

Arun Kumar Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-17-1998

Reported in : 1999(1)AWC72

Judge : D.K. Seth, J.

Acts : Uttar Pradesh Basic Education Act, 1972 - Sections 10, 10 (3), 10A, 11, 12, 13 and 13 (2); Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 - Rule 21; Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 - Rule 18

Appeal No. : C.M.W.P. No. 27669 of 1998

Appellant : Arun Kumar

Respondent : State of U.P. and Others

Advocate for Def. : S.C., ;Pramod Kumar Sharma and ;Krishna Ji Khare, Advs.

Advocate for Pet/Ap. : Ashok Khare, Adv.

Judgement :

D. K. Seth, J.

1. The petitioner was transferred along with several other persons by the order dated 7th June, 1997 from Junior High School. Bharthana to Junior High School,

Amthari (Thakha). By the same order respondent No. 6 was transferred from Junior High School, Hathanauli to Junior High School. Bharthana. Thus, it appears that the respondent No. 6 was transferred to the place from where the petitioner was transferred. This order of transfer was challenged by the petitioner by means of Civil Misc. Writ Petition No. 31080 of 1997. which has since been disposed of on 22nd of September. 1997. Pursuant to the order dated 22nd of September, 1997 passed in the said writ petition the petitioner had made a representation. By the order dated 29th of April, 1998 the said representation was allowed. The order of transfer was set aside by the Secretary, U. P. Basic Shiksha Parishad. Allahabad. The cancellation of the order of transfer was passed on two grounds. The first is that the petitioner was transferred within one year of his posting in the said school. The second is that the order of transfer was not approved by the Transfer Committee. After the said order, the petitioner was reinstated in the same school and had taken over the charge. Thereafter by an order dated 30.6.98 the petitioner was again transferred. This order has since been challenged in this writ petition.

Mr. Ashok Khare, learned counsel for the petitioner contends that this order was not passed by the District Basic Shiksha Officer independently on his own discretion. On the other hand, he passed the order without application of mind on 30.6.98 pursuant to the direction dated 22nd of June, 1998 and letter dated 16.5.1998 and a copy of the said order was also sent to the Hon'ble Minister of the State Incharge of Education, which according to him. was an order passed at the Instance of the Hon'ble Minister of the State Incharge of Education. According to him. no authority is vested in the State to issue any direction with regard to the transfer and posting of an individual teacher or Head-master inasmuch as the scope and ambit of interference by the State under Section 13 of the U. P. Basic Education Act, 1972 does not postulate any such action. He contends that the Hon'ble Minister of the State Incharge of Education may. however, issue any directions for Government employee. His jurisdiction cannot include those in respect of the administration of the Basic Education, which is carried on through the Board, a statutory authority having an autonomous and independent existence as provided under the Act and Rules framed particularly in respect of transfer and posting. According to him Sections 10, 10A and 11 of the Act provide that the

Board shall carry out such directions of the Government for different purposes of administration of the basic schools. In view of such elaborate procedure, the Government in no way can interfere except within the scope and ambit as provided under Section 13 thereof. He also contends that the orders of transfer has been passed without application of mind by the District Basic Education Officer again without approval of the transfer Committee on the grounds on which the earlier order was set aside. Therefore, in effect, which could not be done on the earlier occasion, is being sought to be done with the stamp of the State Government, which is wholly uncalled for and beyond the scope and Jurisdiction by virtue of Section 13 of the Act. Therefore, according to him. the order dated 30th of June. 1998 is wholly without Jurisdiction and void ab initio. On these grounds he prays for quashing of the said order of transfer.

2. Mr. Krishna Ji Khare appearing for respondent No. 6 contends that the State Government has every authority and jurisdiction to issue directions even with regard to the transfer and posting by virtue of Section 13 of the Act. The Hon'ble Minister of State being an authority relating to education and the powers having been vested to the Hon'ble Minister, it was well within the Jurisdiction of the said Hon'ble Minister to pass appropriate orders even in respect of transfer and posting. He further contends that there is nothing in the Acts or Rules that the transfers will be affected only with the approval of the Transfer Committee. On the other hand, he contends that the transfer can be made under Rule 18 of the Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers] Rules, 1978 which provides that a person can be transferred only on an application of the teacher. He also contends that by the decision in the case of Rajendra Kumar Yadav v. State of U. P. and others. 1996 (4) LCD 178, the authority of the Hon'ble Minister is accepted in the matter of passing an order of transfer. He further contends that the transfer has been effected within the same area which is 2 Kilometers away from where the petitioner is working. He further contends that two years have lapsed in between one of the ground for setting aside the order is no more in existence. In the absence of any provision that the transfer has to be made on the basis of the recommendation of Transfer Committee, the transfer cannot be said to be invalid. He also contends that the District Basic Education Officer being an authority

relating to education having applied his mind on the basis of the Government Order, it cannot be said that the order was passed without application of mind. His further contention was that the Hon'ble Minister of the State Incharge of Education has power to give direction for transfer. Alternatively, he further contends that the transfer order was passed on 30th of June, 1998, therefore the petitioner is not entitled to the interim order. On these grounds he contends that the writ petition should be dismissed.

3. I have heard both the learned counsel at length. Since both the learned counsel have addressed on merits of the case at length, this writ petition is, therefore, disposed of at the stage of admission, to which they have no objection.

4. The fact remains that by the order dated 20th of April, 1998 the earlier order of transfer was cancelled on two grounds that it was made within one year and that it was made without the approval of the Transfer Committee.

5. So far as the first ground of one year is concerned, in the mean time two years having lapsed, Mr. Khare cannot make any capital out of the said ground. Therefore, this ground is no more in existence.

6. So far as the second ground that it was made without the approval of the Transfer Committee is concerned, admittedly in the present case the present transfer order had also been issued without the approval of the Transfer Committee. The order dated 20th of April, 1998 has not been challenged. It is still operative. In the said order, it was held that the Transfer Committee was constituted and the order of transfer was not approved by the said Committee and on this reason, the order of transfer was cancelled. As it appears from Sections 10, 10A and 11 of the Uttar Pradesh Basic Education Act, 1972, that the Committee can be constituted by the Board for the purposes mentioned in the said Section. Section 10 (3) provides that subject to the superintendence and directions of the Board, a Samiti may perform its function mentioned in (1) and (ii). One of the functions is as mentioned in clause (i) 'to administer the basic schools situate within the rural areas of the district.' The function to administer include the functions of transfer and posting. It cannot be said that the transfer and posting is outside the scope and ambit of the function to administer the basic schools situate

within the district. Thus the Committee is empowered by reason of Section 10 (3) of the Act to look into the question of transfer and posting as well.

Rule 18 of the U. P. Recognised Baste Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules. 1978, does not help Mr. Krishna Ji Khare inasmuch as it provides only transfer on the ground of application made by the teacher. In the present case, it was not alleged that the petitioner has ever made any application for transfer by which he has been transferred. On the other hand, Rule 21 of the U. P. Basic Education (Teachers) Service Rules, 1981, prescribes that a teacher in basic school shall be transferred within the local area. In the present case, the transfer has been made within the local area. It is not alleged that the transfer has contravened the provision contained in Rule 21 of the said Rules. Rule 21 of the said Rules provides the consent of the teacher before transfer outside the district, but here the transfer is not being made outside the district and it is also not the transfer from the rural local area to an urban local area or from one urban local area to another of the same district or from local area of one district to that of another district. Therefore, the order of transfer is not affected under Rule 21 of the Rules.

7. Now there having been no friction with regard to Rule 21 aforesaid, in case of such transfer as provided in Section 10 (3) of the Act. it is the Committee which can deal with such exercise. Now Section 12 empowers the Director to exercise control over the function of the local bodies. Different bodies have been contemplated in Sections 10, 10A and 11 of the U. P. Basic Education Act. 1972. Here in this case, the Director has not intervened and has not exercised his powers under Section 12 of the Act. On the other hand, the powers have been exercised by the Government, which is empowered to do so under Section 13 of the said Act.

8. Section 13 of the said Act empowers the State Government to Issue directions from time to time to the Board. If such directions are issued, the Board shall carry out such directions. If in exercise of any or its powers and discharge of any of the functions by the Board under this Act. any dispute arises between the Board and the State Government, or between the Board and any local body, the decision of

the State Government of such dispute shall be final and binding on the Board or the local body, as the case may be. In the present case, it has not been alleged that there was any dispute between the Board and the State Government. At the same time, there was no dispute between the Board and local body. Section 13 (2) of the Act defines the dispute between the local body and the State Government. In the present case, the State Government has entered into the transfer of the teachers by local body. There has been no dispute between the local body and the State Government and there is no dispute between the Board and the State Government. The State Government has no authority to intervene in the matter itself creating the dispute in between the local body and the State Itself. The State cannot exercise the jurisdiction in respect of the alleged dispute, even though it is so construed by fiction. Therefore, the decision with regard to the transfer and posting as has been done in the present case does not travel to the Jurisdiction of the State Government where the State Government may give any decision. Therefore, the order of the Government or the directions of the Government as referred to in the Impugned order, cannot be binding on the District Basic Education Officer. Only those decisions as contemplated in sub-section (2) of Section 13 of the Act are binding on the local body as the case may be. The present dispute as has been sought to be raised having not been disputed within the scope and ambit of Section 13 (2) of the Act, the decision of the Government cannot be said to be binding on the District Basic Education Officer.

9. Apart from Section 13 of the Act, there is no other provision by which the State Government can exercise its control over the Basic Education as contemplated in U. P. Basic Education Act, 1972. The State Government cannot intervene except within the scope and ambit as has been provided in the Statute Itself. When the entire administration governed and controlled by the Statute, it is not possible to conceive of any extra-statutory authority to Intervene with the administration of basic education. The Jurisdiction has been defined in the Act Itself. The entire administration is being run through the Board within the scope and ambit of the said statute subject to control by the Government through the provision contained in Section 13 of the Act. Therefore, it cannot be said that the State Government would have Jurisdiction to interfere with the matters which are outside the scope and ambit of Section 13 of the Act.

10. When the Statute itself creates provisions that the entire function is to be carried under the statute, in that event it would be completely against the statute, if the Interpretation as has been sought to be given by Mr. Krishna Ji Khare, is accepted by this Court, then this Court would travel beyond its Jurisdiction. Any such interpretation of sub-section (2) of Section 13 of the Act would amount to legislation. which is wholly impermissible.

11. The decision in the case of Rajendra Singh Yadav (supra) deals with the transfer of a Government servant by the Chief Minister, where it has been held that the Chief Minister has to supervise each and every action of the public servant, In the facts of the said case, the petitioner was a Government employee in the Government department within the Directorate of Agriculture ; whereas in the present case the petitioner is governed by the provisions of the U. P. Basic Education Act. It is not permissible to interfere with the administration which would affect the autonomy conferred on the Board and the local bodies by virtue of the said Act. Therefore, the said decision does not help us in respect of the question involved herein.

12. On the other hand, Mr. Khare also relied upon the decision in the cases of Pratap Narain Sriuastaud v. State of U. P. and others, 1995 (1) ESC 509 (All) and Smt. Gyatri Devi v. State of U. P. and others, 1997 (2) ESC 970 (All).

13. In the case of Pratap Narain Srivastava (supra), it was held that the transfer having been affected on the basis of a complaint of the Member of Legislative Assembly, was found to have been done on extraneous consideration and. therefore, the same could not be sustained ; whereas, in the next case of Smt. Gyatri Devi (supra), it was held that the order of transfer, which was effected on the directions of the Member of the Legislative Assembly. was set aside on the ground ofInfracation of the professed norm or principle governing transfers.

14. The said two decisions though might be utilised for drawing analogy to the extent that those orders were not passed at the instance of the Hon'ble Minister, but by Members of Parliament or the Legislative Assembly, who do not have any connection with the administration of any department. Therefore, the directions or complaint of such Members of Parliament or Legislative Assembly is wholly

outside the scope and ambit of the conditions of the services of the Government servant or otherwise. But on the other hand, the Hon'ble Minister being a Minister of the department itself is having some amount of control. Even then the said analogy cannot apply in the facts and the circumstances of the present case. Inasmuch as in view of Section 13 of the Act providing limited control of the State Government, as observed earlier, it cannot exercise jurisdiction through the Hon'ble Minister of State Incharge of Education in administrative matters, relating to transfer and posting,

15. When the administration is governed by a statute, it is to be carried on as provided in the statute through the authorities appointed in the statute to the extent of respective powers and jurisdiction as delineated therein. There cannot be any extra-statutory authority, nor there can be any power or jurisdiction vested in any authority in excess of what has been provided in the statute. All actions are to be carried according to the statute or the law. The authorities under the statute are creation of statute and bound by law. No authority can be above the law. There cannot be any power extra-statutory. The jurisdiction and power of the respective authority having been defined in the statute, the respective authority is bound to confine itself within the bounds of the power and jurisdiction defined.

16. In that view of the matter, the order impugned cannot be sustained, which has since been passed, as is apparent on the face of it which shows that the order was passed on the basis of the directions of the Hon'ble Minister of State dated 22nd Of June, 1998 and the order dated 30th of June, 1998 cannot be sustained and are accordingly quashed. Let a writ of certiorari do issue accordingly,

17. Since the question is a question of law, that the respondent No. 6 has taken over the charge and the petitioner has delayed in approaching this Court by two months after the order dated 30th of June. 1998 was passed and that the school is situated within two kilometers, becomes immaterial in view of the observations made hereinbefore. However, since the petitioner has also been transferred from Junior High School Bharthana to another school where some one had joined. The respondents shall make appropriate arrangement for posting of respondent No. 6 to appropriate vacancy without affecting any service conditions.

18. The writ petition is thus disposed of, There will however, be no order as to costs.

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