

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 7578 of 2023

Applicant :- Kapil Kumar

Opposite Party :- Pratap Singh Beghel, Secretary, U.P. Basic Education Board

Counsel for Applicant :- Kamlakar Pal, Hakim Kumar Kushwaha

Hon'ble Rohit Ranjan Agarwal, J.

1. Heard Sri Yatindra, learned counsel appearing on behalf of the opposite party.
2. The writ Court on 16.12.2022 while disposing of Writ-A No. 21089 of 2022 passed the following order:-

"Heard Shri Sushil Kumar Pal, learned counsel for the petitioner, Shri Shresth Pratap Singh under the authority of Mrs. Archana Singh, learned counsel appearing for the respondents No. 3 & 4 as also learned Standing Counsel appearing for the State-respondent.

The present writ petition has been filed for issuance of a writ of mandamus directing the respondent No. 3 to transfer the petitioner from District Sonbhadra to District Bijnor as Assistant Teacher.

Learned counsel for the petitioner submits that petitioner is presently posted as Assistant Teacher in District Sonbhadra. Learned counsel for the petitioner submits that petitioner has a 19 months old child and petitioner's wife is suffering from severe Gynological problem. Petitioner is permanent resident of District Bijnor and he is posted far away about 900 km in District Sonbhadra.

Learned counsel for the petitioner submits that petitioner has moved an application 29.9.2022 before respondent No. 3, but nothing has been done in the matter.

It is further contended by learned counsel for the petitioners that the inter district transfer are governed by Rule 8 of the U.P. Basic Education (Teachers) (Posting) Rules, 2008 framed under Section 19 (1) of the U.P. Basic Education Act, 1972. The respondents for the academic Sessions 2019-20 evolved a Transfer Policy for inter district transfers by issuing Government Order dated 2.12.2019. The said Government Order dated 02.12.2019 came to be challenged in a bunch of writ petitions leading amongst them being Writ Petition No.878 of 2020 (Divya Goswami and others Vs. State of U.P. & others) decided on 03.11.2020 wherein clauses 2(2)(A), (B) of the Government Order was held to be contrary and in conflict with the statutory rules contained under the posting Rules, 2008 and Clause 16 to be contradictory to the Clause 15 of the Government Order and also defeating the very objective sought to be achieved under the posting Rules, 2008 in the light of the objective set forth under the Right to Free Education for all Act, 2009 and Clause 15 of the Government Order was observed to be read down for female candidates as they may be specially circumstanced. The writ petition was disposed of with certain directions to be kept in mind before finalizing the list of

teachers seeking inter district transfer. The directions were:-

"(I) No inter district transfer shall be done in the mid of the academic session.

(II) Transfer application should be entertained strictly in the light of the provisions as contained in Rule 8(2)(a) (b) and (d) of the Posting Rules, 2008.

(III) Once a teacher has successfully exercised the option for inter district transfer, no second opportunity shall be afforded to any teacher of any category except in case of female teacher who has already availed benefit of inter district transfer on the ground of parents dependency, prior to her marriage. However, in case if the marriage has taken place then she will have only one opportunity to exercise option for inter district transfer either on the ground of parents dependency or spouse residence/ in-laws residence.

(IV) In case of grave medical emergency for any incurable or serious disease that may as of necessity, require immediate medical help and sustained medical treatment, either personally or for the spouse, a second time opportunity to apply for inter district transfer should be afforded to such a teacher even if he/she had exercised such option for inter district transfer for any other reason in the past.

(V) Application of differently abled person should have very sympathetic consideration looking to physical disability but they should also have only one time opportunity to exercise option for inter district transfer. In case of female teachers, such exception would apply, as referable to rule 8(2) (d) of Posting Rules, 2008.

(VI) In case of female teacher's right to seek transfer, relaxation given under Rule 8(2)(d) shall be read with rule 8(2) (b) and relaxation shall, therefore, be subject to rule 8(2) (b).

(VII) Save as observed and directed herein above (Direction Nos.III, IV and V), no second opportunity to exercise option for inter district transfer be made available to any candidate of any category whatsoever.

(VIII) The exercise of inter-district transfer since is exception to the general rule of appointment and posting, every application for transfer has to be addressed to by the competent authority keeping in mind the objectives set forth under the Act, 2009 and Posting Rules, 2008 as amended in the year 2010 and must be acceded to citing a special circumstance specific to the case considered."

The pending applications for inter district transfer before the State Government pursuant to the Government Order date 02.12.2019 were directed to abide by the directions/observations made in the judgment. The decision dated 03.11.2020 rendered in the case of Divya Goswami (Supra) was modified vide order dated 03.12.2020 and the direction No.1 in the judgment dated 03.11.2020 was directed not to be pressed into the service in cases of medical emergency.

It is next contended that the question whether a male Assistant Teacher appointed in a Primary School run by Basic Shiksha Parishad could be transferred from one district to another even before completing five years term is no longer res-integra and stands decided by a decision dated 30.05.2018 of a Coordinate Bench rendered in Writ (A) No.4950 of 2018 (Anuraddha Kumar Tripathi Vs. State of U.P. & 5 others) wherein the Court held that transfer of a male Assistant Teacher from one district to another, in a basic school, can ordinarily be made only after completion of five years initial posting in backward area in accordance with Rule

8(2)(d) of the Rules of 2008 as well as the policy framed for the purpose. However, in extra ordinary or exceptional circumstances an application for transfer can be considered by the Basic Shiksha Parishad even before expiry of such term. The question whether in a given case extra ordinary circumstances exist or not has to be examined by the Basic Shiksha Parishad.

Learned counsels for the respondents submit that no policy has been framed by the Government as yet in this regard. He further submits that the respondent No. 3 , is the transferring authority, because it is an Inter-District Transfer.

I have heard learned counsels for the parties and perused the record.

This Court finds that it is no longer res-integra that a male Assistant Teacher appointed in a Primary School run by Basic Shiksha Parishad could be transferred from one district to another even before completing five years term and stands concluded by the decision of the Coordinate Bench in Writ (A) No.4950 of 2018 (Anuradha Kumar Tripathi Vs. State of U.P. & 5 others). The said decision has been approved in Special Appeal Defective No.70 of 2019 (Arif Ali Vs. U.P. Basic Education Board & 3 others). The petitioner has already completed five years statutory period.

In view of the aforesaid, let the respondent No. 3 , consider the request of the petitioner for transfer from District Sonbhadra to District Bijnor within a period of two months from the date of filing of certified copy of this order, keeping in view of the decision rendered in case of Divya Goswami & Anuraddha Kumar Tripathi (Supra) and medical exigency of the petitioner's wife. The application shall not be rejected on the ground that there is no policy framed in this regard for the reasons already mentioned herein above and the petitioner has not submitted online application for his transfer.

With the aforesaid observations, the writ petition stands disposed of. "

3. Today, a compliance affidavit has been filed on behalf of opposite party wherein it has been stated that the order of the Writ Court has been complied with and the representation of the applicant has been decided on 02.12.2023. Copy of which has been brought on record as Annexure-1 to compliance affidavit.

4. In view of said fact, as the order of writ Court has been complied with, the contempt application is rendered infructuous and the same stands dismissed.

5. Contempt notice stands discharged.

Order Date :- 5.12.2023

Shiraz