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Court : Allahabad

Decided On : Oct-07-2010

Judge : Sudhir Agarwal, J.

Appellant : Laxmi Mohan Sharma and ors.

Respondent : State of U.P. and Others

Advocate for Pet/Ap. : Sri. Vijay Gautam

Judgement :

1. Heard Sri Vijay Gautam for the petitioners and Sri M.C.Tripathi, learned Additional Chief Standing Counsel along with Piyush Shukla, learned Standing Counsel for the respondents. With the consent of the learned counsel for the parties, all the petitions, which involve a common question of law and fact, are being decided finally at this stage under the rules of the Court.

2. The petitioners in this bunch of writ petitions are either Sub-Inspector or Constables in U.P. Police Force and have been transferred from one place to another by various orders of transfer which are impugned in these writ petitions.

3. Sri Vijay Gautam, learned counsel for the petitioners assailed before this Court the impugned orders of transfer only on the ground that the same have been passed without obtaining any approval whatsoever from the Police Establishment Board pursuant to the Apex Court decision in Prakash Singh v. Union of India (2006) 8 SCC 1. In a Full decision of this Court in Vinod Kumar v. State of U.P. &

Ors. 2010 (7) ADJ 315 this Court in paras 20 and 21 has observed:

"20. In our opinion, therefore, considering the fact that the Rule 26 of the Rules, 2008 makes applicable the rules pertaining to the government servants, i.e. persons appointed to public services and posts in connection with the affairs of the State, and as Regulation 520 deals with the transfers of the police personnel, who are also a part of the public services of the State, therefore, insofar as the police are concerned, the Regulation pertaining to transfer would continue to apply to them. Therefore, though one of the Boards constituted is not strictly in terms of the directions issued by the Supreme Court in Prakash Singh (supra), nonetheless considering the exercise that has to be done and the provisions for transfer, as contained in the Police Regulations, there has been sufficient compliance.

21. In these circumstances, we are clearly of the opinion that, though we have found that the notification constituting the Board is not traceable to Section 2 of the Police Act, the same at the highest, amounts to an irregularity and not illegality and would not vitiate the transfers, if they have been done in terms of the Regulations and after the approval of the Board."

4. Sri Gautam very fairly stated that so far as the power of the respondents to transfer the petitioners under the Regulations is concerned, Regulation 520 and onwards under Chapter 20 of the Regulation are applicable to the transfer of the police officers and therefore, it cannot be said that the orders of transfer are in violation thereof. But so long as no consultation/approval of police establishment Board is obtained, to this extent the orders of transfer cannot be said to be valid.

5. Sri M.C.Tripathi, learned Addl. Chief Standing Counsel submitted that in view of the Full Bench decision since the matter of approval of Police Establishment Board has been held to be a mere irregularity, it is submitted that in cases where the approval of the Board is not already obtained, if it is obtained post facto, it will

validate the orders of transfer and the orders of transfer, itself, merely for this reason cannot be held to be illegal.

6. Sri M.C.Tripathi, learned Addl. Chief Standing Counsel, further submitted that so far as the approval of the Police Establishment Board is concerned, in case an order of transfer has been passed without such approval, it would only render the transfer order inoperative since lack of approval would be mere irregularity and it can be obtained later on. Hence it would not vitiate the order as such in its entirety to the extent of making it illegal and void ab initio. He submitted that cases in which mere approval is required and that is not the kind of "prior approval" contemplated by statute, the effect of not obtaining approval is only that, the order may not be given effect to till such approval is obtained and as and when, approval is obtained, from that date and onwards, the orders shall render valid and operative. He submits that in the Full Bench decision, this aspect of the matter has not been considered and in the present case he has no objection if the orders of transfer of the petitioners are made inoperative by this Court till approval, if any, is obtained by the Department from Police Establishment Board and thereafter the Department may be left free to give effect to such orders of transfers accordingly.

7. In the light of the above submission, the only question up for consideration is whether non obtaining of approval before passing the impugned orders of transfer render the transfer orders void ab initio, nonest, illegal and liable to be set aside by this Court only on this ground or it is a kind of irregularity which can be rectified later on and from the date such approval is obtained, the transfer orders may become operative and valid. In such circumstances, instead of questioning the transfer orders for want of approval, the Court may allow such orders of transfer to remain in abeyance till the approval is obtained.

8. In a similar controversy pertaining to the effect of non obtaining approval before making appointment under Section 16-G of the Intermediate Education Act, the issue came up for consideration before this Court in Prabhu Narain Singh v. Deputy Director of Education, Varanasi and another, 1977(3) ALR 391, Lalit Mohan Misra v. District Inspector of Schools, 1979 ALJ1025 and Ashika Prasad Shukla v. District Inspector of Schools, Allahabad and Another, 1998(3) UPLBEC

1722 wherein it was held that an appointment made without approval ipso facto would not be illegal but may get validated from the date, approval is granted by the competent authority subsequently. In some other matters, the effect of lack of approval came up for consideration where the words used in the statute were "prior approval" and it was found that if the statute requires "prior approval" then an order without approval would be void, as is evident from this Court's decision in Joint Director of Education v. Udai Raj Vishwakarma 2007 (2) UPLBEC 1242 and Kailash Prasad v. State of U.P. & Others 2007 (10) ADJ 406.

9. The difference between "permission", "prior approval" and "approval" was considered by the Apex Court in Life Insurance Corporation of India v. Escorts Ltd. & Others 1986(1) SCC 264 and in para 63 it held:

"we are conscious that the word "prior" or "previous" may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1) of the Act."

10. Ordinarily the difference between approval and permission is that in the first the act holds good until disapproved, while in the other case, it does not become affective until permission is obtained. But permission subsequently obtained may all the same validate the previous act.

11. It was stated in Lord Krishna Textiles Mills Ltd. v. Workmen, 1961(1) L.L.J. 211 at 215-16 that the management need not obtain the previous consent before taking any action. The requirement that the management must obtain approval was distinguished from the requirement that it must obtain permission.

12. Following it, a similar view was reiterated in U.P.Awas Avam Vikas Parishad v. Friends Cooperative Housing Society Ltd. 1995 Supl. (3) SCC 456.

13. In High Court of Judicature for Rajasthan v. P.P.Singh & Anr. 2003 (4) SCC 239, para 40 the Apex Court held:

"When an approval is required, an action holds goods. Only if it disapproved it loses its force. Only when a permission is required, the decision does not become effective till permission is obtained."

14. The above authorities have been discussed and followed by the Apex Court recently in *Ashok Kumar Das & Others v. University of Burdwan & others* 2010 (2) SCALE 110.

15. In the statutory regulations, applicable for transfer of the police officers as contained in Chapter 20 of the Police Regulations framed under the Police Act 1861, there is no such requirement of approval but in view of the Apex Court decision in *Prakash Singh v. Union of India*, 2006(8) SCC 1 it has been contemplated that to save and protect the police officer from the clutches of the politicians from unnecessary harassment their transfer matter must be considered by a high powered committee and the establishment of Police Establishment Board is in that context.

16. In my view, therefore, on the one hand it cannot be disputed that an employee in the police department may not be transferred and relieved unless the matter of his transfer has been examined by the Police Establishment Board and it has accorded its approval but in absence of any approval the transfer order, if any issued by the authorities, may not be vitiated by itself, and, it is in the fitness of the things, in such circumstances, to keep the order of transfer in abeyance till the question of approval is considered by the Police Establishment Board and only when it approves the same, such an order of transfer be given effect to and not otherwise. The decision of this Court in *Ashok Kumar Tiwari v. State of U.P. & others* in Writ Petition No.29506 of 2009 decided on 9th June, 2009 is also in the same line.

17. In the circumstances and in view of the above discussion, in my view, all these writ petitions can be, and, are being disposed of with the following directions:

- (i) The orders of transfer of the petitioners impugned in the writ petitions shall remain in abeyance till the Police Establishment Board consider the question of

transfer of the petitioners and convey its approval. After receiving such approval, if any, the petitioners shall be dealt with accordingly.

(ii) In case such approval in respect to some of petitioners has already been obtained or obtained during the pendency of this matter, the respondents shall communicate factum of such decision only to the petitioners concerned, and shall be free to take appropriate steps for giving effect to the orders of transfer concerned accordingly.

18. There shall be no order as to costs.

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