

Court No. - 36

Case :- WRIT - A No. - 12522 of 2023

Petitioner :- Anarkali

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Narendra Srivastava

Counsel for Respondent :- CSC, 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 & 5 and Smt. Archana Singh, learned counsel appearing for the Respondents No. 3 & 4.

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 certiorari quashing the circular/letter dated 16.06.2023 issued by the respondent no. 3, to the extent which excludes are chronic disease namely 'Lissencephaly and Microcephaly' (i.e. a rare condition in which brain fails to achieve normal growth) from the list of the chronic disease; as narrated under paragraph no. 7 of the Annexure No. 8.

(II) Issue a writ, order or direction in the nature of mandamus; commanding the Chief Medical Officer Sonbhadra to conduct a physical examination of the petitioner's daughter and to submit a report thereof before the authorities concerned so that correct facts may be taken into cognizance by them in order to award 20 marks (total 37 marks) in lieu thereof.

3. Petitioner in her writ petition has stated that she is working on the post of Assistant Teacher in Primary School at district Sonbhadra and she submitted online application in the exercise of inter district transfers initiated pursuant to Government order dated 02.06.2023 but since disease 'Lissencephaly' and 'Microcephaly' do not find mention in the relevant Government order, therefore, petitioner's case for inter district transfer could not be considered.

4. Learned counsel appearing for the petitioner has submitted that Rule 21 of the U.P. Basic Education (Teachers) Services Rules 1981 and Rule 8(2) (d) of the U.P. Basic Education (Teachers) (Posting) Rules, 2008 very clearly provide that if there are extraordinary circumstances, Secretary, U.P. Basic Education Board can always consider the case of a teacher for her inter district transfer.

5. Learned counsel appearing for the petitioner has invited attention of this court towards representation dated 11.10.2023 submitted to Secretary, U.P. Basic Education Board, whereby petitioner has requested for her inter district transfer from district Sonbhadra to district Prayagraj on the ground that her daughter is suffering from disease 'Lissencephaly' and 'Microcephaly'.

6. Learned counsel appearing for the petitioner has argued that since petitioner's daughter is seriously ill and therefore, there are extraordinary circumstances which warrant petitioner's inter district transfer, therefore Secretary, U.P. Basic Education Board, Prayagaraj must consider and decide petitioner's case.

7. On the other hand Smt. Archana Singh, learned counsel representing Secretary, U.P. Basic Education Board, Prayagaraj though has opposed the writ petition but ultimately has agreed that if petitioner has extraordinary circumstances, she can file a representation before the Respondent No. 3 and her grievance can be considered and redressed.

8. In view of the aforesaid submissions, without entering into merits of the case, this writ petition is finally ***disposed of*** with liberty to petitioner to file a fresh representation before the Secretary, U.P. Basic Education Board, Prayagaraj and if such representation is filed within a period of three weeks from today, Respondent No. 3 is directed to consider and decide petitioner's case sympathetically by passing speaking and reasoned order within a period of six weeks thereafter.

9. It is further provided that if ultimately Respondent No. 3 passes order for inter district transfer of the petitioner it shall be open for him to issue posting order to the petitioner at the end of the academic session.

Order Date :- 28.11.2023

Gaurav