

Court No. - 36

Case :- WRIT - A No. - 10980 of 2023

Petitioner :- Shaifali Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Smt Rekha Singh, Ambuj Srivastava

Counsel for Respondent :- C.S.C., Archana Singh, Udit Chandra

Hon'ble Manjive Shukla, J.

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No.1 and 4 as well as Smt. Archana Singh, learned counsel appearing for the Respondents No.2 and 3.

2. Petitioner through this writ petition has sought for a direction from this court thereby commanding the respondents to transfer her from district Mathura to district Jhansi by including 10 weightage marks in respect of posting of her spouse in Indian Railways.

3. Facts of the case, in brief, are that petitioner is working on the post of Assistant Teacher in a primary school in district Mathura. State Government initiated exercise of inter-district transfers by issuing Government order dated 2.6.2023, wherein it was provided that applications of teachers for inter-district transfers shall be considered on the basis of weightage marks obtained by them. Petitioner pursuant to Government order dated 2.6.2023 submitted her online application and in the said application, she claimed 10 weightage marks in the category of woman candidate, 9 weightage marks for the length of service and 10 weightage marks for posting of her spouse in Indian Railways.

4. The State Government in the Government order dated 2.6.2023 has very categorically provided that if spouse of a teacher is working with the Government of India, then 10 weightage marks shall be given to the said teacher for evaluating her case for inter-district transfer.

5. Petitioner along with her application annexed a certificate issued by the Deputy Chief Mechanical Engineer, Wagon Repair Workshop, Jhansi, whereby it has been certified that husband of the petitioner, Mr. Sanjeev Kumar, is working as Senior Section Engineer in Wagon Repair Workshop, NCR,

Jhansi, U.P.

6. Learned counsel appearing for the petitioner has submitted that the aforesaid certificate issued by the Deputy Chief Mechanical Engineer, Wagon Repair Workshop, Jhansi, was not considered while evaluating the case of petitioner for inter-district transfer and she was not given 10 weightage marks in respect of posting of her spouse. It has further been submitted that when petitioner represented her case, then her matter was referred to the State Level Committee headed by the Director of Education (Basic), U.P., Lucknow and there petitioner besides other papers regarding employment of her husband, also submitted a letter dated 18.9.2023 issued from the North Central Railways, wherein it has been certified that the certificate submitted by the petitioner along with her application regarding posting of her spouse has been issued by the appointing authority of her husband.

7. The State Level Committee considered the petitioner's case and proceeded to scrutinize the fact as to whether husband of the petitioner is a Central Government employee and whether the certificate has been issued regarding his employment by his appointing authority.

8. Learned counsel appearing for the petitioner has argued that once the Railways itself again and again is certifying that the certificate annexed by the petitioner regarding posting of her spouse dated 10.6.2023 is perfectly alright and has been issued by the competent authority (appointing authority), then there is no reason for the State Level Committee to disbelieve the said certificate.

9. A counter affidavit has been filed on behalf of the Respondent No.3, wherein it has been stated that certificate regarding employment of petitioner's spouse has not been issued by the appointing authority and therefore, in view of Clause 8 of circular issued on 16.6.2023, petitioner is not entitled for 10 weightage marks. and accordingly petitioner's case for inter-district transfer has not been considered and ultimately, has been rejected by the State Level Committee.

10. Smt. Archana Singh, learned counsel appearing for the Respondents No.2 and 3 has argued that once there is condition in the circular dated 16.6.2023 that only certificate issued by the appointing authority shall be considered for granting weightage marks for spouse posting and since petitioner's certificate has not been issued by the appointing authority, therefore she is not entitled for 10 weightage marks.

11. Smt. Archana Singh, learned counsel appearing for the Secretary, U.P. Basic Education Board, Prayagraj has further submitted that the State Level Committee has scrutinized the matter in the light of papers provided by the petitioner and thereby has reached to the conclusion that certificate annexed by the petitioner has not been issued by the appointing authority, therefore she is not entitled for 10 weightage marks.

12. I have considered the rival submissions advanced by the learned counsels appearing for the parties and I find that petitioner, while submitting online application for inter-district transfer, has annexed the certificate dated 10.6.2023 issued by the Deputy Chief Mechanical Engineer, Wagon Repair Workshop, Jhansi, whereby it has been certified that husband of petitioner is working on the post of Senior Section Engineer in Wagon Repair Workshop, NCR, Jhansi, U.P. I also find that after there was little doubt in respect of fact as to whether the aforesaid certificate has been issued by the appointing authority, again the Senior Personnel Officer, NCR (Personnel), Jhansi vide his letter dated 18.9.2023 has clarified that the certificate dated 10.6.2023 has been issued by the appointing authority of the husband of petitioner.

13. This court is of the view that the State Government has issued Government order dated 2.6.2023 and thereby has provided 10 weightage marks for spouse posting only just to facilitate the transfers of teachers working in the schools run by the U.P. Basic Education Board to their desired districts and therefore, once the Railways itself is again and again certifying that the certificate regarding employment of petitioner's spouse has been issued by the appointing authority, there can not be any reason for the respondents to doubt the said correspondence made by the Railways unless there is some clinching evidence to the contrary.

14. This court also finds that the State Government while issuing the Government order dated 2.6.2023 only provided that if the spouse of a teacher is working under the Government of India, then the said teacher shall be entitled for 10 weightage marks, and in the said Government order, it is nowhere provided that certificate issued only by the appointing authority shall be considered as proof of posting of spouse. The said condition of certificate being issued by the appointing authority has been brought into existence only by a subsequent circular issued by the Secretary, U.P. Basic Education Board, Prayagraj, therefore this court is of the view that the Secretary, U.P. Basic Education Board, Prayagraj could not have provided any extra condition which is not part and parcel of the aforesaid Government order dated 2.6.2023.

15. Even otherwise, once there is no evidence that husband of the petitioner is not working with the Government of India, there cannot be any reason, either to State Level Committee or to the Secretary, U.P. Basic Education Board, Prayagraj to disbelieve the version of the petitioner that her husband is working under the Government of India.

16. This court finds that authorities while not awarding 10 weightage marks to the petitioner in the matter of inter-district transfer, have acted in most illegal and arbitrary manner.

17. In view of the aforesaid reasons, this writ petition is allowed. Respondent No.3 is directed to consider the case of petitioner and pass fresh order regarding her inter-district transfer from district Mathura to district Jhansi, within three weeks from today.

Order Date :- 2.11.2023

Salim