

STATE OF RAJASTHAN AND ORS.

v

ANAND PRAKASH SOLANKI

AUGUST 25, 2003

[R.C. LAHOTI AND ASHOK BHAN, JJ.]

*Service Law:*

*Appointment of President District Consumer Protection Forum by transfer from another district—Challenge to—Quashing transfer order the High Court observed that in the absence of any provisions relating to transfer of President/Members of District Forum, the State Government cannot transfer them—On appeal, Held: Power to make an appointment includes power to make an appointment by transfer—The power conferred on the National Commission is exercisable over the State Commission/District Fora—Reading the provisions mutatis mutandis some power conferred and exercisable by the State Commission over District Fora—Construing so, the State could exercise administrative control over District Fora—Hence, power of transfer could be exercised by the employer State unless there is an express bar in the provision, but it has to be exercised bonafide—The Consumer Protection Act does not prohibit the exercise of such power—Hence transfer order valid—Consumer Protection Act, 1986—Sections 10 and 24(B)—Interpretation of Statutes.*

*Words and Phrases:*

*'Transfer'—Meaning of—In the context of service jurisprudence.*

The questions which arose in the present appeal were as to whether a President or a Member of Consumer Protection Forum at district level could be transferred from one district to another; and if so, which is the competent authority to transfer them.

Allowing the appeal, the Court

**HELD:** 1.1. The concept of appointment by transfer is not unknown to service jurisprudence. A power to appoint includes a power to revoke an appointment, and so also a power to make an appointment includes a power to

**A** make an appointment by transfer, subject to satisfying the requirements of Section 10 of the Consumer Protection Act. The expression 'appointment' takes in appointment by direct recruitment, appointment by promotion and appointment by transfer. [962-E, F]

**B** *Indra Sawhney and Ors. v. Union of India and Ors.*, [1992] Supp. 3 SCC 217 and *K. Narayanan and Ors. v. State of Karnataka and Ors.*, [1994] Supp. 1 SCC 44, relied on.

**C** 1.2. Every appointment under sub-section (1) of Section 10 of the Act, though made by the State Government, is dependent on the recommendation of a selection committee headed by the President of the State Commission who is, or has been a Judge of a High Court. The administrative control over all the District Fora within the State has been vested in the State Commission in all the matters contemplated by clauses (i), (ii) and (iii) of sub-section (1) of Section 24B of the Act. The power conferred on the National Commission by clause (iii) of sub-section (1), exercisable by the National Commission over the State Commissions and District Fora, read *mutatis mutandis* confers the same power on the State Commission *qua* District Fora within the State by virtue of sub-Section (2) of Section 24 of the Act. Keeping in view the purpose sought to be achieved by these provisions, Section 24B has to be so construed as to spell out administrative control in favour of the National Commission over all the State Commissions and District Fora and in favour of the State Commission over all the District Fora within its jurisdiction, whenever there is any doubt. In other words, clauses (i), (ii) and (iii) of sub-section 24B of the Act have to be liberally and widely interpreted. [963-C, D, E]

**F** 1.3. The existence of one cadre is not essential and is not the *sine qua non* to make available the power of transfer. As District fora, more than one, are constituted within the State, there is nothing wrong in the President or members of one District Forum being appointed by transfer to another District Forum, subject to the requirement of sub-section (1A) of Section 10 being satisfied. Such appointment by transfer shall be made by the State Government but only on the recommendation of the Committee constituted. Such appointment by transfer cannot be a frequent or routine feature. The power is there but is meant to be exercised sparingly and only in public interest or in such exigencies of administration as would satisfy the purpose of constituting the District Forum. [963-G, H; 964-A]

**H** 1.4. The broader concept of 'transfer' is a change of the place of employment within an organization. Transfer is an incidence of public service

and the power to transfer is available to be exercised by the employer unless an express bar or restraint on the exercise of such power can be spelt out. The power, like all other administrative powers, has to be exercised *bona fide*. [964-B] A

*General Officer Commanding-in-Chief and Anr. v. Dr. Subhash Chandra Yadav and Anr.*, [1988] 2 SCC 351 and *Om Prakash Rana v. Swarup Singh Tomar and Ors.*, [1986] 3 SCC 118, distinguished. B

1.5. The process of transfer may involve the same considerations as governing a fresh appointment and there can be an appointment by transfer. The scheme of the Act does not prohibit or exclude the exercise of power to transfer the President or members from one District Forum to another District Forum within the State. Power to transfer vests in the State Government as employer and is available to be exercised on the recommendation of committee contemplated by sub-section (1A) of Section 10 of the Act. The view to the contrary taken by the High Court cannot be countenanced. [965-E, F] C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6733 of 2003.

From the Judgment and Order dated 8.10.98 of the Allahabad High Court in C.M.W.P. No. 968 of 1997.

Ranji Thomas, Ms. Bharti Upadhyaya and V.N. Raghupathy, Javed Mahmud Rao for State of Rajasthan. E

Pallav Shishodia, T. Mahipal for the Respondent.

The Judgment of the Court was delivered by F

**R.C. LAHOTI, J.** The questions arising for decision in this appeal are: Whether a President or a Member of the District Forum, constituted under Section 10 of the Consumer Protection Act, 1986 (hereinafter 'the Act', for short) can be transferred and if so, which is the competent authority to transfer them? These questions are of significance inasmuch as the answers are likely to have far reaching implications on the working of District Fora under the Act. G

Shri Anand Prakash Solanki, the respondent herein, was an officer belonging to the cadre of Rajasthan Higher Judicial Services. In the year 1996, he was working as a Special Judge in the cadre of Addl. District & Sessions H

A Judge in the State of Rajasthan. He was appointed as President, District Consumer Protection Forum, Pali vide order dated 9.2.1996. While he was discharging the function as President of the Forum, sometime in the month of November, 1999 he was informed telephonically by the State Government that he was being transferred and posted as President, District Consumer Protection Forum, Jalore and in his place another person was appointed/  
B posted as the President of the Forum at Pali. This telephonic communication was followed by a written communication dated 15.11.1999 appointing him as President, District Consumer Protection Forum, Banswara in supersession of the earlier orders.

C The respondent filed a writ petition challenging the order of his transfer. A Division Bench of the Rajasthan High Court held that the concept of transfer is unknown for the President and members of District Fora in the scheme of the Consumer Protection Act, 1986 and, therefore, a person appointed as President of any District Forum cannot be transferred by the State Government. The order of transfer was directed to be quashed. Feeling  
D aggrieved by the decision of the High Court, the State of Rajasthan has preferred this appeal by special leave. During the pendency of the petition, the respondent has retired and, having lost interest in contesting the matter, he has chosen not to make appearance. We requested Mr. Pallav Sishodia, Advocate, to assist the Court as an *amicus curiae*, which he agreed to do.

E We have heard Shri Ranji Thomas, the learned counsel for the State of Rajasthan and Shri Pallav Sishodia, the learned amicus.

Leave granted.

F A complete hierarchy of Commissions and Fora has been constituted from the national level to the district level by the Consumer Protection Act, 1986. There is a National Commission at the national level constituted under Section 20 of the Act and State Commissions constituted for the States under Section 16 of the Act. District Fora are constituted under Section 10 of the Act. These are the three-tier agencies established for the purpose of the Act  
G as contemplated by Section 9. Each State Commission consists of a person, designated as President, who is, or has been, a Judge of a High Court, appointed by the State Government after consultation with the Chief Justice of the High Court. Then there are the members. Section 17 confers on the State Commission appellate and supervisory jurisdiction over the District Fora in quasi-judicial matters. Section 24B inserted by Act No. 50 of 1993 w.e.f.  
H 18.6.1993 provides as under:-

"24B. *Administrative control.*—(1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely:- A

(i) calling for periodical return regarding the institution, disposal, pendency of cases; B

(ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents; C

(iii) generally overseeing the functioning of the State Commission or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom. D

(2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1)."

(underlining by us)

Each District Forum in a State is constituted under Section 10 of the Act which reads as under:- E

**"10 Composition of the District Forum.—**

(1) Each District Forum shall consist, of—

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President; F

(b) two other members, who shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs of administration, one of whom shall be a woman. G

(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:-

(i) the President of the State Commission. - Chairman H

- A (ii) Secretary, Law Department of the State - Member.  
 (iii) Secretary, incharge of the Department dealing with consumer affairs in the State - Member.

B (2) Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier, and shall not be eligible for re-appointment:

C Provided that a member may resign his office in writing under his hand-addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who has resigned.

D (3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.”

E It is clear from a bare reading of the abovesaid statutory provisions that though a District Forum is to be constituted and its President and members are to be appointed by the State Government, the power to appoint is exercisable only on the recommendation of a selection committee consisting of the President of the State Commission and two Secretaries of the State as provided by sub-Section (1A) of Section 10. The concept of appointment by transfer is not unknown to service jurisprudence. A power to appoint includes a power to revoke an appointment, and so also a power to make an appointment includes a power to make an appointment by transfer, subject to satisfying the requirements of Section 10 of the Act. The expression ‘appointment’ takes in appointment by direct recruitment, appointment by promotion and appointment by transfer. (See *Indra Sawhney and Ors. v. Union of India and Ors.*, [1992] Supp. 3 SCC 217, para 827, per Jeevan Reddy, J. In *K. Narayanan and Ors. v. State of Karnataka and Ors.*, [1994] Supp 1 SCC 44, the term ‘recruitment’ came up for the consideration of this Court and it was held that it is a comprehensive term which includes any method provided for inducting a person in public service such as appointment, selection, promotion and deputation which are all well known methods of recruitment and even appointment by transfer is not unknown. In *Union of India v. A.R. Shinde and Anr.*, [1987] 2 SCC 1, this Court noticed three modes of making recruitment, i.e. promotion, deputation and direct recruitment and at the same time held that an appointment by transfer too was unexceptionable.

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It cannot be lost sight of that the National Commission, State Commissions and District Fora have all been constituted to exercise jurisdiction over such grievances of the aggrieved persons which were earlier available to be raised before the conventional courts established under the Constitution and/or the laws. Inasmuch as the persons appointed to discharge functions under the Act at whatever level exercise judicial powers and are expected to function judicially consistently with the procedure as laid down by the Act or Rules framed thereunder, the very nature of the functions discharged by them needs them to be insulated from the control of, or interference by the Executive. So far as the District Fora are concerned, the purpose is sought to be achieved by sub-Section (1A) of Section 10 as also by Section 24B of the Act. Every appointment under sub-Section (1) of Section 10, though made by the State Government, is dependent on the recommendation of a selection committee which is headed by the President of the State Commission who is, or has been, a Judge of a High Court. The administrative control over all the District Fora within the State has been vested in the State Commission in all the matters contemplated by clauses (i), (ii) and (iii) of sub-Section (1) of Section 24B. The power conferred on the National Commission by clause (iii) of sub-Section (1), exercisable by the National Commission over the State Commissions and District Fora, read *mutatis mutandis* confers the same power on the State Commission *qua* District Fora within the State by virtue of sub-Section (2). Keeping in view the purpose sought to be achieved by these provisions, Section 24B has to be so construed as to spell out administrative control in favour of the National Commission over all the State Commissions and District Fora and in favour of the State Commission over all the District Fora within its jurisdiction, whenever there is any doubt. In other words, clauses (i), (ii) and (iii) abovesaid have to be liberally and widely interpreted.

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It is true that there is no cadre as such of the President and the members of the District Fora contemplated by the Act and this is the principal consideration which has prevailed with the High Court for holding that the President and members of District Fora are not liable to be transferred inasmuch as there is no single cadre of such persons in the State. We cannot subscribe to that view. The existence of one cadre is not essential and is not the *sine qua non* to make available the power of transfer. As District Fora, more than one, are constituted within the State, there is nothing wrong in the President or members of one District Forum being appointed by transfer to another District Forum, subject to the requirement of sub-Section (1A) of Section 10 being satisfied. Such appointment by transfer shall be made by the State

- A Government but only on the recommendation of the committee consisting of the President of the State Commission and two Secretaries, i.e. the committee composed as per sub-Section (1A) of Section 10. Such appointment by transfer cannot be a frequent or routine feature. The power is there but is meant to be exercised sparingly and only in public interest or in such exigencies of administration as would satisfy the purpose of constituting the District Forum.
- B The broader concept of 'transfer' is a change of the place of employment within an organization. Transfer is an incidence of public service and the power to transfer is available to be exercised by the employer unless an express bar or restraint on the exercise of such power can be spelt out. The power, like all other administrative powers, has to be exercised *bona fide*.
- C The High Court has in its judgment referred to two decisions of this Court namely *General Officer Commanding-in-Chief and Anr. v. Dr. Subhash Chandra Yadav and Anr.*, [1988] 2 SCC 351 and *Om Prakash Rana v. Swarup Singh Tomar and Ors.*, [1986] 3 SCC 118.
- D *Dr. Subhash Chandra Yadav's* case (*supra*) is one where the Central Government proposed to transfer the person in employment of one Cantonment Board to another Cantonment. This Court held that under the Cantonments Act, 1924 each of the Cantonment Boards is an autonomus body and the employees of one Cantonment Board cannot be transferred to another Cantonment Board inasmuch as the service under the Cantonment Board is not a centralized service or a service at the State level. The law so laid down has no applicability to the facts of this case. The President and members of the District Forum are in the employment of the State Government and all the Presidents and members of the District Fora within one State serve under the same employer at the State level.
- E In *Om Prakash Rana's*, case (*supra*) this Court was mainly concerned with the impact of the Services Commissions Act on the provisions of the Education Act and held that after the commencement of the Services Commissions Act, it was not permissible to invoke the provisions of the Education Act and regulations framed thereunder for the purpose of transferring a Principal from one institution to another because the subsequent Act had superseded the provisions of the earlier Act in that regard.
- F During the course of its judgment the Court held that the scheme under the relevant statutory enactments envisaged the appointment of a Principal in relation to a specific college and to no other. Different colleges may be owned by different bodies or organizations so that each Principal serves a different employer. On appointment as a Principal to a college a contract of employment
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with a particular employer comes into existence. A

The Court further, held—

“There is no State-level service to which Principals are appointed. Had that been so, it would have been possible to say that when a Principal is transferred from one College to another no fresh appointment is involved. But when a Principal is appointed in respect of a particular College and is thereafter transferred as a Principal of another College it can hardly be doubted that a new appointment comes into existence. Although the process of transfer may be governed by considerations and move through a machinery different from the considerations governing the appointment of a person *ab initio* as Principal, the nature of the transaction is the same, namely that of appointment, and that is so whether the appointment be through direct recruitment, through promotion from the teaching staff of the same Institution or by transfer from another institution.” B C

The abovesaid decision is partly distinguishable inasmuch as the transfer therein involved a change of employer which is not the case at hand. The principle laid down by this Court in *Om Prakash Rana's*, case (supra) rather supports the view which we have taken inasmuch as the Court has clearly spelled out that the process of transfer may involve the same considerations as governing a fresh appointment and there can be an appointment by transfer. D E

The scheme of the Act does not prohibit or exclude the exercise of power to transfer the President or Members from one District Forum to another District Forum within the State. Power to transfer vests in the State Government as employer and is available to be exercised on the recommendation of committee contemplated by sub-Section (1A) of Section 10 of the Act. The view to the contrary taken by the High Court cannot be countenanced. F

The appeal is allowed. The judgment of the High Court is set aside.

We place on record the appreciation of valuable assistance rendered by the learned amicus to the Court. G

S.K.S.

Appeal allowed.