

Court No. - 8

1. Case :- WRIT - A No. - 2681 of 2023

Petitioner :- Surendra Kumar Sharma

Respondent :- State Of U.P. Thru. Prin. Secy. Home, U.P. Govt. Civil Sectt. Lko. And 2 Others

Counsel for Petitioner :- Satendra Jaiswal, Amit Kumar, Ashwini Kumar Singh

Counsel for Respondent :- C.S.C.

2. Case :- WRIT - A No. - 3430 of 2023

Petitioner :- Ran Dheer Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Petitioner :- Birendra Kumar Yadav, Satendra Jaiswal

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. In compliance of the order dated 25.05.2023, Sri Avinash Chandra, Director General Fire Services, Government of U.P., Sri Yugal Kishore, Deputy Inspector General of Fire Services and Sri Matloob Hussain, Chief Fire Officer attached at the Headquarter, are present.

2. Sri Avinash Chandra, Director General, Fire Services has stated that Establishment Boards for transferring and posting the employees and officers of U.P. Fire Services shall be reconstituted within 2 days. In respect of transferring of Class III and IV (Non Gazetted) Officers/employees, new Board shall be headed by Director General of Fire Services and Deputy Inspector General of Fire Services and Sri Dinesh Puri, Additional Superintendent of Fire Services would be the members. This Board will also be entitled for transferring and posting of Fire Station Second Officers.

For the employees, such as Leading Fireman, Fire Service Drivers, Fireman and other Class IV employees, a new Board shall be constituted under Deputy Inspector General of Fire Services, U.P. and other members would be Additional Superintendent of Fire Services and Chief Fire Officer.

3. After the two Boards are reconstituted, transfer and posting matters may be taken up by the respective Boards, and accordingly orders would be passed taking into consideration the policy and rules as applicable to the

concerned employees/officers.

4. Learned counsels appearing for the petitioners challenges the impugned transfer orders only on the ground that after the new Act i. e. U.P. Fire and Emergency Act, 2022 has come into force with effect from 30.12.2022, neither Director General of Fire Services nor the Board has power to transfer a Fire Service Officer and Fire Service Driver inasmuch as the State Government is the appointing authority for them.

5. Earlier Writ A No.2681 of 2023 was dismissed by this Court vide judgment and order dated 06.04.2023, which was challenged by the petitioner by filing an special appeal being Special Appeal No.175 of 2023. The Division Bench has set aside the order dated 06.04.2023 passed by this Court, and remitted the matter back before this Court. The Division Bench has been of the view that under Section 9 of the U.P. Fire and Emergency Services Act, 2022 the State Government is appointing authority of Fire Officer, therefore, so far as transferring authority is concerned, it can only be the State Government and this aspect was not dealt with by this Court earlier while disposing of the writ petition vide order dated 06.04.2023.

6. By the executive instruction under the old Act of 1944, Establishment Boards were constituted in compliance of the judgment passed by the Supreme Court in the case of **Prakash Singh & Ors vs Union Of India & Ors : (2006) 8 SCC 1** the Government has delegated its power for transferring and posting all the employees and officers working in the Fire Services, Government of U.P. to the State to the Establishment Boards.

7. Powers earlier enjoyed by the authority and officers are saved under sub Section 4 of Section 5 the new Act of 2022. Section 5 would read as under:-

"5.(1) Subject to the provisions of this Act, the State Fire and Emergency services shall consist of such number of staff in various ranks and have such organizations and have such powers, functions and duties as the State Government may by general or special order, determine.

(2) The State Government may prescribe by rules,

(i) the different posts of the State Fire and Emergency Service:

(ii) the mode of recruitment of staff. grade of post, the

qualification, pay, allowances and other conditions of service of the officers and other staff engaged therein and matters connected therewith.

(3) The State Government may, by notification in the Official Gazette, review the pattern of the existing Fire and Emergency Service in the State and if deem fit may modify the same: Provided that for local Fire and Emergency Services, the rules framed under this sub-section may not include mode of recruitment of staff, pay, allowances and matters connected therewith.

(4) Save as otherwise provided by or under this Act, every person holding office either as a Fire Officer or staff or an employee (by whatever designation called) of an existing Fire Brigade or Fire and Emergency Services of any Authority on the date immediately before the commencement of this Act, shall continue to hold office on the same terms and conditions as were applicable to him immediately before such date and shall exercise such powers and perform such duties as be fore and in addition to those as are conferred on them by or under this Act."

8. Under Section 64 of the Act of 2022, the State Government is authorized to frame rules for carrying out the provisions of the Act of 2022. It is admitted that till date rules have not been framed. In absence of the Rules, executive instructions would govern the field.

8. The U.P. Fire Services Act, 1944, The Uttar Pradesh Fire Prevention and Fire Safety Act, 2005, The Uttar Pradesh Fire Services (Gazetted Officers) Service Rules, 2016, The Uttar Pradesh Fire Services Subordinate Officers/Employees Service Rules, 2016 and The Uttar Pradesh Fire & Emergency Services Ordinance, 2022 have been repealed under Section 66(1) of the Act, 2022. However, it is provided that such repeal shall not be deemed to limit, modify or derogate from the general responsibility of any local authority.

9. It is not in dispute that the Fire and Emergency Service has not been properly constituted as envisaged under the new Act. There is shortage of officers and employees in the organization. It is also not in dispute that appointing authority of Fire Service Officer is Government but since the Government has delegated its power to the establishment board, which would be held to be valid under Sub section 4 of Section 5, any order of

transfer and posting passed by the such establishment board cannot be held to be illegal or beyond jurisdiction. However, it appears that the earlier Boards were not properly constituted and, as agreed today, fresh/new boards will be constituted within a period of 2 days from today. New Boards will pass necessary order regarding transfer and posting of the employees including the petitioners.

10. Till fresh decision(s) regarding transfer and posting is taken in respect of the petitioners, earlier orders shall not be given effect to, if the petitioner(s) has/have not joined at transferred place of posting as a result of the impugned orders, .

11. With the aforesaid present petition is **disposed of**.

(Dinesh Kumar Singh, J.)

Order Date :- 26.5.2023
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