

Court No. - 36

Case :- WRIT - A No. - 16181 of 2023

Petitioner :- Shravan Kumar Upadhyay

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

Counsel for Petitioner :- Ratnakar Upadhyay

Counsel for Respondent :- C.S.C., Archana Singh

Hon'ble Manjive Shukla, J.

1. Heard Mr. Ashish Kumar Ojha Advocate holding brief of Mr. Ratnakar Upadhyay, learned counsel appearing for the petitioner and learned Standing Counsel appearing for the Respondent No. 1 as well as Smt. Archana Singh, learned counsel appearing for the Respondents No. 2 & 3.

2. Petitioner through this writ petition has prayed for a direction from this court thereby commanding the Respondent No. 2 to consider the case of the petitioner for his transfer from the post of Assistant Teacher District Sonbhadra to the post of Assistant Teacher District Jaunpur.

3. Facts of the case, in brief, are that petitioner was appointed on the post of Assistant Teacher in district Sonbhadra on 05.12.2020. Petitioner's wife is working on the post of Assistant Teacher in a primary school at district Jaunpur. Petitioner is 80% disabled and in that regard a disability certificate has been issued to him on 24.06.2022 by the Chief Medical Officer, Jaunpur.

4. Learned counsel appearing for the petitioner has submitted that there are exceptional circumstances, with the petitioner as he is suffering from 80% disability and his wife is working on the post of Assistant Teacher in a primary school at district Jaunpur, therefore, looking into the practical difficulties of the petitioner it would be in the fitness of things to transfer the petitioner from district Sonbhadra to district Jaunpur.

5. Learned counsel appearing for the petitioner has invited attention of this court towards judgment and order dated 30.05.2018 passed by the learned Single Judge of this court in Writ-A No. 4950 of 2018, wherein it has been categorically held that provisions of Rule-8(2) (d) of the Uttar Pradesh, Basic Education Teachers (Posting) Rules, 2008 are applicable in normal

circumstances, and therefore, in normal circumstances, a male teacher cannot be transferred from one district to another unless he has completed five years of service but in exceptional circumstances, the case for inter district transfer can always be considered by the Secretary, U.P. Basic Education Board, Prayagraj.

6. Learned counsel appearing for the petitioner has argued that in view of law laid down by this court vide aforesaid judgment and order dated 30.05.2018 passed in Writ-A 4950 of 2018 petitioner's case for inter district transfer is also liable to be considered and decided by the Secretary, U.P. Basic Education Board, Prayagraj.

7. Per contra, Smt. Archana Singh, learned counsel appearing for the Respondents No. 2 & 3 has argued that Rule-8(2) (d) of the Rules of 2008 puts a prohibition that if a male teacher has not completed five years of service in a particular district, he is not entitled for inter district transfer. Smt. Archana Singh has placed reliance on judgment and order dated 16.06.2023 passed by the Divisional Bench of this court in Writ-A No. 10209 of 2023, wherein validity of Rule-8(2) (d) of the Rules of 2008 has been upheld. Smt. Archana Singh on the strength of the aforesaid judgment has argued that once the validity of Rule-8(2) (d) of the Rules of 2008 has been upheld, there is no occasion for making inter district transfer of those male teachers who have not completed five years of service.

8. I have considered the rival submissions advanced by the learned counsels appearing for the parties. I find that Rule-8(2) (d) of the Rules of 2008 provides that in normal circumstances, the applications for inter district transfer in respect of male and female teachers will not be entertained within five years of their posting but under special circumstances, application for inter district transfer in respect of female teachers would be entertained to the place of residence of their husband or in-laws.

9. For ready reference Rule- 8 of the Rules of 2008 is extracted as under :-

"8. Posting. - (1)(a) Three options for schools shall be asked from the handicapped candidates in order of their merit and after receiving such options the handicapped candidates shall be posted on the basis of options given by them and the vacancies.

(b) Based on the order of their merit, female teachers would be required to submit under their signature option of three schools each from the general and backward block and accordingly, posting would be given in one of these

schools.

(c) The posting of male teachers shall be made in accordance with the order of candidates, in the roster prepared under Rule 7.

(2)(a) The newly appointed male teachers shall initially be posted compulsorily in backward areas for a period of at least five years.

(b) Newly appointed female teachers shall also be compulsorily posted in backward areas for a period of at least two years.

(c) Mutual transfers within the district from general block of backward block and vice-versa would be permitted with the condition that the teacher on mutual transfer to a backward block shall have to serve in that block compulsorily for five years. Mutual transfers would be permitted only in case of those teachers who have more than remaining five year's service.

(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.

(e) If by virtue of posting of newly appointed or promoted teachers the primary and upper primary schools of backward blocks get saturated i.e., no post of teacher is vacant in these schools, then handicapped and female teachers on their choice can be adjusted against the vacant posts of general blocks from these saturated blocks.

(f) Mutual transfers of male/female teachers from one backward block to another can be considered.

(3) Teachers transferred from one district to another will be given posting as per the provisions of these rules."

10. This court finds that the provisions of Rule-8(2) (d) of the Rules of 2008 have been considered by the Coordinate Bench of this court while passing judgment and order dated 30.05.2018 in Writ-A No. 4950 of 2018 and it has been held that completion of five years of service by teacher is under normal circumstances, and once there exists exceptional circumstances, with a teacher, the Secretary, U.P. Basic Education Board, Prayagraj can always consider his case for inter district transfer.

11. So far as the argument of Smt. Archana Singh, learned counsel appearing for the Respondents No. 2 & 3 that validity of Rule-8(2) (d) of the Rules of 2008 has been upheld by the Division Bench of this court vide judgment and order dated 16.06.2023 passed in Writ-A No. 10209 of 2023 is concerned, this court is of the view that no doubt validity of Rule-8(2) (d) of the Rules of 2008 has

been upheld but the fact remains that the Rule-8(2) (d) of the Rules of 2008 is applicable in normal circumstances and in exceptional circumstances, there is always scope available with the Secretary, U.P. Basic Education Board, Prayagraj to consider and decide the cases of inter district transfer of the teachers on the basis of individual merits of the case.

12. This court is of the view that so far as exceptional circumstances, in the case of petitioner are concerned that can very well be seen and evaluated by the Secretary, U.P. Basic Education Board, Prayagraj. Petitioner has also filed a representation before the Secretary, U.P. Basic Education Board, Prayagraj, wherein petitioner has narrated his exceptional circumstances and has prayed for inter district transfer.

13. In view of the aforesaid reasons, without entering into merits of the case, this writ petition is finally ***disposed of*** with liberty to petitioner to file a fresh comprehensive representation within a period of three weeks from today before the Secretary, U.P. Basic Education Board, Prayagraj and if such representation is filed, Respondent No. 2 is directed to consider and decide the said representation by passing speaking and reasoned order within a period of two months thereafter.

Order Date :- 21.11.2023

Gaurav