

Court No. - 36

Case :- WRIT - A No. - 11340 of 2023

Petitioner :- Mrs. X

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Pratik Chandra

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

Hon'ble Manjive Shukla, J.

1. Heard Mr. Nihal Singh Advocate holding brief of Mr. Pratik Chandra, learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No. 1 & 2 and Smt. Archana Singh, learned counsel appearing for the Respondent No. 3.

2. Petitioner has filed this writ petition inter-alia praying therein for the following reliefs :-

I. Issue a writ, order or direction in the nature of Mandamus directing the respondents to transfer the petitioner from District Siddhartha Nagar to District Ghaziabad or District Baghpat in the Primary Schools' under Basic Education Department.

II. Issue a writ, order or direction in the nature of Mandamus directing the respondents to transfer the petitioner from District Siddhartha Nagar to District Ghaziabad or District Baghpat in the Primary Schools' under Basic Education Department in view of Rule 8(2) (d) of U.P. Basic Education (Teachers) (Posting) Rules, 2008 since the case of the petitioner falls in exceptional category.

III. Issue a writ, order or direction in the nature of Mandamus directing the respondents to not to give effect the decision taken by the respondents rejecting her online application for the inter-district transfer for the Session 2023-24 from the District-Siddhartha Nagar.

3. Learned counsel appearing for the petitioner has submitted that petitioner is a victim and has lodged an F.I.R. on 09.05.2018 in Police Station Madhuvihar, New Delhi under Section 376-D, and 506 I.P.C. It has further been submitted that in the aforesaid criminal case cognizance has already been taken by the competent court at Delhi and the trial is in process.

4. Learned counsel appearing for the petitioner has argued that though petitioner has applied in the exercise of inter district transfers initiated in terms of Government order dated 02.06.2023 but since in the said Government order there is no provision for taking into account the extraordinary circumstances, which petitioner is facing therefore, her application for inter district

transfer could not be considered and she has not been transferred from her present place of posting to any district near to Delhi.

5. Learned counsel appearing for the petitioner has invited attention of this court towards Rule 21 of the U.P. Basic Education (Teachers) Service Rules, 1981 and Rule 8(2) (d) of the U.P. Basic Education (Teachers) (Posting) Rules, 2008 and has submitted that under the said provisions power has been conferred to Secretary, U.P. Basic Education Board, Prayagraj to consider the cases of teachers for inter district transfer where extra ordinary circumstances, are existing.

6. Learned counsel appearing for the petitioner has vehemently argued that petitioner is facing extraordinary circumstances, as she is victim and she has to pursue her case which is going on before the competent court at Delhi and therefore, it is in the fitness of things that petitioner may be transferred from district Siddharth Nagar to any district nearby Delhi.

7. Learned counsel appearing for the petitioner at this stage has submitted that petitioner may be permitted to submit a fresh representation before the Secretary, U.P. Basic Education Board, Prayagraj and a direction be issued to him to consider the case of the petitioner sympathetically.

8. On the other hand Smt. Archana Singh, learned counsel appearing for the Secretary, U.P. Basic Education Borad, Prayagraj though has opposed the writ petition but has agreed that if petitioner files an off-line representation that can be considered by the Secretary, U.P. Basic Education Borad, Prayagraj.

9. In view of the aforesaid reasons, without entering into the merits of the case, this writ petition is finally ***disposed of*** with liberty to the petitioner to file a representation before the Secretary, U.P. Basic Education Borad, Prayagraj within a period of three weeks from today and if such representation is filed, Respondent No. 3 is directed to consider and decide the said representation sympathetically.

10. It is further provided that if Secretary, U.P. Basic Education Borad, Prayagraj passes order for transfer of the petitioner then it will be open for him to issue posting order to the petitioner at the end of academic session.

Order Date :- 28.11.2023

Gaurav