

A KRISHAN KUMAR MADAN AND ORS.

v.

ASHOK KUMAR AND ORS.

(Civil Appeal Nos. 8336-8337 of 2011)

B AUGUST 29, 2018

**[DIPAK MISRA, CJI, DR. D. Y. CHANDRACHUD AND
INDIRA BANERJEE, JJ.]**

C *Service Law – U.P. Public Service Commission invited applications for the post of Personal Assistant in the year 1999 –*
D *The erstwhile State of Uttar Pradesh was reorganised into the State of Uttar Pradesh and the State of Uttaranchal (now Uttarakhand) on 09.11.2000 – Appellants though selected (i.e. on 03.03.2000) before the reorganisation of the State, however, were appointed after the reorganisation in the year 2001 – The State of U.P.*
E *provided option to appellants to serve either in the State of U.P. or the State of Uttarakhand – Appellants opted for the State of Uttarakhand – High Court held that the appellants remained employees of the State of U.P. – Held: High Court overlooked the guidelines issued by the Central Government – Para (5)(c) of the guidelines refers to cases of selections where results were published prior to the cut-off date (09.11.2000) but appointment letters were not issued to candidates – In the guidelines it was further stipulated that where panels had been recently published, the selected candidates were to be notified that they may not be required beyond the appointed day (09.11.2000) in the State of U.P.*
F *and would be liable to serve the successor State of Uttaranchal – In instant case, appellants were declared to be employees of the State of U.P. by the High Court without noticing that the appointment letters issued to them clearly stipulated that their services could be transferred to the successor State of Uttarakhand – Furthermore, the Central Government permitted the transfer of*
G *employees on the basis of the mutual consent of both the States – Pursuant thereto, services of the appellants were transferred and absorbed by the State of Uttarakhand with the mutual consent of both the States – No infirmity in the procedure adopted by both the States in transfer of employees – Thus, Judgment of the High Court*
H *set aside – U.P. Reorganisation Act, 2000.*

Appellants were selected for the post of Personal Assistant on 3.03.2000 in the State of Uttar Pradesh. Meanwhile, the erstwhile State of Uttar Pradesh was reorganised into the State of Uttar Pradesh and the State of Uttaranchal (now Uttarakhand) on 9 November 2000. Thereafter, appellants were appointed as Personal Assistants in the year 2001. The appellants opted to serve the State of Uttarakhand. High Court held that the appellants remained employees of the State of Uttar Pradesh. Hence, appeals.

Allowing the appeals, the Court

HELD: 1. The High Court has overlooked the guidelines issued by the Central Government on 13 September 2000. Para (5)(c) of the guidelines refers to cases of selections where results were published prior to the cut-off date but appointment letters were not issued to candidates. Para (5) (c) contemplates that recruitments would be kept in abeyance until final allocation orders were made. This was to be so even where panels were drawn but not given effect to. The High Court has directed its attention to a sole consideration, namely whether there existed any statutory provision for transferring an employee from one State to another State. The appellants were declared to be employees of the State of Uttar Pradesh by the High Court without noticing that the appointment letters issued to them clearly stipulated that their services could be transferred to the successor State of Uttarakhand. Such a transfer took place with the consent of both the States. [Para 18] [372-B-D]

2. The State of Uttarakhand was created with the enactment of the U.P. Reorganisation Act, 2000 which reorganized the State of Uttar Pradesh into two states namely, the successor State of Uttar Pradesh and the State of Uttarakhand. Under the Act, 9 November 2000 was the appointed day. The Central Government, by its letter dated 15 September 2004, permitted the transfer of employees on the basis of the mutual consent of both the States. The State of U.P. gave options to existing employees appointed before 9 November 2000 for transfer of their services to the State of Uttarakhand. However, despite those efforts, the State of Uttarakhand was facing acute shortage of officers and a number of vacancies continued in the newly formed State of Uttarakhand.

- A Hence, various employees who were already employed with the State of U.P. prior to the appointed day were provided with a choice of permanent transfer of service to the State of Uttarakhand. In the meantime, in the case of persons such as the appellants where recruitments were completed but appointment letters were not issued the appointment letters indicated that
- B their services may be allotted either to the State of Uttar Pradesh or the State of Uttarakhand after the appointed day. The services of the appellants were transferred and absorbed by the State of Uttarakhand with the mutual consent of both the States. Since then the appellants have been continuing as employees of the
- C State of Uttarakhand. There is no infirmity in the procedure adopted by both the states in the transfer of employees, on the basis of mutual consent. [Paras 19, 20] [372-D-H; 373-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8336-8337 of 2011.

- D From the Judgment and Order dated 17.02.2011 and 23.03.2011 of the High Court of Uttarakhand at Nainital in Writ Petition No. 1313 of 2005 (S/S) and Review Petition No. 126 of 2011 in Writ Petition No. 1313 of 2005 (S/S) respectively.

- E Raju Ramachandran, Sr. Adv., Arun K. Sinha, Rakesh Singh, Sumit Sinha, Swastik Verma, Mrs. Jaspreet Gogia, Brijendra Singh, Anoop Kr. Srivastav, Ms. Kiran Bhardwaj, Balendu Shekhar, Hemant Arya, Ms. Kirti Dua, B. V. Balram Das, Sanjay Kumar Tyagi, Sandeep Singh, Ms. Anagha S. Desai, Ms. Rachana Srivastava, Ms. Monika, Advs. for the appearing parties.

- F The Judgment of the Court was delivered by

DR. DHANANJAYA Y. CHANDRACHUD, J.

1. Applications for impleadment are allowed.

- G 2. On 17 November 2011, the Division Bench of the High Court allowed the Writ Petition filed by respondents 1 to 5 and held that the appellants are not employees of the State of Uttarakhand. The High Court held that the appellants, who were initially appointed by the State of Uttar Pradesh shall remain employees of that State. The review petition preferred by the appellants was also dismissed by the High Court by its

H

order dated 23 March 2011. These appeals arise out of the judgment and order of the Uttarakhand High Court in the Writ Petition and in review. A

3. On 28 March 1999, the U.P. Public Service Commission issued an advertisement, inviting applications for 170 vacancies in the post of Personal Assistant in the U.P. Secretariat. The results of the selection process were published in the newspapers on 3 March 2000. The appellants were selected. The U.P. Public Service Commission directed the appellants to furnish certified copies of certain documents. The selection process was challenged before the High Court of Allahabad and was stayed. Meanwhile, the erstwhile State of Uttar Pradesh was reorganized into the State of Uttar Pradesh and the State of Uttaranchal (now Uttarakhand) under the Uttar Pradesh Reorganization Act, 2000, which came into force on 9 November 2000. Following the dismissal of the Writ Petition before the Allahabad High Court, the appellants were appointed as Personal Assistants on 29 January 2001 in the U.P. Secretariat at Lucknow. B C D

4. The State of U.P. provided options to its employees, including the appellants on whether they desired to serve in the State of UP or the reorganised state of Uttarakhand. The appellants exercised the option to serve the State of Uttarakhand and expressed their willingness for appointment in the Uttarakhand State Secretariat. The State of U.P. issued orders on 22 May 2001 and 28 July 2001 listing out employees who were approved for appointment in the Uttarakhand State Secretariat by the Governor of the State of Uttar Pradesh. The appellants joined the Uttarakhand Secretariat on 23 May 2001 and 1 August 2001. E

5. As the newly formed State of Uttarakhand was facing a scarcity of employees to run the administration, the Government of Uttarakhand issued two orders dated 28 November 2001 and 7 January 2002 transferring employees working in various departments to the state secretariat. Respondent Nos. 1 to 5 who were working in other departments joined the Uttarakhand Secretariat as Stenographers. On 28 September 2004, the services of these Respondents were confirmed in the cadre of Personal Assistant/Private Secretary by Government of Uttarakhand. The appellants, pursuant to an order dated 22 November 2004 issued by Uttarakhand government, made a representation for transfer of their services to the State of Uttarakhand upon a direction of F G

H

A the Central Government dated 15 September 2004 permitting the transfer of employees on the basis of mutual consent of the reorganized states. The consent of the State of Uttar Pradesh was received by a letter dated 22 November 2005 written by Chief Secretary of the State of U.P. for transfer of the appellants to the State of Uttarakhand.

B 6. In the meantime, a challenge was made to the seniority list in the cadre of the appellants posted to the Uttarakhand secretariat by Respondents 1 to 5, in Writ Petition no 1313 of 2005 filed before the Uttarakhand High Court. The challenge by Respondent 1 to 5 was only to the seniority list but not to the letter issued by the Central Government on 15 September 2004 permitting the transfer of employees with the consent of the reorganized state. The consent of the State of Uttar Pradesh granted by its letter dated 22 November 2005 relieving the appellants for transfer to the State of Uttarakhand was not subjected to challenge in the proceedings before the High Court.

C 7. The final allocation list published by the Central Government on 7 August 2009 excluded the appellants for transfer of services to the State of Uttarakhand as they were appointed after the cut-off date. The appellants preferred a representation to the Central Government requesting allocation of their services to the State of Uttarakhand. In response to the representation, a letter dated 3 September 2009 was communicated to the appellants denying them allocation to the State of Uttarakhand as they were appointed after 9 November 2000. The letter stated that while they are not eligible for allocation under the U.P. Reorganisation Act, 2000 and neither the State Advisory Committee nor the Central Government has anything to do with the appellants, the State Governments of U.P. and Uttarakhand may take mutual action for resolving the issue.

D 8. The High Court in its judgment dated 17 February 2011 observed that the appellants cannot be termed as employees of the State of Uttarakhand as they were appointed by the State of U.P. Therefore, in the view of the High Court, they shall continue to remain employees of the State of Uttar Pradesh. The review petition filed by the appellants was dismissed by the High Court on 23 March 2011 by reiterating the position earlier taken by High Court in its judgment dated 17 February 2011. The High Court has held that the appellants shall continue to remain employees of the State of U.P.

H

9. Aggrieved by the decision of the High Court, the appellants approached this Court under Article 136 of the Constitution. This Court, by its order dated 25 April 2011 granted *status quo* with regard to the present posting of the appellants. Leave was granted on 26 September 2011. A

10. During the course of the hearing, learned counsel for appellants has drawn our attention to a letter dated 13 September 2000 issued by the Union Ministry of Personnel, Public Grievances & Pensions. The letter deals with the subject of “Reorganisation of States-Allocation of personnel” and contains guidelines for allocating personnel belonging to services (other than All India Services) to the State of Uttar Pradesh. Para (5)(c) of the guidelines is relevant and is reproduced below: B C

“(5)(c) All recruitments against vacancies in the interim i.e. till the issue of the final allocation orders, may be kept in abeyance. Wherever panels have been drawn but not published, they may be kept in abeyance till reorganization of States is given effect to. Wherever panels have been recently published, selected candidates may be notified that their services in the existing State of Uttar Pradesh may not be required beyond the “Appointed Day” and that they are liable to serve the Successor State of Uttaranchal after Reorganization, as the case may be.” D

The above guidelines were issued by the Central Government prior to the reorganization of the State of Uttar Pradesh for allocation of personnel belonging to the state service to the newly formed state of Uttarakhand. Paragraph (5)(c) of the guidelines speaks of different eventualities. Recruitments against vacancies until the issuance of final selection orders were to be kept in abeyance. Similarly, where panels were drawn but had not been published, they were to be kept in abeyance until the reorganization of states was given effect to. Moreover, in cases where panels had been recently published, the selected candidates were to be notified that they may not be required beyond the appointed day in the State of Uttar Pradesh and would be liable to serve the successor state of Uttaranchal. E F G

11. It has been submitted by the learned counsel for the appellants that the results of the recruitment process in which the appellants participated and were selected were published prior to the issuance of

H

- A the guidelines and therefore their recruitment is squarely covered by aforesaid guidelines. Hence, according to the appellants, the option provided to them and their subsequent transfer to the State of Uttarakhand is valid. It has been also submitted that the appointment letters of the appellants issued by the competent authority of the Government of Uttar Pradesh specifically mentions that the services of appellants may be allotted to the States of Uttar Pradesh or Uttarakhand after the appointed day.
- B

12. We have heard learned counsel for the parties and perused the counter affidavit filed on behalf of Respondent nos 1 to 3 and 5 who are presently employees in the Uttarakhand secretariat and were petitioners before the High Court. They had challenged the seniority list of employees in the Uttarakhand Secretariat and the inclusion of the appellants as employees of Uttarakhand.
- C

13. It has been submitted by the Respondents that:

- D (i) The appellants were appointed by the State of Uttar Pradesh to the posts of Personal Assistant through the Uttar Pradesh Public Service Commission and they were called upon to join the U.P. Secretariat at Lucknow after the reorganisation of the State of U.P. Later, they were directed to join the Uttarakhand Secretariat situated at Dehradun; and
- E

(ii) Government of Uttarakhand by an order dated 22 November 2004 stated that the appellants could not be allocated to the State of Uttarakhand.

14. In response, the State of Uttarakhand in its counter stated that:
- F

(i) The State Reorganization Committee advised that with the consent of the State of U.P., the appellants can be taken on transfer to the State of Uttarakhand as there was an acute shortage of officers in the newly constituted State of Uttarakhand;

- G (ii) Transfer was done only with the mutual consent of both the States and the appellants; and

(iii) Transfer of the services of the appellants was affected after the creation of the State of Uttarakhand is, therefore, not covered by any of the provisions of the U.P. Reorganization Act, 2000, which has

H

also been mentioned in the letter dated 3 September 2009 of the Government of India; and A

iv) The Guidelines dated 13 September 2000 clearly envisage in respect of recruitment against vacancies, that wherever panels have been drawn but not published, they may be kept in abeyance till reorganization is given effect to. But these guidelines did not contemplate what action is to be taken in a situation where the selection has been made. Hence, in the absence of any specific provision in the guidelines provided by the Government of India, the decision arrived with the mutual consent of the two State governments does not suffer from any infirmity and is justified. B C

15. In the counter affidavit filed on behalf of Union of India by the Under Secretary, Department of Personnel & Training, Government of India, it was stated that:

(i) Although the Central Government was made a party to Writ Petition no 1313 of 2005, before the High Court, it did not file a Counter affidavit as none of its decisions was under challenge; and D

(ii) The case was contested between private parties where the State Governments were to furnish a reply. The Central Government has nothing to say in the matter except that the appellants could not be allocated as they were out of the purview of the U.P. Reorganisation Act, 2000 as they were inducted into service in 2001, which is after the appointed day, 9 November 2000. E

16. The State of Uttar Pradesh and the State Advisory Committee, who have been arrayed as Respondent 8 and 9 in the instant appeals, have not filed counter affidavits. No counter affidavit has been filed on behalf of Respondent 4 who was one of the petitioners before the High Court. F

17. The U.P. Reorganisation Act, 2000 empowered the Central Government to issue directions to the State Governments of Uttar Pradesh and Uttarakhand from time to time to resolve any issues envisaged under the Act. The power of the Central Government under Section 77 of U.P. Reorganisation Act, 2000 is in the following terms: G

“77. Power of Central Government to give directions. — The Central Government may give such directions to the State

H

A Government of Uttar Pradesh and the State Government of
Uttaranchal as may appear to it to be necessary for the purpose
of giving effect to the foregoing provisions of this Part and the
State Government shall comply with such directions. “

18. The High Court has overlooked the guidelines issued by the
B Central Government on 13 September 2000. Para (5)(c) of the guidelines
refers to cases of selections where results were published prior to the
cut-off date but appointment letters were not issued to candidates. Para
(5) (c) contemplates that recruitments would be kept in abeyance until
final allocation orders were made. This was to be so even where panels
C were drawn but not given effect to. The High Court has directed its
attention to a sole consideration, namely whether there existed any
statutory provision for transferring an employee from one state to another
state. The appellants were declared to be employees of the State of
Uttar Pradesh by the High Court without noticing that the appointment
letters issued to them clearly stipulated that their services could
D transferred to the successor state of Uttarakhand. Such a transfer took
place with the consent of both the states.

19. The State of Uttarakhand was created with the enactment of
the U.P.Reorganisation Act, 2000 which reorganized the State of Uttar
Pradesh into two states namely, the successor State of Uttar Pradesh
E and the State of Uttarakhand. Under the Act, 9 November 2000 was the
appointed day. During the initial days after its formation, the State of
Uttarakhand was facing an acute shortage of officers in various
departments including the Secretariat. The State of Uttarakhand was
seeking help from the State of Uttar Pradesh and the Central Government
to provide human resources. The Central Government, by its letter dated
F 15 September 2004, permitted the transfer of employees on the basis of
the mutual consent of both the States. The State of U.P. gave options to
existing employees appointed before 9 November 2000 for transfer of
their services to the State of Uttarakhand. However, despite those efforts,
a number of vacancies continued in the newly formed State of
G Uttarakhand. Hence, various employees who were already employed
with the State of U.P. prior to the appointed day were provided with a
choice of permanent transfer of service to the State of Uttarakhand. In
the meantime, in the case of persons such as the appellants where
recruitments were completed but appointment letters were not issued
the appointment letters indicated that their services may be allotted either

H

to the State of Uttar Pradesh or the State of Uttarakhand after the appointed day. The services of the appellants were transferred and absorbed by the State of Uttarakhand with the mutual consent of both the states. Since then the appellants have been continuing as employees of the State of Uttarakhand. A

20. There is no infirmity in the procedure adopted by both the states in the transfer of employees, on the basis of mutual consent. This was clearly contemplated by the letter dated 15 September 2004 of the Government of India in the Ministry of Personnel, Public Grievances and Pensions. Hence, we are unable to agree with the view of High Court. B

21. Accordingly, we allow the appeals and set aside the impugned judgment and order of the High Court. There shall be no order as to costs. C