

Court No. - 20

Case :- WRIT - A No. - 5473 of 2022

Petitioner :- Chandraesh Kumar Pal

Respondent :- State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy. Dept. Of Gram Vikas Lucknow And 7 Others

Counsel for Petitioner :- Maneesh Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging orders dated 30th June, 2022, 18th August, 2022 and 25th January, 2021 whereby petitioner has been transferred from one block to another in the same district as well as relieved for joining. Order dated 25th January, 2021 has been challenged on the ground that it is in contravention to the government order dated 3rd September, 2007. Paragraph 10(Gha) of the government order dated 3rd September, 2007 is as follows:-

"तकनीकी सहायको का मुख्यालय सम्बन्धित क्षेत्र पंचायत विकास खण्ड होगा।"

3. It has been submitted that since the government order has clearly indicated a specific provision regarding posting of Technical Assistants such as petitioner, the same can not be violated as has been done by subordinate officers by means of impugned orders, which are therefore without jurisdiction.

4. Learned State Counsel on the basis of counter affidavit filed has however submitted that due to vacancies on the post of Technical Assistants in a district and for purposes of filling up such vacancies, options were received from Technical Assistants for adjustment whereafter such posting has been given on the basis of their options such as in the case of

petitioner who has been provided such posting on the basis of his own option in the interest of administrative work. It is also submitted that under Clause 13 of government order dated 3rd September, 2007, there is provision to remove Technical Assistants for financial irregularity committed by him but petitioner has been adjusted from block Madhoganj to Block Sandila on his consent.

5. Upon consideration of submissions advanced by learned counsel for parties, it is quite evident that paragraph 10(Gha) of the government order dated 3rd September, 2007 clearly requires posting of petitioner on the post of Technical Assistant under MGNREGA Scheme only in the block where he is appointed. In pursuance thereof, petitioner was posted at his original place but has subsequently been adjusted/transferred elsewhere allegedly on his own consent.

6. It is settled law that there can not be any estoppel against law and once government order dated 3rd September, 2007 provides for a particular place of posting of petitioner, the same can not be deviated from by subordinate authorities while passing administrative orders. Such deviation is clearly against the hierarchy of authorities and is against the provisions of law.

7. Paragraph 13 of the government order dated 3rd September, 2007 relied to upon by learned State Counsel does not have any applicability in the present circumstances since the same pertains to removal of Technical Assistant for financial irregularity committed by him. In the present case there is no such allegation of financial irregularity against petitioner and therefore in the considered opinion of this Court, Clause 13 of the government order dated 3rd September, 2007 does not empower opposite parties to post petitioner elsewhere in another block as has been done by the impugned orders.

8. It is also evident that in similar circumstances, such transfer orders have been quashed vide order dated 30th August 2018 passed in writ petition No. 19509 (S/S) of 2018 as well as writ A No. 14905 of 2018, Uma Shanker Gupta versus State of U.P. and others.

9. In view of aforesaid, it is evident that in view of paragraph 10(Gha) of the government order dated 3rd September, 2007, the petitioner was required to be posted in the place indicated and there was no provision under which he could have been transferred.

10. Considering aforesaid facts, the impugned orders date 30th June, 2022, 18th August, 2022 and 25th January, 2021 are quashed by issuance a writ in the nature of Certiorari with a further writ in the nature of Mandamus commanding opposite parties to post petitioner in his original block i.e. Madhoganj forthwith.

11. Resultantly the petition succeeds and is allowed.

Order Date :- 18.10.2023

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