

Court No. - 36

Case :- WRIT - A No. - 14465 of 2023

Petitioner :- Jabeen

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

Counsel for Petitioner :- Prabhakar Dwivedi, Vikram Bahadur Yadav

Counsel for Respondent :- C.S.C, Archana Singh, Ashok Kumar 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 5 as well as Smt. Archana Singh, learned counsel appearing for the Respondents No. 3 and 4.
2. Petitioner, through this writ petition, has sought for a direction from this court thereby commanding the respondents to consider her application for transfer from District Siddharth Nagar to District Sultanpur or District Amethi.
3. Facts of the case, in brief, are that the petitioner is working on the post of Assistant Teacher in a primary School at District Siddharth Nagar. State Government issued a Government order on 2.6.2023 and thereby initiated the exercise of inter district transfer. Petitioner submitted her online application in the aforesaid exercise of inter district transfer and as per the provisions made in the Government order dated 2.6.2023, she was entitled for 27 weightage marks but due to mistake committed by the District Basic Education Officer, Siddharth Nagar, petitioner was not awarded ten marks in respect of the posting of her spouse. Accordingly, petitioner stood lower in merit and her case for inter district transfer could not be considered.
4. Learned counsel appearing for the petitioner has submitted that once petitioner is entitled for ten weightage marks in respect of her spouse posting and if the mistake has been committed by the District Basic Education Officer, Siddharth Nagar, then petitioner cannot be penalised for the said mistake and accordingly, it is incumbent for the respondents to correct the mistake by issuing order for transfer of the petitioner from District Siddharth Nagar to District Sultanpur or District Amethi.

5. This court after hearing learned counsels appearing for the parties passed a detailed order on 1.11.2023, whereby direction was issued to Respondent No. 2 i.e. Secretary U.P. Basic Education Board, Prayagraj to scrutinize the matter and to take remedial measures within a week. Order dated 1.11.2023 is extracted as under:-

"1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No.1, 2 and 5, Smt. Archana Singh, learned counsel appearing for the Respondent No.3 as well as Sri Ashok Kumar Singh, learned counsel appearing for the Respondent No.4.

2. Learned counsel appearing for the petitioner has submitted that petitioner has applied for inter-district transfer from district Siddharth Nagar to district Sultanpur. Petitioner in her application has claimed 10 weightage marks in the category of woman, 7 weightage marks on the basis of length of service and 10 weightage marks in respect of her spouse posting. Learned counsel appearing for the petitioner has further submitted that petitioner should have been awarded 27 weightage marks but the District Basic Education Officer, Siddharth Nagar has committed manifest error and has not granted 10 weightage marks to the petitioner in respect of her spouse posting on the ground that petitioner's husband is a Home-guard, whereas petitioner's husband is a government servant and is a regularly appointed Platoon Commander in the department of Home-guards and his appointment is under a regular pay scale.

3. Learned counsel appearing for the petitioner has invited attention of this court that husband of the petitioner has been appointed on the post of Platoon Commander in the department of Home-guards in terms of the provisions made under the service rules framed under proviso appended to Article 309 of the Constitution of India.

4. On the other hand, Smt. Archana Singh, learned counsel appearing for the Respondent No.3 though tried to oppose this writ petition but could not justify that for what reason petitioner has not been given 10 weightage marks in respect of posting of her spouse.

5. I have considered the rival submissions advanced by the learned counsels appearing for the parties and prima facie, I find that petitioner is entitled for 10 weightage marks for posting of her spouse as her husband is a government servant and is a regularly appointed Platoon Commander in the department of Home-guards and the said appointment has been made in terms of the provisions made under the service rules framed under proviso appended to Article 309 of the Constitution of India.

6. Let the Respondent No.3 scrutinize the matter and take remedial measures within a week from today.

7. List this matter on 20.11.2023 as fresh."

6. This matter was again heard by this court on 20.11.2023 and again this court passed a detailed order, which is extracted as under:-

"1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No. 1, 2 & 5, Smt. Archana Singh,

learned counsel appearing for the Respondent No. 3 and Sri A.K. Singh, learned counsel appearing for the Respondent No. 4.

2. This court after hearing parties' counsels passed an order on 1.11.2023 which is extracted as under:

"1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No.1, 2 and 5, Smt. Archana Singh, learned counsel appearing for the Respondent No.3 as well as Sri Ashok Kumar Singh, learned counsel appearing for the Respondent No.4.

2. Learned counsel appearing for the petitioner has submitted that petitioner has applied for inter-district transfer from district Siddharth Nagar to district Sultanpur. Petitioner in her application has claimed 10 weightage marks in the category of woman, 7 weightage marks on the basis of length of service and 10 weightage marks in respect of her spouse posting. Learned counsel appearing for the petitioner has further submitted that petitioner should have been awarded 27 weightage marks but the District Basic Education Officer, Siddharth Nagar has committed manifest error and has not granted 10 weightage marks to the petitioner in respect of her spouse posting on the ground that petitioner's husband is a Home-guard, whereas petitioner's husband is a government servant and is a regularly appointed Platoon Commander in the department of Home-guards and his appointment is under a regular pay scale.

3. Learned counsel appearing for the petitioner has invited attention of this court that husband of the petitioner has been appointed on the post of Platoon Commander in the department of Home-guards in terms of the provisions made under the service rules framed under proviso appended to Article 309 of the Constitution of India.

4. On the other hand, Smt. Archana Singh, learned counsel appearing for the Respondent No.3 though tried to oppose this writ petition but could not justify that for what reason petitioner has not been given 10 weightage marks in respect of posting of her spouse.

5. I have considered the rival submissions advanced by the learned counsels appearing for the parties and prima facie, I find that petitioner is entitled for 10 weightage marks for posting of her spouse as her husband is a government servant and is a regularly appointed Platoon Commander in the department of Home-guards and the said appointment has been made in terms of the provisions made under the service rules framed under proviso appended to Article 309 of the Constitution of India.

6. Let the Respondent No.3 scrutinize the matter and take remedial measures within a week from today.

7. List this matter on 20.11.2023 as fresh."

3. In compliance of this court's order dated 1.11.2023, Secretary, U.P. Basic Education Officer, Prayagraj has provided instructions to Smt. Archana Singh, learned counsel appearing for the Respondent No. 3 wherein it is mentioned that in respect of petitioner's matter, District Basic Education Officer, Siddharth Nagar and petitioner have been directed to appear before the Committee headed by Director of Education (Basic), U.P., Lucknow on 23.11.2023.

4. *Smt. Archana Singh prays that this matter may be listed after 23.11.2023 so that the decision taken by the State Level Committee can be placed before this court.*

5. *In view of the aforesaid, put up this case on 30.11.2023 as fresh.*

6. *It is expected that by the next date, suitable decision shall be taken in the matter in terms of this court's order dated 1.11.2023. "*

7. Smt. Archana Singh, learned counsel appearing for the Respondents No. 3 and 4 has produced before this court the decision taken by the State Level Committee headed by the Director of Education (Basic) U.P. Lucknow wherein mistake committed by the District Basic Education Officer, Siddharth Nagar has been admitted and it has been stated that since petitioner was not granted ten waightage marks towards posting of her spouse, therefore, her case could not be considered but at the same time State Level Committee instead of rectifying the mistake has taken an excuse that since the academic session has already started, therefore, in the mid of the academic session transfer of the petitioner cannot be ordered. It also transpires that the State Level Committee in its decision has said that at the end of the academic session, petitioner's matter shall be reconsidered.

8. Learned counsel appearing for the petitioner has vehemently argued that once the exercise of inter district transfer was initiated pursuant to the Government order dated 2.6.2023 and thereby thousands of teachers have been transferred from one district to another, therefore, if petitioner's case could not be considered due to the mistake committed by the District Basic Education Officer, Siddharth Nagar then the respondents are under legal obligation to rectify their mistake and to pass an order for transfer of petitioner from District Siddharth Nagar to District Sultanpur or District Amethi.

9. Smt. Archana Singh, learned counsel appearing for the Respondents No.3 and 4 has argued that though mistake has been committed by the District Basic Education Officer, Siddharth Nagar in the case of the petitioner and thereby she could not be transferred from district Siddharth Nagar to district Sultanpur or district Amethi but since the academic session has already started and this court vide order dated 3.11.2020 passed in Writ-A No.878 of 2020 has directed for not making transfers in mid academic session, therefore the State Level Committee has taken decision not to transfer the petitioner at this stage and has further provided that her case for inter-district transfer can be re-considered at the end of academic session.

10. I have considered the rival submissions advanced by the

learned counsels appearing for the parties and I find that exercise of inter-district transfers has been carried out in terms of Government order dated 2.6.2023 and thousands of teachers have been transferred but due to mistake committed by the respondents, petitioner's case for inter-district could not be considered. Once it is admitted to the respondents that they have committed glaring mistake while dealing with the case of the petitioner then it is obligatory on the respondents to take remedial measures to rectify the mistake.

11. This court is of the view that on the one hand, respondents have committed mistake while dealing with the case of the petitioner for her inter-district transfer and on the other hand, respondents are trying to take advantage of their own mistake. Once the mistake has been committed, that has to be rectified by passing necessary orders.

12. So far as the issue of transfer of the petitioner in mid academic session is concerned, no doubt this court has taken cognizance of the interest of the students and has directed that in mid academic session transfers should not be effected but this court has not restrained the respondents from passing the orders of transfer in mid academic session and implementing them at the end of academic session.

13. In view of the aforesaid reasons, this writ petition stands **allowed**. Respondent No.3 is directed to consider application of the petitioner for her transfer from district Siddharth Nagar to district Sultanpur or district Amethi and to pass necessary orders, within six weeks from today. It is provided that petitioner's transfer shall be implemented only after academic session 2023-24 is over.

Order Date :- 30.11.2023

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