courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 07/11/2025

(2005) 08 AHC CK 0242

Allahabad High Court

Case No: Civil Misc. Writ Petition No"s. 53127, 53174, 53481, 53640, 54178, 54511 and 55078 of 2005

Vinod Kumar Pandey and Others — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision: Aug. 11, 2005

Acts Referred:

- Constitution of India, 1950 - Article 243G
- Uttar Pradesh Panchayat Raj Act, 1947 - Section 25, 34
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 117

Citation: (2006) 1 AWC 65 : (2005) 99 RD 2 : (2005) 2 RD 490

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Advocate: Shashi Nandan, S.R. Verma, S.P. Pandey, A.N. Mishra, S.K. Mishra, V.K. Singh, Mohd. Yusuf and Neel Kamal, for the Appellant; Sudhir Agarwal, A.G.A., S.M.A. Kazmi, A.C.S.C., S.K. Garg, A.C.S.C., V.K. Rai and C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

Tarun Agarwala, J.
In these batch of writ petitions, the petitioners were appointed as Tubewell Operators in the Irrigation department of the State of U.P. Subsequently, their services were transferred to different Gram Panchayats and are presently working as Gram Panchayat Vikas Adhikari. The controversy involved, starts from the year 1994, when Article 243G was inserted in the Constitution of India, which gave powers, authority and responsibility to the Gram Panchayat. For facility. Article 243G of the Constitution is quoted hereunder:

"Article 243G. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayat with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain

provisions for the devolution of powers land responsibilities upon Panchayat at the appropriate level, subject to such conditions as may be specified therein, with respect to -

[a] the preparation of plans for economic development and social justice.

[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."

2. Based on the aforesaid Article 243G, and in furtherance of the objectives of the 73rd Amendment, the State government issued a Government Order dated 12.4.1999 transferring certain employees from various department to the Gram Panchayat. In furtherance to the objective engrafted in Article 243G of the Constitution, U.P. Panchayat Raj Act 1947 was also amended and Section 25 was substituted by a new provision. The substituted Section 25 vide Amendment Act No. 27 of 1999 is quoted hereunder :

"25. Staff- [1] Notwithstanding anything contained in any other provisions of this Act, any Uttar Pradesh Act, rules, regulations, or bye-laws or in any judgement, decree or order of any Court, -

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

[b] the employee or employees on being so transferred and posted in a 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.

3. From a perusal of the aforesaid provision, it is clear that the persons who were being transferred would serve on the same terms" and conditions with the same rights and privileges as to their retirement benefits, etc. as they were enjoying earlier.

4. On the basis of the aforesaid substitution of Section 25, the State Government issued a Government Order dated 30.6.1999, revoking its earlier Government Order dated 12.4.1999 and, on the very next day, i.e. 1.7.1999, issued a Government Order u/s 25 of the Panchayat Raj Act, transferring government servants from almost eight departments to the Gram Panchayat. By this Government Order, these Tubewell Operators also were given the designation of a Gram Panchayat Vikas Adhikari. By this Government Order, the tubewell and water resources management was to be under the direct control of the Gram Panchayat and a multi purpose Panchayat employment was formulated, which was

to serve the Gram Panchayat. These employees were be transferred from various departments of the State Government to the Gram Panchayat. This Government Order further stipulated that the post of Tubewell Operator would henceforth be declared as a dying cadre.

5. The validity of the new Section 25 of the Act was challenged in the writ petition of Manbodh Kumar Lal and Others Vs. State of U.P. and others, in which it was held that the Government employees transferred to the Gram Panchayat would continue to be the Government employees and that their status as a government employee would not be extinguished so long as the posts were not abolished.

6. In Krishana Kant Tiwari and Anr. v. State of U.P. And Ors. [2002] 1 UPLBEC 475, a learned Single Judge held that the transferred employees were only sent on deputation to the Gram Panchyat. This judgement was affirmed in Special Appeal and thereafter by the Supreme Court. In this judgement, it was further held that the post of the Tubewell Operator was only a dying cadre and was not a dead cadre and therefore, the Gram Panchayat Vikas Adhikari could always be repatriated to their parent department.

7. The aforesaid view was again reiterated in Subash Chand Pandey v. State of U.P. In Writ Petition No. 31085 of 2004, decided on 20.8.2004 and again in Special Appeal in the case of Gauri Shanker and Ors. v. State of U.P. and Ors. , decided on 5.8.2005. In the Special Appeal, it was held that the transferred employees working under the supervision and control of the Gram Panchayat were not the employees of the Gram Panchayat and that they remained government employees so long as the original post existed and was not abolished.

8. On 20.7.2004 and 23.7.2004, the State Government issued an order repatriating certain employees of three departments to their parent departments. By these orders, the State Government withdrew the services of multi purpose employee belonging to the Agriculture, Cane Development and the Rural Development Departments, and repatriated them to their parent departments. This led to another round of litigation and these persons filed various writ petitions before this Hon''ble Court challenging the said order repatriating them to their parent department. The ground of attack was that they had become the employees of the Gram Panchyat, and that they had no lien with their parent department, and that the post of .Tubewell Operators had also been declared as a dying cadre and therefore, in view of these facts, they could not be repatriated to their parent departments. In Civil Misc. Writ Petition No. 36006 of 2004, Braj Kishore v. State of U.P., this Court vide judgement dated 15.9.2004 held that these persons can be repatriated to their parent department. In Civil Misc. Writ Petition No. 3820 of 2004, Lal Sahab Singh and Ors. v. State of U.P. and Ors., the Government Order dated 20.7.2004 was upheld and the writ petition was dismissed by judgement dated 18.9.2004.

9. After a lapse of one year, the State Government has issued another order dated 19.7.2005 and this time, repatriated the Tubewell Operators to the Irrigation department.

This Government Order has now been attacked by all the Tubewell Operators, basically, on the the same grounds as was attacked by the employees in the earlier writ petitions. This Court vide judgement dated 3.8.2005 in the case of Ashok Kumar Pandey and Ors. v. State of U.P. and Ors., in Writ Petition No. 52527 of 2005 again upheld the Government order dated 19.7.2005 and reiterated that the Tubewell Operators had no right to remain in the Gram Panchayat and that the State Government had ample power to repatriate them to their parent department. This Court while dismissing the writ petition considered the judgement of the Supreme Court in the case of Kunal Nanda Vs. Union of India and Another, in which it was held that an employee had no right to remain on a deputation post and that he could be sent back at any time Similar view was upheld by another learned Judge of this Court vide judgement dated 4.8.2005 in the case of Musahid Beg and Ors. v. State of U.P. and Ors. passed in Civil Misc. Writ Petition No. 4779 [SS] of 2005.

10. After the dismissal of these two writ petitions, this batch of writ petitions has again been filed by most of the Tubewell Operators challenging again the order of the State Government for repatriating them to their parent department Heard Sri Shashi Nandan, the learned Senior Counsel assisted by Sri S.R. Verma, S.P. Pandey, Sri Akhila Nand Mishra, S.K. Mishra, Sri V.K. Singh, Mohd. Yusuf and Dr. Neel Kamal for the petitioners and Sri Sudhir Agarwal, the learned Additional Advocate General, Sri S.M.A. Kazmi, the Additional Chief Standing Counsel, Sri S.K. Garg, the Additional Chief Standing Counsel, and Sri V.K. Rai, the learned Standing Counsel appearing for the respondents.

11 Sri Shashi Nandan, the learned Senior Counsel fairly conceded and stated that the petitioners have a lien with the parent department and that the petition has not been filed on those grounds on which this Court had dismissed the earlier petitions. The sole ground of attack made by Sri Shashi Nandan, the learned Senior Counsel is, that the State Government by an executive order, has transferred the property of the Gram Panchayat back to the Irrigation Department and simultaneously by the said order, the services of the petitioners has also been repatriated to their parent department. The submission of the learned counsel for the petitioners is, that the property which had been transferred to the Gram Panchayat by Government Orders dated 13.4.99 and 1.7.1999 had vested with the Gram Panchayat and, therefore, by an executive order, the same could not be divested and transferred, back to the Irrigation Department. Further, the learned Senior counsel for the petitioners submitted that if a divestation had to be made, if any the procedure contemplated u/s 117 of the Zamindari Abolition and Land Reforms Act was required to be followed. In the present case, without complying with the aforesaid provision, the State Government had divested and transferred the property by an executive order. The learned Senior counsel further submitted that if the order relating to divesting of the property was found to be illegal, in that case, the whole order had to be set aside including the order repatriating the petitioners to the parent department.

12. This Court dwelled upon the submissions made by the learned counsels" at length. The Additional Advocate General invited the attention of the Courts to Section 34 of the

U.P. Panchayat Raj Act 1947. Section 34 of the said Act reads as under :

" 34. Property vested in the [Gram Panchayat] -

[1] Subject to any special reservation made by the State Government, all public property situated within the jurisdiction of a [Gram Panchayat] shall vest in and belong to the [Gram Panchayat] and shall, with all other property which may become vested in the [Gram Panchayat], be under its direction, management and control."

13. A perusal of the aforesaid section indicates that all public property shall vest in and belong to the Gram Panchayat and such property would be under its direction, management and control. The question that arises for consideration is, as to what kind of vesting is contemplated u/s 34. Whether such vesting is absolute or is limited for such time as required by the State Government? In my view, the language used in the provision and the context in which the vesting takes place has to be understood. The task of the Court has been reduced considerably, as in a similar matter, the Supreme Court had the opportunity to consider in a similar situation with regard to the vesting of the property in a Gaon Sabha. In the case of Maharaj Singh Vs. State of Uttar Pradesh and Others, , the Supreme Court, while interpreting the provisions of section 117 of the U.P.Z.A. & L.R. Act, held that the vesting in the State was absolute, whereas the vesting in the Gaon Sabha was limited and that it was open to the State Government to divest the said property from the Gaon Sabha at any time. For an absolute vesting, there had to be a transfer of property as well as of vesting. I have perused the Government Order dated 12.4.1999 as well as the Government order dated 1.7.1999, which indicates that the State Government has only transferred the property for its management to the Gram Panchayat. There is no whisper in the Government Orders" that the property was to vest absolutely with the Gram Pancahayat. Further, Section 34 of the Panchayat Raj Act, indicates that vesting of the property to the Gram Panchayat is in relation to "direction, management and control".

14. It is, therefore clear, that there is no absolute right given to the Gram Panchayat with regard to the ownership of the property and that the vesting is only confined to direction, management and control and that too, till such time as the State Government requires.

15. The Supreme Court in the case of Maharaj Singh [supra] held that the word "vesting" connotes different meanings and has to be interpreted in the manner and in the context as used in the provision. Therefore, while interpreting section 34 of the Act harmoniously, I am of the opinion, that the word "vest", used in section 34, means the enjoyment of the property so long as it last and that it is not an absolute vesting and is only a transfer of the property for a limited purpose, namely for a direction, control and management. Thus, the State Government was justified in issuing the order for transferring the property back to the parent department.

16. In view of the aforesaid, I do not find any error in the impugned order. The writ petition fails and is dismissed. However, there shall be no order as to costs.