

SUPREME COURT OF INDIA

Dr. Ram Deen Maurya

Vs.

State of U.P.

C.A.No. of 2009

(Tarun Chatterjee and H.L. Dattu JJ)

17.04.2009

JUDGEMENT

H.L. DATTU, J.

Leave granted in these special leave petitions.

1) In these appeals, the appellants question the correctness or otherwise of the judgment and order passed by the High Court in Civil Misc.

Writ Petition No.5014 of 2006 dated 04.10.2007. By the impugned order, the Court, while allowing the writ petition, has quashed the order passed by the State Government dated 09.01.2006, wherein and whereunder the State Government had granted permission for transfer 1 of petitioner - Dr. Ram Deen Maurya from A.P.N. College, Basti to D.A.V. Post Graduate College, Lucknow, to the post which had fallen vacant due to the retirement of Dr. Ram Autar Singh.

2) Case of the petitioner - Dr. Ram Deen Maurya :- Petitioner is working as a Lecturer in A.P.N. Post Graduate College, Basti in the Department of Economics. On 30.06.2002, a post of a Reader fell vacant in the Department of Economics due to the retirement of Dr.

Ram Autar Singh in D.A.V. Post Graduate College, Lucknow. The petitioner wanted to be transferred from A.P.N. Post Graduate College, Basti to D.A.V. Post Graduate College, Lucknow to the aforesaid vacant post. Therefore, petitioner on 12.03.2005 applied for No Objection Certificate ('N.O.C.' for short) before the management of D.A.V. Post Graduate College for the transfer to the said vacant post. By a Resolution dated 04.04.2005, the management of D.A.V. College unanimously decided in favour of the petitioner for the issuance of NOC and accordingly issued the NOC in favour of the petitioner on 03.05.2005 for the said transfer. Petitioner on 05.05.2005 applied for the issuance of NOC in his parent College viz.

A.P.N. College for transfer to D.A.V. Post Graduate College. The authorized Controller of the A.P.N. College considered the 2 application of the petitioner and issued NOC for the said transfer on 30.05.2005. The Principal of A.P.N. College on 31.05.2005, sent the application of the petitioner to the Director of Education, (Higher Education), Uttar Pradesh for its consideration and recommendation as provided in the Uttar Pradesh Aided College Transfer of Teachers Rules, 2005.

3) Case of Dr. Madhu Tandon - Respondent No.5 : - On 24.10.2004, she had made an application

for issuance of NOC with regard to her transfer to D.A.V. Post Graduate College before the management of her parent institution, viz. Prayag Mahila Vidyapeeth College, Allahabad. In this regard, NOC was issued by the management of P.M.V. College in her favour for the said transfer on 21.12.2004. Dr.

Madhu Tandan, then made an application before the Management of D.A.V. Post Graduate College, for grant of NOC for her transfer to their institution. The said application was considered and a resolution was passed by the Committee of Management of D.A.V. Post Graduate College in the meeting held on 04.04.2005. Based on the aforesaid resolution, the manager of D.A.V. Post Graduate College issued NOC on 28.04.2005. After getting NOC from both the Colleges, Dr. Madhu Tandon submitted her application to the 3 Director of Education, seeking her transfer from her Parent College to D.A.V. Post Graduate College.

4) The Director of Education (Higher Education), duly processed the said application and forwarded his recommendation to the Secretary, Allahabad Education Department, Government of U.P. on 17.06.2005 for transfer of Dr. Madhu Tandon from Prayag Mahila Vidyapeeth Degree College, Allahabad to DAV Post Graduate College, Lucknow, though the transfer application of Dr. Ram Deen Maurya was also available in his office.

5) It is stated that the petitioner had approached the Director of Education on 23.06.2005 to enquire about his transfer application and it appears that he was informed that his transfer application is not available in their records. It is further stated, that, the petitioner gave an application to the Joint Secretary, Education Department along with the Photostat copy of the application submitted before the Director of Education (Higher Education). It is further stated, that, on 24.06.2005, the petitioner filed a representation to the Secretary Higher Education, Government of U.P. and also before the Director of Education, inter alia stating that he had also made an application for the transfer to D.A.V. Post Graduate College and, however, 4 without considering his application, only the application filled by Dr.

Madhu Tandon has been recommended to the Secretary Higher Education for transfer. It is also stated in the representation that only his name had been approved by the Management Committee of DAV Post Graduate College for the said post but the Director of Education has failed to recommend his case for transfer. It is also stated that in response to the query made by the Secretary, Education Department, the Director of Education by his letter dated 11.07.2005 had informed the Secretary for Higher Education, that the name of Dr. Madhu Tandon has already been recommended by the Directorate on 17.06.2005 for the transfer to the vacant post due to retirement of Dr.

Ram Avatar Singh. It is also clarified that the management of DAV Post Graduate College, Lucknow has given No Objection Certificate to both Dr. Madhu Tandon and Dr. Ram Deen Maurya, but the transfer application of Dr. Madhu Tandon was received earlier than Dr. Ram Deen Maurya and, therefore, the recommendation for transfer of Dr. Madhu Tandon has been sent to the State Government and due to non-availability of the post, the application of Dr. Ram Deen Maurya is not considered and recommended.

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6) The Joint Secretary, Higher Education, after considering the No Objection Certificates issued, one in favour of Dr. Madhu Tandon and another in favour of Dr. Ram Deen Maurya for the transfer on the same post which fell vacant on the retirement of Dr. Ram Autar Singh on 30.06.2002 sought clarification from Manager D.A.V. Post Graduate College, Lucknow, vide letter dated 09.09.2005,

to clarify whose application should be considered for the transfer to the vacant post, which has fallen vacant on the retirement of Dr. Ram Autar Singh. In response to the clarification so sought, the Manager of DAV Post Graduate College, Lucknow, has informed the Secretary, Education Department that the NOC given in favour of Dr. Ram Deen Maurya should be treated as valid NOC for the purpose of transfer to the vacant post and the transfer order may be issued to Dr. Ram Deen Maurya to join the vacant post in the Department of Economics in D.A.V. Post Graduate College.

7) The Director of Education by his letter dated 20.09.2005 sought clarification from the President of the Committee of Management of DAV Post Graduate College, as to out of two No objection certificates issued by them to two applicants, which No Objection Certificate should be accepted by him to make his recommendation to the State Government for transfer of the applicants to their institution.

In response to this letter, the President of the Committee of Management, vide his letter dated 20.09.2005 has informed the Director of Education that the No Objection Certificate issued to Dr.

Madhu Tandon is one which is issued at the earliest point of time and, therefore, the same should be accepted for the purpose of transfer.

8) To add to this confusion, the Manager of DAV Post Graduate College, vide his letter dated 27.10.2005 has informed the Secretary to the Education Department that sanction has been granted by Regional Higher Education Officer on 25.10.2005 for the post which has fallen vacant due to retirement of Dr. Ram Autar Singh and requested him to transfer Dr. Ram Deen Maurya to that post.

9) Case of DAV Post Graduate College, Lucknow:- Dr. Madhu Tandon on 26.02.2005 submitted an application for issuance of NOC for her transfer to the said College to the vacant post in view of the retirement of Dr. Ram Autar Singh. Dr. Ram Deen Maurya also submitted an application on 12.03.2005 for the very same purpose.

Accordingly, a resolution was passed on 04.04.2005 by the Committee of Management with regard to issue of NOC to the applicants. It is further stated, that the Committee took a unanimous decision that it would have no objection if Dr. Ram Deen Maurya is transferred to the vacant post of teacher in the Economics Department by the State Government and, whereas, in respect of Dr. Madhu Tandon, the Committee took the decision that the Committee would have no objection, if Dr. Tandon is transferred by the State Government in the absence of sanction of post as per Rules. It is also stated that on 28.04.2005, the Committee of Management of the College issued a NOC in favour of Dr. Madhu Tandon and, on 03.05.2005 another NOC was issued in favour of Dr. Ram Deen Maurya. It is also their case, that the President, and the Deputy Manager of Committee of Management, issued a false certificate that no resolution recommending the name of Dr. Ram Deen Maurya for transfer was passed on 23.07.2005. It is also stated, that, the Joint Secretary, Education Department had sought clarification from the Manager, D.A.V. Post Graduate College, to clarify as to which of the two No Objection Certificates issued for the purpose of transfer to the vacant post should be considered. It is their further stand, that, the Manager in his reply dated 12.09.2005, had stated that the NOC issued in favour of Dr. Ram Deen Maurya be considered for the transfer to the vacant post. It is also stated that the President of the Management Committee by his letter dated 17.11.2005 to the Director of Education had falsely informed that by resolution dated 04.04.2005, Dr. Madhu Tandon's application was only considered in respect of issuance of NOC.

10) Order Passed by the State Government :- The Secretary, Government of Uttar Pradesh, vide its

order dated 9.1.2006 accorded permission for transfer of Dr. Ram Deen Maurya from A.P.N College, Basti to D.A.V. Post Graduate College.

11) Reliefs sought in the Writ Petition :- Dr Madhu Tandon, being aggrieved by the order passed by the State Government dated 09.01.2006, filed a writ petition before Allahabad High Court in WP No.5014 of 2006, inter alia requesting the Court to issue a writ in the nature of certiorari to quash the order passed by the State Government and further to direct the State Government to issue necessary orders transferring her to the post of Lecturer in Economics to the substantive vacancy caused due to the retirement of Dr. Ram Autar Singh.

12) Order passed by the High Court :- The High Court has allowed the writ petition and has granted the reliefs sought for by the petitioner in the writ petition and while doing so, the Court has looked into original records produced by the Management of D.A.V. Post Graduate College. In the course of its order, the Court has observed, that, the original register produced by the Manager in respect of the meeting held on 04.04.2005, does not inspire confidence and, therefore, the same cannot be relied on. Secondly, the Manager of the College could not have issued a second No Objection Certificate against the same vacancy in favour of Dr. Ram Deen Maurya and, consequently, the order of the State Government cannot be sustained, since it is based on considerations of irrelevant documents. The Court has also observed, that the State Government having regard to the provisions of the Act and the rules framed thereunder, can accept the recommendation of the Director of Education or take its own decision in the matter having regard to the relevant prayers and documents received, and it is highly inappropriate on the part of the State Government to enter into private correspondence with the Manager of DAV Post Graduate College and to make a decision on the basis of the document received behind the back of the incumbent.

The Court by way of finding of fact has also observed that the Committee of Management of DAV Post Graduate College in fact had granted NOC in favour of Dr. Madhu Tandon and that the NOC 10 issued in her favour was prior in point of time to the grant of NOC in favour of Dr. Ram Deen Maurya.

13) Submissions :- The learned senior counsel Sri S.R. Singh, appearing for the petitioner, would contend that the Committee of Management of D.A.V. Post Graduate College had passed the first resolution in favour of petitioner on 04.04.2005 and in pursuance thereof, No Objection Certificate was issued to the petitioner on 03.05.2005 for his transfer to DAV College and, therefore, the State Govt. was justified in passing the order dated 09.01.2006. It is further submitted, that, the application said to have been filed by the respondent No.5 was invalid and nonest in law, since the same was sent directly to the Director of Education. While elaborating this submission, the learned senior counsel would submit, that, under the Uttar Pradesh Aided College Transfer of Teachers Rules, 2005, the transfer application for single transfer from one College to the other requires to be submitted to the Director of Education, (Higher Education) through the Management constituted and approved by the University along with the written consent of both the Management and since the application submitted by the contesting respondent was contrary to the statutory rules, the same is invalid and contrary to the rules. The learned senior counsel would also contend, that, when the 11 Rules prescribe a particular procedure to be followed for submitting the application for single transfer, the same requires to be followed and any deviation would disentitle the applicant to claim relief under the Rules. In aid of this submission, the reliance is placed on the Emperor, (1936 PC 253) and the decision of this Court in the case of 14) The learned Senior counsel appearing for DAV College, would contend, that, the reasoning and the conclusion reached by the High Court, is manifestly erroneous, for the reason, that, the Court could not have come to the conclusion that the

resolution dated 04.04.2005 in which the decision to grant NOC in favour of Dr. Ram Deen Maurya was taken, cannot be believed due to the reason that it does not contain the signature of all the members, whereas the agenda notice had been signed by all the members and the minutes of that meeting were ratified in the next meeting held on 06.05.2005. It is further contended that the High Court was not justified in holding that in an emergent meeting no decision with regard to ratification of an earlier meeting can be taken, when there is no prohibition in law for arriving at such a decision in an emergent meeting. The learned 12 senior counsel would submit, that, the court may not justified in holding that No Objection Certificate issued in favour of Dr. Madhu Tandon is in respect of vacant post of Lecturer in the DAV College and, whereas a perusal of the NOC, it only says that the College has no objection if Dr. Madhu Tandon is transferred on an unsanctioned post and, therefore, the Court could not have substituted its own decision while interpreting the NOC granted in favour of Dr. Madhu Tandon. It is further submitted by the learned counsel, that, the State Government cannot enter into private correspondence with the Manager of the institution when the Rules authorize the State Government to arrive at a decision either on the basis of the recommendation made by the Director or on its own and, therefore, in view of Rule 4(6) of the Rules 2005, the Court could not have taken any exception to the procedure adopted by the State Government in corresponding with the Management of D.A.V. College. It is further submitted that since the NOC issued in favour of Dr. Madhu Tandon was issued before the NOC issued in favour of Dr. Ram Deen Maurya and, therefore, another NOC should not have been issued in favour of Dr. Ram Deen Maurya whereas a perusal of the two NOC would reveal that they are different and, thus, no conflict existed between 13 the two NOC's and therefore, the Management of DAV could not have issued NOC in favour of Dr. Ram Deen Maurya is an erroneous conclusion reached by the court.

15) The learned counsel appearing for contesting respondent, however, supported the impugned judgment.

16) Our conclusion :- The undisputed facts are, D.A.V. Post Graduate College, Lucknow is affiliated to Lucknow University, Lucknow.

The provisions of the State Universities Act, 1973, and the provisions of U.P. Higher Education Services Commission Act, 1980 are made applicable to the teachers of the said College. By U.P. Ordinance No.14 of 2004, Section 2 of the Act, 1980 is amended and a provision for the transfer of the teachers/lecturers from one aided degree College to another aided degree College, on fulfillment of certain conditions is provided therein. The rules are framed to give effect to the amended provisions and they are known as the Uttar Pradesh Aided College Transfer of Teachers Rules, 2005 ('Rules' for short). The rules are published in the Government Gazette on 9th of April, 2005 and they are made applicable with immediate effect. The rules provide for the meaning of the expressions, apart from others, the "Management", "Teacher" etc., Rule 4 speaks of conditions of 14 transfer of teachers appointed on regular basis and holding lien as permanent teacher, shall be entitled to transfer after 10 years of service only once in the whole service period. Rule 6 speaks of manner and the method for making an application for the purpose of transfer. In order to appreciate the submissions of learned senior counsel Mr. S.R. Singh, the Rule 6 of the Rules requires to be extracted. The same is as under:- "The transfer application for single/mutual transfer from one College to the other should be submitted to the Director, Higher Education through the Management legally constituted and approved by the University along with the written consent of both the managements. The Director, Higher Education shall submit his recommendation to the Government within one month from the date of receipt of the application. The Govt. shall take decision either on the basis of the recommendation of the Director or on its own."

17) Rule 6 of the Rules provides the procedure for making an application by a teacher desirous of transfer from one college to another college against the available post for which salary is paid from the salary Payment Account. Under the rule, the transfer application for single or mutual transfer from one college to the other college requires to be submitted through the legally constituted management, along with the written consent of both the management to the Director of Higher Education. It is the submission of learned counsel Shri S.R. Singh, 15 appearing for the appellant, that Dr. Madhu Tandon - Respondent No. 5, has not submitted her application for transfer from her parent college to D.A.V. Post Graduate College, but has directly submitted the application to the Director of Higher Education. Therefore, according to the learned Senior Counsel, there is breach of statutory Rules and the Director of Higher Education ought not to have entertained and recommended the case of Respondent No. 5 to the State Government. In aid of this submission, the reliance is placed on the observations made by this Court in Dhanajaya Reddy's case, which is noticed and explained in the recent decision of this court in the case of Meera Sahni vs. Governor of Delhi (2008) 9 SCC 177, where in it is stated :- 31) "It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all.

The origin of this rule is traceable to the decision in Taylor vs. Taylor, which was followed by Lord Roche in Nazir Ahmad vs. King Emperor, who stated as under:

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32) This rule has since been approved by this Court in Rao Shiv Bahadur Singh vs. State of Vindhya Pradesh and again in Deep Chand vs. State of Rajasthan. These cases were considered by a three Judge Bench of this 16 rule laid down in Nazir Ahmad case was again upheld.

This rule has since been applied to the exercise of jurisdiction by Courts and has also been recognized as a salutary principle of administrative law."

18) We cannot have any quarrel with the aforesaid principle of law.

19) Having examined the rules and the principles evolved by the Courts, let us now examine whether non-compliance of one of the facet of Rule 6 of the Rules would be fatal to the application filed by Dr. Madhu Tandon. To answer this issue, it is necessary to find out, whether the rule is directory or mandatory. If it is mandatory, then it is settled rule of interpretation, it must be strictly construed and followed and act done in breach thereof will be invalid. But if it is directory, the act will be valid although the non-compliance may give rise to some other penalty if provided by the Statute. It is often said that a mandatory enactment must be obeyed or fulfilled exactly, but, a directory provision non-compliance of it, has been held in many cases as not affecting the validity of the act done in breach thereof (See principles of Statutory Interpretation, 11th Edition 2008 by Justice G.P. Singh).

20) Rule 6 of the rules is in four parts. They are, (i) The transfer application for single/mutual transfer shall be submitted to the 17 Director, Higher Education (ii) It shall be submitted through the management along with the written consent of both the management. (iii) The Director, Higher Education shall submit his recommendation to the Government within one month. (iv) The Government shall take decision either on the basis of recommendation of the Director or on its own. Filing of the application before

the Director (Higher Education) is a must for transfer, for the reason under the rules, it is he who is expected to consider the application to find out, whether the applicant is eligible for such transfer and whether the applicant has obtained consent or no objection from both the managements, namely, from the management where he or she is working and to the college where he or she wants to be transferred and if the requirement in this behalf is not complied with, the Director may reject the application at the threshold itself. Further, the rule specifically provides that the application for the purpose of Rule 4, must be filed only before him or no other authority of the State Government, this part of the rule requires to be considered mandatory. We will come to the second limb of the rule a little later. The third part of the rule says that the Director (Higher 18 Education) shall submit his recommendation within one month to the State Government, if there is any delay in making the recommendation, the rules do not provide that the recommendations so made, will not be considered by the State Government nor the rule says, if the recommendations are not received within the stipulated time, the State Government would ignore the recommendation and proceed to decide the request of the applicant independently. Therefore, this requirement of this part of rule is only directory and not mandatory, the non-compliance thereof will not make the application invalid. The fourth limb of the rule gives discretion to the State Government.

The State Government may accept the recommendation of the Director (Higher Education) and then proceed to pass an order on the application filed by the applicant/s for transfer. The discretion is also given to the State Government, that, in spite of recommendations made by the Director (Higher Education), it can also take a decision on its own. That only means that under all circumstances, the State Government need not accept the recommendations of the Director of Higher Education and it can take its own decision with the material available and also to take 19 such decision, collect material from the respective managements.

Since absolute discretion is provided to the State Government to take a decision either on the recommendation made by the Director of Higher Education or on its own in regard to the request of the applicant for a single time transfer from one college to another, this portion of the rule by no stretch of imagination can be construed as a mandatory. Now, we are left with second part of the rule. As we have already noticed, the learned senior counsel says, it is mandatory and non-compliance thereof would invalidate the application filed and the Director of Higher Education could not have recommended its consideration by the State Government.

The submission of the learned Senior Counsel looks attractive at the first blush, but on a consideration of the submission, in our view, it has no merit. At the first instance, we have to find out, whether this part of the rule is mandatory and its non-compliance is fatal, and assuming it is mandatory, whether the substantial compliance of this rule would satisfy the requirement of this part of the rule and its non-compliance would not be breach of the rules. We are fully aware that in Service Law Jurisprudence, it is mandatory that an employee is required to route through all his 20 applications to the higher ups through the head of the department;

where he or she is working. The object and the purpose appears to be that the head of the department should know the grievance, if any, of his employee which he is trying to project before a superior forum and it could also be in cases where the employee desires to apply for employment in a different organization. The object and the purpose of this exercise appears to maintain discipline in the institution or the organization.

21) In the instant case, on the request made by the applicant an NOC is granted and thereafter, routing through the application through the management is a requirement under the rules, and its

non-compliance thereof would not make her application invalid. In the facts and circumstances of this case, since both managements were fully aware that the applicant intends to shift herself to a college which may be helpful to her either to achieve better prospects in her profession or to suit her convenience. In our view, since it does not involve any public interest nor it would effect the interest of both the managements in any manner whatsoever, and since there is substantial compliance with the requirements of the rules, we cannot accept the submission of learned senior counsel 21 Shri S.R. Singh, appearing for the petitioner while considering the non-compliance of procedural requirement, it has to be kept in view, that, such a requirement is designed to facilitate justice and furthers its ends and, therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory.

22) In Rule 6 of the Rules, the rule making authority has used the expression 'shall' and, therefore, it is mandatory and not directory is the submission of the learned senior counsel. This submission of the learned senior counsel need not detain us for long, since similar issue had come up for consideration before this court in the case of M/s Rubber House vs. M/s Excelsior Needle Industries Pvt. Ltd., (1989) 2 SCC 813, wherein this court has observed, that, the word "shall" in its ordinary import is obligatory.

Nevertheless, the word "shall" need not be given that connotation in each and every case and the provisions can be interpreted as directory instead of mandatory depending upon the purpose which the legislature intended to achieve as disclosed by the object;

design, purpose and scope of the statute. While interpreting the 22 concerned provisions, regard must be had to the content, subject matter and object of the statute in question.

23) Having examined the rules, let us now take note of the fact situation as existing in the present case. Dr. Madhu Tandon has obtained NOC from her parent college and also from the college where she intends to be transferred. The NOC issued by both the colleges was earlier in point of time than that of NOC granted to Dr. Ram Deen Maurya. However, the case of management of D.A.V. Post Graduate College authorities is that the NOC granted to Dr. Madhu Tandon was not by the management of the institution, but by the President and Assistant Secretary, who were not authorized to issue such No Objection Certificate. The High Court while considering this issue, has looked into the records maintained by the college authorities and on facts has come to the conclusion that the NOC issued to Dr. Madhu Tandon is in order and, therefore, was not justified in contending contrary to their own records. In our view, the finding on facts by the High Court, by no stretch of imagination can be criticized as perverse findings.

We are in full agreement with the findings and conclusion reached by the High Court on facts.

24) For the reasons herein before mentioned, the appeals are dismissed with no order as to costs.

Cont..Pet. No.90 of 2008 In S.L.P.(C) No.22330/2007 In view of the orders passed in Civil Appeals arising out of S.L.P.

(C) No.22330 of 2007 and S.L.P.(C) No.11423 of 2008, nothing further survives in this contempt petition which is, accordingly, disposed of.