

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 872 of 2011 (S/S)

Sri Har Singh Gusain
S/o Sri Mangal Singh
Posted as Stenographer in the District Rural
Development agency, Nainital at Bhimtal

.....Petitioner

Versus

1. State of Uttarakhand through Secretary Rural
Development, Govt. of Uttarakhand, Dehardun
2. Deputy Commissioner (Administration) Rural
Development, Uttarakhand Pauri Garhwal
3. Chief Development Officer, District Rural
Development Agency, Nainital

.....Respondents

ANDWrit Petition No. 1101 of 2011 (S/S)

Anil Kumar Jain
S/o Sri Bimal Prasad Jain
Posted as Investigator (Technical)
District Rural Development Agency, Haridwar

.....Petitioner

Versus

1. State of Uttarakhand through Secretary Rural
Development, Govt. of Uttarakhand, Dehardun
2. Deputy Commissioner (Administration) Rural
Development, Uttarakhand Pauri Garhwal

3. Chief Development Officer, Hardwar

.....Respondents

Mr. C.D. Bahuguna, Senior Advocate, assisted by Mr. A.K. Verma, Advocate, present for the petitioners.

Mr. A.S. Rawat, Additional Advocate General, assisted by Mr. Subhash Upadhyaya, Standing Counsel present for the respondents.

Hon'ble Prafulla C. Pant, J.

Hon'ble Sudhanshu Dhulia, J.

Hon'ble Servesh Kumar Gupta, J.

Oral: Hon'ble Prafulla C. Pant, J.

In both the above writ petitions the petitioners have challenged their transfer orders from one District Rural Development Agency (for short DRDA) to another.

2. Heard learned counsel for the parties at length, and perused papers on record.

3. Brief facts are that the writ petitioner [of writ petition no. 872 of 2011 (S/S)] Har Singh Gusain was initially appointed as junior clerk by District Magistrate/Chairman DRDA, Nainital, vide letter dated 02.03.1987. Later, he was promoted as Stenographer vide order dated 28.02.1992, by Chief Development Officer/ Chairman DRDA, Nainital. He is transferred vide impugned order dated

11.07.2011, passed by respondent no. 2 Dy. Commissioner (Administration) Rural Development, Pauri Garhwal, from DRDA Nainital to DRDA Champawat. Aggrieved by said order, the writ petition has been filed by said writ petitioner, *inter alia* on the ground that an employee of one DRDA cannot be transferred to another.

4. In writ petition no. 1101 (S/S) of 2011, the facts are that writ petitioner Anil Kumar Jain was appointed as Investigator (Technical) /Assistant Engineer by District Magistrate/ Chairman DRDA, Hardwar, vide order dated 02.02.1990. In said appointment letter it is clearly mentioned that the services of the appointee (Anil Kumar Jain) are transferrable to any District within the State. He is aggrieved by the impugned order dated 11.07.2011, passed by respondent no. 2 Dy. Commissioner (Administration) Rural Development, Pauri Garhwal, whereby said writ petitioner has been transferred from DRDA, Hardwar to DRDA Almora. This writ petitioner has challenged his transfer order *inter alia* also on the ground that his services are not transferrable from one DRDA to another.

Both these writ petitions were being earlier heard by learned single judge.

5. In writ petition no. 872 (S/S) of 2011, vide order dated 20.06.2012, learned Single Judge observed that in view of the conflicting decisions of Division Benches of this Court, the issue as to whether DRDA is an autonomous body, and whether the employee of one DRDA can be transferred to another DRDA requires to be resolved by Larger Bench. In writ petition no. 1101 (S/S) of 2011, it was directed that order passed in the writ petition no. 872 (S/S) of 2011, be seen.

6. Hon'ble the Chief Justice vide his Lordship's order dated 25.06.2012, constituted this Bench before whom the matter was referred and writ petitions were directed to be listed.

7. Rule 6 of Chapter V of Rules of Court (applicable to High Court of Uttarakhand) provides that Hon'ble the Chief Justice may constitute a Bench of two or more judges to decide a case or any question of law formulated by a Bench hearing a

case. It further provides that in the later event the decision of such Bench on the question so formulated shall be returned to the Bench hearing the case, and that Bench shall follow that decision of such question and dispose of the case after deciding the remaining question if any, arisen therein. In the present case there is no formal formulation of questions but learned Single Judge in its order observed that above mentioned issue on account of conflicting decisions requires to be resolved by a Larger Bench on which Hon'ble the Chief Justice has referred the matter by constituting this Bench.

8. The two questions which are required to be answered in the present case can be formulated as under:-

I. *Whether a District Rural Development Agency (DRDA) is an autonomous body or not ?*

II. *Whether an employee of one DRDA can be transferred to another DRDA within a State ?*

Answer to Question No. I:-

9. The word '*autonomous*', as defined under

Webster's Third New International Dictionary, means___living under one's own laws or independent or having right or power of self governance. The Oxford English Dictionary (Second Edition) Volume- I explains meaning of word '*autonomous*' as___ making or having one's own laws or independent. Now, we would like to examine the object of constituting a DRDA and its nature and functions, before holding as to whether it can be said to be autonomous or not.

10. The concept of DRDA was visualized by the Government of India as a specialized and professional agency capable of maintaining the Anti Poverty Programmes of Ministry of Rural Development, and effectively relate these to the over all effort of poverty eradication in the District. In the other words, a DRDA is required to watch over, and ensure effective utilization of the funds intended for Anti Poverty Programmes. The DRDAs are expected to co-ordinate with the Line Department, Panchayati Raj Institutions, NGOs as well as Technical Institutions with a view to gather the support, and resources required for poverty

eradication. Role and functions of DRDAs as given in 'REGULATIONS' framed by the Ministry of Rural Development of Government of India provides that DRDAs would maintain their separate identity but will function under chairmanship of the Chairman of the Zila Parishad. And, in absence of Zila Parishad the DRDA would function under the District Magistrate/ Dy. Commissioner as the case may be.

11. It is relevant to mention here that expression 'Rural Development' nowhere finds place in either of the three lists of Seventh Schedule of Constitution of India, but Schemes meant for 'Rural Development' not only cover many of the subjects of State list like item no. 14, 15, 17 and 21 but also the items no. 20, 29, 38 of concurrent list. As such, it can be said that executive powers of the State extends under Proviso to Article 162 of Constitution of India subject to as limited by Clause (2) of Article 246 read with proviso to Article 73 of Constitution of India.

12. On the point of administration of DRDAs,

the 'REGULATIONS' framed by Government of India provide that DRDA shall be a registered society registered under Society Registration Act or distinct cell in the Zila Parishad having separate identity. The 'REGULATIONS' further provide that Chairman of Zila Parishad shall be a Chairman of Governing body of DRDA. However, executive and financial functions would lie with Chief Executive Officer of Zila Parishad/ the District Collector who shall be designated as Chief Executive Officer. It further provides that whenever Zila Parishads are not in existence or are not functional, the DRDAs would function under Collector/District Magistrate/Dy. Commissioner of the District as the case may be. In the composition of the governing body apart from the Chairman of Zila Parishad, the Members of Parliament, Members of Legislative Assembly, District Magistrate, Heads of co-operative Banks, District Lead Banks, NABARD Representatives, Representatives of NGOs etc., have their right of representation. Para 5.5 of the Chapter V of 'REGULATIONS' provides that all executive and financial powers of DRDA shall be exercised by the Executive Committee as per a scheme of

delegation of financial and executive powers to be determined by each State, and this Committee (through its Chief Executive Officer) will be fully accountable in all matters of DRDA to the governing body as well as to the Government.

13. On the functional procedures Chapter VI of REGULATIONS framed by Government of India, provides that the scheme of 'DRDA Administration' shall be a centrally sponsored scheme. The funds required under this programme shall be shared between the Centre and the State in the ratio of 75:25. Funds will be released directly to the DRDAs, in accordance with the guidelines under this programme.

14. From the above mentioned provisions in the REGULATIONS framed by the Department of Rural Development of Government of India, it is clear that though DRDA of each District is required to be registered as a society under the Registration of Societies Act but it cannot be said to be a autonomous body, as it has no law or rules making powers, for self governance.

15. Therefore, we answer Question No. I in negative.

Answer to Question No. II:-

16. The 'REGULATIONS' issued by Ministry of Rural Development of Government of India, regarding functioning of DRDAs contains provisions relating to organizational structure of the DRDAs. It provides that each District will have its own District Rural Development Agency, and ordinarily it would be a society registered under a Societies Registration Act. It further provides that the State Government may modify the structure of DRDAs suitably, but without altering basic design, to take care of the needs of individual Districts keeping in view their size as well as specificity . The REGULATIONS further provides that by and large the staff appointed in DRDAs should be dedicated to DRDA related works, and should not be frequently transferred. Each DRDA is required to have seven wings namely (1) Self Employment Wing (2) Women's Wing (3) Wage Employment Wing (4) Engineering Wing (5) Accounts Wing (6)

Monitoring and Evaluation Wing, and (7) Chief Administrative Wing.

17. Chapter relating to Personnel Policy of the DRDAs in REGULATIONS provides that as a matter of policy the DRDA should not have any permanent Staff. Taking employees on deputation to DRDA for specific period has an advantage of better choice of staff. To start with, DRDAs should no longer be allowed to make any direct recruitment. It further provides the manner in which Project Director and the officers of level of APOs are to be selected. It is pertinent to mention here that 'REGULATIONS' containing instructions of Government of India, in pursuance to Schemes w.e.f. 1 April 1999, is published in the year 2002.

18. Learned counsel for the writ petitioners referred the case of *General Officer Commanding - In-Chief vs. Dr. Subhash Chandra Yadav, AIR 1998 SC-876*, and argued that as an employee of one Cantonment Board cannot be transferred from one Board to another, an employees of DRDAs also cannot be transferred from one DRDA to another.

However, we are of the view that the status of the Cantonment Boards is undoubtedly is that of autonomous bodies as they have certain powers of self governance, but the DRDAs cannot be equated with the Cantonment Boards as they cannot be said to be an autonomous bodies for the reasons already discussed above in answer to Q no. I.

19. Similarly, principle of law laid down in *Jawaharlal Nehru University vs. Dr. K.S. Jawatkar AIR 1989 SC 1577*, referred on behalf of the writ petitioners is of no help to them for the reason that unlike Jawaharlal Nehru University and Manipur University which are autonomous bodies under the separate statutes, DRDAs have no such status.

20. The conflicting views of Division Benches of this Court are also placed before us and relied by the rival parties. The writ petitioners relied on the judgment and order dated 16.04.2010, passed by Division Bench of this Court in Special Appeal No. 43 of 2009, State of Uttarakhand vs. Mohan Lal. In said judgment the Division Bench in its para 4 has observed as under:

“It is not disputed that each district has a DRDA which is a separate and independent body, registered under the Societies Registration Act, 1860. Thus, DRDA, Udham Singh Nagar and DRDA, Almora both are independent Registered Government Societies. The incumbents of one society cannot be transferred to another society. The State Government neither has any pervasive control over the incumbents of the DRDA nor it has any authority to transfer an employee of DRDA to another district. In our view, the Hon’ble Single Judge has rightly set aside the impugned transfer order vide order dated 26.09.2008”.

21. On the other hand, on behalf of the respondents judgment delivered by two Division Benches of this Court in writ petition no. 147 of 2009 (S/B), and writ petition no. 115 of 2008 (S/B) are read out before this Court. In both i.e., the judgment and order dated 27.12.2010, passed by Division Bench of this Court in writ petition no. 147 of 2009 (S/B), and in judgment and order dated 09.09.2008, passed by another Division Bench of this Court in writ petition no. 115 of 2008 (S/B) Ravindra Kumar Rajwar vs. State of Uttarakhand, the transfer orders of writ

petitioners from one District to another District were up held on the same ground. In both these cases the writ petitioners were initially appointed in DRDA of hill districts. When they were transferred from their original DRDAs to the district of planes, they readily accepted the transfer orders, and complied with the same but when they were transferred from DRDAs of district of planes to DRDAs of hill districts they challenged their transfer orders on the ground that the DRDAs are independent bodies and their services were not transferrable. In both the cases the Division Benches of this Court took the view that since in their earlier transfer orders, the writ petitioners (of said cases) had accepted their transfers as valid, and complied with earlier transfer orders from their original DRDAs, it was not open for them to challenge subsequent transfers on the ground that their services were not transferrable.

22. In the present writ petitions both the petitioners have challenged their transfer orders from their original DRDAs where they were appointed, as such the principle of estoppel which

was made applicable against the writ petitioners of writ petition no. 147 of 2009 (S/B) ,and writ petition no. 115 of 2008 (S/B) does not apply as against them (present petitioners). In our opinion the view taken in writ petition no. 147 of 2009 (S/B) Prem Prakash Tamta vs. State of Uttarakhand, decided on 27.12.2010, and the one in writ petition no. 115 of 2008 (S/B) Ravindra Kumar Rajwar vs. State of Uttarakhand, decided on 09.09.2008, in the circumstances of said cases, is correct. But it cannot be said that said view can be made applicable to the case where an employee is getting transferred for the first time from the original DRDA where he was appointed.

23. Para 13 of the Government Order No. 2350/30-1-94-41 P-92 Rural Development Section 1 Lucknow, dated 17.03.1994, issued by Government of Uttar Pradesh (applicable to State of Uttarakhand) provides that the incumbents of the post in which his Excellency Governor or the Commissioner, Rural Development Department is the appointing authority, in DRDA, can be transferred from one DRDA to another. This

Government Order is independent and not challenged by the present petitioners, nor we are shown any case law wherein the aforesaid clause in the Government Order is quashed by any Court. As such the aforesaid para of the Government Order still holds good. The appendix of the Government Order dated 17.03.1994, classifies the posts in which the Governor or the Commissioner, Rural Development, are the appointing authorities. The appendix of the Government Order further discloses that in the cases of Junior Clerk, Junior Typist, Stenographers, Drivers and Class four Employees neither His Excellency the Governor, nor Commissioner Rural Development is the appointing authority. The writ petitioner Hari Singh Gusain of writ petition no. 872 of 2011 is a Stenographer whose appointing authority was neither the Governor nor the Commissioner Rural Development, as such it cannot be said that his services were transferrable from the DRDA in which he was originally appointed unless he consents for the same, or it has become necessary for the exceptional reasons that he be transferred. None of the two conditions get fulfilled in respect of

the writ petitioner of Writ Petition no. 872 of 2011 (S/S).

24. But same cannot be said for the writ petitioner Anil Kumar Jain of writ petition no. 1101 (S/S) of 2011, who is a Assistant Engineer/ Investigator (Technical) in DRDA, Hardwar. Appendix of the Government Order No. 2350/30-1-94-41 P-92 Rural Development Section 1 Lucknow, dated 17.03.1994, provides that appointing authority for the post of Assistant Engineer is the His Excellency the Governor as such his services are transferrable from one DRDA to another DRDA as mentioned in para 13 of the Government Order. Apart from this as discussed in para 4 of this judgment, Sri Anil Kumar Jain has accepted the appointment containing the term he can be transferred within the State.

25. We think it just and proper to mention here that the 'REGULATIONS' framed by the Department of Rural Development of Government of India in para 2 of Chapter 2 relating to organizational structure of the DRDAs provides

by and large the staff appointed in DRDA should be dedicated to DRDA related works, and cannot be frequently transferred. This provision also indicates that an employee of one DRDA can be transferred to another DRDA only in exceptional circumstances. Therefore, in our opinion where the employee of DRDA whose appointing authority is neither the Governor, nor Commissioner Rural Development, can be transferred only in exceptional circumstances, and the transfer order must speak of the circumstances in which the transfer was necessary.

26. Accordingly Question No. II stands answered.

27. For the reasons as discussed above, the writ petition no. 872 of 2011 (S/S) Har Singh Gusain vs. State of Uttarakhand, is hereby allowed. The impugned transfer order dated 11.07.2011, passed by respondent no. 2 is hereby quashed. But the writ petition no. 1101 (S/S) of 2011, is dismissed, and interim order dated 27.08.2011, stands vacated.

(Servesh Kumar Gupta, J.) (Sudhanshu Dhulia, J.) (Prafulla C. Pant. J)

18 .09.2012

Parul

