

Court No. - 20

Case :- WRIT - A No. - 7758 of 2023

Petitioner :- Brijesh Singh

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

Counsel for Petitioner :- Savitra Vardhan Singh, Umesh Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for the petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 30.06.2023 whereby petitioner working on the post of Lekhpal has been transferred from Lucknow to Hardoi on administrative ground. Also under challenge is the order dated 27.09.2023 whereby petitioner's representation there against has been rejected.

3. Earlier the aforesaid transfer order had been challenged in Writ A No.6759 of 2023, which was disposed of vide order dated 19.09.2023, which is reproduced herein below:-

"1. Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.

2. Petition has been filed raising challenge to order dated 30.06.2023 whereby petitioner working on the post of Lekhpal has been transferred from Lucknow to Hardoi on administrative grounds.

3. Argument raised by learned counsel for petitioner is based on Rule 24 of U. P. Lekhpal Service (IIIrd Amendment), Rules of 2015 whereby in the first and second proviso, it has been provided that as a consequence of transfer of Lekhpal from the District of their posting, vacancies in any District shall not exceed 20% of his sanction strength. Second proviso to Rule 24 provides that in case overall 20 posts is below the threshold of 80% then vacancies shall be distributed across the District on a proportionate basis.

4. Learned counsel has drawn attention to paragraph 10 of writ petition to submit that in District Lucknow, there are 302 posts of Lekhpal sanctioned where against only 189 Lekhpals are working due to which there 30% vacancy in the District of

Lucknow itself and therefore petitioner's transfer is in violation of second proviso to Rule 24 of Rules of 2015.

5. Learned counsel has submitted that matrimonial dispute between petitioner and his wife is also ongoing in Case No.1430 of 2019 (Brijesh Singh versus Dr. Namita Gupta) under Section 13 of Hindu Marriage Act, 1955 and due to present transfer, the aforesaid case pertaining to petitioner would be hampered.

6. With regard to aforesaid grievance, petitioner has already submitted a representation but seeks liberty to file a fresh representation before concerned authority.

7. Considering innocuous prayer being made by learned counsel for petitioner and without entering into the merits of the case, petitioner is granted liberty to file a fresh representation against his transfer before opposite party No.2 i.e. Commissioner, Lucknow Division, Lucknow within a period of three days from today. In case such a representation is filed, the same shall be considered and decided by a reasoned and speaking order within a period of one week from the date a certified copy of this order is produced before the said authority. Till a decision on the petitioner's representation, petitioner shall not be compelled to join at the transferred place in case not already joined.

8. With the aforesaid observation, petition stands disposed of. "

4. A perusal of the impugned order dated 27.09.2023 makes it quite evident that the observations made in the order dated 19.09.2023 with regard to submissions of learned counsel for petitioner has not been dealt with at all. Impugned order only adverts to some report dated 26.09.2023 submitted by the District Magistrate but also does not indicate as to how the petitioner's submissions have been dealt with, particularly since such submissions pertain to service rules. Clearly, the impugned order is not a speaking order and has been passed without any application of mind.

5. Consequently, the **impugned order dated 27.09.2023 is quashed** by issuance of a writ in the nature of Certiorari, granting liberty to opposite party no.2- Commissioner, Lucknow Division, Lucknow to pass fresh orders adverting to arguments of learned counsel for petitioner as indicated in paragraph nos.3, 4 and 5 of the order dated 19.09.2023. Fresh orders shall be passed within a period of ten days from the date a certified copy of this order is produced before the authority concerned. Till a decision or as indicated aforesaid, petitioner

shall not be compelled to join on the transferred place, in case he has not already joined.

6. Consequently, petition succeeds and is **allowed** at the admission stage itself.

7. Parties to bear their own costs.

Order Date :- 10.10.2023

Arnima