

Court No. - 36

Case :- WRIT - A No. - 14234 of 2023

Petitioner :- Seema Yadav

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

Counsel for Petitioner :- Anil Kumar Yadav, Sr. Advocate

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 and Smt. Archana Singh, learned counsel appearing for the Respondents No. 3, 4 & 5.

2. Petitioner, through this writ petition, has prayed for a direction from this court thereby commanding the respondents to transfer her from the post of Assistant Teacher, Junior Basic School, Jaunpur to the post of Assistant Teacher, Junior Basic School, Prayagraj.

3. Fact of the case, in brief, are that petitioner is working on the post of Assistant Teacher, Junior Basic School, Jaunpur. State Government issued a Government order dated 2.6.2023, whereby exercise of inter district transfers of the teachers working in the schools run by the U.P. Basic Education Board, Prayagraj was initiating. Pursuant to the Government order dated 2.6.2023, all the teachers seeking inter district transfer were required to submit their online applications and the said applications were to be evaluated by the authorities of the department in terms of the provisions made in the said order.

4. Government order dated 2.6.2023 provides certain weightage marks for different categories of teachers and on the basis of the said weightage marks, their cases for inter district transfers are to be considered.

5. Petitioner, while submitting application for inter district transfer claimed for ten weightage marks on the ground that her husband is working in Railway Protection Force, which is an establishment of the Government of India. As per the Government order dated 2.6.2023, petitioner was entitled for the ten weightage marks for the posting of her spouse but due to mistake committed by the District Level Committee, Jaunpur petitioner was not given the said ten weightage marks and accordingly her application for inter district transfer was not considered and she has not been transferred from District Jaunpur to District Prayagraj. In the aforesaid circumstances, petitioner has filed the present writ petition before this court.

6. This matter was heard by this court on 19.9.2023 and after hearing counsels for the parties, following order was passed:-

"1. Heard Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Anil Kumar Yadav, learned counsel appearing for the petitioner and Smt. Archana Singh, learned counsel appearing for the Respondents No. 3, 4 & 5.

2. Smt. Archana Singh in compliance of this court's order dated 06.09.2023 has produced before this court instructions provided by the District Basic Education Officer, Jaunpur through his letter dated 18.09.2023. In the instructions, it has been mentioned by the District Basic Education Officer, Janpur that since the husband of the petitioner is working under the Central Government in the State of Bihar, therefore, petitioner is not entitled for ten marks in her case for inter district transfer. In the instructions it has also been said that the Government Order dated 02.06.2023 provides that if spouse of the teacher is working in the Central Government out of the State of U.P. he will not be eligible for grant of ten marks.

3. I have perused the Government Order dated 02.06.2023 and I find that in the said government order only this much has been provided that if the spouse of a teacher is working in the Central Government, he or she shall be entitled for ten marks while considering the case for inter district transfer.

3. This court prima facie is of the view, that once the State Government vide Order dated 02.06.2023 has provided that ten marks in respect of all the Central Government employees will be given then the committee has no jurisdiction to interpret the said government order and enlarge its scope by putting a rider that only such Central Government employees shall be taken into account and ten marks will be given who are working within the State of U.P.

4. In view of the aforesaid, let the matter of petitioner be re-scrutinized within a week and adequate instructions be provided to Smt. Archana Singh, learned counsel appearing for the Respondents No. 3, 4 & 5.

5. List this matter on 27.09.2023 as fresh. "

7. A short counter affidavit has been filed on behalf of the Respondents No. 3 & 4 in which it has been admitted that the petitioner, on the basis of employment of her spouse, was entitled for ten weightage marks and if the said weightage marks would have been given to the petitioner, definitely she would have been transferred from District Jaunpur to District Prayagraj. In the short counter affidavit it has been stated that this court has passed an order on 3.11.2020 in Writ-A No. 878 of 2020 (Divya Goswami Vs. State of U.P. and others), wherein it has been categorically provided that inter district transfers shall not be made in the mid of the academic session and since now the academic session is already on, therefore, it is not possible for the authorities to transfer petitioner from District Jaunpur to District Prayagraj in the mid of academic session.

8. For ready reference, Paragraphs No. 16 to 21 of the short counter affidavit are extracted as under:-

"16. That the petitioner submitted her application for Inter-district Transfer with claim of 10 quality marks for her spouse being posted under Central Government or State Government, as per the provisions contained under Clause 2(12)(4) of the Government Order, by stating that her husband is an employee of R.P.F. which comes under the definition of Central Government.

17. That because of some inadvertent erroneous verification/validation of the online application form submitted by the petitioner, the District Level Committee, Jaunpur, decided not to give 10 marks weightage to the petitioner and forwarded her application without giving any weightage.

18. That in pursuance of the above since the petitioner had claimed her Inter-district Transfer for District Prayagraj for which minimum cut of marks was fixed as 22 while the petitioner obtained only 12 quality points, therefore the Inter-district Transfer of the petitioner could not be done at that time.

*19. That in compliance of the order dated 19.09.2023 passed by this Hon'ble Court, the matter was sent to the State Level Committee. The State Level Committee convened its meeting on 14.10.2023 and it was found that because transfer of the petitioner could not be done during the process of inter-district transfer for the academic session 2023-24 and since now the process of inter- district transfer is complete as well as it is a mid- academic session and since the case of petitioner is not covered under medical emergency therefore transfer of the petitioner could not be done at this stage being violative of the directions of this Hon'ble Court passed in the case of Divya Goswami. For the kind perusal of this Hon'ble Court, a copy of the relevant pages of the minutes of meeting dated 14.10.2023 of State Level Committee is being filed and marked as **Annexure-SCA-1** to this short counter affidavit.*

20. That it is also relevant to state that clause 15 of the Government order dated 02.06.2023, strictly provides that no offline application with respect to either inter-district transfer or mutual transfer, shall be entertained for the academic session 2023- 24.

*21. That in case of Divya Goswami in writ petition no. 878 of 2020, this Hon'ble Court, had passed an order on 03.11.2020 observing that "**No Inter District Transfer shall be done in the mid of academic session**". In the light of aforesaid order also, no transfer of the petitioner can be done in the mid of academic session."*

9. Learned counsel appearing for the petitioner has vehemently argued that it is admitted in the short counter affidavit that petitioner has not been transferred only due to mistake committed by the District Level Committee, Jaunpur and once authorities are admitting their mistake they cannot be permitted to take advantage of their mistake and thereby to deny petitioner's transfer from District Jaunpur to District Prayagraj.

10. Learned counsel appearing for the petitioner has also

argued that so far as the direction issued by this court vide judgment and order dated 3.11.2020 passed in Writ-A No. 878 of 2020 is concerned, that is applicable in normal circumstances as this court, taking into account the interest of the students, has issued direction that there can not be any inter district transfer in mid academic session but that does not mean that the authorities should be allowed to commit mistakes and even when the said mistake is admitted by the authorities, there cannot be any transfer in mid academic session.

11. On the other hand, Smt. Archana Singh, learned counsel appearing for the Respondents No. 3,4 & 5 has argued that due to mistake committed by the District Level Committee, Jaunpur, petitioner has not been granted ten weightage marks for employment of her spouse but since the exercise of inter district transfer is over and Government order dated 2.6.2023 prohibits entertaining any off-line application for inter district transfer, therefore, now petitioner cannot be transferred from District Jaunpur to District Prayagraj.

12. Smt. Archana Singh, learned counsel appearing for the Respondents No. 3,4 & 5 has further argued that since there is prohibition under the order passed by this court regarding inter district transfers in mid academic session, therefore, petitioner during continuance of this academic session, cannot be transferred from one district to another.

13. I have considered the rival submissions advanced by the learned counsels appearing for the parties and I find that the Government order dated 2.6.2023 was issued by the State Government for carrying out inter district transfers in the entire State of U.P.. The State Government in the Government order dated 2.6.2023 provided detailed mechanism for evaluation of the applications submitted by the teachers seeking inter district transfer on the basis of weightage marks obtained by them. I further find that it is admitted case of the respondents that petitioner was entitled for grant of ten weightage marks for the posting of her spouse in Railway Protection Force, which is an establishment of Government of India but due to mistake committed by the District Level Committee, she has not been granted the said weightage marks which has resulted in denial to the petitioner for her transfer from District Jaunpur to District Prayagraj.

14. Once it is admitted by the respondents that they have committed mistake in evaluating the application of the petitioner for inter district transfer then there cannot be any prohibition for them to rectify the said mistake.

15. So far as the argument advanced by the learned counsel appearing for the Respondents No. 3,4 & 5 that the Government order dated 2.6.2023 prohibits any off-line transfer is concerned, such prohibition is in normal circumstances and once the authorities have admitted that they have committed mistake in evaluation of the application of the petitioner, such prohibition cannot be used by the authorities to deny the petitioner's transfer from District Jaunpur to District Prayagraj. Even otherwise, the authorities are empowered under Rule-21 of the U.P. Basic Education Teachers Rule, 1981 to transfer a teacher from one district to another.

16. So far as the argument advanced by Smt. Archana Singh, learned counsel appearing for the Respondents No. 3,4 & 5 that the inter district transfers in mid academic session have been prohibited by this court vide order dated 3.11.2020 passed in Writ-A No. 878 of 2020 is concerned, this court is of the view that the said prohibition is applicable in normal circumstances and has been made applicable by this court in the larger interest of the students so that their studies may not suffer but the authorities cannot take advantage of that direction issued by this court to cover up their own mistakes and thereby to deny inter district transfer of the petitioner.

17. In view of the aforesaid reasons, this writ petition is **allowed**. Respondent No. 3 is directed to consider the claim of the petitioner for her transfer from District Jaunpur to District Prayagraj by passing a fresh order, within a period of two weeks from the date of presentation of certified copy of this order.

Order Date :- 27.10.2023

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