

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
HON'BLE SRI JUSTICE RAKESH THAPLIYAL

28TH JUNE, 2023

WRIT PETITION (S/B) No. 21 OF 2023

Between:

Kedar Datt Joshi.

...Petitioner

and

State of Uttarakhand and others.

...Respondents

Counsel for the petitioner. : Mr. Sanjay Bhatt, learned counsel for the petitioner.

Counsel for respondent nos. 1 to 3. : Mr. B.S. Parihar, learned Standing Counsel for the State of Uttarakhand.

JUDGMENT : (per Sri Vipin Sanghi, C.J.)

The petitioner has preferred the present Writ

Petition to seek the following reliefs :-

- i. A writ, order or direction in the nature of certiorari to call for the record of the case and to quash the impugned office memorandum dated 30-12-2022 so far as it relates to transfer of Petitioner from Government Inter College Tanakpur to the office of Deputy Education Officer, Berinag, Pithoragarh with the stigma of insubordination and quarrel with one of the lecturers of college i.e. Respondent No. 4.*
Annexure No.8
- ii. A writ, order or direction in the nature of mandamus commanding the Respondents to allow the Petitioner to continue with his present place of posting till his retirement which is due in next 20 months.*

2. The impugned order of transfer of the petitioner has been placed on record, along with its translation. The translated copy of the impugned transfer order reads as follows :-

*"Directorate, Primary Education, Naroorkhera,
Dehradun
Order No. Services-3(2)/ 878 /2022-23 Dated 30
Dec,2022*

Office Memorandum

In Pursuant to the complaint made by Shri Badri Prasad Sharma Lecturer Geography GIC Tanakpur, Champawat to District Magistrate Champawat against Shri Kedar Datt Joshi Chief Administrative Officer GIC Tankpur Champawat dated 30-06-2022 and report provided by Chief Education Officer Champawat and on the basis of enclosed audio recording and viral video's in digital media vide Letter No. 3363-64/ Services- 03/2022-23 dated 18 July 2022 and Semi Official Letter No. Services -03/2022-23/3561/ dated 16 July 2022 as a result of being found prima facie guilty of violation of orders of higher authorities, gross indiscipline and willful conduct Mr. Kedar Datt Joshi, Chief Administrative Officer Government Inter College Tanakpur, Champawat has been suspended under the provisions of Uttarakhand Government Servant Discipline and Appeal Rules, 2003 amended in 2010 vide order of directorate dated 27-07-2022 Order No. Services-03/391/ suspension/2022-23.

In Pursuant to that Additional Director Primary Education Kumaun Division Nainital was nominated inquiry officer vide directorate's order No. Services – 03 / 391 / suspension/2022-23 dated 27 July 2022 with issuing charge to Shri Kedar Datt Joshi.

That Additional Director Elementary Education, Kumaun division Nainital has inquired the matter vide its letter/ camp-015(B)/ inquiry/3816/2022-23, dated 19 October, 2022 and report has been provided to Directorate.

In which it was informed that on 12.10.2022, the stand of the concerned personnel was also heard in connection to the matter. It has been clarified by the inquiry officer in conclusion of his report that in the inquiry report of the complaint letter made by the complainant Mr. Badri Prasad Sharma he perused the both parties evidence and after questioning on issues/points of the matter on date of inquiry audio

and videos received in inquiry report were narrated to Shri Kedar Datt Joshi and he has admitted all the allegation.

It has been informed by Shri Kedar Dutt Joshi that he did not received Audios and Videos, when this office directed him to receive audio and videos he denied to receive the same.

It has come to the notice that duties of in-charge Principal during the summer vacation period has been given to Mr. Badri Prasad Sharma, lecturer Geography in the month of June. The situation of complainant has arisen due to feeling of enmity between Mr. Badri Prasad Sharma and Mr. Kedar Datt Joshi because both are important in their respective posts. After the hearing on 12.10.2022 Mr. Kedar Datt Joshi accepted all the facts and evidences, audios CD, video CD, Photograph, but after accepting these it has been ask to him to sign on noting but he has denied to do so and told by him that I will firstly talk to my lawyer and I will sign only after that, which is not fair.

During inquiry, it was found that indecent language was used by Mr. Kedar Datt Joshi in the school premises and records have been tampered.

In the unrestrained conversation in the school premises, it was said to transaction of money in construction works which does not suit a government employee, and shows a violation of the government employee's conduct rules.

As per provisions of rule 09(4) of the Uttarakhand Government Servant Discipline and Appeal Rules 2003 as amended in 2010, the photo copy of inquiry report of inquiry officer was provided to the suspended Chief Administrative Officer Kedar Datt Joshi vide directorate's order No. services -03(01)/36/705/ Inquiry report/20220232, dated 14 November, 2022 and it was directed that in relation to inquiry report, his written reply along with evidence be supplied to the directorate. In Pursuant to that Mr. Kedar Datt Joshi, suspended Chief Administrative Officer appeared in the directorate on 01.12.2022 to present his case, but in hearing, Mr. Joshi did not provide any such proved evidence in his defense in relation to the charge sheet and inquiry report, which could prove that the allegations leveled against Mr. Joshi are baseless. The Allegation leveled against Mr. Joshi have been partially proved. Therefore, to maintain the educational environment in the school and in the interest of school/ student, it is necessary that Mr. Kedar Datt Joshi should be posted elsewhere.

Decision

*On the basis of inquiry report of inquiry officer and discussion, the allegation leveled against Mr. Joshi has been partially proved. After due consideration it has been decided that with revoking the suspension order he will be reinstate in services and posted elsewhere **in the interest of school and student for the purpose of establishing environment of peace and harmony in the school.***

Therefore, Mr. Kedar Datt Joshi Chief Administrative Officer, Government Inter College, Tanakpur Champawat is hereby posted on the vacant post available in the office of Deputy Education Officer, Berinag, Pithoragarh in the same post and pay scale (Rs.56100-177500), by restoring with salary.

*Bandana Garbyal
Director Primary Education
Uttarakhand"*

(emphasis supplied)

3. The submission of learned counsel for the petitioner is that the aforesaid transfer of the petitioner is contrary to the provisions of the Uttarakhand Annual Transfer for Public Servants Act, 2017. It is argued that the said transfer does not fall within one of the kinds of transfers enlisted in Section 7 of the aforesaid Act. It is further submitted by Mr. Sanjay Bhatt that the said transfer cannot be treated as under Section 18(4) of the aforesaid Act, for the reason that the said order does not state that the transfer is being made on administrative grounds. It is argued that there is no compliance of Section 18(5) of the Transfer Act.

4. We have considered the submissions of learned counsel for the petitioner, and perused the record.

5. In our view, a bare perusal of the transfer order shows that the same has been made on administrative grounds, since it clearly records that the transfer has been made "*in the interest of school and student for the purpose of establishing environment of peace and harmony in the school.*" The background, in which the said transfer has been made, is also recorded in the impugned order itself - that the petitioner was charge-sheeted in respect of indiscipline and misconduct, and the charges were found to have been partially proved against him.

6. Merely because the order does not record that it has been issued on administrative grounds, is neither here, nor there.

7. We are, therefore, not inclined to exercise our discretionary jurisdiction in favour of the petitioner in these proceedings.

8. The Writ Petition is, accordingly, dismissed.

9. We, however, make it clear that we have not examined the merits of the Inquiry Report made against the petitioner, and it shall be open to the petitioner to take appropriate steps in that regard independently before the appropriate forum.

10. Consequently, pending application(s), if any, also stand disposed of.

VIPIN SANGHI, C.J.

RAKESH THAPLIYAL, J.

Dt: 28th June, 2023
Rahul