
(2009) 12 AHC CK 0029
In the Allahabad High Court

Uma Shanker Bhatt

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Reorganisation Act, 2000 — Section 2, 73(1), 73(2), 76, 77

Citation : (2010) 4 AWC 3310

Hon'ble Judges : D.K. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Arora, J.—Heard learned Counsel for the parties.

2. By means of present writ petition, the petitioner is seeking a writ of certiorari for quashing the impugned order dated 20.10.2009, passed by the opposite party No. 6 and order dated 14.9.2009, passed by the opposite party No. 5 as well as the order dated 4.6.2009, passed by the opposite party No. 1 so far as the same relate to the petitioner, contained in Annexures-1, 2 and 3 respectively to the writ petition. The petitioner also seeks a writ of mandamus for directing the opposite parties not to create hindrance in the peaceful functioning of the petitioner on the post of Allopathic Pharmacist in Samudayik Swasthya Kendra Shamli, Muzaffarnagar, U.P.

3. The submission of the counsel for the petitioner is that by means of impugned orders, the petitioner has been transferred from State of Uttar Pradesh to Uttarakhand alongwith other 42 persons in a most arbitrary and illegal manner without affording any opportunity of hearing to the petitioner.

4. The petitioner is originally resident of Rishikesh, district Dehradun (Uttarakhand), The petitioner is a Allopathic Pharmacist and is working at Samudayik Swasthya Kendra Shamli, district Muzaffarnagar (U.P.). At the time of petitioner's appointment, his whole family was settled in the State of

Uttarakhand. At the time of division of the State of Uttar Pradesh, the petitioner made an application on 3.10.2000 opting to serve in the State of Uttarakhand being original resident of Uttarakhand especially to look after his whole family because the petitioner was alone person to take care of his family and his father was suffering from serious illness. The petitioner awaited his transfer till 2005 and when no action was taken regarding his transfer, he again moved an application on 30.8.2005 before the authority concerned and when the petitioner could not get success in getting himself transferred to State of Uttarakhand, the petitioner decided to shift his whole family from Rishikesh, district Dehradun, Uttarakhand and settle in district Muzaffarnagar, Uttar Pradesh for treatment of his old father and accordingly, shifted his whole family permanently in Uttar Pradesh. All of sudden the petitioner has been transferred by means of the impugned orders, contained in Annexures-1, 2 and 3 respectively to the writ petition after lapse of ten years from the date

5. The further submission of counsel for the petitioner is that it is settled law that no such order can be implemented after a lapse of so long period, whereas during the period of ten years the situation has been changed and thus, without providing opportunity of hearing, notice, fresh option, passing of impugned order is wholly arbitrary, illegal and against the principles of natural justice. It is also submitted that in the impugned transfer list, four persons, who were placed at serial Nos. 33, 34, 42 and 43, have been given opportunity to make representation against their transfer while they were also optee. Since the petitioner was also one of the optees, he should have been given opportunity to make representation but by not providing this opportunity, the petitioner has been discriminated. In para 15 of the writ petition, it has been stated that State of Uttarakhand came into existence on 9.11.2000 and it was with effect from the said date or soon thereafter the process of final allotment of personnel to the successor State of U.P. and Uttarakhand would have started and completed, The intention of the Parliament to provide for a period of one year in the proviso to Section 73(1) of the U.P. Reorganization Act, in which the personnels serving in the successor State of U.P. and Uttarakhand would continue as provisional allotted to each of the States was to ensure that the process of final allotment will be completed within the period of one. year. The final allotment was never intended by Parliament to continue indefinitely and certainly for a long period of eight to nine years of creation of State of Uttarakhand.

6. It appears that it was third meeting of State Advisory Committee, Uttar Pradesh held on 2.7.2002, almost two years after the creation of the State of Uttarakhand. Necessary principles, procedures and policies for final allotment of personnel to successor State of Uttar Pradesh and Uttarakhand was finalised and in pursuance thereto the Government order dated 15.7.2002 was issued by the Member Secretary, State Advisory Committee, U.P., Lucknow and the same was circulated amongst various departments of State of U.P. According to para 2 (b) of the aforesaid Government order, first such personnels, who had opted for the State of U.P. and Uttarakhand, would be allotted finally to each of the States.

Secondly, after adjusting all the aforesaid personnels, who had opted for the respective States in the said States, still vacancies remained, persons who were domicile of the States of U.P. and Uttarakhand would be finally allotted to the said States. Thirdly, if after adopting the aforesaid two procedures, still vacancies are left to be filled, the Junior most personnel in a particular department would be allotted to the State of Uttarakhand finally and while doing so, the reservation policy for Scheduled Castes, Scheduled Tribes and Other Backward Classes of the Government of India would be followed. It was also provided in the Government order that in case any person proposed to be finally allotted to the State of Uttarakhand had some genuine difficulties or face some hardships, representation highlighting the same alongwith evidence in support thereof should be presented before the State Advisory Committee for consideration and decision.

7. It is also submitted by the counsel for the petitioner that no orders appear to have been passed on the representation of the petitioner by the State Advisory Committee as the petitioner was never communicated with any orders that may have been passed on the aforesaid representation. The petitioner placed reliance on the order passed by this Court on 12.12.2007, contained in Annexure-10 to the writ petition. Operative portion of the same reads as under:

A plain reading of the order dated 12.11.2007 indicates that the Government of India has taken a decision to decide the representations received from the employees department wise in the matter where even the allocation has been completed. Dr. Ashok Nigam has very fairly submitted that the cases of employees who are covered by order dated 12.11.2007 may be considered by the respective committees. It has also been submitted that one other order has been issued on 2.11.2007 by the Government of India amending the guidelines to some extent.

Keeping in view the changed scenario, it shall be appropriate that the pending representations which are covered by the aforesaid orders may also be considered by the respective committees in accordance with law expeditiously. However, all those petitioners who are covered by the aforesaid order may also make fresh representations expeditiously within a period of fifteen days from today through proper channel. In case, the department concerned forwards, the representations of the petitioners and all those employees who submit their representations keeping in view the order dated 12.11.2007 to the respective committee for adjudication within fifteen days thereafter, the committee may adjudicate the controversy expeditiously and preferably within a period of one month.

8. In para 22 of the writ petition, it is mentioned that after shifting the family at Muzaffarnagar (U.P.), the petitioner moved an application in the year 2007 to the opposite party No. 1 stating therein that his earlier option for transfer to Uttarakhand be treated as infructuous as he has permanently and finally settled in Uttar Pradesh. The representation of the petitioner, contained in Annexure-12

to the writ petition, has not been considered and petitioner has been transferred by the impugned transfer orders to the State of Uttarakhand. The petitioner also placed reliance on another order dated 28.7.2009, contained in Annexure-11 to the writ petition. The same reads as under:

It has been brought to the notice of the Court that the Director General Uttarakhand has refused the joining of the petitioners, in pursuance of the orders passed by the authorities impugned in some of the writ petitions.

Learned Counsel for the parties have agreed that looking to the facts and circumstances of the case, it would be appropriate that the matter is relegated to the State Advisory Committee for passing appropriate orders on the representations of the petitioners, expeditiously.

Accordingly, as agreed between the counsel for the parties, all the writ petitions are disposed of with a direction to the State Advisory Committee to pass appropriate orders on the representations preferred by the respective petitioners, in accordance with law, expeditiously, say 31.8.2009. Till the date of passing of the orders on the representations of the petitioners, the transfer orders shall be kept in abeyance. It is also provided that the State Advisory Committee will take assistance from the Secretaries of the respective departments of the State of Uttar Pradesh and State of Uttarakhand, if it so desire.

No other point has been pressed by the counsel for the petitioner.

9. Sri Pradeep Chandola, learned Counsel appearing for the opposite parties No. 5 and 6 submitted that the judgment and order dated 12.12.2007 (Annexure-10 to the writ petition) referred by the petitioner, does not apply in the case of the petitioner as the order dated 12.11.2007 was passed by the Government of India in exercise of powers conferred u/s 76 of U.P. Reorganization Act, 2000 to look into the representations received from the employees, department-wise, whereeven the allocation has been completed. In the present case, the final allotment was made on 4.6.2009 (Annexure-3 to the writ petition) and as such, the circular/order dated 12.11.2007 does not apply in the present case. Similarly, the judgment and order dated 6.3.2009 (Annexure-9 to the writ petition) relates to routine transfer of the police personnels within the State of U.P. as such the same has no application in the present case. The third judgment and order dated 28.7.2009 (Annexure-11 to the writ petition) also does not apply in the present case as in the said case, certain persons were refused to join in the State of Uttarakhand, and, therefore, the matter was referred to the State Advisory Committee for passing appropriate orders.

10. Sri Anil Saran, learned standing counsel while relying upon the Circular/Order dated 15.7.2002 submitted that in the first category the persons were required to give option by 15.6.2001 and no change was permissible in the option. It is further submitted that choice of representation was available with the second and third category of employees, i.e., domicile and the junior most employees and in the present case, the petitioner himself has given option for State of

Uttarakhand, no change is permissible in the option in view of the Circular/Order dated 15.7.2002.

11. It was also pointed out that the representation of the petitioner dated 9.6.2007, contained in Annexure-12 to the writ petition, is addressed to the Secretary, Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Lok Nayak Bhawan, New Delhi, whereas the petitioner himself is fully aware that the representation was required to be submitted to the President, State Advisory Committee, as earlier while submitting his option on 30.8.2005 he has addressed the same to the President, State Advisory Committee, U.P., Lucknow. It is also pointed out that Annexure-12 of the writ petition does not indicate the mode, by which it was sent. The alleged representation also does not indicate that the same has been sent through proper channel and in fact, there appears to be no representation and the same is a fictitious document filed alongwith writ petition to raise a plea that the authorities have passed allocation order without considering the representation of the petitioner. The act of filing fictitious representation (Annexure-12 to the writ petition) is an attempt to mislead the Court.

12. In sum and substance the ground of challenge of the petitioner's petition is that the representation of the petitioner dated 9.6.2007, contained in Annexure-12 to the writ petition, has not been considered by the State Advisory Committee and implementation of the transfer order after lapse of about 10 years is meaningless as the situation during this period has been changed. In the impugned order only 4 persons have been given liberty to file representation against the transfer order though the petitioner opted for Uttarakhand but due to non-implementation of the transfer order, the petitioner decided to settle in the State of U.P. and shifted his family, hence, the petitioner has been discriminated. The petitioner also deserves parity of the judgment and order dated 28.7.2009, by which this Court stayed the impugned transfer order and directed the State Advisory Committee to decide the representation of the petitioner.

13. In order to appreciate the issue, it is necessary to go through the relevant provisions of U.P. State Reorganization Act, 2000 and the same are being reproduced hereunder:

73. Provisions relating to other services.-(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Uttar Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttaranchal:

Provided that every direction under this sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the consultation of the Governments of the successor States.

(2) As soon as may be after appointed day, the Central Government shall, by

general or special order, determine the successor State to which every person referred to in Sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of Sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

75. Provisions as to continuance of officers in same post.-(1) Every person who, immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Uttar Pradesh in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in that successor State:

Provided that nothing in this section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office.

76. Advisory Committee.-The Central Government may, by order, establish one or more Advisory Committees for the purpose of assisting it in regard to:

- (a) the discharge of any of its functions under this Part; and
- (b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.

77. Power of Central Government to give directions.- The Central Government may give such directions to the State Government of Uttar Pradesh and the State Government of Uttaranchal as may appear to it to be necessary for the purpose of giving to the foregoing provisions of this Part and the State Government shall comply with such directions.

The Central Government notified 9.11.2000 as the "appointed day" u/s 2 (a) of the Act.

14. The reading of Section 73(1)(a) of the Act reveals that a U.P. Government employee shall on and from the appointed date provisionally continue to serve in connection with the affairs of the State of U.P. unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttaranchal. Similarly Section 73(2) in sum and substance provides that the Central Government by general or special order can determine the successor State to which every person mentioned in Sub-section (1) shall be finally allotted for service and the date with effect from which the

said allotment shall take effect. The final allotment has to be done by the Central Government on the recommendations of the Advisory Committee appointed u/s 76 for ensuring fair and equitable treatment to all persons likely to be affected, and for proper consideration of any representation made by such person and u/s 77 the Central Government can give directions to the State Government, as may appear to it to be necessary for the purposes of giving effect to the provisions of the Act.

15. After series of meetings, the State Government issued the Government order dated 15.7.2002 regarding final allocation of personnel on the basis of norms and guidelines laid down by the State Advisory Committee in its meeting dated 2.7.2002 (Sri Pradeep Chandola provided the copy of the order dated 15.7.2002, the same is taken on record).

16. The para 2 (b) of the Government order dated 15.7.2002 provides the procedure and criteria for allocation of State service personnel, which provided firstly the allocations of persons, who had given their options upto 15.6.2001 for allocation of the State of Uttaranchal. If there were any vacancies, the same were to be filled by the domiciles of the State of Uttaranchal. A person would be treated as domicile of Uttaranchal, if he had declared any of the 13 districts in the State of Uttaranchal as his home district in his service records prior to 1.4.2000. If still any vacancy remained to be filled, the same was to be allocated to the junior most working employees in the concerned cadre working in the same pay scale. The fourth and last condition provided that in carrying out the directions for determining the junior most persons, reservations shall be ensured for Scheduled Castes/Scheduled Tribes and Other Backward Classes and further that so far as possible, proportional prorata of the Junior most employees should be worked out of every batch in the cadre.

17. The Division Bench of this Court examined the validity of criteria adopted for allocation in the meeting of the State Advisory Committee held on 2.7.2002 which were notified vide order dated 15.7.2002 in Pushpak Jyoti v. State of U.P. 2004 (55) ALR 28 and the same are as under:

1. The first of the allotted will be optees to Uttaranchal (Option means-First option given by the employee by 15.6.2001 and no change is permissible).
2. Those whose home district as declared in service records lies within Uttaranchal, will be allotted to that State.
3. If vacancies persist, the junior most as on the appointed day in the desired pay scale would be allotted.
4. While carrying out the exercise care would be taken to observe the criteria regarding reservation of S.Cs./S.Ts. O.B.Cs. and others Care would also be taken to allocate personnel prorata according to the total strength of the batch, as far as possible.
5. If both husband and wife are in service, allotment would be in accordance with

the option of the senior with reference to the pay scale. In case of officers finally allotted to Uttaranchal vide Government of India's order dated 11.9.2001, the spouse would be allotted Uttaranchal only, and not Uttar Pradesh.

6. Female employees would be allocated according to their options, subject to the condition that those whose spouses are covered by point 2 or point 3 would be allotted Uttaranchal only and not Uttar Pradesh.

7. Those employees who are due to retire within two years will be allotted as per their option.

8. Handicapped employees, if not finally allotted to Uttaranchal vide orders dated 11.9.2001 issued by Government of India would be allotted as per their options.

There was consensus on the adoption of these norms to govern the allocation of personnel.

18. It was held that all the 8 principles are objective criteria designed to avoid any complaint of pick and choose and thus, the same cannot be regarded arbitrary.

19. The decision in the case of Pushpak Jyoti was challenged before the Hon''ble Supreme Court and the Hon''ble Supreme Court while issuing notices directed for maintaining status quo, but subsequently SLP in the case of Pushpak Jyoti was withdrawn, with the result, the judgment of this Court delivered in the case of Pushpak Jyoti has become final. Recently, this Court in the matter of Sanjay Kumar Singh v. State of U.P. and Ors. 2009 (5) ESC 2945 (All), examined the provisions of U.P. State Re-organization Act, 2000 and the criterias for allocation, which was confirmed in intra-court appeal by the Division Bench vide its Judgment dated 9.10.2009, passed in Special Appeal No. 1052 (D) of 2009, Mahendra Singh v. State of U.P. and Ors. holding that the allocations were done according to a policy decision and the same does not call for any interference.

20. Now coming back to the case of the petitioner, from perusal of the record of the writ petition, it is evident that no representation has been made to the Competent Authority/State Advisory Committee (Annexure-12 to the writ petition). The alleged representation is addressed to the Secretary, Government of India, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension whereas the same should have been addressed to the State Advisory Committee through proper channel and from perusal of the Annexure-5 to the writ petition, it is evident that the petitioner is fully aware as to whom the representation is to be made as the petitioner himself addressed the said representation to the President, State Advisory Committee, Lucknow U.P. on 30.8.2005 through proper channel reiterating his option for Uttaranchal and requested for his relieving on the ground that his name figured in the tentative list at serial No. 860.

21. The perusal of the Annexure-12, i.e., the alleged representation dated 9.6.2007 also reveals that the same does not indicate the method of submission/

sending to the Competent Authority and definitely the same has not been sent through proper channel and this Court agrees the submission of Sri Anil Saran, learned standing counsel to the effect that their appears to be no representation and the same is fictitious document filed alongwith the writ petition to raise plea that the authorities have passed the allocation order without considering the representation of the petitioner and, as such, the act of filing the fictitious representation (Annexure-12 to the writ petition) is an attempt to mislead the Court.

22. It is a fundamental principle of law that a person invoking the extraordinary, Jurisdiction of the High Court under Article 226 of the Constitution of India must come with clean hands and must make a full and complete disclosure of facts to the Court. Parties are not entitled to choose their own facts to put forward before the Court. The foundational facts are required to be pleaded enabling the Court to scrutinize the nature and content of the right alleged to have been violated by the authority.

23. The Hon''ble Supreme Court in the case of K.D. Sharma v. Steel Authority of India Ltd. and Ors. (2008) 12 SCC 481, in para 36 observed as under:

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court,- the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done". The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

24. The same view has been taken by the Hon''ble Supreme Court in several other cases. Reference may be made to Raj Kumar Soni and Another Vs. State of U.P. and Another, and Union of India and Ors. v. Amor Singh (2007) 12 SCC 261 : 2008 (5) AWC 4245 (SC)."

25. The reliance of the petitioner on the order passed by this Court on 12.12.2007, passed in Writ Petition No. 3699 (S/S) of 2009, Afsar Husain and Ors. v. Union of India and Ors. is also misconceived and does not apply in the case of the petitioner in view of the fact that the Circular/Order dated 12.11.2007 was passed by the Government of India in exercise of power conferred u/s 76 of U.P. Reorganization Act, 2000 to look into the representations received from the employees, department-wise, whereeven the allocation has been completed but in the present case the final allocation was done on 4.6.2009. Similarly, reliance of the petitioner on the order dated 28.7.2009 (Annexure-11 to the writ petition) also does not apply in the case of the petitioner as in the said case certain persons were refused to join in the State of Uttarakhand and, therefore, the matter was referred to the State Advisory Committee for passing appropriate orders. The reliance of the petitioner on the

order dated 6.3.2009 (Annexure-9 to the writ petition) is also misplaced because the observation of this Court in the said order was relating to the routine transfer of the police personnel within the State of U.P.

26. As far as the ground of the petitioner with respect to giving opportunity of filing representation to only four persons is concerned, the perusal of the order dated 4.6.2009 (Annexure-3 to the writ petition) reveals that the persons who are at serial numbers 33, 34, 42 and 43 belong to O.B.C. and S.C. category and they have right to give representation in pursuance to para 2 (b)(4) of the Government order dated 15.7.2002 whereas the petitioner belongs to general category.

27. It is admitted position that petitioner submitted his option/application on 3.10.2000 (Annexure-4 to the writ petition), which was duly recommended/forwarded by the Incharge, Medical Officer, Prathamik Swasthya Kendra, Kudana, Muzaffarnagar, and the petitioner once again on 30.8.2005 approached the President, State Advisory Committee, U.P., Lucknow through proper channel for his relieving to the State of Uttaranchal on finding his name at serial No. 860 in the tentative allocation list (Annexure-5 to the writ petition). As per order dated 15.7.2002, the option given upto 15.6.2001, no change was permissible and the petitioner gave his option on 30.1.2000, as such, alleged representation dated 9.6.2007 was not maintainable.

28. In view of the aforesaid facts and circumstances though the writ petition deserves to be dismissed with costs for not approaching the Court with clean hands and filing the fictitious document in the shape of representation (Annexure-12 to the writ petition), this Court taking a lenient view warns the petitioner to be cautious in future. Further none of the grounds raised by the counsel for the petitioner in the writ petition are tenable in the eyes of law as the allocation of the petitioner was done according to a policy decision on the basis of his option, which was irrevocable, as such, the present writ petition deserves to be dismissed.

Accordingly, the writ petition is dismissed. However, no order as to costs.