

Court No. - 20

Case :- WRIT - A No. - 7917 of 2023

Petitioner :- Dr. Pawan Kumar Bharti

Respondent :- State Of U.P. Thru. Prin. Secy. /Addl. Chief Secy. Medical Health, Lko. And 3 Others

Counsel for Petitioner :- Abhinav Trivedi, Prachi Arya

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

Heard Ms. Prachi Arya, learned counsel for petitioner and learned State Counsel for opposite parties.

Supplementary affidavit filed on behalf of petitioner is taken on record.

Petition has been filed challenging order of transfer dated 30.06.2022 whereby petitioner working on the post of Level-2 Medical Officer in District Maharajganj has been transferred to Gorakhpur under Chief Medical Officer, Siddharthanagar. The aforesaid transfer order was challenged in Writ A No.1170 of 2023 which was disposed of vide order dated 08.02.2023 directing opposite parties to take a decision on petitioner's representation. In pursuance thereof, order dated 16.03.2023 has been passed rejecting petitioner's representation, which is also under challenge.

It has been submitted that petitioner is a handicapped person with 40% disability regarding traumatic cervical cord and was required to be exempted from annual transfers in view of Government Order dated 15.06.2022 wherein paragraph 5(vi) clearly provided for such exemption. It is also submitted that transfers of such handicapped persons are to be effected only in case of exceptional circumstances and as per their options.

It is also submitted that petitioner is Level-2 Medical Officer whereas impugned order was passed with regard to Level-1 Medical Officers and therefore also petitioner was required to be exempted from transfers. It is submitted that aforesaid aspects have not been dealt with in the impugned order rejecting petitioner's representation only on the ground that petitioner has already spent approximately nine years seven months in the current place of transfer and therefore is required to be covered under the transfer list in terms of the Government Order itself. It is submitted that the other submissions raised by the petitioner have not been adverted to at all.

Learned State Counsel appearing on behalf of opposite parties has refuted submissions advanced by learned counsel for petitioner with a submission that in terms of paragraph 5 of the Government Order dated 16.06.2022, there is no absolute prohibition in transfer of handicapped persons, which can be resorted to in exceptional circumstances. Since petitioner has already spent more than nine years in the current place of transfer, he was required to be transferred out of his place of posting in terms of the Government Order itself. It is also submitted that transfer being an incidence of service, there is no absolute vested right of petitioner to continue in the particular place of posting.

Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is quite evident that more than one and a half years have passed since transfer of petitioner was effected vide order dated 30.06.2022. Even the order rejecting the petitioner's representation was passed more than six months ago on 16.03.2023. The petitioner has already joined at the place of transfer.

In the considered opinion of this Court, there would be no

effective use in adjudicating this dispute on merits in view of aforesaid conditions. It is also evident from a perusal of the Government Order dated 15.06.2022 that there is no absolute prohibition or bar on transfer of handicapped persons. In the present case, it appears that petitioner's representation has been rejected only on the ground that he has been posted in the current place of posting for more than nine years. The aspect of other conditions pertaining to transfer of handicapped persons does not appear to have been kept in mind while resorting to petitioner's transfer. However, as indicated herein above, since more than one and a half years have passed, opposite parties are therefore directed to keep in mind the conditions for transfer of handicapped persons, such as petitioner, prior to issuing any order or transfer pertaining to such persons, particularly with regard to conditions for their effective conduct of life in terms of Section 20 of Persons with Disability Act, 2016.

The aforesaid aspects are required to be kept in mind even in case of future transfer of petitioner.

With the aforesaid directions, petition has been **disposed of**.

Order Date :- 12.10.2023

Arnima