

Court No. - 7

Case :- WRIT - A No. - 6660 of 2023

Petitioner :- Laxmi Shukla

Respondent :- State Of U.P. Represented By Its Addl. Chief Secy.
Basic Shiksha Anubhag-5 Lko. And 5 Others

Counsel for Petitioner :- Ashish Kumar,Rajat Aren

Counsel for Respondent :- C.S.C.,Abhinav Singh,Ran Vijay
Singh,Rishabh Tripathi

Hon'ble Abdul Moin,J.

1. Short counter affidavit on behalf of respondent no. 3 and the personal affidavit of the respondent no. 4 filed in Court today are taken on record.

2. Shri Rajat Aren, learned counsel for the petitioner states that he does not intend to file any reply to the said affidavits.

3. The personal affidavit was required by this Court vide order dated 08.11.2023 whereby it had been indicated that the Basic Shiksha Adhikari, Sitapur had given a wrong press statement.

4. Shri Rishabh Tripathi, learned counsel for respondent no. 4 states on the basis of averments contained in the said personal affidavit more particularly paragraphs nos. 5 & 6 that the news reported in the newspaper has been brought on record by the petitioner by means of supplementary affidavit. In this behalf, a notice has been issued to Chief Editor of the newspaper concerned to show cause on the said publication along with relevant material to establish that the respondent no. 4 has issued any such statement. A categorical statement has also been made in Paragraph 6 to the said personal affidavit that no such statement was given by respondent no. 4.

5. Considering the averments made in the personal affidavit, the Court has no reason to disbelieve the said affidavit and the statements made therein, consequently no action is required to be taken against the

respondent no. 4.

6. Heard.

7. All the learned counsels state that the facts of the case have already been summed up in the order dated 05.10.2023. For the sake of convenience, the order dated 05.10.2023 is reproduced below:

"1. Heard Sri Rajat Aren and Sri Rishi Srivastava, learned counsels for the petitioner, learned Standing Counsel for respondents no.1, 2 and 5, Sri Ran Vijay Singh, learned counsel for respondent no.3, Sri Rishabh Tripathi, learned counsel for respondent no.4, and Sri Abhinav Singh, learned counsel for respondent no.6.

2. Instant petition has been filed praying for quashing of the order dated 27.07.2023 passed by respondent no.6, a copy of which is Annexure-23 to the writ petition, as well as the Circulars dated 29.06.2023 and 01.07.2023. Further prayer is for a mandamus commanding the respondents to allow the petitioner to re-join in the office of respondent no.6 in pursuance of the relieving order dated 06.07.2023 and to regularly pay salary to the petitioner w.e.f. 01.07.2023 without considering any break in service.

3. The contention of learned counsels for the petitioner is that the respondents had issued a policy seeking applications for inter-district transfer on various grounds. The petitioner finding herself eligible for inter-district transfer, she being working at Sitapur, preferred an application for transfer from Sitapur to Unnao. As per the policy, the petitioner had annexed copy of the prescriptions/treatment of her husband for neurological disease which was being carried out both at SGPGI Lucknow as well as SGPGI Chandigarh. Initially, a list dated 26.06.2023, copy of which is Annexure-12 to the writ petition, was issued in which the name of the petitioner finds place at serial no.141 whereby the petitioner was transferred from District Sitapur to District Unnao. Subsequent thereto, the petitioner has been relieved from Sitapur to Unnao vide order dated 06.07.2023, a copy of which is Annexure-18 to the writ petition. The petitioner claims to have submitted her joining at Unnao on 07.07.2023.

4. After a period of almost three weeks, the order impugned dated 27.07.2023, a copy of which is Annexure-23 to the writ petition, was issued whereby the petitioner's transfer has been cancelled. The ground as emerges from the impugned order of cancellation is that medical certificates annexed by the petitioner have not been countersigned by the Chief Medical Officer of the concerned district.

5. The argument of learned counsels for the petitioner is that there are

two Government Orders governing the inter-district transfer of the teachers namely the Government Order dated 02.06.2023, a copy of which is Annexure-7 to the writ petition, followed by the Circular dated 29.06.2023.

6. The Government Order dated 02.06.2023 categorically provides in paragraph 9 that with respect to incurable disease and serious disease the certificates issued by the AIIMS, SGPGI, Lucknow/Safai, KGMU Lucknow and other Government Hospitals would be treated to be valid which have to be countersigned by the Chief Medical Officer of the concerned district. By means of the Circular dated 29.06.2023, it has been indicated that in terms of Government Order dated 29.06.2023 (para-5) in case the medical certificates are found to be fake or fabricated then the transfer order has to be cancelled.

7. The argument of learned counsels for the petitioner is that once the Government Order dated 09.06.2023 read with Circular dated 29.06.2023 and the Government order of the same date i.e. 29.06.2023 all provide for cancellation of the transfer order only when the medical certificates have been found to be fake or fabricated and by means of the order impugned dated 27.07.2023 the cancellation of the petitioner's transfer order has only been made only on the ground that the medical certificates have not been countersigned consequently the order impugned would run contrary to the Government Order and the Circular issued by the respondents themselves as such the order merits to be quashed on this ground alone.

8. Responding to that Sri Ran Vijay Singh, learned counsel appearing for respondent no.3, states that the Government order dated 02.06.2023 categorically provided that the medical certificate has to be countersigned by the Chief Medical Officer of the concerned district. Thus, even if by means of the subsequent circular dated 29.06.2023 it has been indicated that the transfer order can only be cancelled where it is found to be fake or fabricated the same cannot resile from the earlier order dated 02.06.2023 that medical certificate has to be countersigned and thus once it was noticed that the medical certificate annexed by the petitioner was not countersigned by the Chief Medical Officer of the concerned district consequently no error has been committed by the respondents by cancelling the transfer order of the petitioner through order dated 27.07.2023 on the ground that the medical certificate is not countersigned by the Chief Medical Officer of the concerned district.

9. Sri Singh also states that by means of an order dated 03.10.2023 the initial transfer order of the petitioner dated 26.06.2023 has itself been cancelled and the said order has not been challenged by the petitioner and consequently for all practical purposes the instant petition has been rendered infructuous.

10. Upon that, learned counsels for the petitioner pray for and are granted three days' time to file an application for amendment of the instant writ petition.

11. As such, list this case in the next week as fresh."

8. Shri Rajat Aren and Shri Rishi Srivastava, learned counsels for the petitioner have pointed out that on account of typographical error in the order dated 05.10.2023, the date of government order has been indicated as "09.06.2023" in paragraph 7. They contend that the correct date of government order is "02.06.2023".

9. They have further submitted that the merit position of the petitioner has been indicated as "Serial No. 141" in paragraph 3 of the said order which should be "Serial No. 15221".

10. The aforesaid statement of Shri Rajat Aren and Shri Rishi Srivastava, learned counsels for the petitioner is recorded.

11. From a perusal of the order dated 05.10.2023, it emerges that the claim of the petitioner for her transfer has been rejected on 27.07.2023 and during the pendency of the petition, vide order dated 03.10.2023, a copy of which is Annexure No. SA-2 to the supplementary affidavit, the respondent no. 3 has also rejected the claim of the petitioner for transfer to District - Unnao.

12. As already recorded by this Court in the order dated 05.10.2023, the government order dated 02.06.2023 read with circular dated 29.06.2023 and the government order of the same date i.e. 29.06.2023 provide for cancellation of the transfer order only when the medical certificates have been found to be fake or fabricated. However by means of order impugned dated 27.07.2023, the claim of the petitioner has been rejected on the ground that the medical certificates have not been countersigned by the Chief Medical Officer.

13. The aforesaid ground for rejection would thus run contrary to the condition of rejection as categorically provided in the government

order dated 02.06.2023 i.e. rejection order does not find the medical certificate(s), as annexed by the petitioner, to be either fake or fabricated and consequently the order impugned dated 27.07.2023 cannot be said to be legally sustainable in the eye of law.

14. On the same analogy, the order dated 03.10.2023 as passed by the respondent no. 3 cannot be said to be legally sustainable.

15. Once the claim of the petitioner has been rejected on the ground which is totally alien to the grounds on which the claim could be rejected, as detailed in the government orders dated 02.06.2023 and 29.06.2023 as such the orders impugned are liable to be quashed.

16. Keeping in view the aforesaid discussion, the writ petition is **allowed**. The impugned orders dated 27.07.2023 and 03.10.2023, a copy of which is Annexure No. 23 to the petition and Annexure No. SA-2 to the supplementary affidavit respectively, are quashed.

17. Respondents are directed to permit the petitioner to join at the transferred place i.e. District- Unnao. The joining of the petitioner would be treated with effect from the date the petitioner initially submitted her joining i.e. 07.07.2023 with all consequential benefits.

Order Date :- 17.11.2023

Mohit Singh/-