

Court No. - 7

Case :- WRIT - A No. - 6310 of 2023

Petitioner :- Radhika Mishra

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Education.
Lko. And 4 Others

Counsel for Petitioner :- Durga Prasad Shukla, Vivek Mishra

Counsel for Respondent :- C.S.C., Abhinav Singh, Net Ram, Ran Vijay Singh

Hon'ble Abdul Moin, J.

1. Heard.

2. The instant writ petition has been filed praying for quashing of the order dated 16.08.2023, a copy of which is annexure 1 to the petition, passed by the respondent no. 5 whereby the respondents have denied permission to the petitioner to join on the transferred post at District Unnao. Also under challenge is the order dated 26.09.2023 by which the transfer order of the petitioner has been cancelled.

3. The contention of learned counsel for the petitioner is that the petitioner is working as an Assistant Teacher. A government order dated 02.06.2023, a copy of which is annexure 3 to the petition, was issued which permitted inter district transfers of teachers on certain stipulations. One the the said stipulation was that in case the spouse of the petitioner is working in government service under the State Government, the Assistant Teacher would be entitled for weightage of 10 marks for the purpose of being considered for transfer.

4. The contention of learned counsel for the petitioner is that as the husband of the petitioner is working as an Assistant Professor in a government aided college consequently he would be deemed to be working under the State Government and as such the petitioner would be entitled for benefit of weightage of 10 marks.

5. It is contended that initially the petitioner applied for inter district transfer from district Lakhimpur Kheri to district Unnao. The respondents had found the petitioner eligible and indicated her name alongwith several others who have been found eligible for inter district transfer as per the transfer list dated 26.06.2023, a copy of which is annexure 6 to the petition. Subsequent thereto through an order dated 16.08.2023, a copy of which is annexure 1 to the petition, the District Basic Education Officer, Unnao has not permitted joining of the petitioner on the ground that the husband of the petitioner is working as an Assistant Professor in Mathura Prasad Degree College. Subsequent thereto, through an order dated 15.09.2023, a copy of which is annexure 12 to the petition, the respondent no. 3 has cancelled the transfer order of the petitioner to district Unnao.

6. The contention of learned counsel for the petitioner is that when the policy of transfer dated 02.06.2023 itself provides, so far as it is relevant to the facts of the instant case, that the spouse should be working under the State Government as such even if the husband of the petitioner is working as an Assistant Professor in an aided degree college the same would be deemed to be under the State Government and consequently the respondents have patently erred in not permitting the petitioner to join on the transferred post at District Unnao and thereafter cancelling her order of transfer.

7. Responding to that, Shri Ran Vijay Singh, learned counsel appearing for the respondent no. 3 states that the government order dated 02.06.2023 is categorical and it provides that where the spouse is working in government service, it is only then that a weightage of 10 marks is to be given. It is contended that the husband of the petitioner is working in a private aided degree

college and thus by no stretch of imagination can the working of the husband of the petitioner can be considered to be a service under the State Government and thus when the respondents have realized this, they initially did not permit the petitioner to join and thereafter cancelled her transfer order and thus there is no illegality and infirmity in the orders impugned.

8. Having heard learned counsel for the parties and having perused the record what emerges is that admittedly the husband of the petitioner is working as an Assistant Professor in a private aided degree college. The respondents had issued the policy for inter district transfer on 02.06.2023. Of the many stipulations as contained in the said policy, one of the stipulations, so far as it is relevant to the facts of the instant case, is that where a spouse of the person seeking transfer is working under the State Government he would be granted 10 points weightage for transfer.

9. When the petitioner applied for transfer in the capacity of being an Assistant Teacher from district Lakhimpur Kheri to District Unnao the application was acceded to by the respondents and they transferred the petitioner from district Lakhimpur Kheri to district Unnao. Subsequent thereto, the District Basic Education Officer, Unnao vide the order dated 16.08.2023 upon realizing that the husband of the petitioner is working as an Assistant Professor in a private aided degree college did not permit the petitioner to join and thereafter through the order dated 15.09.2023 passed by the respondent no. 3 the transfer order of the petitioner itself has been cancelled.

10. Whether working of the husband of the petitioner who is working as an Assistant Professor in a private aided degree college can be considered to be under the State Government as

is urged by learned counsel for the petitioner may not detain the Court in as much as once a policy has been issued by the State Government, obviously it is the author of the policy who is in the best position to interpret the conditions of the said policy. The intention on the part of the respondents is that the service being rendered of the spouse of a person seeking transfer should be under the State Government. This would also be clear from a perusal of the English version as stands indicated in the form that had been filled in by the petitioner, a copy of which is annexure 5 to the petition, which indicates that teachers whose spouse are working in government service would be eligible for grant of 10 marks. When the working of the petitioners husband admittedly is in a private aided degree college, it cannot strictly be said that the said working would be in a government service and consequently once the respondents have interpreted the same and it being a policy decision there cannot be any occasion for this Court to interfere with the said interpretation under Article 226 of the Constitution of India.

11. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition is **dismissed.**

Order Date :- 12.10.2023
J.K. Dinkar