(2007) 01 AHC CK 0074

Allahabad High Court

Case No: None

Dr. Anil Kumar Agarwal		APPELLANT
	Vs	
State of Uttar Pradesh and Others		RESPONDENT

Date of Decision: Jan. 10, 2007

Citation: (2007) 2 ADJ 336 : (2007) 5 AWC 4777 : (2007) 2 UPLBEC 1986

Hon'ble Judges: Sanjay Misra, J; Amitava Lala, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Amitava Lala, J.

The writ petition has been made basically challenging the order of transfer dated 26.7.2006 by which one Dr. Nathu Ram Pandey was placed as Chief Medical Officer, Lalitpur in the place and instead of Nagar Swasthya Adhikari, Lalitpur wherein the petitioner Dr. Anil Kumar Agarwal was placed in the place and instead of Chief Medical Officer, Lalitpur. This change of placement was made within 6/8 months of the original posting. So far as the position in the list of the Chief Medical Officers is concerned the petitioner is against the seniority No. 1501 where the respondent No. 5 is against seniority No. 2498. Therefore, admittedly the respondent No. 5 is junior in rank. The position would be much more specific from the list of the officers dated 20.3.2005, Annexure-2 to the writ petition.

2. As per the Government Order dated 20.6.2005 there should be two categories of the officers. The category -I is the level of Joint Directors. In the category -I, 505 posts are there. So far as category-II is concerned 788 posts are there. In any event first 8 posts in the category -I are separated. Such posts are as follows:

1. Chief Medical Officer	70
2. Nagar Swasthya Adhikari	70
3. D.T.O.	70

4. D.L.O.		70
5. Joint Director Regional Level	17x5	85
6. Institute of State Health & Public Analysis		17
7. Principal R.F.P.T.C.		18
8. Joint Director, Headquarter		105

3. The dispute is with regard to placement of the post Nos. 1 & 2 amongst the category -I. We do not find any cause of public interest or administrative exigency in the impugned order of placement. It is not usual transfer order which should not be interfered with by the Court. It is a case of interchange of placement in between the two posts of same district. According to the petitioner under no stretch of imagination all the posts of the category -I can be equated with the Chief Medical Officer of the district. In further it is said that he is drawing and disbursing officer of the district.

4. Learned Standing Counsel and learned Counsel appearing for the private respondent contended that an affidavit has been filed by the Principal Secretary explaining the position. The explanation is that all the Medical Officers are from the general cadre of Joint Director level. They have been bifurcated into two categories as per the seniority. Out of 1293 posts 505 posts are kept in the category -I whereas 788 posts are kept under category -II. The posts of category -I are of equal status and none is under subordination of others. The Chief Medical Officer in the district is controlling authority of all the Primary Health Centres or Community Health Centres in the district whereas Nagar Swasthya Adhikari is controlling authority to maintain the cleanliness in the urban areas of the district. All the posts are independent in nature, therefore, enjoying the equal status. One can be transferred in place of other.

5. We have gone through the discussion made in the order impugned dated 20.6.2005 about placement of seniors and juniors etc. and when it is adversely affecting interest. After making aforesaid discussion in the last line an important aspect is incorporated that in the case of Chief Medical Officer only the placement will be made from the category -I as per the seniority. However, in paragraph 8 of the counter affidavit the Principal Secretary diluted the wordings by saying that it does not happily worded. The intention was to provide that the Chief Medical Officer will be appointed from amongst the Senior Joint Directors described from the Category No. 1.

6. Therefore, it appears to us that the Principal Secretary by filing the affidavit wanted to dilute the position by incorporating the word Senior Joint Directors in the place and instead of seniority amongst the category -I to fit the purpose. We are afraid that the Principal Secretary cannot do so by filing an of affidavit when the Government Order seems to be reflection of the policy. It can only be done by way of amendment of Government Order.

7. According to us, law is to be read as it is worded but not by way of different interpretation on the basis of the affidavit.

8. In any event, having so we cannot say that the order impugned can be sustainable. Therefore, the order impugned stands quashed. The appropriate steps will be taken by the government in respect of placement of the petitioner and respondent No. 5. It is also necessary to make appropriate policy to avoid future litigation if the government thinks it necessary.

9. The writ petition is, accordingly, disposed of.

10. No order is passed as to costs.