. 2546 of 2014, which was dismissed by learned Single Judge on 15.4.2014 against which the petitioner filed Special Appeal No. 469 of 2014. The special appeal bearing No. 924 of 2011 is being treated as a leading case.

7. It has been contended on behalf of the opposite party Rajesh Kumar Yadav that the order dated 20.10.2008 passed by the respondent No. 3 relates to his demotion from the post of Sandeshwahak to Prahari on his transfer and has further argued that the respondent No. 3 has no power to demote the opposite party and post him as Prahari because in fact presently his post is that of a Messenger. It is further submitted that, in all the correspondences, he has been addressed as Messenger, thus, it is beyond the power of the appellants to post him after demotion as Prahari.

8. Mentioning of facts would help to arrive at a just and proper decision. The initial appointment of the opposite party was done on the post of Prahari, vide order dated 29.11.1985 being Annexure 2 to the writ petition.

9. Counsel for the appellants has argued that the parent posting of the respondent was on the post of Prahari and his post could not be converted to any other post because he was confirmed on the post of Prahari.

10. Perusal of the Annexure 2 to the affidavit filed in support of the stay application shows that the respondent was temporarily posted as Messenger on 29.11.1985. Later on 4.4.1990, in modification of the earlier order dated 15.1.1990, the respondent was transferred to Kunda, Pratapgarh on the post of Messenger (Sandeshwahak).

11. At this point, the counsel for the respondent has vehemently contended that the respondent had already been posted as Messenger, hence, he cannot be reverted back.

12. Perusal of Annexure 4 to the writ petition shows that on 29.7.1995, the respondent being posted as Messenger (Sandeshwahak) was transferred from Lookerganj, Allahabad to Naini, Allahabad and again on 20.7.2007, he was transferred from Naini, Allahabad to Duddhi, Sonbhadra as Messenger (Sandeshwahak) vide Annexure 5 to the writ petition, the respondent was granted some increments and on 15.1.2002, vide Annexure 3 to the affidavit filed in support of the stay application in special appeal No. 924 of 2011, he was confirmed on the post of Prahari (Chowkidar) since 3.12.1986 and he was kept on probation for one year from the date of his confirmation on the post of Prahari.

13. At this juncture, learned counsel for the respondents has argued that this order is in complete contravention of the order dated 30.5.1994. The order dated 30.5.1994 copy of which is Annexure 7 to the writ petition (bearing No. 21546 of 2014) is being quoted hereunder:

14. The argument advanced on behalf of the learned counsel for the respondent

have no legs to stand because it has been mentioned that the post of any class IV employee shall not be converted, although class IV employees keep on sending such representation. No where on record, it has come that at any point of time, the post of the respondent was converted and his post was that of Messenger (Sandeshwahak). One cannot lose site of the fact that the respondent was confirmed on his original post, i.e., Prahari on 3.12.1986. Thus, he was substantially posted on the said post on 3.12.1986 subject to probation of one year, and since nothing is said to have been written against the respondent for a year, the probation period shall be deemed to have been completed successfully. Thus, the position, as it stands, is that the respondent is a confirmed Prahari as on date.

15. Counsel for the State has submitted that the argument of the respondent that he has been demoted is wholly misconceived and devoid of merits because the respondent was posted as Prahari and he has been confirmed as Prahari. It was for the appointing authority to take such work from the employee in that group, i.e., "D" group as he desires.

16. As far as transfer of the respondent is concerned, perusal of Annexure 3 to the writ petition No. 21546 of 2014 goes to show that the respondent was transferred on his own request, hence, he was not entitled to any transfer allowance and, vide order dated 4.4.1990, he was posted to Allahabad from Pauri Garhwal.

17. There is no dispute as far as application of rules are concerned between the parties, as such, the U.P. Group "D" Employees Service Rules, 1985 applies in the case of promotion of the respondent. Rule 6 of the said Rules of 1985:

10. Academic Qualifications.--(1) A candidate for recruitment to the post of peon, messenger or cyclostyle operator must have passed at least class V Examination.

(2) No educational qualifications are required for any other category of post but preference will be given to a person who is educated or is at least able to read and write Hindi in Devnagri script.

(3) No person shall be eligible for appointment to the post of Mali unless he is found to possess requisite knowledge pertaining to the work of a Mali and has good experience of that work.

(4) No person shall be eligible for appointment as Daftari/Book Binder unless he is found to possess requisite knowledge of Book binder work and has good experience of that work.

(5) No person shall be eligible for appointment as cyclostyle operator or any other post requiring technical knowledge, unless he is found to possess the requisite technical knowledge and has good experience pertaining to the particular job.

(6) A candidate for recruitment to each category of group "D" post must know

cycling:

Provided that this condition shall not be applicable to female candidates.

(7) A candidate who has served in the Territorial Army for a minimum period of two years shall, other things being equal, be given preference in the matter of direct recruitment to the Establishment.

18. Thus, it is clear from the record that the respondent was never posted on the post of Messenger (Sandeshwahak) but in fact being Prahari (Chowkidar), he was deputed to perform the duties of a Messenger which could very well be done and which was within the powers of the appellant. We do not think that anywhere by performing the duties of a Messenger on the orders of the State, any chances of demotion have come into the way of the respondent. Since he was neither confirmed on the post of Messenger nor posted thereon, hence, no question arises for his consideration on the said post. The matter as it remains is that the parent (original) post on which the respondent was posted was that of a Prahari and he was confirmed on the same post as has been discussed earlier. Thus, the appellants of Appeal No. 924 of 2011 was well within its limit to pass order dated 20.10.2008. Consequently, the Special Appeal No. 924 of 2011 is allowed and the Special Appeal No. 469 of 2014 is dismissed.