
(1999) 04 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16021 of 1999

Umesh Chandra Sharma and Others

APPELLANT

Vs

Chairman, U.P. State Electricity Board and Others

RESPONDENT

Date of Decision : 17-04-1999

Acts Referred:

Citation : (1999) 2 UPLBEC 1589

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

Bench : Single Bench

Advocate : Anita Tripathi, for the Appellant; S.P. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioners were transferred by an order dated 29-7-98 from Badaun to Bareilly. In the said order, the petitioner, who was a Junior Meter Tester, was proposed to be transferred and posted as Sub-station Operator. The said order was challenged by means of a Writ Petition No. 30866 of 1998 on various grounds which was disposed of by directing the authority concerned to consider the petitioner's representation. The representation was considered and the petitioner was permitted to remain attached to the same post at Badaun till 31-3-1999. Thereafter, an order dated 8-4-1999 has been passed reviving the order dated 29th July, 1998. These two orders 29th July, 1998 and 8th April, 1999 have since been challenged in this writ petition.

2. Smt. Anita Tripathi, learned Counsel for the petitioner contends that once the order was subjected to a proceeding and the representation was directed to be considered, the said order lost its force and cannot be revived. She further contends that by reason of the order contained in Annexure-11, the petitioner could not have been transferred to the post of Sub-station Operator since the same belongs to a different cadre. She further contends that the transfer order, was a mid-term one and therefore, the same could not have been effected to. She further contends that the petitioner could have been transferred in the

manner it has been proposed to since a different procedure and treatment is being pursued by the respondents at different regions. Mr. S.P. Mehrotra, learned Counsel for the respondents, on the other contends that the question that a Junior Meter Tester could not be transferred as Sub-Station Operator had come in another Writ Petition wherein it was held that these two posts are interchangeable but then it was observed that there should be a Regulation framed for such purpose. Thereafter, the respondents had framed UP. Rajya Vidyut Parishad Parichalkiya Karmachari Varg Sewa Viniyamawali, 1995 (Regulation of 1995). In the said Regulations the post of Junior Meter Tester and post of Sub-station Operator were grouped together the Technician Grade-H and were made inter-changeable. This Regulation of 1995 was challenged before this Court on various grounds. In the decision in the case of U.P. Vidyut Mazdoor Sangh, Kanpur v. U.P. State Electricity Board, Lucknow, decided with several other Special Appeals and Writ Petitions reported in (1997) 2 UPLBEC 1460 the Division Bench of this Court had upheld the vires of the said Regulations of 1995. Therefore, it is not more open to challenge the question of inter-changeability as contended by Mrs. Tripathi. Then she contends that the order dated 8th April, 1999 is not a fresh order. By reason of the order passed on the Writ Petition, the operation of the order dated 29th July, 1998 was kept in abeyance so far as the petitioners are concerned till 31st March, 1999. Therefore, as soon the said date is expired, the order dated 29th July, 1998 stands revived and the petitioner is bound to move on. Therefore, by the order dated 8th April, 1999, the petitioner was directed to be released. According to him, there is no infirmity in the order. The order dated 29th July, 1998 cannot be assailed as a mid term order. Therefore, he prays that the Writ Petition be dismissed.

3. I have heard both the Counsel at length.

4. Admittedly, the vires of 1995 Regulation has been upheld in the Division Bench judgment in the U.P. Vidyut Sangh (supra). Admittedly, the post of union Meter Tester and that of Sub-station Operator have been grouped as Technician Grade-II and had been made inter-changeable in the said regulations. After the vires of the said Regulations has been upheld, it is no more open to question the inter-changeability of these two posts. Therefore, I am unable to agree with the contention of Mrs. Tripathi with regard to her first objection. The order dated 29th July, 1998 and the consequential order of 8th April, 1999. So far as the question that it was a mid term order cannot be sustained, in view of the fact that the original order dated 29th July, 1998 and the order dated 8th April, 1999 is a consequential order which has since brought about by the action of the petitioners themselves by means of requiring decision on their representations. The petitioner had acquiesced to the order on their representations and had accepted the benefit thereof. Now they cannot reagitate the same once again after the order had expired, having enjoyed the benefit deriving out of such order. The order dated 8th April, 1999 being a consequential order since after 30-3-1999 the order dated 29th July, 1998 had revived, the same cannot be challenged on the alleged ground of mid term transfer.

5. The petitioner is governed by the 1995 Regulations which permits inter-changeability and transfer. It is not known as to how the different treatment is being meted out at different region. If it is so in that event the persons affected had every right to challenge the same in terms of the 1995 Regulation unless there is a violation of the 1995 Regulations. The petitioner cannot make any capital out of the alleged different treatment meted out to employees of different region that too without any sufficient materials placed before the Court. Therefore, the said ground also cannot be sustained. Thew reliance on the order dated 12th January, 1999 contained in Annexure-11 by Mrs. Tripathi appears to be misplaced. By the said order dated 29th July, 1998 nor the provisions contained in the Regulations were recalled as has been sought to be contended by her. On the other hand the said order proceeds to note that all orders relating to the matters of inter- changeability and transfer would cease to operate and the provisions of the Regulations should be operative and applicable and it should be ensured that the same is adhered to. Therefore, by the said order the Regulations has been sought to be adhered to and the petitioner having not been able to show anything how the Regulations is being violated, the contention of Mrs. Tripathi does not find any support.

6. In this background, in my view the petitioner has not been able to make out a case for interference by this Court. In the result the writ petition fails and is accordingly dismissed. No costs.