

**Subhash Chand Vs. State of U.P. and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/452169](http://sooperkanoon.com/452169)

**Court :** Allahabad

**Decided On :** Nov-27-2000

**Reported in :** 2001(1)AWC235; (2001)1UPLBEC129

**Judge :** Shyamal Kumar Sen, C.J. and ;Sudhir Narain, J.

**Appeal No. :** Special Appeal No. 731 of 2000

**Appellant :** Subhash Chand

**Respondent :** State of U.P. and Others

**Advocate for Def. :** Senior Counsel

**Advocate for Pet/Ap. :** D.K. Srivastava, Adv.

**Judgement :**

Shyamal Kumar Sen, C.J.

1. We have heard learned counsel for the parties and have perused the records of the case.

2. The special appeal arises out of Judgment and order of the learned single Judge dismissing the writ petition of the petitioner wherein the petitioner has challenged the impugned order of transfer. Earlier also, the petitioner challenged the transfer order in which learned single Judge directed his representation to be considered by the authority concerned and till then, the transfer order was directed

to be stayed. The representation of the petitioner was rejected by the concerned authority and he was relieved from the post where he was working and was directed to join the transferred post in the State of Uttaranchal. The petitioner (appellant herein) challenged the order of rejection. Learned single Judge, however, dismissed the writ petition on the ground that the transfer order was passed on August 7, 1999, the representation of the petitioner pursuant to the earlier writ petition was rejected on December 21, 1999, the Uttaranchal State has come into existence later on and reference to the Government order dated September 30, 2000, was not justified since the same pertains to the persons who were not transferred.

3. The petitioner was already transferred in the year 1999. Sri D. K. Srivastava, learned counsel for the petitioner, has, however, placed reliance on the last portion of paragraph 2 of the Government order dated September 30, 2000 mentioned on page 26 of the writ petition which is set out herein below :

4. Relying upon the said portion of the Government notification dated September 30, 2000, learned advocate for the petitioner submitted that the transfer order issued earlier, but not implemented, shall not be given effect to and the persons affected thereby shall not be transferred. The learned single Judge has not considered this aspect of the matter. We are of the view that although the transfer order was issued much earlier in point of time to the creation of State of Uttaranchal but for the reason as provided by the Government notification dated September 30, 2000, it cannot be given effect to. Therefore, the transfer order, in respect of the petitioner since not implemented till the creation of the State of Uttaranchal, cannot be implemented and will be guided by the new policy of transfer of Government servants. Since the Government itself provided for the aforesaid procedure in respect of the transfer orders not implemented, the State Government cannot take out different stand at this stage and is estopped from contending otherwise. This, however, shall not prevent the respondent-authorities to pass any other order in accordance with law as the State Government may be advised.

5. The special appeal is allowed to the extent indicated above.

