

Court No. - 36

Case :- WRIT - A No. - 11033 of 2023

Petitioner :- Anita Verma

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

Counsel for Petitioner :- Dadhi Bal Yadav

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

Hon'ble Manjive Shukla,J.

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

2. Petitioner through this writ petition has prayed for a direction from this court thereby commanding the respondents to consider the case of the petitioner for transfer from District Siddharth Nagar to District Ayodhya or District Ambedkar Nagar.

3. Facts of the case, in brief, are that petitioner is working on the post of Assistant Teacher in a Primary School at District, Siddharth Nagar. Son of the petitioner is suffering from Acute Renal Failure (A.R.F.), therefore in the exercise of inter-district transfers initiated by the State Government vide Government order dated 02.06.2023, she applied for her transfer to District Ayodhya or District Ambedkar Nagar and in her application, she claimed 20 weightage marks regarding her son's illness.

4. Petitioner along with her online application also annexed a medical certificate issued by the Chief Medical Officer, Ayodhya wherein it has been certified that petitioner's son is suffering from first episode of Nephrotic Syndrome. Since petitioner's case for inter-district transfer was not considered and petitioner was not transferred to District Ayodhya, she has filed this writ petition before this court.

5. Counter-Affidavit and Supplementary Counter-Affidavit have been filed on behalf of Respondents No. 3 and 4 in which it has been stated that under the Government order dated 02.06.2023, there was requirement that the medical certificate issued by the

hospital, must be counter-signed by the Chief Medical Officer of the district where the teacher is working but petitioner has annexed the certificate issued by the Chief Medical Officer, Ayodhya and since petitioner is working in District, Siddharth Nagar, therefore, aforesaid medical certificate was not a valid certificate, accordingly, petitioner has not been given 20 weightage marks in respect of her son's illness.

6. In the Counter-Affidavit, it has further been stated that since petitioner could not secure 20 weightage marks regarding her son's illness, therefore, she has not been transferred from District Siddharth Nagar to District Ayodhya.

7. Learned counsel appearing for the petitioner has argued that if the medical certificate submitted by the petitioner regarding her son's illness has not been found in order as per the provisions of Government order dated 02.06.2023, even then petitioner can be given time to obtain a valid certificate from the competent authority as per the provisions of the Government Order dated 02.06.2023 and thereafter her case for inter-district transfer can be considered as there is provision under Rule 8(2)(d) of The U.P. Basic Education (Teachers) (Posting) Rules, 2008 wherein Secretary, U.P. Basic Education Board, Prayagraj has been conferred power to pass transfer orders of the teachers in exceptional circumstances.

8. Smt. Archana Singh, learned counsel appearing for Secretary, U.P. Basic Education Board has argued that since the entire exercise of inter-district transfers has already completed, therefore, now there is no occasion for the respondents to consider the case of the petitioner for inter-district transfer.

9. I have considered the rival submissions advanced by the learned counsels appearing for the parties and I find that petitioner's case for inter-district transfer could not find favour of the respondents only because of technical reason that medical certificate regarding illness of petitioner's son was not in conformity with the provisions made in the Government order dated 02.06.2023.

10. Facts of the case and documents annexed with the writ petition clearly demonstrate that petitioner's son is suffering from Renal Failure but her case for inter-district transfer could not be considered because of technical reason.

11. Be that as it may, Rule 21 of The U.P. Basic Education (Teachers) Service Rules, 1981 gives ample power to the

Secretary, U.P. Basic Education Board, Prayagraj to consider the case of the petitioner for inter-district transfer if there are exceptional circumstances. For ready reference, Rule 21 is extracted as under:

"21. Procedure for transfer -There shall be no transfer of any teacher from the rural local area to an urban local area or vice versa or from one urban local area to another of the same district or from local area of one district to that of another district except on the request of or with the consent of the teacher himself and in either case approval of the Board shall be necessary."

12. There is another provision under Rule 8(2)(d) of of The U.P. Basic Education (Teachers) (Posting) Rules, 2008 where the power has been conferred to Secretary, U.P. Basic Education Board, Prayagraj to pass transfer order for inter-district transfer in exceptional circumstances. For ready reference, Rule 8(2)(d) is extracted as under:

"(d) In normal circumstances the applications for inter-district transfers in respect of male and female teachers will not be entertained within five years of their posting. But under special circumstances, applications for inter-district transfers in respect of female teachers would be entertained to the place of residence of their husband or in law's district."

13. I have considered the aforesaid rules and I find that even if the exercise of inter-district transfers pursuant to Government order dated 02.06.2023 has been completed, Secretary, U.P. Basic Education Board, Prayagraj still have power to pass orders for transfer of teachers from one district to another in exceptional circumstances.

14. In view of the aforesaid reasons, without entering into merits of the case, this writ petition is **disposed of** with liberty to petitioner to obtain medical certificate of illness of her son in conformity with the provisions of the Government order dated 02.06.2023 and, thereafter to submit a representation before the Secretary, U.P. Basic Education Board, Prayagraj and if such representation is filed, the Secretary, U.P. Basic Education Board, Prayagraj is directed to consider the case of the petitioner and decide her representation by passing speaking and reasoned order within six weeks from the date of filing of representation.

Order Date :- 23.11.2023/A. Mandhani