

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 4346 of 2022

Applicant :- Mamta Pal

Opposite Party :- Mr. Pratap Singh Baghel, Secretary

Counsel for Applicant :- Navin Kumar Sharma

Counsel for Opposite Party :- Yatindra

Hon'ble Rohit Ranjan Agarwal, J.

The writ Court on 13.09.2021 while disposing of Writ-A No.11690 of 2021 passed the following order:-

"Heard learned counsel for the petitioner, Ms. Archana Singh who appears for the contesting respondents and the learned Standing Counsel for the State.

The challenge in the instant petition is to an order of 06 August 2021 which has refused the prayer of the petitioner for transfer from Allahabad to Kanpur Nagar on the ground that this amounts to a second application made by her. Undisputedly the aforesaid ground flows from the directions issued by a learned Judge in Divya Goswami And Others v. State of U.P. And Others [2020 (11) ADJ 137]. In the intra Court Appeal which was taken against that decision, that stipulation which came to be introduced pursuant to the directions in Divya Goswami was set aside. In view of the aforesaid, it is fairly conceded that the order impugned would not sustain.

That only leaves the Court to consider whether circumstances would warrant the respondents being commanded to consider the prayer of the petitioner for transfer in the mid-academic session. It becomes relevant to note that initially in Divya Goswami the learned Judge had provided that no transfers would be affected during the mid-academic session. After declaration of that judgment the State had moved an application for modification seeking relaxation of the prohibitions placed in terms of that decision on mid-academic sessions transfers. While disposing of that application for modification the learned Judge on 03 December 2020 modified the final judgment rendered in Divya Goswami in the following terms:-

"At this stage, it is also submitted by Sri M.C. Chaturvedi, learned Additional Advocate General that the cases of medical emergency should also be taken as an exception to the general rule of transfer as far as the mid of the academic session is concerned. It is submitted that in cases where the people are suffering from incurable or serious diseases that amount to a case of medical emergency, should have an opportunity to apply for transfer even during mid session.

Learned counsel for the respective petitioners do not dispute this above view also and I also find justification in the request made by learned Additional Advocate General and therefore, as far as direction no. 1 in the judgment dated 03.11.2020 is concerned that shall not be pressed into service in cases of medical emergency. Needless to add that the medical emergency cases

should be dealt with by the Government strictly in accordance with its own guidelines and that prescribed procedure to identify such cases, shall be religiously followed.

In view of the above, my judgment and order dated 03.11.2020 stands modified in above terms.

The application stands disposed of."

The petitioner here asserts that she is entitled to claim consideration of her application for transfer since her minor son suffers from epilepsy. Whether the aforesaid and other facts and circumstances which are relied upon would constitute an incurable or serious disease which warrants the transfer being affected in the mid-academic session is an issue which must in the first instance be considered and decided by the second respondent.

Ms. Archana Singh learned counsel representing the aforesaid respondent states that subject to verification of all facts, the prayer of the petitioner for being accorded transfer in the mid-academic session shall be examined and a final decision communicated with expedition and preferably within a period of one month from the date of presentation of a duly authenticated copy of this order.

Accordingly and without going into the merits or otherwise of the claim of the petitioner, this petition shall stand disposed of in light of the statement noted above."

From the perusal of the aforesaid order, it is clear that the application moved by the applicant was to be decided by the opposite party.

Today, an affidavit of compliance has been filed on behalf of the opposite party, which is taken on record.

It is contended by learned counsel for the opposite party that the order of the writ Court has been complied with and the decision has been taken by the Authority on 15.02.2022, copy of which has been brought on record as Annexure 1 to the affidavit of compliance.

In view of said fact, as the order of writ Court has been complied with, the contempt application is rendered infructuous and the same stands dismissed.

However, it is open to the applicant to assail the order passed by opposite party before the appropriate forum, if so advised.

Order Date :- 4.12.2023

SK Goswami