

Court No. - 8

Case :- WRIT - A No. - 4024 of 2023

Petitioner :- Dr. Awaneesh Kumar Tiwari And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Dept. Medical Health Family Welfare U.P. Lko. And 4 Others

Counsel for Petitioner :- Deepak Singh, Manish Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Shri Seemant Singh, learned counsel for the petitioners and Shri Sandeep Sharma, learned Standing Counsel appearing for the State-respondents.

2. The present petition under Article 226 of the Constitution of India has been filed seeking following reliefs:-

"(a) Issue a writ, order or direction in the nature of certiorari calling the records of the case and quashing the impugned order dated 13.04.2023 passed by Special Secretary, Government of U.P., Medical Section-8, Lucknow (Annexure No.16), whereby the petitioners have been transferred at First Referral Unit (F.R.U.) Community Health Centre, Malhipur, Shravasti from First Referral Unit (F.R.U.) Community Health Centre, Ikauna, Shravasti while working on the post of Medical Officers under Buddy Buddy Scheme (M.B.B.S. Sahyogi Chikitsak) and impugned office order dated 15.05.2023 passed by the Special Secretary, Government of U.P., Lucknow (Annexure No.18) whereby no basis/opportunity has been found to review the impugned transfer order dated 13.04.2023 in compliance of the judgment and order dated 28.04.2023 passed in Writ A No.3201 of 2022 (Dr. Awaneesh Kumar Tiwari and Another vs. State of U.P. and Others).

(b) Issue a writ, order or direction in the nature of Mandamus directing the respondents not to relieve the petitioners from their respective post of Medical Officers working under Buddy Buddy Scheme (M.B.B.S. Sahyogi Chikitsak), First Referral Unit (F.R.U.) Community Health Centre, Ikauna, Shravasti.

(c) Issue a writ, order or direction in the nature of Mandamus direct the respondents not to interfere with the smooth functioning and working of the petitioners on their respective post of Medical Officers working under Buddy Buddy Scheme (M.B.B.S. Sahyogi Chikitsak), First Referral Unit (F.R.U.) Community Health Centre, Ikauna, Shravasti within the period of 5 years from the date of completion of the requisite training of Life Saving Anesthesia Skills (LSAS) and Emergency Obstetric Care (EmOc) in view of the Government order dated

27.02.2019 issued by the State Government.

(d)...

(e)..."

3. This is the second writ petition filed by the petitioners. Earlier they had challenged the order dated 13.04.2023 passed by Special Secretary, Government of U.P., Medical Section-8, Lucknow in Writ A No.3201 of 2023. The petitioners vide order dated 13.04.2023, who were posted at F.R.U. Community Health Centre, Ikauna, District-Shravasti were transferred to F.R.U. Community Health Centre, Malhipur, District-Shravasti. The said writ petition was disposed of by this Court vide order dated 28.04.2023, which would read as under:-

"1. Heard Shri Seemant Singh, learned counsel for petitioners and Shri Sandeep Sharma, learned Standing Counsel appearing for the State-respondents.

2.The present petition under Article 226 of the Constitution of India has been filed challenging the order dated 13.04.2023 passed by the Special Secretary, Government of U.P., Medical Section-8, Lucknow, whereby the petitioners who were posted in F.R.U. Community Health Centre, Ikauna, District-Shravasti have been directed to be transferred to F.R.U. Community Health Centre, Malhipur, District Shravasti.

3. Shri Seemant Singh, learned Counsel for the petitioners has argued the present case with great zeal and exaggeration and has submitted that the impugned transfer order and relieving order are in the nature of punishment. He further submits that the recommendation letter of the Chief Medical Officer, District-Shravasti, would suggest that he recommended the transfer of the petitioners on allegations mentioned in the said letter dated 07.04.2023. It is also submitted that the impugned order dated 13.04.2023 passed by the Special Secretary, Government of U.P., Medical Section-8, Lucknow does not disclose that the petitioners have been transferred on administrative ground or exigency of service. He therefore, submits that since the impugned transfer order is by way of punishment, therefore, same is liable to be set aside.

4.On the other hand, Shri Sandeep Sharma, learned Standing Counsel has disputed the submissions made by learned Counsel for the petitioner and submits that the letter dated 07.04.2023 was an internal communication between the Chief Medical Officer, District-Shravasti and Director General, Medical and Health Service, Government of Uttar Pradesh, Lucknow and it was not addressed to the petitioners, therefore, an internal communication cannot be the basis for alleging that the impugned transfer order is by way of punishment. He further submits that the petitioners have been transferred on the same post to a F.R.U. Community Health Centre in the same district i.e. Shravasti. He therefore, submits that there is no substance in the present petition, which is liable to be

dismissed.

5. I have considered the submissions made by learned Counsel for the parties.

6. The transfer of the petitioners got triggered by a letter dated 07.04.2023 issued by the Chief Medical Officer, District-Shravasti. There can be no denial that there are some allegations against the petitioners. The impugned order dated 13.04.2023 does not disclose that the petitioners have been transferred on administrative ground or they have been transferred because of the allegations as contained in the said letter dated 07.04.2023 addressed to the Director General, Medical and Health Services, Government of Uttar Pradesh, Lucknow by Chief Medical Officer, Shravasti.

7. In view thereof, the Special Secretary, Government of U.P., Medical Section-8, Lucknow-respondent No.2, who has passed the impugned order dated 13.04.2023 is directed to re-look on the said impugned transfer order of the petitioners and if there is no administrative exigency, same shall be cancelled. The Special Secretary, Government of U.P., Medical Section-8, Lucknow should re-look on the impugned transfer order dated 13.04.2023 within a period of ten days from the date a certified copy of this order is placed before him/her. In the meantime, the petitioners should not be forced to join at their new place of posting for a period of ten days till the impugned transfer order is being re-looked by the Special Secretary, Government of U.P., Medical Section-8, Lucknow.

8. With the aforesaid observations, the present petition stands disposed of."

4. In pursuance to the directions issued by this Court vide order dated 28.04.2023, the Special Secretary, Government of U.P., Medical Section-8, Lucknow after considering the facts and circumstances has passed the impugned order and has also reiterated the earlier transfer order and it has been said that the petitioners are transferred on administrative ground.

5. When the petitioners are transferred on administrative ground, no stigma can be said to be attached to the said transfer of the petitioners. It appears that there is some problem between the Chief Medical Officer, District-Shravasti and the petitioners. It is for the authority to see that working atmosphere of the Community Health Centre where the petitioners were posted did not get vitiated. It is also not in dispute that petitioners have been transferred in the same district i.e. District-Shravasti to another Community Health Centre.

6. Considering the facts, I do not find that the impugned order is either stigmatic or it has been passed with malice.

7. In view thereof, the present petition is hereby **dismissed**. However,

petitioners are granted one week's time to join at their transferred place of posting.

(Dinesh Kumar Singh, J.)

Order Date :- 26.5.2023

Piyush/-