

(2004) 08 AHC CK 0157

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 30716, 30718, 30734, 31085, 31088, 31132, 31154, 31210, 31304, 31537, 31724, 31431, 31850, 31883 and 32519 of 2004

Subash Chand Pandey and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-08-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Uttar Pradesh Panchayat Raj Act, 1947 — Section 15, 25, 25A

Citation : (2004) 4 AWC 3661 : (2004) 3 UPLBEC 2751

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Ashok Khare and V.D. Chauhan, for the Appellant; Sudhir Agarwal, A.A.G., M.C. Chaturvedi, Additional Standing Counsel and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri"Ashok Khare, Senior Advocate assisted by Sri V.D. Chauhan for petitioners and Sri Sudhir Agarwal, Additional Advocate General as well as Sri M.C. Chaturvedi, Additional Standing Counsel for State respondents.

2. With consent of parties, this batch of writ petitions is finally decided at this stage.

3. The petitioners in this batch of writ petitions are Kisan Sahayaks, of Agriculture Department,; Sugarcane Supervisor of Sugarcane Department, and Gram Vikas Adhikari of Gramya Vikas Department, all Class III employees in the services of Government of U.P., transferred by the State Government vide Government Order dated 12.4.1999, as Multi-Purpose Panehayat Workers, and were serving as Gram Panehayat Vikas Adhikaris in various Gram Sabhas in the State. By these writ petitions, they have prayed for quashing Government Order dated 20.7.2004 issued by the Chief Secretary, Government of U.P., by which a

decision was taken, on account of certain difficulties felt by the departments with regard to technical qualifications and complicated procedures, to repatriate these employees to their parent department for discharging their duties. They shall cease to function as multi-purpose workers, but will continue to discharge their duties assigned by their respective departments at Gram Vikas Employees under the administrative and financial control of Gram Panchayats. The Government Order also provides for fresh criteria for appointment of Gram Panchayat Vikas Adhikaris based on the population of the Gram Panchayats.

4. Brief facts, giving rise to these petitions, are stated as below. The 73rd Amendment to the Constitution of India inserted Article 243G, decentralizing the powers and giving more authority and responsibility to Gram Panchayats, and provided that the legislature of a State may, by law, endow the panchayats with such power and authority as may be necessary to enable them to function as institutions of self-Government and such law may contain provision for the devolution of powers and responsibilities upon the panchayats at the appropriate level, subject to conditions as may be specified with respect to (a) the preparation of plans for economic development and social justice and (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 the Eleventh Schedule. The State legislature enacted U.P. Panchayat Raj (Amendment) Act 27 of 1999, substituting Sections 25 and 25-A of the U.P. Panchayat Raj Act, 1947. The substituted Section 25, Sub-sections (1) and (2) and Section 25-A relevant for the purpose of these cases are quoted as below;

"25. (1) Notwithstanding anything contained in any other provisions of this Act, any Uttar Pradesh Act, Rules, Regulations, or Bye-laws or in any judgment, decree or order of any Court :

(a) The State Government may, by general or special order, transfer any employee or class of employee serving in connection with the affairs of the State of serve under Gram Panchayats with such designation as may be specified in the order and thereupon posting of such employee or employees in Gram Panchayats of a district shall be made by such authority in such manner as may be notified by the State Government.

(b) the employee or employees on being so transferred and posted in as Gram Panchayat, shall serve under the supervision and control of the Gram Panchayat on the same terms and conditions and with the same rights and privileges as to retirement benefits and other matters including promotion as would have been applicable to him immediately before such transfer and shall perform such duties as may be specified from time to time by the State Government.

(2) Subject to the provisions of Sub-section (1), a Gram Panchayat may after prior approval of the Prescribed Authority, appoint from time to time such employee as may be considered necessary for efficient discharge of its functions under this Act in accordance with such procedure as may be prescribed :

Provided that the Gram Panchayat shall not create any post except with the previous approval of the Prescribed Authority.

25-A. The State Government, or such officer or authority as may be empowered by it in this behalf shall appoint a Secretary from amongst the employees referred in clause (b) of Sub-section (1.) or Sub-section (2) of Section 25, who shall act as Secretary of such Gram Panchayat of Gram Panchayats, the Gram Sabha concerned and the Nyaya Panchayats within whose territorial limits such Gram Panchayats are situated and perform such other duties as may be prescribed by the State Government or such officer or authority as may be empowered in this behalf by the State Government."

5. The validity of the substituted Sections 25 and 25-A of the U.P. Panchayat Raj Act, 1947 was upheld by this Court in *Manbodh Kumar Lal and Ors. v. State of U.P. and Ors.* (2000) 1 LBESR 128 , Paras 7, 10, and a portion of para 11 of the judgment relevant for the purpose of the case are quoted as below ;

"7. It is a matter of policy decision of the State Government as to what kinds of governmental functions are to be transferred to Panchayats. The decision taken by the Government under clause (a) of Section 25 (1) would not be open to judicial review by this Court so long as it is in consonance with clause (b) of Sub-section (1) of Section 25 of the Act and Article 243G of the Constitution.

10. The submission made by the learned Counsel that the transfer visualized under clause (a) of Sub-section (1) of Section 25 is violative of Articles 14, 16 and 311 of the Constitution, cannot be countenanced in approval inasmuch as it has been very clearly provided in Section 25 (1) (b) of the Act that the service conditions of the Transferee employees of the concerned department will continue to be the same and they will continue to be the Government employees and governed by the same service conditions which were applicable to them prior to transfer of the departments to the Gram Panchayats.

11. In the present case, it would be evident from clause (b) of Sub-section (1) of Section 25 of the Act that the service condition of the existing Government employees of the Departments transferred to Gram Panchayats have not at all been altered as it is very clearly provided in clause (b) and Sub-section (1) of Section 25 that they would continue to be governed and the same set of rules as Government servants would, pro tanto, apply to them as were applicable to them on the date of devolution of power. In such view of the matter, we find no infirmity in the view taken by the learned Single Judge dismissing the writ petition nor do we find any substance in the writ petition filed by and on behalf of Gram Panchayat Adhikari challenging the validity of the amended Sections 25 and 25-A of the U.P. Panchayat Raj Act, 1947 and the GO dated 1.7.1.999."

6. By Government Order dated 12.4.1999, the employees of various cadres of 8 departments, who were looking after day-to-day work at Panchayat level were directed to be appointed, to carry out their functions and responsibilities except those who were working in Canal Department and Government Tubewells, as

multi-purpose workers, and atleast one of these employees was to be appointed as officiating Secretary of the Gram Panchayat as Gram Panchayat Vikas Adhikari. The multi-purpose workers were required to perform all functions except some of which required to be performed by the Lekhpal of the Revenue Department. These transferred employees were to be under the control and supervision of Gram Panchayats. The employees of four other departments were also placed under the supervision and control by the Gram Panchayats but they were not required to work as multi-purpose workers.

7. On a representation made by the Sichai Sangh, U.P. and U.P. Basic Health Workers' Association, the State Government appointed, a Committee to look into their difficulties and based on its recommendations, the Government Order dated 6.6.2001 was modified on 6.7.2001 and 21.9.2001. By these Government Orders the Sinchpal of Canal Division and Male Health Workers were sent back to their parent department. The Tube-Well Operators and Cane Supervisors with qualifications up to the High School were re-designated as Gram Panchayat Vikas Adhikari (Karyakarm) and weic to look alter the work of only their department. The Tube-Well Operators and Cane Supervisors having higher qualifications were to continue to work as multi-purpose workers. The Government Order dated 6.6.2001 was challenged before this Court. The entire bunch of writ petitions was decided by this Court in Krishna Kant Tiwari and Another Vs. State of U.P. and Others, . The Court held that the employees who were transferred by the Government Order dated 1.7.2004 were not inducted in any new service but were on deputation to Gram Panchayats and they can always be transferred back to their parent department. There was no illegality in transferring Sinchpyl (Canal Department), Male health Workers (Medical & Health Department) and Sinchpal (Bhumi Vikas and Jal Sansthan), back to their parent department. The learned Single Judge, however, declared that the re-designation of those Tube-Well Operators and Cane Supervisors, who possess qualifications only upto High School was discriminatory and was quashed. This judgment was upheld by a Division Bench of this Court and the Special Leave Petitions against the order were dismissed by the Supreme Court.

8. Now by impugned order dated 20.7.2004 the employees of three more Departments namely Agriculture; Sugarcane Development, and Gramya Vikas have been sent back to their parent department. The order, however, provides that whereas these employees will cease to work as multi-purpose workers, they will continue to discharge their departmental duties at Gram Panchayat Level under the administrative and financial control of Gram Panchayats. These orders have been made in exercise of powers u/s 25 (1) of the Panchayat Raj Act, 1947 and amended Act and previous orders issued in this regard.

9. An interim order dated 28.7.2004 was made in Writ Petition No. 4116/2004 staying their repatriation. Thereafter a batch of writ petitions were filed at Allahabad and that by a judgment and order dated 7.8.2004, the entire batch of writ petitions led by Writ Petition No. 30054/2004 between Gauri Shanker and

Ors. v. State of U.P. and Ors., and other connected writ petitions [Gauri Shankar and Others Vs. State of U.P. and Others,] have been dismissed by the Court with observations and directions that petitioners shall not be allowed to discharge duties under the administrative and financial control of the Gram Panchayats and that the State Government shall pass an appropriate Government Orders forthwith in this regard.

10. The issue stands decided and is concluded by the judgment of learned Single Judge. Sri Ashok Kharc, however, has made an attempt and has made submissions to persuade the Court to refer the matter to a Larger Bench. After hearing parties, at length, I do not find any good ground to refer the matter to the Larger Bench. I respectfully agree with the judgment delivered by Hon''ble Devi Prasad Singh, J. The issues raise by Sri Ashok Kharc with which I have not agreed and the reasons for not accepting the contentions are give as below.

11. Sri Khare submits that with the Amendment of Section 15 of U.P. Panchayat Raj Act, 1947 in pursuance of Article 243G, the powers and authority of Gram Panchayat were enlarged and basic functions and duties, to fulfil the purpose of 73rd Amendment to the Constitution of India stood transferred to the Gram Panchayats. These functions continue to be entrusted to the Gram Panchayats and are to be performed through the employees or a class of employees serving in the State Government, by their transfer to Gram Panchayats with such designation as may be specified, the provision of transfer made u/s 25 (1) (a), and the purpose on which the transfer is made has not undergone any change. Sub-section (b) of Section 25 (1) of the Act only gives protection to the employees to maintain their len is the parent department. The functions contemplated under the Constitution and the amended Provisions of the U.P. Panchayat Raj Act, 1947 have been transferred to Gram Panchayats and that the funds have been released and are at the dispdsal of the Gram Panchayats. With the transfer of the petitioners serving in Agriculture Department; Sugarcane and Gramya Vikas Department, the cadres in their respective departments were declared to be dead cadres, and thus, the petitioners cannot be repatriated to their parent department as there are no posts available for them. Sri Khare further submits that whereas Kisan Sahayaks of the Agriculture Department are graduates in Agriculture, the Tube-Well Operators of the Irrigation Department having lesser qualifications and lower pay have been allowed to function as Gram Panchayats Vikas Adhikari causing hostile discrimination between these employees. Sri Ashok Khare submits that these points were not taken into consideration in the judgment in Gauri Shanker's case and require reconsideration and reference to a Larger Bench. " "

12. Sri Sudhir Agarwal, Additional Advocate General, on the other hand, submits that these questions were considered in Gauri Shanker's case and in any case, even if these points are into consideration, in the manner they have raised by Shri Khare, they do not change the ratio of the judgment, and that nothing will turn on these issues.

13. After tracing the entire back ground in which the petitioners were transferred under the administrative and financial control of Gram Panchayats, Sri Agarwal submits that the parent cadres were not declared as "dead cadre" but as "dying cadres". He refers paragraph-7 of the Government Order dated 24.9.1999, annexed as Annexure 2 to the writ petition in which it is provided that no fresh appointment shall be made on the posts which shall fall vacant in the cadre on account of retirement, death, resignation or otherwise. Explaining the difference between the dead cadre and dying cadre Sri Agarwal submits that whereas in "dead cadre" the posts are abolished, in "dying cadre" the existing posts continue but no fresh appointment is to be made, to allow the cadre to exhaust gradually. He submits that the posts held by the petitioners have not been abolished and that the petitioners still holds lien to the existing posts in the parent department, so long they continue in service, Sri Agarwal submits that these issues have been considered at length in Manjodh Kumar Lai's case and Krishna Kant Tiwari's case and that the judgment in Krishna Kant Tiwari has been upheld upto the Supreme Court so far as the discrimination between the petitioners and the employees of Irrigation Department is concerned, it is pointed out that under vSection 25-A, the Gram Panchayat can appoint a Secretary from amongst the employees under clause (b) of Sub-section (i) or Sub-section (ii) of Section 25 to Act as Secretary of such Gram Panchayat. Since the petitioners are no longer functioning as multi-purpose workers and are not on transfer to Gram Panchayats, they cannot be appointed as Gram Panchayat Vikas Adhikari. They are a class within themselves and cannot claim discrimination as against the Tube-Well Operators of Irrigation Department. He submits that there are no Assistant Tube- Well Operators as this nomenclature of the post given to Part Time Tube-Well Operators was not found valid in Surendra Chandra Tiwari's case in Writ Petition No. 3558 (SS) of 1992, decided on 18.5.1994 and that by a subsequent Government Order dated 2.8.2004 the State Government has decided to continue the services of Tube-Well Operators and some Part Time Tube-Well Operators, who were placed on transfer under Gram Panchayats with such Gram Panchayats until a fresh decision is taken.

14. I do not find force in the submission of Sri Ashok Khare that once the powers and authority of Gram Panchayats were enlarged and that the functions and the functions as provided in Eleventh Schedule of the Constitution of India, were transferred to the Panchayati Raj Department, to be performed by Gram Panchayats, the petitioners cannot be transferred/repatriated back to their parent department. The petitioners on their transfer to the Gram Panchayats did not lose their lien with the parent department and that there is no illegality in transferring them back to their parent department. Since the cadres of each of these Departments constitute a separate class the question of discrimination or violation of Articles 14 and 16 does not arise. The functions and duties of petitioners may not be confined now only to a Gram Panchayat. As an employee of the parent department posted in a Gram Panchayat, the petitioners can be asked to perform the functions and responsibility of the department in any other

Gram Panchayats and/or in a larger area. Their expertise will be better utilised if they are allowed to function in a larger area and are not confined to a single Gram Panchayat. The petitioners do not have a right to hold the post of Gram Panchayat Vikas Adhikari, which is also an ex-officio Secretary of the Gram Panchayat. The object and purpose of the appointment of the employees of all these departments under the administrative and financial control at Gram Panchayat will not be defeated, in case the petitioners are allowed to discharge their functions and responsibilities even in the same Gram Panchayats.

15. It appears that the constitutional goal to decentralise and to empower of the Gram Panchayats has not achieved the desired results in the State of U.P. The employees of these eight departments, classified as multi-purpose workers were required to discharge their duties under the supervision and control of gram panchayats for efficient discharge of their functions and responsibilities provided u/s 15 of the U.P. Panchayat Raj Act, 1947. It is apparent that the experiment has failed in the State of U.P., and that instead of rendering service by utilising their expertise, these employees were more interested in acquiring powers and authority to work as Secretaries of the Gram Panchayats and to exercise control over the funds provided by the State Government to be spent at Gram Panchayat levels. In these circumstances the State Government has retraced the steps, and considered it better to transfer these employees back to their parent department. This is clearly a policy decision, based on the practical experience on the field level. The petitioners have not laid any foundation to establish that the decision was arbitrary, capricious or taken in colourful exercise of powers.

16. So far as the matter of dual administrative control over these employees is concerned I agree with the observations of Hon'ble Devi Prasad Sigh, J, that such dual control may give rise to practical difficulties and that once the employees are transferred back to their parent department, have regained their status as Government servant with all rights and privileges, the administrative control of Gram Panchayats as local bodies, will affect their rights and conditions of service regulated by their respective statutory Service Rules.

17. For the aforesaid reasons, all the writ petitions are dismissed. No order as to costs.