

Court No. - 7

Case :- WRIT - A No. - 7709 of 2023

Petitioner :- Smt. Sushma Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Education Deptt. U.P. Lko. And 3 Others

Counsel for Petitioner :- Avdhesh Shukla

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

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner, learned Standing counsel appearing on behalf of the respondent no. 1, Sri Ran Vijay Singh, learned counsel appearing on behalf of the respondent no. 2, Dr. Uday Veer Singh, learned counsel appearing on behalf of the respondent no. 3 and Sri Rishabh Tripathi, learned counsel appearing on behalf of the respondent no. 4.

2. With the consent of learned counsel appearing on behalf of the contesting parties, the instant writ petition is being finally decided.

3. At the very outset, learned counsel for the petitioner states that he does not intend to press the prayer no. 1 of the writ petition and prays that the writ petition may be dismissed as not pressed so far as it pertains to prayer no. 1. Accordingly, the writ petition is dismissed as not pressed so far as it pertains to prayer no. 1.

4. Instant writ petition has been filed challenging the impugned order of rejection as uploaded on the website passed by the respondent no. 2, a copy of which is annexure 2 to the writ petition.

5. The contention is that the petitioner had applied for mutual transfer with one Ms. Tarun Verma who was working as Assistant Teacher at Balrampur and the petitioner is working as Assistant Teacher at Barabanki. It is contended that in case the mutual transfer would have been agreed to by the respondents, the petitioner would have been transferred to Balrampur and in her place, Ms. Tarun Verma would have been transferred to Barabanki.

6. It is contended that the Government order dated 02.06.2023, a copy of which is annexure 1 to the writ petition has been issued which deals with the

application for transfer of the teachers including mutual transfers. It is contended that Sub Clause (2) of Clause 2 of the aforesaid Government order indicates that in case an employee has earlier been transferred then he would not be liable to be transferred even on mutual transfer within a period of five years except on specific ground enumerated in the said clause.

7. It is contended that earlier the petitioner had been transferred from Farrukahbad to Barabanki on 16.07.2018.

8. It is contended that when the petitioner applied for a mutual transfer, the same has been rejected by means of non speaking order, a copy of which is annexure 2 to the writ petition as uploaded on the official website by indicating that "You are not eligible for mutual transfer".

9. The argument is that the respondents have placed reliance on the aforesaid Government order dated 02.06.2023 more particularly Sub Clause (2) of Clause (2) which entails a bar on transfer a second time except in special circumstances in case a person has been transferred within a period five years.

10. It is contended that this aspect of the matter has been considered by this Court in **Writ- A No. 6921 of 2023 Inre; Akanksha Pandey Vs. State of U.P and Ors** decided on **19.09.2023** wherein this Court has held that a second application for transfer is not barred.

11. On the other hand, Sri Ran Vijay Singh, learned counsel appearing on behalf of the respondent no. 2 does not dispute that this Court in the case of **Akanksha Pandey (supra)** has held that a second application for transfer is not barred but he states that the petitioner would not have any right claiming for being transferred.

12. Having heard the learned counsel appearing for the contesting parties and having perused the records what emerges is that after the petitioner had applied for a mutual transfer with Ms. Tarun Verma, her application has been rejected by means of a non speaking order, a copy of which is annexure 2 to the writ petition by indicating that she is not eligible for mutual transfer. Apart from the fact that

the order does not contain any reasons as to why her application has been rejected, another aspect of the matter, as urged by the learned counsel for the petitioner is that there is a bar contained in Sub Clause (2) of Clause 2 of the Government order dated 02.06.2023 which prohibits an employee for being transferred a second time except in special circumstances. However, this Court in the case of **Akanksha Pandey (supra)** has already held that the second application for transfer is not barred.

13. Accordingly, keeping in view the aforesaid discussion, the writ petition is allowed. The order impugned, a copy of which is annexure 2 to the writ petition whereby the application of the petitioner for mutual transfer has been rejected, is quashed. The respondents are required to pass a fresh order on the application of the petitioner keeping in view the discussion made above.

14. Let such an order be passed within a period of two weeks from the date of receipt of a certified copy of this order

Order Date :- 10.10.2023
Pachhere/-