

Court No. - 34

Case :- WRIT - A No. - 18125 of 2023

Petitioner :- Suman Dubey

Respondent :- The State Of U.P. And 3 Others

Counsel for Petitioner :- Shailendra Kumar Ojha, Ashutosh Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

Heard Sri S.K.Ojha, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

By means of present petition filed under Article 226 of the Constitution, the petitioner has questioned the order dated 19.09.2023 issued by respondent no. 4.

The grievance raised by the petitioner is that in view of interim protection granted by this Court in its order dated 4.9.2023 if the petitioner submitted representation within time prescribed for under the said order, he ought to have been given joining .

Per contra, learned Standing Counsel submits that there is no order of this Court which can be interpreted to me that petitioner was put back at the same place from where he was transferred and so all that was required was that no action shall be taken against him for his not joining at the transferred place. Under the circumstances, according to him present petition is thoroughly misconceived and should be dismissed summarily .

Having heard learned counsel for the parties and having perused the records, I find that the petitioner had challenged the transfer order dated 30th June, 2023 vide Writ A No. 14719 of 2023 in which following directions were issued:

"Accordingly, without entering into the merits of the case, the present petition is disposed of leaving it open to the petitioner to submit a comprehensive representation against the impugned transfer order dated 30.06.2023 before the competent authority i.e. Principal Secretary, Health & Treatment, Civil Secretariat, Government of U.P./ respondent no. 1 within a period of two weeks from today.

In case such a representation is made, respondent no. 1 shall proceed to decide the same in accordance with law considering the grounds taken by the petitioner in the representation, which would be decided within a period of three weeks from the date of receipt of the representation alongwith certified copy of this order.

Till disposal of representation, no coercive action shall be taken

by the respondents against the petitioner in pursuance of the impugned transfer order dated 30.06.2023.

It is made clear that if the petitioner does not submit her representation within the time specified, then the benefit of this order shall not be available to her. "

(emphasis added)

From a bare perusal of the aforesaid order and directions issued by this Court, it is very much clear that petitioner was not to be proceeded against for not complying with the order of transfer but there was no direction to permit petitioner to join back at the place from where he was transferred. Petitioner was, therefore, to remain absent at his own risk in view of the nature of order being merely of *status quo* and which could be referable to *de facto* position and so if a person is on leave or remain absent from joining, he would be continued in that status.

In the circumstances, therefore, the order that has been passed by the authority dated 19.09.2023 cannot be said to be an order in violation of directions issued by this Court. The Principal of Medical College, Jalaun has very clearly noticed the order and has directed that no coercive measure shall be taken against the petitioner.

In view of above, I do not find any good ground to interfere with the order impugned. The petition lacks merit and is accordingly dismissed.

Order Date :- 30.10.2023
Sanjeev