

Court No. - 7

Case :- WRIT - A No. - 7137 of 2023

Petitioner :- Bhawna Srivastava

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Education, Deptt. Lucknow And 3 Others

Counsel for Petitioner :- Shrish Kumar Gaur

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

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner, learned Standing counsel appearing on behalf of the respondents no. 1 to 3 and Sri Ran Vijay Singh, learned counsel appearing on behalf of the respondents no. 2 & 4.
2. With the consent of learned counsel appearing on behalf of the contesting parties, the instant writ petition is being finally decided.
3. Instant writ petition has been filed praying for a mandamus commanding the respondents to consider the application of the petitioner for her transfer from Kanpur Nagar to Lucknow on spouse ground as well as medical ground of herself and her husband.
4. The contention of learned counsel for the petitioner is that the petitioner is working as a Teacher at Kanpur Nagar and has sought for transfer from Kanpur Nagar to Lucknow on the ground of her husband working at Lucknow apart from the medical ailments with which the petitioner and her husband are both suffering. The medical certificate in this regard are said to have been annexed along with the application filed by the petitioner seeking her transfer to Lucknow.
5. The contention is that despite her application, the respondents are not proceeding to consider the said application for transfer and hence the petition.
6. Per contra, Sri Ran Vijay Singh, learned counsel appearing on behalf of the respondents no. 2 to 4 states that the transfer of the teachers are governed by the Government order dated 02.06.2023, a copy of which has been filed as annexure 9 to the writ petition. It is contended that the petitioner is seeking a transfer a

second time, her earlier transfer having been occasioned in the year 2008. Reliance has been placed on Sub Clause (3) of Clause 2 of the Government order dated 02.06.2023 to contend that a teacher would not be transferred a second time on her application though there is no prohibition in she moving an application.

7. Responding to that, the argument of the learned counsel for the petitioner is that this aspect of the matter has been considered by the Division Bench of this Court in Special Appeal Defective No. 419 of 2019 Inre; Ajay Kumar Vs. State of U.P and Ors decided on 05.07.2021 wherein while considering the earlier Government order which had placed a ban on a second transfer, the Division Bench of this Court was of the view that the Government order imposing bar on second application for inter district transfer is not in consonance with the rules rather *de hors* the statutory rules and to that extent it was clarified that mere making of an application would not mean a right to get a transfer rather it would remain the discretion of the State Government.

8. The argument of the learned counsel for the petitioner is that once the earlier Government order which had placed a bar on the second transfer, has already been considered by the Division Bench of this Court in the case of **Ajay Kumar (supra)** consequently, the respondents have patently erred in law in not entertaining the second application of the petitioner.

9. Having heard the learned counsel appearing on behalf of the contesting parties and having perused the records what emerges is that despite the petitioner having preferred an application seeking her transfer from Kanpur Nagar to Lucknow, the respondents have failed to act upon the same. The application for transfer has been moved by the petitioner both on the ground of her husband working at Lucknow and the petitioner and her husband suffering from various ailments. The respondents have failed to act upon the said application placing reliance on Sub Clause (3) of Clause (2) of the Government order dated 02.06.2023 which does not restrain a second application for transfer from being filed.

10. The same may not detain this Court inasmuch as earlier too when there was a bar for a second transfer of a teacher, the same had been considered threadbare by a Division Bench of this Court in the case of **Ajay Kumar (supra)** wherein the Division Bench has held as under:-

"In view of the above, we find that the Government Order, imposing bar on second application for inter-district transfer, is not in consonance with the Rules; rather, de hors the statutory Rules. To that extent, we are entertaining this appeal and causing interference in the directions issued by the learned Single Judge prohibiting second application for inter-district transfer. It is, however, with the clarity that mere making of application would not mean a right to get transferred; rather, it would remain at the discretion of the State Government. It is furthermore that if the Government permits inter-district transfer, the employee would be placed at the bottom of the seniority in the district where he/she is transferred."

11. From a perusal of the aforesaid judgment in the case of **Ajay Kumar (supra)** clearly emerges that the Division Bench has held that there would not be any bar on a second application for inter district transfer being moved and the transfer of teachers remains in the domain of the State Government and thereby mere submission of the application does not create any right in favour of the employee to seek transfer.

14. Accordingly, keeping in view the Division Bench judgment of this Court in the case of **Ajay Kumar (supra)** and the alleged bar as has been indicated by the learned counsel for the respondents not being a complete bar for the purpose of entertainment of the said application, the writ petition is disposed of with the direction to the respondent no. 2 i.e Basic Education Board, U.P, Prayagraj to consider the application of the petitioner for her transfer to Lucknow from Kanpur Nagar in accordance with law and the relevant rules.

15. Let such a consideration be done within a period of four weeks from the date of receipt of a certified copy of this order.

Order Date :- 11.10.2023

Pachhere/-