

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 4394 of 2022

Applicant :- Sonia Mishra

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 26.04.2022 while allowing of Writ-A No.3594 of 2022 had passed the following order:-

"Heard Shri Navin Kumar Sharma, learned Counsel for the petitioner, learned Standing Counsel for respondent nos.1 & 3, Shri Chandrakesh Rai, learned Counsel for respondent no.2.

The instant writ petition under Article 226 of the Constitution of India has been filed for quashing the impugned rejection order of online application of the petitioner seeking transfer from District Jhansi to District Unnao.

It is contended by learned Counsel for the petitioner that earlier he filed Writ-A No.8478 of 2020, which was allowed by this Court vide order dated 03.11.2020. The concerned authority, however, again rejected the petitioner's claim on the ground that the subsequent application for transfer has already been rejected.

Learned counsel for the petitioner has invited attention of the Court to a Division Bench Judgement in Special Appeal Defective No.419 of 2021 wherein the Division Bench has observed that in the absence of stipulation in the rule the authorities cannot restrict the transfer only on one application for inter-district. Operative portion of the Division Bench judgement reads as under:-

"In view of the above, we find that the Government Order, imposing bar on second application for inter-district transfer, is not in consonance with the Rules; rather, de hors the statutory Rules. To that extent, we are entertaining this appeal and causing interference in the directions issued by the learned Single Judge prohibiting second application for inter-district transfer. It is, however, with the clarity that mere making of application would not mean a right to get transferred; rather, it would remain at the discretion of the State Government. It is furthermore that if the Government permits inter-district transfer, the employee would be placed at the bottom of the seniority in the district where he/she is transferred.

With the aforesaid, we cause interference in the order of the Government as well as the judgement of the learned Single Judge to clarify that as per Rule 21 of the Rules of 1981 so as Rule 8(2)(d) of the Rules of 2008, an employee would be at liberty to make application for inter-district transfer

and it would not be restricted to only one application in his service tenure. It is again with the clarification that mere making of an application would not create a right to get transferred; rather, it would remain at the discretion of the Government.

If any employee has been affected by the outcome of the judgement in question, he would be at liberty to take the remedy individually challenging the order of transfer. The appeal is allowed with the aforesaid."

In view of the clear enunciation of law by the Division Bench of this Court on the subject it would not be open for the authorities to reject petitioner's application only on the ground that this application is the second application for transfer.

Writ petition, accordingly, succeeds and is allowed. The impugned order rejecting the online application of the petitioner is quashed. The authority concerned shall revisit the matter in light of the above observation of the Division Bench and the application will not be rejected only on the ground that the application is second application for transfer. Requisite decision would be taken within a period of six weeks from the date of presentation of a copy of this order. "

An affidavit of compliance has been filed today, wherein it has been stated that the claim of the applicant has been decided on 29.09.2022, 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 present contempt application is rendered infructuous and the same stands dismissed.

Contempt notice stands discharged.

Order Date :- 24.11.2023
SK Goswami