

Neutral Citation No. - 2024:AHC:133033

A.F.R.
Reserved on 23.07.2024
Delivered on 20.08.2024

Court No. - 4

Case :- WRIT - A No. - 10189 of 2024

Petitioner :- Anupam Srivastava And 7 Others

Respondent :- Uttar Pradesh Power Corporation Ltd and 5 Others

Counsel for Petitioner :- Vikas Upadhyay

Counsel for Respondent :- Abhishek Srivastava,Devesh
Vikram,Manoj Kumar Srivastava

Connected with

Case :- WRIT - A No. - 9702 of 2024

Petitioner :- Rahul Kumar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Narendra Deo Upadhyay,Rahul
Agarwal,Vinay Bhushan Upadhyay

Counsel for Respondent :- Abhishek Srivastava,Adarsh
Bhushan,C.S.C.

and

Case :- WRIT - A No. - 10495 of 2024

Petitioner :- Ganga Prasad Jaiswal

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Shivam Shukla,Vinod Kumar

Counsel for Respondent :- C.S.C.,Manoj Kumar Srivastava

and

Case :- WRIT - A No. - 10096 of 2024

Petitioner :- Arun Kumar Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Prabhakar Awasthi,Saurabh Tripathi

Counsel for Respondent :- Adarsh Bhushan,C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Vikas Upadhyay, learned counsel for the petitioner, Sri Vinay Bhushan Upadhyay, learned counsel for the petitioner in connected petition being Writ - A No.- 9702 of 2024, Sri Shivam Shukla,

learned counsel for the petitioner in connected petition being Writ - A No.- 10495 of 2024, Sri Prabhakar Awasthi, learned counsel for the petitioner in connected petition being Writ - A No.- 10096 of 2024, Sri Abhishek Srivastava, learned counsel for the corporation, Sri Adarsh Bhushan, learned counsel for the Managing Director, Purvanchal Vidyut Nitaran Nigam Ltd. Varanasi and Sri Manoj Kumar Sriavastava, learned counsel for the Chief Engineer, Prayagraj.

2. In all these connected petitions different transfer orders have been challenged but more or less the grounds are the same for assailing the transfer orders. Hence all the petitions are being heard to be decided by a common judgment.

3. The petition being Writ – A No.- 10189 of 2024 is taken to be leading petition for reference purposes.

4. Petitioners before this Court in Writ – A No.- 10189 of 2024 are employees working in the Purvanchal Vidyut Vitaran Nigam, Ltd, a Distribution and Supply of the Electricity Company (DISCOM) with the headquarters at Varanasi.

5. The petitioners, who are 8 in numbers are aggrieved by the transfer order dated 28th June, 2024, whereby they have been transferred from their current place of posting to new zone falling in different districts named in the transferred order.

6. It is worth mentioning that petitioner No.- 1 Anupam Srivastava working as Executive Assistant has been transferred from Prayagraj to Varanasi zone, petitioner No.- 2 Sanjay Kumar Pandey working as Executive Assistant has been transferred from Prayagraj to Mirzapur zone, petitioner No.- 3 Ugrasen Singh working as Executive Assistant has been transferred from

Kaushambi to Varanasi zone, petitioner No.- 4 Nitin Narayan Srivastava working as Executive Assistant has been transferred from Gorakhpur to Azamgarh zone, petitioner No.- 5 Abhishek Gupta working as Executive Assistant has been transferred from Prayagraj to Varanasi zone, petitioner No.- 6 Hitesh Bhatnagar working as Executive Assistant has been transferred from Prayagraj to Varanasi zone, petitioner No.- 7 Ranjeet Kumar Yadav working as Executive Assistant has been transferred from Prayagraj to Varanasi zone and petitioner No.- 8 Ram Prakash working as Executive Assistant has been transferred from Azamgarh to Gorakhpur zone.

7. In writ petition being Writ – A No.- 9702 of 2024 petitioner Rahul Kumar working as Executive Officer has been transferred from Varanasi to Maharajganj, which is in Gorakhpur zone under the transfer order dated 28th June, 2024.

8. In writ petition being Writ – A No.- 10495 of 2024, petitioner Ganga Prasad Jaisawal working as Executive Officer has been transferred from Prayagraj to new allotted Circle/ EDC Fatehpur.

9. In writ petition being Writ – A No.0 10096 of 2024 the petitioner Arun Kumar Singh working as Executive Engineer has been transferred from District Supply Division Varanasi to the office of Chief Engineer Distribution, Basti Circle, Basti vide transfer order dated 21st June, 2024.

10. The orders of transfer have been challenged basically on three grounds:

(i). Transfer policy of the year 2019-2020 was an annual transfer policy which is no more in existence and merely by a circular letter issued on 22nd July, 2023, such a transfer policy cannot be re-

enforced, nor such a circular letter can grant extension to an annual transfer policy of a particular year for subsequent years;

(ii). Transfer is one of the conditions of service and with U.P. Electricity Reforms Transfer Scheme, 2000 coming into force, the corporation was required to frame statutory rules, failing which the old U.P. State Electricity Board Rules will be applicable as the existing service conditions of the Board were to apply *mutatis mutandis* vide clause 6 (10) of the U.P. Electricity Reforms Transfer Scheme, 2000. Circular letter of the year 2023 having no statutory force cannot be put into service to transfer employees from one circle to another circle and the circular letter issued at the instance of Chairman on 11th September, 2018 only shall have a binding force and;

(iii). Without there being a DISCOM based general policy governing service conditions of its employees including their transfer and adjustments from one circle to another circle, the whimsical transfers are not based upon any administrative exigency or in public interest but for arbitrary exercise of power as many employees from one department got transferred to an inferior department losing their seniority etc. which was acknowledged by the DISCOM itself in its letter dated 18th July, 2024 which has been brought on record as Annexure SA-2 to the supplementary affidavit.

11. Advancing his argument Sri Anoop Trivedi, learned Senior Advocate has vehemently urged that these companies were formed in the year 2000 and the Corporation has remained idle in the matter *qua* framing of rules/ regulations and now when the administrative requirements and public interest has compelled them to make transfers of employees as it is alleged, may be for working at their home districts or at any place for substantially a very long

period of time that the transfer orders got issued arbitrarily. He has argued that many employees going by their substantive date of appointment stood transferred to a place where in terms of substantive date of appointment junior persons are working on a higher posts, to their utter embarrassment.

12. Sri Trivedi has submitted that this raises administrative issues also because at times for non- availability of vacancies, an Executive Assistant is not promoted in a circle whereas in another circle a much junior due to availability of vacancy got promoted as Executive Officer and there is hardly any chemistry seen in the working of a senior person by virtue of a substantive appointment with a higher officer who is otherwise junior due to date of initial appointment.

13. In support of his argument Sri Trivedi has relied upon various provisions of the Scheme, 2000 and Regulation, 1970. He has submitted that seniority is circle-wise and it is also admitted in the circular letter issued dated 8th September, 2018 and there has been no quarrel about a fact that these transfers, may be for administrative compulsions/ public interest, from one circle to another circle within the DISCOM have not only resulted in serious unrest amongst the employees but has been prejudicial to the public interest as well.

14. Sri Trivedi has argued that ultimately DISCOM has to maintain supply/ distribution of electricity Board domestic and industrial, so smooth functioning of various circles and divisions in different zones have to be ensured to serve the public interest.

15. In the petition filed by Sri Rahul Kumar one more argument has been advanced that two officers got transferred at one place itself, namely Gorakhpur zone-II, ADC, Maharajganj.

16. One more argument has been advanced in the petition of Ganga Prasad Jaiswal that in effect status of an employee will change with the transfer of the employee and that employee will get new birth in a new circle or zone with the transfer and, therefore, he is liable to be placed at the bottom of seniority in that circle.

17. All the learned Advocates have adopted the arguments of Sri Trivedi, learned Senior Advocate in their respective petitions.

18. Meeting the argument Sri Abhishek Srivastava, learned counsel appearing for the corporation and Sri Adarsh Bhushan, learned counsel appearing for the Purvanchal Vidyut Vitaran Nigam Ltd. have submitted that once the corporation has ensured that seniority would stand protected in the cadre to which the employees belong, there cannot be any issue.

19. It is submitted that petitioners cannot deny that they are all working on transferable posts and their apprehension that if they would be transferred, they would be working under a junior person looking to the date of substantive appointment, is not substantiated by any pleadings raised in any of the writ petitions.

20. It has been argued by learned counsel for the corporation that the document that has been filed as Annexure – SA-2 itself clarifies that no employee would be transferred from one office to another office which is lower in order. Thus, an employee working in the office of Chief Engineer would be transferred to the office Chief Engineer and likewise the employee working in the office of superintending engineer, executive engineer will be transferred under the similar rank of officers. It is also argued that even if the argument is accepted that the seniority is prepared circle wise, then protection of seniority in that circle itself is an example of vigilant approach of corporation in ensuring that as and when the vacancy

arises in that circle such an employee because of his transfer does not get prejudiced by losing any chance of promotion in his original circle or division, as the case may be.

21. It is argued that corrections that have taken place by virtue of the order dated 18th July, 2024 would go on to demonstrate that whenever any error comes to the knowledge of corporation any arbitrariness in the matter of transfer or where the employees' interest is seriously getting prejudiced, the matter would always be examined by the competent authority upon the representation being made. It is argued that on a mere apprehension a writ petition should not be entertained. The grounds raised to challenge the order or the argument so advanced must be substantiated by appropriate pleadings. It is argued that none of the petitioners has been able to aver in any of the paragraphs in any of the writ petitions, as to under which employee they are going to be junior or anyone of them is going to be junior.

22. It is submitted that officer of the same rank would be sitting in office where they are transferred and even though seniority stands protected in the original circle but the DISCOM will ensure that no discrimination is meted out in the treatment of the employees of another circle or division or zone, as the case may be after they join the transferred place.

23. On the question of policy of transfer it has been argued by Sri Srivastava as well as Sri Bhushan, learned Advocates appearing for the respective respondents that Managing Directors of the corporation are fully empowered to formulate policy and no statutory scheme is required to be floated. They have argued that it is a company now and, therefore, no statute is required to regulate its transfer policy. They have also urged that transfer being an incident of service depending upon the administrative exigencies

and public interest, by administrative orders or circulars such policy of previous years can always be extended and enforced in subsequent years. They submit that there is no bar for an employee not to be transferred either under the previous Act prior to coming into force of Scheme, 2000 or even by virtue of any subsequent circulars or executive orders issued at the instance of the corporation.

24. It is vehemently urged by learned counsel for the respondents that U.P. Electricity Reforms Transfer Scheme, 2000 was brought into force to transform the erstwhile U.P. State Electricity Board into a power corporation for the purposes of distribution of power and supply of electricity. Thus, U.P. Power Corporation came into existence and five companies, namely, Purvanchal Vidyut Vitaran Nigam Ltd., Dakshinachal Vidyut Vitaran Nigam Ltd., Madhyanchal Vidyut Vitaran Nigam Ltd., Pashchimanchal Vidyut Vitaran Nigam Ltd. and Kanpur Electricity Supply Company, came to be incorporated and registered under the Companies Act, 1956. It is argued that companies are always governed by its own by laws and standing orders and relations framed by it or adopted by it and there is no requirement of any statute to be passed by the State Legislature.

25. It is further submitted that the controversy in the above regard is no more *res integra* in view of the Division Bench judgement of this Court in the case of **Rajeev Kumar Jauhari v. State of U.P. and others, 2007 (2) AWC 1726**, wherein the U.P. Rajya Vidyut Utpadan Nigam Ltd. Absorption Regulation, 2006 were challenged and the Court very categorically held that with the transfer of statutory body to non statutory body like company registered under the Companies Act, 1956 in the present case would certainly deprive the employees of protection under the Statute and

now the service conditions would stand governed under the ordinary law of contract.

26. It is thus argued that in terms of the contract law, it is always for the corporation to issue circulars to facilitate transfer of its employees from one place to another place in administrative exigencies and public interest. It is also submitted that in the cases in hand employees have been working for a number of years to say 5 to 10 years or more at one place and that is why the transfers have been effected.

27. Sri Manoj Kumar Srivastava, learned counsel appearing for the Executive Engineer/ Superintendent Engineer, Purvanchal Vidyut Vitaran Nigam Ltd., Varanasi has adopted the arguments advanced by Sri Abhishek Srivastava and Sri Adarsh Bhushan, learned counsel for the U.P. Power Corporation and Managing Director Eastern DISCOM.

28. Learned counsel for the respondents have also relied upon the judgment of a coordinate Bench of this Court in the case of **Ashutosh Kumar Singh v. Uttar Pradesh Power Corporation** and others in Writ – A No.- 11856 of 2022 and have heavily relied upon paragraphs 6, 7, 8, 9, 10 & 11 of the judgment which runs as under:

“(6) Learned counsel for the Respondents, on the other hand, have referred to the Regulations of 1970, which are still applicable to employees of the Corporation but subject to some Amendments/Modifications/ Clarifications as and when required. He has referred to the Definitions Clause and Regulations-3 (9) where Establishment has been defined as Ministerial Establishment in the office of the Chief Engineer and other Subordinate Offices under the Board. He has also referred to the sources of recruitment in the office of the Chief Engineer, in Circle Office and Divisional Office and he says that Office Assistant is the re-designation of the original Clerical post by the name of Routine Grade Clerk. All Routine Grade Clerks are directly recruited in various offices of the Chief Engineer, Circle offices,

and the Divisional Offices but their seniority is maintained as per the date of their substantive appointment and when their promotions are due, the seniority of incumbents shall be determined from the date of their substantive appointment in their own class or cadre. The Cadre remaining the same and the seniority being determined only on the basis of date of substantive appointment, the petitioner shall not be affected adversely by being transferred to Maharajganj Circle.

(7) Learned counsel for the petitioner has pointed out that the letter sent by the Managing Director of U.P. Power Corporation Limited on 11.09.2018 shall be deemed to have been suppressed by the Transfer Policy dated 03.06.2019 issued by the Board of Directors of the Power Corporation Limited.

(8) Learned counsel for the Respondents has referred to Paragraph-3 (ii) of the Transfer Policy wherein the maximum tenure of Grade-III employees in a particular Office/Circle/District is mentioned. It has been mentioned therein that such Clerical staff shall be allowed to function for a maximum period of three years on one Office table and for a maximum period of six years in such office and that they shall be transferred to some other Tehsil in the same District after six years. The maximum period of posting in one District shall be 10 years, thereafter the incumbent shall be transferred to the Adjoining/Nearby District. In the case of the petitioner he has been working in Gorakhpur for the past more than ten years with effect from 2011 to 2022 and he has been transferred to the adjoining District of Mahanagar. It has also been mentioned that in the said Paragraph-3 (ii) of the Transfer Policy that on transfer, such Clerical staff shall not be affected in terms of their seniority which shall be maintained as per the lien they exercise in their original office.

(9) This Court has considered the interim order granted in Writ-A No.16454 of 2019 as aforesaid where learned Senior counsel for the petitioners had argued that the appointments for each class of posts is made at three distinct levels i.e. the Office of the Chief Engineer, Circle Office and Divisional Office and employees from one unit if they are transferred to another unit, would stand to lose their seniority and shall be adversely affected in their chances of promotion. It was also argued by the learned counsel for the petitioners therein that the Rules have not been amended and therefore, it would not be open for the employees of one Division/Circle to be transferred to another Division/Circle, as their seniority and chances of promotion would be justified.

(10) Such arguments were made by the learned Senior counsel only on the basis of Regulations and the interim order was passed at a time when there were no instructions received from the Corporation, at the stage of admission of the writ petition. Such benefit of interim order as prayed for by the learned counsel for

the petitioner can be given to him in terms of judgments of the Supreme Court in the case of Vishnu Traders Vs. State of Haryana reported in 1995 (Supp 1) SCC 461. However, if a writ petition is being decided finally an interim order cannot be treated as binding. Now that instructions have been received from the Corporation and arguments have been made by the learned counsel for the Respondents on the basis of very Regulations that were relied upon at the time of passing of the interim order dated 05.12.2019, the matter can be decided by this Court.

(11) This Court finds that the Regulations of 1970 were made applicable to the employees of the Power Corporation subject to Clarification/ Modification etc. as required on conversion of the Board to a Government Company. The Power Corporation is now governed by the Board of Directors which has issued a transfer policy wherein taking into account the fact that the Clerical employees have been posted in a Circle Office/Divisional offices for long periods of time and they needed to be transferred a provision has been made that they shall be transferred to the adjoining and nearby places without affecting their seniority. Even otherwise as per the Regulation of the 1970, seniority is maintained as per the Cadre and Establishment is defined under the Regulations itself.”

29. It is argued that the coordinate Bench having upheld the transfer policy issued by the Board of Directors, same would amount to a binding judicial precedent for another coordinate Bench. However, it is submitted that they are not averse to an order being passed for consideration of representations of different petitioners, if they make or have already made.

30. Rival submissions fall for consideration.

31. Looking to the transfer order as for instance in the leading petition I find that these transfers are general in nature as by one common order dated 28th June, 2004 a large number of employees have been transferred from one zone to another zone. The petitioners have been transferred like for instance from Azamgarh zone to Varanasi zone or from Prayagraj zone to Varanasi zone and likewise. The transfer order mentions the designation of the

employees transferred and the name of offices from where they have been transferred to another zone.

32. It is not specified in the order that they are being transferred to report in a particular office. They have to report to the zonal headquarter from there they will be assigned duty for a particular department or a circle or division obviously as Sri Srivastava has submitted that in accordance with the letter dated 18th July, 2024 brought on record by means of supplementary affidavit.

33. From the order of transfer it cannot be inferred that petitioners have been transferred to a post and under the officers, who are junior to them, nor there is any specific pleadings raised in any of the paragraphs of the petition. The pleadings are basically indicative of violation of clause 6 (10) of the U.P. State Electricity Reforms Transfer Scheme, 2000 and the Regulation, 1970. The details as have been given vide paragraphs 8 to 15 of the petitioner only demonstrate to the extent that these employees were appointed in a particular year and have been discharging their duties as such. I, therefore, find substance in the submission advanced by learned counsel for the respondents that pleadings are lacking to substantiate the grounds and the arguments advanced that petitioners' seniority are going to be compromised if transfer orders are sustained.

34. Reliance has been placed upon the circular dated 11th September, 2018 to show that employees cannot be transferred from one circle to another circle and this circular, according to Mr. Trivedi, is still in force. This argument of Mr. Trivedi, if accepted, it will run counter to two of his own arguments: firstly, that the transfer policy 2020 would not be enforced and carried forward by any executive instructions or circular unless and until a new policy is enforced; and secondly, if there is no statutory transfer policy or

statutory circular which can be given effect to in view of the relevant regulations in the Scheme 2000 then the circular dated 11th November, 2018 could be relied upon.

35. It is an admitted position on record that circular letter dated 11th September, 2018 stood superseded by the circular letter dated 3rd June, 2019 and then by another circular letter dated 22nd July, 2023. The petitioners cannot argue that circular letters or instructions issued on behalf of the corporation would not have any binding force in view of the scheme of 2000 and no circular letter can enforce a previous transfer policy while at the same time rely upon the similar circular letter 2018 which also does not have any statutory force. However, it is also worth noticing that none of the circular letters are challenged in this petition and in the connected petitions. If the letter issued on 22nd July, 2023 enforcing the transfer policy 2019-2020 is not questioned then this Court cannot go into the question of legality of such transfer policy, more specially in the circumstances when a coordinate Bench of this Court in the case of Ashutosh Kumar Singh (*supra*) had upheld the transfer policy. Vide paragraph 11 of the judgment the Court had held thus:

“(11) This Court finds that the Regulations of 1970 were made applicable to the employees of the Power Corporation subject to Clarification/ Modification etc. as required on conversion of the Board to a Government Company. The Power Corporation is now governed by the Board of Directors which has issued a transfer policy wherein taking into account the fact that the Clerical employees have been posted in a Circle Office/Divisional offices for long periods of time and they needed to be transferred a provision has been made that they shall be transferred to the adjoining and nearby places without affecting their seniority. Even otherwise as per the Regulation of the 1970, seniority is maintained as per the Cadre and Establishment is defined under the Regulations itself.”

36. Besides above, in view of the Division Bench judgment of this Court upholding the Scheme, 2000 and directing that there was

no requirement for the company registered under Companies Act, 1956 to have any statutory regulations, every instructions issued on administrative side by a competent authority in its behalf shall have a binding force. It is a contract of employment now between the employees of the corporation and corporation registered under the Companies Act, 1956 and, therefore, corporation is well within its right to issue necessary executive instructions to govern the day to day transfer or otherwise annual transfers. The Division Bench of this Court vide paragraph 32 in the case of Rajeev Kumar Jauhari (*supra*) had held thus:

“32. Sri Khare lastly sought to argue that Section 23(7) of the Reforms Act, 1999 read with Clause 3 (10) of the Transfer Scheme, 2000 use the word 'Regulation' and therefore, UPRVUNL can only change the condition of service by framing statutory Regulations and not the Regulations, which are non statutory In our view, this submission is to be noted for rejection only. UPRVUNL is not a statutory body, but a Company registered under the Companies Act. It is not disputed that the employment and contract of the petitioners which was earlier with a statutory autonomous body, namely, UPSEB, stood transferred to UPRVUNL and now it is UPRVUNL, who is empowered to determine the conditions of service of its employees. The manner in which such provision can be made would be governed by the Article of Association of such Company and when the Company itself is not statutory, to expect such company to frame statutory Regulations for governing its employees is wholly untenable. The effect of transfer of service from statutory body to a non statutory bod), namely, a company registered under the Company Act, would deprive the statutory protection available to the employees and now the matter would be governed by ordinary law of contract. Normally, the transfer of contract involves the consent of the employees also, but in the present case, the petitioner's contract has been transferred to UPRVUNL by statute itself and, therefore, the employees have no role and their consent is not required. The only rider on the power of transferee employer is that the service condition whenever changed would not be less beneficial and will not deprive past benefits accrued to the transferred employees before transfer, that is, to the extent provided under Section 23(7) of the Reforms Act, 1999. The protection under Section 23(7) neither continue the status of the transferred employee with the new companies as statutory nor otherwise has any other role except to prevent employer from exercising its ordinary powers available in Common Law, which would be contrary to the protection given under Section

23(7) of the Reforms Act, 1999. For all other purposes, the transferee company is free to formulate its policies and enter into contract or lay down terms and conditions of its employees in the manner, it find best suited for the efficient functioning of the company. Merely for the reason that the State Government is 100% share holder of the company does not identify the company itself with the State Government. In Shrikant v. Vasant Rao , the Court held in para 24 that in the matter of a company where the entire share capital is held by the State Government, yet it cannot be identified with the State Government and is always entitled to act and proceed in a manner a company function. This principle was recognized as long back as in 1970 also by a Constitution Bench in R.C. Cooper v. Union of India , and at page 584, the Apex Court held- "A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholder has merely an interest in the Company arising under its Article of Association measured by a sum of money for the purpose of liability, and by a share in the profit."

37. Now testing the arguments of Mr. Trivedi on the touchstone of clause 6(10) of the U.P. State Electricity Reforms Transfer Scheme, 2000, I find that the object behind the enforcement of the Scheme, 2000 was transformation of U.P. State Electricity Board into a power corporation and likewise transfer of property, assets, rights and liabilities of the State Government as a consequence of transfer of vesting or re-vesting of the properties. It is as a sequel to that objective that the scheme was provided and titled as transfer scheme. In no manner it can be taken as a scheme for transferring employees within the corporation or within the company. Transfer is just an incident of service which can be done in administrative exigency or in public interest by the authorities vested with the power to do so. The word 'Transferee' that has come to be referred to in paragraph 6(10) means that corporation shall frame regulations governing the conditions of service of persons.

38. Employees in the present case earlier were employees of the U.P. State Electricity Board which was State own board and with the floating of the Scheme, 2000 they stood transferred to the

company. It is in that context that it was provided that the transferee company shall frame regulations. Now the transferee company since did not frame regulations then as per clause 6(10) the existing service condition of the board were made to apply *mutatis mutandis*. The relevant provision of clause 6(9) (10) & (11) of the Scheme, 2000 floated by virtue of U.P. State Electricity Reforms Transfer Scheme, 2000 is reproduced hereunder:

“6(9). The transfer of personnel to the Transferee shall be subject to any orders that may be passed by the courts or Tribunals in any of the proceedings pending on the date of the transfer.

(10). Subject to the provisions of the Act and this Scheme, the Transferee shall frame regulations governing the conditions of service of personnel transferred to the transferee under this Scheme and till such time, the existing service conditions of the Board shall mutatis mutandis apply.

(11). In respect of all statutory and other schemes and employment related matters including the provident fund, gratuity fund, person and any other superannuation fund or any other special fund created or existing for the benefit of the personnel, the relevant Transferee shall stand substituted for the Board for all purposes and all the rights, powers and obligations of the Board in relation to any and all such matters shall become those of the Transferee concerned and the services of the personnel shall be treated as having been continuous for the purpose of the application of this sub-clause.

39. In view of the above Division Bench judgment, it was not necessary for corporation to have framed any statutory rules or regulations and the corporation, therefore, could do so by way of issuing executive instructions. It is not the case of petitioners that in the previous establishment when it was known as U.P. State Electricity Board the employees were not transferable, if the employees were transferable then within the DISCOM the distribution company, I see no justification to hold that transfers inter circle is bad.

40. In the case of **SK Nausad Rahaman & others v. Union of India and others (2022) 12 SCC 1**, Supreme Court has observed that executive instructions embodied in the office memorandum issued by the department would have binding force unless and until they are violative of any statutory rules concerning the subject matter. The Court has held that it is only in the event of a conflict between the executive instructions and the rules that the rules would prevail, otherwise the executive instructions will have the same force as of a statutory rule. Since the Division Bench of this Court has already held that the service rules of employee of corporation would stand governed under the contract of law and there are no regulations framed governing the transfer of the employees of the corporation within the DISCOM or even otherwise, the executive instructions issued from time to time by the corporation will have a binding force.

41. It has been repeatedly held by this Court and Supreme Court as well that transfer is an incident of service. A transfer order cannot be taken to have varied conditions of service to the disadvantage of employee. In the case of **B. Varadha Rao v. State of Karnataka and others (1986) 4 SCC 131**, the Supreme Court referring to an earlier judgment had observed that “*The observation that transfer is also an implied condition of service is just an observation in passing. It certainly cannot be relied upon in support of the contention that an order of transfer ipso facto varies to the disadvantage of a government servant, any of his conditions of service making the impugned order appealable under Rule 19(1) (a) of the Rules.*”

42. Even otherwise the scope of judicial review in matters of transfer is very limited as the transfer has been held to be incident of service and those who are working on transferable post can of

course, be transferred. In the case of **Abani Kanta Ray v. State of Orissa and others, 1995 Supp (4) SCC 169**, Supreme Court has observed that *“a court would not ordinarily interfere with the order of transfer unless and until it is found to be arbitrary and vitiated by mala fides or there is infraction of any professed norm or principle governing the transfer”*. This view has been taken by Supreme Court relying upon its earlier judgment in the case of **N.K. Singh v. Union of India (1994) 6 SCC 98**.

43. In the case of **Shilpi Bose (Mrs) and others v. State of Bihar and others, 1991 Supp (2) SCC 659**, the Court while setting aside the order of Patna High Court which had allowed the petition of certain displaced persons on account of transfer being effected, held that except in the event of violation of any statutory rule or *mala fides*, Court should not interfere with the transfer order made in public interest or for administrative reasons. Vide paragraph 4 the Court has held thus:

“4. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other; he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer Orders.”

44. Recently in the case of **SK. Nausad Rahaman and others v. Union of India and others (2022) 12 SCC 1**, Supreme Court has held that the transfer being an incident of service no employee who is working on a transferable post cannot have a fundamental right

or vested right to claim a particular place or station or posting of choice. The Court relied upon its earlier judgment in the case of **Union of India v. S.L. Abbas (1993) 4 SCC 357**, wherein vide paragraph 7 the Court has held thus:

“Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and the wife must be posted at the same place. The said guideline, however does not confer upon the government employee a legally enforceable right.”

45. I may hasten to add here that transfer though is permissible within the distribution company but in no circumstances, seniority of employees should be compromised nor, the employees can be directed to be posted in an inferior office to the one they have been serving at, from where they are sought to be transferred. Thus, if an employee is working in the office of Chief Engineer, he should be transferred in the office of Chief Engineer. Likewise employees working in the office of Superintendent Engineer or Executive Engineer should be transferred to the office of Superintendent Engineer or Executive Engineer only.

46. While it is true that promotions are made unit wise like for instance office of Chief Engineer, Circle and Division as per the availability of vacancy and the feeding cadre for certain posts can be inter-circle or inter-division but this cannot be said to be a good ground to quash the transfer order merely because an employee has been transferred to a place where a higher officer in rank was junior in terms of length of service to the transferred employee while he was in his cadre. A person higher in rank will remain higher in rank

because he/ she is promoted in a particular circle for availability of posts and fulfilling eligibility criterion whereas an employee working in another circle in the same cadre may not have been promoted for want of vacancy even though his length of service more in number of years.

47. I may also observe that interim order relied upon by Mr. Trivedi in the matter of Rajeev Mishra and 19 others has been rightly distinguished by a coordinate Bench of this Court in the case of Ashutosh Kumar Singh (*supra*) and, therefore, in my considered view, it is of no help to the petitioners.

48. So far as the arguments advanced that two persons have been given posting at one place like both the persons have stood transferred to Maharajganj Division or Azamgarh Division, suffice it to observe that every zone has a large number of divisions and unless and until pleadings are there to the effect that posts are not existing, such arguments are not acceptable and, therefore, deserves rejection.

49. These all petitions are since lacking in pleadings as to the grounds raised and the argument advanced that they would become junior to the officers of their own cadre, no presumption can be raised that the transfer orders are in any manner going to prejudice them in the event they go and join at their respective transferred places. Hence, I decline to interfere with the transfer orders challenged in all these petitions.

50. All the petitioners have already been relieved so they first go and report their joining to the place of transfer and if they have still their grievance, liberty is granted to them to make representation before the competent authority within two weeks of their joining and once any such representation is made by any of the petitioners

or by all the petitioners before the competent authority then such representations should be disposed of within a further period of two weeks.

51. U.P. Power Corporation as well as the different DISCOMs will have to ensure that no employee upon transfer from one place to another place is made junior to an employee of his cadre. I may here again refer to paragraph 6 of the judgment in the case of Ashutosh Kumar Singh (*supra*), wherein it was observed thus:

“(6) Learned counsel for the Respondents, on the other hand, have referred to the Regulations of 1970, which are still applicable to employees of the Corporation but subject to some Amendments/Modifications/ Clarifications as and when required. He has referred to the Definitions Clause and Regulations-3 (9) where Establishment has been defined as Ministerial Establishment in the office of the Chief Engineer and other Subordinate Offices under the Board. He has also referred to the sources of recruitment in the office of the Chief Engineer, in Circle Office and Divisional Office and he says that Office Assistant is the re-designation of the original Clerical post by the name of Routine Grade Clerk. All Routine Grade Clerks are directly recruited in various offices of the Chief Engineer, Circle offices, and the Divisional Offices but their seniority is maintained as per the date of their substantive appointment and when their promotions are due, the seniority of incumbents shall be determined from the date of their substantive appointment in their own class or cadre. The Cadre remaining the same and the seniority being determined only on the basis of date of substantive appointment, the petitioner shall not be affected adversely by being transferred to Maharajganj Circle.”

52. Before parting with the case, I may observe here that once the distribution company, say for instance as in the instant case, namely Purvanchal Vidyut Vitaran Nigam Ltd., if transferring its employees from one circle to another circle, from one zone to another zone and from one division to another division then it should also have a general recruitment policy and a DISCOM based seniority list. Appropriate regulation should be framed by U.P. Corporation to create a DISCOM based cadre, whether of Chief Engineer, Superintendent Engineer, Executive Engineer or clerical

cadre. This will not only remove the discontent amongst the employees but will also not give chance to any apprehension of a person getting junior to another person working in higher rank but junior in length of service. It will also facilitate the adjustment of the persons against the existing vacancies and will make the transfer more convenient and acceptable to the employees.

53. It is expected that the U.P. Power Corporation will frame necessary regulations to create a DISCOM based cadre strength of its employees and seniority. It is better that it is done at the earliest.

54. With these above observations and directions, these petitions stand disposed of.

Order Date :- 20.8.2024

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