

Court No. - 35

Case :- WRIT - A No. - 11440 of 2023

Petitioner :- Vinod Kumar Singh

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Prabhakar Awasthi

Counsel for Respondent :- C.S.C., Ashish Kumar Ojha, Salilendu Kumar Upadhyay

Hon'ble Vikas Budhwar, J.

1. Heard Sri Prabhakar Awasthi, learned counsel for the writ petitioner, Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel, who appears for respondent nos.1 and 2 and Sri Ashish Kumar Ojha, learned counsel, who appears for the respondent no.3.

2. The present petition has been filed for quashing of an order dated 18.05.2023, passed by the second respondent, Director of Education (Higher) U.P. at Prayagraj, whereby pursuant to a direction issued by this Court in Writ - A No. 4661 of 2023 (Vinod Kumar Singh vs. State of U.P. and Another), the respondent no.2 has negated the claim of the writ petitioner for being transferred from an aspirational district i.e. Siddharth Nagar to K.G.K. Post Graduate College, District Moradabad.

3. This Court entertained the writ petition, while passing the following orders on 18.07.2023 :-

"On the oral request of Sri Prabhakar Awasthi, Committee of Management Shivpati Post Graduate College Shohratgarh, Siddharthnagar and Committee of Management KGK Post Graduate College Line Par, Moradabad are added respondents no. 3 and 4 respectively.

Sri Prabhakar Awasthi, learned counsel for the petitioner submits that the order dated 18.5.2023 passed by the Director of Education (Higher) U.P. at Prayagraj proceeds on misconception of fact and law particularly when as per the provision contained under the

U.P. Aided Colleges Transfer of Teachers Rule 2005, there was no such concept of aspirational district so as to wipe out any of the eventualities for being accorded transfer of his own request from aspirational district to other district.

The submission is that by virtue of a Government Order dated 22.6.2022 now the such type of restriction has been imposed which even in fact cannot be done as the statutory Rules cannot be amended or supplanted by means of a circular/Government Order.

Learned counsel for the writ petitioner has also invited the attention of the of the Court towards document issued by the Government of India aspirational district programme dated 29.6.2023 so as to contend that Government of India does not treat aspirational district as one of the factors which would germane for consideration of the service condition.

Sri H.K. Shukla, learned Standing Counsel on the other hand submits that the interpretation which is being sought to be suggested by the writ petitioner proceed on legal fallacy particularly when it is always open for the State Government to issue a Government Order which even in fact does not even annul or tried to amend the circular statutory Rules as it provides subject which is not covered under the Rules itself just in order to cover the subjects which was not even contemplated at that time.

However, Sri Shukla seeks time to obtain instructions or to file affidavit.

Ten days time is accorded to Sri Shukla to file his counter affidavit.

Steps to be taken for the newly impleaded respondents no. 3 and 4 within three days. They may also file affidavit within time provided herein.

Affidavit of service shall be filed before the next date.

Put up this case on 16.8.2023 as fresh"

4. Notices were issued on 24.07.2023 for service upon the respondent nos.3 and 4. There is an office report dated 11.08.2023 that the service is confirmed upon the respondent nos.3 and 4. However, Sri Ashish Kumar Ojha, learned counsel appears for the third respondent, however nobody has put in appearance on behalf of the respondent no.4.

5. Primarily, the contention of learned counsel for the writ petitioner is that the writ petitioner had sought transfer from the third respondent institution to the fourth respondent institution. However, now an order has been passed on 18.05.2023, relying upon a Government Order dated 22.06.2022, in particular paragraph no.5, the claim of the writ petitioner for transfer has

been rejected, as according to the respondents, the claim of the writ petitioner for transfer cannot be accepted, particularly in view of the fact that there is no other incumbent, who seeks to be transferred to the post from where the writ petitioner seeks his transfer. He submits that the order in question has been passed in violation of principles of natural justice, as he seeks to rely upon paragraph no.17 of the writ petition.

6. Learned counsel for the writ petitioner seeks to rely upon the order passed on 11.01.2023 in Writ - A No. 19094 of 2022 (Anubhaw Singh and 263 Others vs. State of U.P. and 2 Others), wherein this Court on the submissions made by the counsels in the said writ petition in the matter relating to the institutions of Basic Education had disposed of the writ petition dispensing with a rider that the conditions, which did not permit single transfer related to aspirational district may not come in the way of the disposal of the claim. For the convenience, the order dated 11.01.2023, passed in (Anubhaw Singh and 263 Others vs. State of U.P. and 2 Others) is being quoted herein-under :-

"Heard Sri Prabhakar Awasthi, learned counsel for the petitioners, Sri Prashant Kumar Mishra, learned Standing Counsel for respondent No.1 and Mrs. Archana Singh, learned counsel for the respondent No.2 & 3.

The present writ petition is filed with the following prayer :-

"Issue a writ, order or direction in the nature of Mandamus commanding the respondent No.2 & 3 to forthwith transfer the petitioners from District Bahraich, Balrampur, Shrawasti and District Chitrakoot to their choice of districts after determination of fact as to whether the said districts at all are still to be an aspirational districts and in this regard, suitable orders be passed within the time to be stipulated by this Hon'ble Court."

Learned counsel for the petitioners submits that the petitioners are working as Assistant Teachers in different schools and their request of transfer is not being considered by the respondents.

Learned counsel for the petitioners also relied on the decision of this Court passed on 3.11.2020 in Writ A No.878 of 2020 (Divya Goswami Vs. State of U.P. and Ors.) and submits that academic session is going to start from 1.4.2023 and prior to that case of the petitioner for transfer may be considered. He further submits that petitioners are working in so called aspirational district, as there is no statutory bar for considering the request of petitioners for transfer and also requested that respondent, Secretary, Basic Education Board may be directed to consider the grievance of the petitioners before academic year 2023.

Mrs. Archana Singh, learned counsel for the respondent No.2 & 3 submits that she has no objection, in case, any direction be given to the respondents for taking decision on the representation of the petitioners.

Considering the submissions of learned counsel for the parties and going through the contents of the petition, the writ petition is disposed of with the liberty to the petitioners to move separate fresh representations within one month from today. In case, representations are moved, then the same shall be considered and decided by the respondent Nos.2 and 3, ignoring the rider related to the aspirational districts, by a reasoned and speaking order within a period of six weeks from the date of production of certified copy of this order and communicate the decision to the petitioners."

7. Learned counsel for the writ petitioner submits that the said order has attained finality as it is not being a subject matter of challenge before any superior competent Court of Law, either in special appeal or by preferring a review / recall application. He thus submits that the writ petitioner be given a post decisional hearing in that regard.

8. Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel, who appears for the respondent nos.1 and 2 and Sri Ashish Kumar Ojha, learned counsel, who appears for the respondent no.3 submits that in case the writ petitioner seeks to approach the second respondent, Director of Education (Higher) U.P. at Prayagraj, then it is always open for him to approach and in case the writ petitioner approaches, then the representation of the writ petitioner will be dealt and in case the writ petitioner seeks personal hearing, then he would be heard, however the order at this stage may not be disturbed in that regard.

9. Considering the submission of the rival parties as well as the

stand taken by them and on the concession made by Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel, the writ petition is disposed of requiring the writ petitioner to approach the second respondent for a post decisional hearing and in case any such an application is preferred, then the second respondent shall deal the same in accordance with law.

10. Needless to point out that the order passed today is on the concession of the parties and thus the same may not be construed to be an expression that this Court has adjudicated upon the merits of the matter and it should not be treated as a precedent in other cases.

11. With the aforesaid observations, the writ petition stands ***disposed off***.

Order Date :- 16.10.2023

S Rawat