

Ramadhar Pandey vs State Of U.P. And Ors. on 30 March, 1993

Equivalent citations: 1993(66)ELT547(SC), JT1993(4)SC72, (1993)ILLJ817SC, 1993(2)SCALE349, 1993SUPP(3)SCC35, 1993(3)SLJ124(SC)

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Bench: A.M. Ahmadi, S. Mohan

JUDGMENT

S. Mohan, J.

1. Leave granted.
2. Both these appeals arise out of the dismissal of Civil Misc. Writ Petition Nos. 24720/ 92 & 32100/92 filed by the appellant herein before the High Court of Allahabad.
3. The short facts are as under:
 4. In terms of G.O. No. 2626/30-2-84-32-G.E./72 dated 17.9.1984 the post of Additional Transport Commissioner in Uttar Pradesh Government Services is to be filled in by promotion from among the senior most Deputy Transport Commissioners who have completed five years continuous service as such. Initially, the senior most Deputy Transport Commissioner is appointed ad hoc and promoted to the post of Joint Secretary (Transport) which is an ex-cadre post in the Secretariat. Thereafter, he is posted as Additional Transport Commissioner. In accordance with this procedure, the appellant who was the senior most Deputy Transport Commissioner was promoted to the post of Joint Secretary (Transport). He continued on that post till 11.9.1990. The post of Joint Secretary is a secretarial post while the post of Additional Transport Commissioner is a departmental post.
 5. During the tenure of the appellant as Joint Secretary, one Shri. R.D. Mishra was the Additional Transport Commissioner. Admittedly, the said Shri R.D. Mishra was senior to the appellant. Shri R.D. Mishra retired in August 1990. In that vacancy, the appellant was appointed as Additional Transport Commissioner by an order dated 11.9.1990. He continued to work as Additional Transport Commissioner. However, by an order dated 8.7.1992, he was again posted back to the post of Joint Secretary. On 10.7.1992, Shri O.S. Gahalaut was appointed as Additional Transport Commissioner.
6. These two orders were challenged in Civil Misc. Writ Petition Nos. 24720/92 & 32100/92

respectively. The challenge was on two grounds. One the appellant would not oblige Dr. Om Parkash, the Transport Commissioner who wanted an officer of his own choice as Additional Transport Commissioner. The said Om Parkash ever since the day, he became the Transport Commissioner was trying to oust the appellant from the post of Additional Transport Commissioner as he did not yield to the pressures exerted by Dr. Om Parkash to do illegal works particularly in relation to appointment of the subordinate staff. When the appellant refused to make these illegal appointments which were recommended by Dr. Om Parkash, he was warned of dire consequences.

7. The second ground of challenge was that it was a demotion though parity of pay might have been maintained. Accordingly, the writ of certiorari was sought for in Civil Misc. Writ Petition No. 24720/92.

8. In Civil Misc. Writ Petition No. 32100/92, the challenge was by means of quo warranto restraining the Respondent No. 4 from functioning as Additional Transport Commissioner. According to the appellant, the respondent No. 4 was junior to him. Therefore, he could not be posted as Additional Transport Commissioner. The fact that the order of transfer of the appellant came to be passed on 8.7.1992 and on 10.7.1992, in that vacancy, the respondent No. 4 was appointed as Additional Transport Commissioner will clearly establish that the Selection Committee had no occasion to meet and consider the case of the respondent No. 4 for promotion as Additional Transport Commissioner. This was done in undue haste in clear violation of service rules with a view to accommodate the respondent No. 4. The Transport Commissioner also did not obtain orders from the Governor in this behalf and he himself passed the orders in favour of the respondent No. 4.

9. The High Court of Allahabad dismissed the Civil Misc. Writ Petition No. 24720/ 92 on the ground that by the impugned order of transfer of the appellant, there was no demotion. In any event, the Governor had the requisite power under Clause 2(b) of the Uttar Pradesh Fundamental (Second Amendment) Rules, 1981 to transfer a government servant in public interest to a post of another cadre or to an ex-cadre post. Further according to the Government Order dated 14.9.1988, the pay scale for the post of Joint Secretary is same as is admissible to the post of Additional Transport Commissioner. Besides, there is a special pay of Rs. 250/- for a Joint Secretary. In this view, the writ petition was dismissed. Following this, the other writ petition No. 32100/92 was also dismissed.

10. Before us, Shri R.K. Jain, learned Counsel for appellant would urge that the so called order of transfer is nothing but a demotion and it has come to be passed only to accommodate the respondent No. 4.

11. No doubt the appellant could be transferred to an ex-cadre post. However, it must be in public interest and no such public interest is involved in this case. These are two submissions made before us.

12. Though notice was ordered on 29.1.1993 returnable within four weeks, the Government of Uttar Pradesh had not chosen to file the counter-affidavit. As a matter of fact, service has been effected on all the respondents as early as on 4.2.1993 and yet not any respondent has filed counter-affidavit. When the case was taken up on 15.3.1993, the learned Counsel Ms. Kamini Jaiswal appealed for the

Government of Uttar Pradesh and sought time to file counter-affidavit which we had to decline as it has become the regular practice with all the Government agencies taking it for granted that the time would be given to suit their convenience. Therefore, she was directed to proceed with the case.

13. She would submit that by order dated 1.4.9.1988 of Government of Uttar Pradesh, the ex-cadre post of Joint Secretary has been created. The G.O. further says that a suitable officer of the level of Additional Transport Commissioner may be appointed to the aforesaid post. A special pay of Rs. 250/- is provided for. Therefore, it is incorrect on behalf of the appellant to state that there is a demotion. As per Clause 2(b) of the amended Rules that a government servant can be transferred to a post of another cadre or to an ex-cadre post in public interest by an order of the Governor. Clause 27 of the Rules with regard to persons appointed to the Uttar Pradesh Transport Service clearly postulates that wherever Rules do not specifically govern a case, the general Rules applicable to a government servant could be made applicable. Hence, no exception could be taken to the order of dismissal of the appellant's writ petition. Consequently, it would follow the other writ petition questioning the posting of respondent No. 4 as Additional Transport Commissioner is also liable to be dismissed.

14. In order to appreciate the above contentions we will first extract in full the impugned orders. The order dated 8.2.1992 read as follows:

Nirmal Chandra D.O. Letter No. 40742.1.92 Special Secretary Government of Uttar Pradesh Appointment Section -1 Lucknow dated 8 July, 1992 Dear Sir, I have been directed to say that Shri Ramadhar Pandey "Transport Services" Additional Transport Commissioner is being appointed on the post of Joint Secretary, U.P. Government Transport Department Lucknow. You may please direct Mr. Pandey to take charge of the new post without delay.

With regards, Yours Signed Nirmal Chandra Further, order dated July 10, 1992 read as follows:

Govt. of Uttar Pradesh Department of Transport-3 No.2522/30-3-2-42 G.E.-88 Dated July 10,1992 Appointment/Transfer Shri Om Pal Singh Gahalaut Joint Secretary Transport U.P. Government is hereby transferred and appointed as Additional Transport Commissioner H.qs. in the pay scale of Rs. 3700-125-4700-150-5000. Surendra Mohan Principal Secretary

15. The post of Joint Secretary came to be created by G.O. dated 14.9.1988 on the pay scale of Rs. 1840-60-1900-75-2200-100-2400 Rs. 250/ special pay. Paragraph 3 of the G.O. read as follows:

A suitable officer of the level of Addl. Transport Commissioner from the Transport Commissioners Organisation may be appointed on the aforesaid post.

16. Therefore, the appellant could be transferred as Joint Secretary since there is equation of pay as well as status as is found by the High Court. More importantly, what is to be considered is whether

there is any public interest involved in the transfer of the appellant as Joint Secretary. We have already extracted the order by which the appellant came to be transferred. Clause 2(b) of the Fundamental Rules as amended by Uttar Pradesh Fundamental (second amendment) Rules, 1981 provides that notwithstanding anything to the contrary contained in these Rules, the Governor may in public Interest transfer a government servant to a post in another cadre or to an ex-cadre post. The order dated July 8,1992 does not recite any public interest. We are also not in a position to discover from the other records available before us whether the transfer of the appellant was in public interest. In the absence of a counter-affidavit or even the relevant records, we are left with no option than to conclude that no public interest is involved. It cannot be gainsaid that transfer is a necessary concomitance of every service; but if such a transfer could be effected only on certain conditions, it is necessary to adhere to those conditions. In this case, "the public interest" being absent, the impugned order of transfer cannot be supported.

17. We are informed by the learned Counsel for the appellant that appellant is due to retire in another few months. That being the position, we do not think that he should be transferred as Joint Secretary, more so in the absence of any public interest involved. Accordingly, we set aside the impugned judgment dated 23.11.1992 passed by the High Court and the impugned order of transfer dated 8th July, 1992.

18. Since, the appellant is more interested in his retention as Additional Transport Commissioner, we do not think we should adjudicate upon the validity of posting of the respondent No. 4 as Additional Transport Commissioner in the writ of quo warranto. Of course, it is for the Government of Uttar Pradesh to implement our order and consequently accommodate the claims of respondent No. 4 in any suitable post. The appeals will stand allowed in the manner indicated above.