

Km. Savitri Devi and anr. Vs. State of U.P. and ors.

Km. Savitri Devi and anr. Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/468730

Court : Allahabad

Decided On : Feb-03-2009

Reported in : 2009(3)AWC2240

Judge : S. Rafat Alam and ;Sudhir Agarwal, JJ.

Appellant : Km. Savitri Devi and anr.

Respondent : State of U.P. and ors.

Disposition : Petition dismissed

Judgement :

S. Rafat Alam and Sudhir Agarwal, JJ.

1. Heard Sri Siddharth Srivastava for the petitioners and learned Standing Counsel for the respondents.
2. Aggrieved by the order dated 7.11.2007 transferring the petitioners from District Consumer Disputes Redressal Forum, Hathras to District Consumer Disputes Redressal Forum, Bulandshahr (hereinafter referred to as the 'District Forum') the petitioners have filed this writ petition under Article 226 of the Constitution of India.
3. The facts which are not disputed in brief are that the petitioner No. 1, Km. Savitri Devi was appointed as Member, District Forum, Hathras vide order dated 26.7.2006 (Annexure-5 to the writ petition) by the State Government, for a period

of five years or till she attained the age of 65 years whichever is earlier and pursuant thereto she joined on 1.8.2006. Similarly, the petitioner No. 2, Harish Kumar Saxena, Advocate was appointed vide order dated 20.6.2005 (Annexure-2 to the writ petition) in District Forum, Hathras and pursuant thereto he joined on 2.7.2005. The respondent No. 4, Sri B. B. Singh was appointed as President, District Forum, Hathras and joined on 15.3.2007 whereafter it appears that the petitioners and the respondent No. 4 had some dispute among themselves as a result whereof the petitioners and the respondent No. 4 said to have sent certain letters to the State Government and the Chairman, State Consumer Disputes Redressal Forum, U.P., Lucknow making serious allegations against each other. The State Government in the circumstances, by means of the impugned order dated 7.11.2007 (Annexure-1 to the writ petition) transferred both the petitioners from Hathras to Bulandshahr and in their place Sri Ravindra Nath Garg and Smt. Kiranwati who were working as Members, District Forum, Bulandshahr were transferred to Hathras.

4. Assailing the order of transfer the learned Counsel for the petitioners has mainly raised the following issues:

1. The petitioners are not the employees of the respondents as they have not been appointed but the arrangement is in fact a contract. The petitioners are not paid salary but only honorarium and, therefore, neither any service rules prevailing in the State of U.P. in respect of employees of the State Government are applicable upon the petitioners nor they can be transferred otherwise.

2. The Apex Courts decision in State of Rajasthan and Ors. v. Anand Prakash Solanki : 2003 (7) SCC 403 : 2003 (6) AWC 4686 (SC) is not applicable to the petitioners for the reasons that the petitioners were not appointed and, therefore, the impugned order of transfer is wholly without jurisdiction.

3. Referring to para 7 in Anand Prakash Solanki (supra) he contended that the Apex Court has observed therein that the President or a Member can be appointed by transfer and, therefore, even if assuming that the said judgment would apply since the impugned order is not an order of appointment by transfer but a simple transfer and, therefore, also the impugned order is not covered by the

law laid down by Hon'ble Apex Court in the aforesaid case and is nullity.

4. Rule 3 of U.P. Consumer Protection Rules, 1987 (hereinafter referred to as the '1987 Rules') refers to the payment of salary only to the President of District Forum but in respect to the Members it talks of a consolidated honorarium, therefore, the Members are not employees of the State Government since they are not paid salary but only honorarium.

5. The aforesaid Rule 3(1) refers to the term 'appointment' only in respect to the President of the District Forum and not with respect to the Members and this also shows that the Members are not appointed hence they are not employees of the State Government and cannot be transferred.

6. There are mutual allegations amongst the Members and the President but only the Members have been transferred not the President.

7. Even if for some reasons the State Government find it expedient to transfer the Members or President due to inter se dispute it is always prudent and appropriate to transfer the President since he is paid salary and not the Members who are paid only honorarium and who will be seriously and adversely affected.

8. Transfer of Members in the facts and circumstances will amount to compelling them to resign since they cannot work at a place other than that where they were initially appointed. It amounts to indirect termination of their appointment.

5. Having considered the aforesaid we find that none of the aforesaid submission is tenable in law.

6. Coming to the question as to whether the petitioners are employees of the State Government or not it would be appropriate to consider certain provisions of the Consumer Protection Act, 1986 (hereinafter referred to as the '1986 Act') whereunder the petitioners admittedly have been given the aforesaid assignment.

7. Section 10 of 1986 Act talks of the composition of the State Forum and also provides the manner in which they are to be appointed and other conditions. It reads as under:

10. Composition of the District Forum.-(1) Each District Forum shall consist of,:

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a recognised university,

(iii) be persons of ability, integrity and standing, and have adequate knowledge or experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that a person shall be disqualified for appointment as Member, if he:

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent Court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a Member; or

(f) has such other disqualifications as may be prescribed by the State Government.

(1A) Every appointment under Sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:

(i) the President of the State Commission-Chairman

(ii) Secretary, Law Department of the State-Member.

(iii) Secretary, incharge of the Department dealing with consumer affairs in the State-Member:

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier:

Provided that a member shall be eligible for reappointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in Clause (b) of Sub-section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee:

Provided further that a Member may resign his office in writing under his hand-addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing any of the qualifications mentioned in Sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of Sub-section (1A) in place of the person who has resigned:

Provided also that a person appointed as the President or as a Member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or Member, as the case may be, till the completion of his term.

(3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government:

Provided that the appointment of a Member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum.

(Emphasis added)

8. A bare reading of Section 10(1) shows that a District Forum shall consist of a person who is or has been qualified to be a District Judge, who shall be its President and two other Members, one of whom shall be a woman, who has the qualification of a bachelors degree from a recognised university and is a person of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration and is not less than 35 years of age.

9. Besides, the proviso provides for certain disqualification which are not necessary to be mentioned herein.

10. Sub-section (1A) clearly provides that every appointment under Sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the President of the State Commission as Chairman, two members namely, Secretary, Law Department of the State and Secretary, incharge of the Department dealing with consumer affairs in the State. Sub-section (1A), therefore, contemplates appointment of the persons who constitute the District Forum. Section 10 at different places uses the word 'appointment' in respect to the Members and President both and a careful reading thereof leaves no doubt in the mind of Court that a Member or President, both are entitled to hold office only after their appointment to the office by the State Government. Once it is clear that they are appointed by the Government and it is the Government who can prescribe terms and conditions of such appointment, it is difficult to accept the contention of petitioners that they are not employees of the State Government and there is no relationship of employer and employee between the two. Once Section 10 itself talks of appointment of President and Members, both, if something otherwise has been mentioned in subordinate legislation that will not control or

govern the specific provisions of the Act. Therefore, in our view, reliance placed on Rule 3 of 1987 Rules is of no help. Moreover, the very letter under which the petitioners have assumed the office of Member of the District Forum itself show that they have been appointed on the post of Member of District Forum. The contention of the petitioners that they were not appointed on the post but were engaged on contract basis is without any basis and is rejected.

11. Now coming to the second aspect as to whether the petitioners are employees or not, since they are paid honorarium and not salary, the argument we find presupposes that a person even if appointed to an office but if not paid salary but only honorarium then he is not an employee. The assumption is unfounded. Learned Counsel for the petitioners could not place before us either any statutory provision in support of the aforesaid assumption on his part nor any precedent laying down such a law. Remuneration to a person employed can be made in various ways and honorarium is also a recognised mode thereof. Under Fundamental Rule 9 (9) the term 'honorarium' is defined as under:

Honorarium means recurring or non-recurring payment granted to a Government servant from the Consolidated Fund of a State or the Consolidated Fund of the India as remuneration for special work an occasional character.

12. The first case in this behalf is that of State of Assam and Ors. v. Kanak Chandra Dutta : AIR 1967 SC 884. In para 9 of the judgment the Apex Court considered a question as to whether a 'Mauzadar' is a person holding a civil post under Article 311 of the Constitution and held that there is no formal definition of 'post' and 'civil post'. A 'post' is a service or employment. A person holding a post under the State is a person serving or employed under the State. There is a relationship of master and servant between State where a person said to be holding a post in it. The existence of this relationship is indicated by the State's right to select, its right to suspend and dismissal, its right to control the manner and method of his doing work and the payment of its wages or remuneration. It was further held that a relationship of master and servant may be established by the existence of all or some of these indicia, in conjunction with other circumstances.

13. In *Jaya Bachchan v. Union of India and Ors.* : JT 2006 (5) SC 414 : 2006 (3) AWC 2764 (SC) considering the question as to whether she was holding office of profit and, therefore, was disqualified for being chosen as and for being a Member of either House of Parliament under Article 102(1)(a) of the Constitution of India it was said:

Nature of the payment must be considered as a matter of substance rather than of form. Nomenclature is not important. In fact, mere use of the word 'honorarium' cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient....

14. Similarly in *Union of India and Ors. v. Kameshwar Prasad* : 1997 (11) SCC 650, an extra departmental agent of postal department was held to be a Government servant holding a civil post under Article 311 of the Constitution though he was also entitled for payment of remuneration as honorarium.

15. Similar issue came up for consideration before the Apex Court recently in *State of Karnataka and Ors. v. Ameerbi and Ors.* : JT 2007 (1) SC 279 : 2006 (7) AWC 7424 (SC), where the Angan Bari workers were engaged on payment of honorarium under a scheme known as Integrated Child Development Service (I.C.D.S.) Programme. The question cropped up for consideration was whether they are employees under the State or not. Relying on the Apex Court's decision in *Kanak Chandra Dutta (supra)* the Court held that Angan Bari workers are the employees of the State though they are not holding a 'civil post'. In para 19 of the judgment the Court held the following factors relevant for determining as to whether the person is holding a post under the State: (i) the State has the power and the right to select and appoint him; (ii) he is subordinate to public servant; (iii) he receives remuneration by way of a commission and sometimes a salary; (iv) there exists a relationship of a Master and a Servant; (v) the office falls vacant on the death or removal of the incumbent; (vi) he is a responsible officer exercising delegated powers of Government.

16. In *Chet Ram v. Jit Singh* : JT 2008 (12) SC 1, the Apex Court held that a person working as Gramin Dak Sewak is a Government servant. Payment of salary as such is not the sole and conclusive test to determine whether there is a

relationship of employer and employee or not. It has never been held to be the conclusive governing factor controlling the relationship of employer and employee. On the contrary the Apex Court has held time and again that the power of appointment and termination, power to take disciplinary action, the manner of payment of salary or compensation or remuneration in all or some of them may be indicative factors regarding the existence of relationship of employer and employee.

17. In the case of 'Member' of District Forum, Section 10(3) provides that the salary or honorarium and other allowances payable to the Members of the District Forum shall be such as may be prescribed by the State Government.

18. Under Section 9 the State Government is empowered to establish District Forum and to create posts of Members and President. It is not in dispute that the District Forum has been created in Hathras and Bulandshahr and other places and the posts of President and Members have also been created by the State Government. Against existing two posts of District Forum, Hathras both the petitioners have been appointed. Rules have been framed for providing salary and honorarium to the President and Members as under Section 10(3) and they are entitled for payment of same in accordance with the said rules. Section 10(2) provides for the period for which the Members of District Forum shall be appointed i.e., the term of five years or up to the age of 65 years whichever is earlier. Thereafter the post is liable to become vacant and is to be filled again according to the procedure prescribed under Section 10(1A). Besides thereof Section 24B has been inserted by Act 50 of 1993 conferring administrative control over the District Forums with the State Commission. The aforesaid provision has been considered by the Apex Court in Anand Prakash Solanki (supra) and it has been held that the President and Members of the District Forum are appointed and the term 'appointment' includes termination.

19. Even otherwise we do not find anything in Rule 3 of 1987 Rules to say something else. Rule 3 of 1987 Rules provides for salaries, allowance and other terms and conditions of the Members of the District Forum and reads as under:

3. Salaries and other allowances and terms and conditions of the President and Member of the District Forum [Section 10(3)1-(1)(a) The President of the District Forum shall receive the salary of the Judge of a District Court, if appointed on whole-time basis or an honorarium of Rs. 200 per day if appointed on part-time basis, other members if sitting on whole-time basis, shall receive a consolidated honorarium of Rs. 5,560 per month and if sitting on part-time basis, a consolidated honorarium of Rs. 150 per day for the sitting.

(b) The President of the District Forum shall receive House Rent Allowance of Rs. 800 per month if appointed on whole time basis and no Government accommodation is provided to him.

(c) A member of the District Forum shall get House Rent Allowance of Rs. 600 per month if no Government accommodation is provided to him.

(2) The President and the Members of the District Forum shall be entitled for such travelling allowance and daily allowance on official tour as are admissible to Grade I Officer of the State Government.

(3) The salary, honorarium and other allowances shall be defrayed out of the Consolidated Fund of the State Government.

(4) Before appointment, the President and Members of the District Forum shall have to take an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as a Member.

(5) In addition to provisions of Section 10(2), State Government may remove from the office the President and member of a District Forum who:

(a) has been adjudged insolvent: or

(b) has been convicted of an offence which in the opinion of the State Government involved moral turpitude ; or

(c) has become physically or mentally incapable of acting as such Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member ; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) does not pass judgment or order possible under Act, and in conformity with the earlier judgment and the act and does not display absolute, integrity good conduct and dutifulness ; or

(g) is guilty of unexplained absence upto 7 days without permissions:

Provided that the President or Member shall not be removed from his office on the ground specified in Clauses (b) and (c) of the sub-rule except on an inquiry held by State Government in accordance with such procedure as it may specify in this behalf and the member is found to be guilty of such ground.

(6) The terms and conditions of the service of the President and the Members of the District Forum shall not be varied to their disadvantage during their tenure of office.

(7) Where any vacancy occurs in the office of the President of the District Forum, the senior-most (in order of appointment) Member of District Forum, holding office for the time being, shall discharge the functions of the President until a person appointed to fill such vacancy assumes the office of the President of the District Forum.

(8) When the President of the District Forum is unable to discharge the functions owing to absence, illness or any other cause, the senior-most (in order to the appointment) Member of the District Forum shall discharge the functions of the President until the day on which the President resumes the charge of his functions.

(9) The President or any Member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administration of an organisation which have been the subject of any proceeding under the Act during

the tenure for a period of 5 years from the date on which he ceases to hold such office.

20. A whole time President is entitled for salary of the Judge of a District Court or if appointed on part time basis honorarium of Rs. 200 per day. The Members, if appointed on whole time basis, shall receive a consolidated honorarium of Rs. 150 per day and if appointed on part time basis, for an honorarium of Rs. 100 per day. Sub-rule (3) of Rule 3 also provides that salary, honorarium and other allowances shall be defrayed out of the consolidated fund of the State Government. Sub-rule (5) of Rule 3 empowers the State Government to remove President and Members of the District Forum in the circumstances as detailed therein. Proviso to Sub-rule (5) of Rule 3 empowers the State Government to make inquiry against the Members if the action is to be taken under Clauses (d) and (e) of Sub-rule (5) of Rule 3 and if it finds the Member to be guilty of those charges to remove him. These provisions clearly shows that the honorarium paid to the Members satisfy the definition of 'honorarium' under Fundamental Rule 9 (9). The power of selection, appointment, payment of remuneration and removal all vests in the State Government and considering the aforesaid factors in the light of the law as discussed above this Court has no manner of doubt that the petitioners are employees under the State Government and there exists a relationship of employer and employee between them.

21. The above discussion answers the issues raised by the petitioners at items No. 1, 2, 4 and 5.

22. Now coming to the third item we find that the impugned order of transfer is nothing but a variation of the earlier order of appointment of petitioners and has the effect of appointing the petitioners as Members, District Forum, Bulandshahr instead of District Forum, Hathras. It is the substance of the orders which is to be taken into account and not the terminology used therein. There is no magic or charm that an order in respect to a particular matter should be drafted and prepared in a particular manner alone otherwise it would be vitiated in law unless of course if the same is provided in the statute and that too, if mandatory, otherwise the substantial observance is sufficient. It is not in dispute that in Anand

Prakash Solanki (supra) the Apex Court has also held that the President and the Members of the District Forum are the employees of the State Government and are liable to be transferred from one Forum to another. True that the Apex Court has observed that the power of transfer under Section 10(1A) of the Act should not be exercised in a routine manner but it is meant to be exercised sparingly and only in public interest or in such exigencies of administration as would satisfy the purpose of constituting the District Forum but the fact remains that the Apex Court has clearly held that the President and Members of District Forum, since they are appointed, are liable to be transferred. It has also held that transfer is an incident of public service unless an express bar and restraint on the exercise of such power can be spelled out.

23. We may also notice at this stage that the two Judgments namely, General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav : 1988 (2) SCC 351 and Om Prakash Rana v. Swarup Singh Tomar (supra) : 1986 (3) SCC 118 which were relied on by the High Courts to give a verdict in favour of the Members of the District Forum have also been considered and distinguished in Anand Prakash Solanki (supra). It would be useful to consider the reasons given by the Apex Court while distinguishing the said judgments.

24. In Dr. Subhash Chandra Yadav (supra) the Central Government proposed to transfer a person in employment of one Cantonment Board to another Cantonment and the Apex Court held that under the Cantonments Act, 1924 each of the Cantonment Boards is an independent autonomous body and the employees of one Cantonment Board cannot be transferred to another Cantonment Board inasmuch as the service under the Cantonment Board is not a centralized service or a service at the State level. After saying so the Apex Court further held that in the case in hand the President and Members of the District Forum are in the employment of the State Government and, therefore, the State Government can transfer them from one place to another place.

25. Similarly, Om Prakash Rana (supra) was distinguished by observing that in that case the appointment of Principal to a College was held to be a contract of employment with a particular employer but in the case of Member of the District

Forum it is the State Government who is the employer and there is no change of the employer.

26. In view of the above, we have no hesitation in holding that the petitioners are employee of the State Government and in view of the law laid down by Apex Court in Anand Prakash Solanki (supra) the petitioners can be transferred.

27. Considering the next issue i.e., items No. 6 to 8 that there are mutual allegations amongst the Members and the President but only the Members have been transferred and not the President, suffice is to mention that it is an admitted case of the petitioners that there exist a serious rift between the Members and the President of District Forum, Hathras on account of which normal function of the District Forum was not smooth. In the circumstances, the administrative exigency and public interest demands that for proper and unhampered functioning of the District Forum, Hathras either of the two must be transferred. We do not find anything wrong if the Government chose to transfer both the Members. It cannot be said that here is case of singling out the petitioners. Moreover as held by Apex Court in Union of India and Ors. v. S.L. Abbas : AIR 1993 SC 2444, the question as to who should be transferred and posted at a particular place is the absolute discretion of the employer and it is not a matter of judicial review.

28. Law laid down therein above has consistently been followed subsequently also, inasmuch as, in National Hydro-Electric Power Corporation Ltd. v. Sri Bhagwan and Anr. : AIR 2001 SC 3309 : 2001 (4) AWC 3053 (SC), Apex Court held as under:

It is by now well-settled and often reiterated by this Court that no Government servant or employee of Public Undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities

substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned.

(Emphasis added)

29. Then in *State of U.P. v. Gobardhan Lal* : AIR 2004 SC 2165 : 2004 (5) AWC 4228 (SC), it was held:

It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. The order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

(Emphasis added)

30. All these judgments have been quoted and followed in the case of *Major General J. K. Bansal v. Union of India and Ors.* : AIR 2005 SC 3341.

31. A Division Bench of this Court also in *Gulzar Singh v. State of U.P. and Ors.* Special Appeal No. 1293 of 2005 : 2006 (5) AWC 4755, decided on 7.11.2005 and *R.K. Pandey v. New India Insurance Company Ltd. and Ors.* Civil Misc. Writ Petition No. 68143 of 2005, decided on 26.10.2005, have also taken the same view.

32. It would be appropriate at this stage to reproduce caution in the words of the Apex Court as expressed in *Gobardhan Lal (supra)* as under:

A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fide when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

33. So far as the submission that since the petitioners are only paid honorarium and, therefore, the transfer of petitioners amounts to virtually compelling them to resign from service is concerned, it suffices to say that at the time when the petitioners were engaged or appointed there is nothing on record to show that they were assured that they shall not be transferred to another place. Transfer being an incident of service, and the perks etc. as were available to the petitioners at Hathras would continue to remain the same at Bulandshahr also, there is nothing which can be said to be adverse to the interest of the petitioners. It is not the case of the petitioners that any of the benefits shall not be available to petitioners at Bulandshahr. In the circumstances, it cannot be said that there is anything wrong if the Government decided in its wisdom to transfer the Members of District Forum instead of President. The mere fact that in respect to remuneration 'salary' word is mentioned in the Rules with respect to President though for Members it is

'honorarium', the same would make no difference for the purpose of considering their cases for transfer.

34. Though while considering the various issues raised by learned Counsel for the petitioners in this case we have not guided by any other fact except of the material placed by petitioners on record and the relevant provisions as already discussed above but we find it appropriate to notice that from the record it appears to us that in the matter of appointment of Members of District Forum adequate precaution is not being observed by the Government as to whether the persons who are being appointed as Members of the District Forum possess requisite qualifications prescribed under the statutes or not. The petitioner No. 1 claims to be a Graduate and Social Worker. In support of her claim as a Social Worker a certificate issued by some private association has been placed on record which is said to have been sent to the Government also on the basis whereof the appointment has been made. Learned Counsel for the petitioners could not tell as to whether the said association was a registered body or not. Section 10, Sub-section (1) besides educational qualification provides that a Member must have ability, integrity and standing and have adequate knowledge or experience or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. How and in what manner all these aspects are satisfied by petitioner No. 1 is a matter of investigation. It appears that in making appointment to the District Forums particularly in respect to the women Member, appropriate but desired scrutiny is not being observed so as to abide by the statute by appointing only those persons who strictly answer the above requirement. Appointment to the post of a Member of a District Forum is a serious matter as he has to discharge the functions of adjudication of dispute between consumer and provider of service. It would be extremely dangerous if such wide powers are to be exercised by the persons who lack requisite qualification etc., as that would cause serious repercussions on the litigating public over whom the jurisdiction is exercised by the District Forum. It is true that the President of District Forum is normally a person who has full fledged legal training since he is a person qualified to be a District Judge and normally retired District Judge is appointed as President of District Forum but that would not in any manner reduce the responsibility of a Member who is also expected to participate at par while hearing

the matter as one of the Member of the District Forum. We are not going into further details of this aspect but we feel that it is the high time that the Government must take more care and scrutinize the testimonials of the persons sought to be appointed as Members of the District Forum in a more stricter way so that only the persons who can be said to be really able, experience and possess capacity as contemplated under Section 10(1)(b) are appointed as Members of District Forum.

35. Before parting we find it appropriate to mention that the petitioners are Members of an adjudicatory forum and having been transferred on 7.11.2007, it is not in dispute that till date they have not joined at Bulandshahr. The order of transfer has not been revoked and due to non joining of petitioners, the District Forum, Bulandshahr obviously could not have functioned properly. Though the petitioners knew that there is no interim order granted in their favour yet have chosen not to join. Moreover, the grounds on which the present writ petition has been filed are already covered by the judgment of the Apex Court in Anand Prakash Solanki (supra) and, therefore, the petitioners being Members of District Forum were not expected to create a situation so that the Forum may not function smoothly. Therefore, we find it appropriate that the writ petition should be dismissed with exemplary cost.

36. The writ petition, therefore, being devoid of merit is dismissed with costs which is quantified at Rs. 25,000. The costs shall be borne equally by both the petitioners and shall be deposited with the Registrar General within two months from today, failing which it shall be recovered as the arrears of land revenue. After the cost is deposited/realized, 50% thereof shall be forwarded to the Mediation Center, Allahabad High Court and 50% to the State Legal Authority.