

Court No. - 36

Case :- WRIT - A No. - 15228 of 2023

Petitioner :- Sushma Verma

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

Counsel for Petitioner :- Vinod Kumar Singh

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 and 2 as well as Smt. Archana Singh, learned counsel appearing for the Respondent No.3.

2. Petitioner has approached this court in very peculiar circumstances. Petitioner's son is suffering from disease known as "Autism Spectrum Disorder" and therefore, he needs extra care by the petitioner. Petitioner is presently working on the post of Assistant Teacher in a Senior Basic School at district Siddharth Nagar and therefore, she wants her transfer to a district where facilities regarding treatment of disease of her son are available.

3. The State Government recently initiated exercise of inter-district transfer by issuing Government Order dated 2.6.2023, but petitioner could not submit application for transfer as zero vacancy was shown in district Ghaziabad and district Gautam Budh Nagar.

4. Learned counsel appearing for the petitioner has submitted that Rule 21 of the U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as "the Rules of 1981") provides that teachers can be transferred from one district to another after approval of the Secretary, U.P. Basic Education Board, Prayagraj. Learned counsel appearing for the petitioner has also pointed out that Rule 8(2)(d) of U.P. Basic Education (Teachers) (Posting) Rules, 2008 (hereinafter referred to as "the Rules of 2008") provides that in exceptional circumstances, a female teacher, who has completed two years of her posting, can be transferred to another district.

5. Learned counsel appearing for the petitioner has argued that in the recent exercise of transfers, the districts, where petitioner wants her transfer, were shown to be having zero vacancy, therefore she could not submit her online application for inter-

district transfer, but nevertheless power is still with the Secretary, U.P. Basic Education Board, Prayagraj to consider the case of the petitioner for inter-district transfer.

6. On the other hand, Smt. Archana Singh, learned counsel appearing for the Respondent No.3 has argued that since petitioner has not submitted application in the recent exercise of inter-district transfers, therefore now her request for inter-district transfer cannot be entertained.

7. I have considered the submissions advanced by the learned counsels appearing for the parties and I find that petitioner's son is suffering from "Autism Spectrum Disorder" and therefore, he needs to be stationed at a place where proper facilities regarding his treatment are available. Petitioner, in the aforesaid circumstances, was willing to submit her application for inter-district transfer for district Ghaziabad and district Gautam Budh Nagar but since zero vacancy was shown in the said districts, as such petitioner could not submit online application for inter-district transfer.

8. Rule 21 of the U.P. Basic Education (Teachers) Service Rules, 1981 reads as under:-

"21. Procedure for Transfer- There shall be no transfer of any teacher from the rural local area to an urban local area or vice-versa or from one urban local area to another of the same district or from local area of one district to that of another district except on the request of or with the consent of the teacher himself and in either case approval of the Board shall be necessary."

9. Rule 8(2)(d) of the U.P. Basic Education (Teachers) (Posting) Rules, 2008 reads as under:-

8(2)(a). x x x x x x

(b) x x x x x x

(c) x x x x x x

"(d) In normal circumstances the applications for inter-district transfers in respect of male and female teachers will not be entertained within five years of their posting. But under special circumstances, applications for inter-district transfers in respect of female teachers would be entertained to the place of residence of their husband or in law's district."

10. I find that under Rule 21 of the Rules of 1981 read with Rule 8(2)(d) of the Rules of 2008, the Secretary, U.P. Basic Education Board, Prayagraj has been given power to transfer a teacher from one district to another in exceptional circumstances and in the present case, prima facie there appears exceptional circumstance with the petitioner as her son is suffering from "Autism Spectrum Disorder".

11. In view of the aforesaid reasons this writ petition is finally disposed of with liberty to the petitioner to file a fresh representation before the Secretary, U.P. Basic Education Board, Prayagraj within fifteen days from today and if such representation is filed, Respondent No.3 is directed to consider and decide the said representation within a period of one month thereafter.

12. It is made clear that this court has not adjudicated on merits of the case and observations made by this court in the order are tentative and therefore, it would be open for the Respondent No.3 to consider each and every aspect of the matter but definitely he will have a sympathetic view while considering the case of the petitioner.

Order Date :- 17.10.2023

Salim