

Court No. - 20

Case :- WRIT - A No. - 8044 of 2023

Petitioner :- Aneeta Devi

Respondent :- State Of U.P. Thru. Prin. Secy. Medical And Health And Family Welfare Lko. And 4 Others

Counsel for Petitioner :- Ankit Kumar Singh, Dharmendra Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Petition has been filed challenging order dated 6th September, 2023 whereby petitioner's representation against transfer order dated 20th June, 2023 has been rejected.
3. It has been submitted that earlier petitioner had been transferred from Community Health Central, Bangarmau, District Unnao to the district hospital in Bighapur, District Unnao in by means of order dated 20th June, 2023 which was challenged in Writ A No. 5064 of 2023. The aforesaid petition was disposed of vide order dated 18th July, 2023 granting liberty to opposite parties to decide petitioner's representation, which has been rejected by the impugned order.
4. Learned counsel for petitioner has submitted that vide order dated 18th July, 2023, direction had been issued to the opposite party No.3 in the said writ petition, i.e. Joint Secretary, Medical and Health Services, U.P., Lucknow wheres the impugned order has been passed by the Joint Secretary, Anubag-8 who is different entity altogether and therefore impugned order has not been passed by the authority which was directed to do so. It is also submitted that petitioner's father-in-law is 100 % disabled being blind and therefore petitioner being his daughter-in-law was required to be exempted from annual transfer in pursuance of paragraph 5 of the government order dated 7th June, 2023.
5. It is submitted that opposite party has not appreciated petitioner's submission in its correct perspective since exemption was required to be allowed in terms of aforesaid government order particularly once there was no dispute with regard to petitioner's father-in-law being disabled more than 40% and the fact that he was dependent upon the petitioner.
6. Mr. Vikas Singh learned State Counsel has refuted submissions advanced by learned counsel for petitioner with

submission that government order clearly indicates that provisions indicated in paragraph 5 are required to be followed not as a mandatory condition but only as a directory condition, so far as it is possible. It is submitted that impugned order has been passed in accordance thereof.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is quite evident that earlier this Court vide order dated 18th July, 2023 had directed opposite party No.3 of the said writ petition i.e. Joint Secretary, Medical and Health Services, U.P., Lucknow to decide the representation and perusal of impugned order dated 6th September, 2023 makes it evident that it has been passed by the very same authority. The aspect as to the department being Anubhag-8 or not is hardly relevant in case there is no such direction issued by this Court earlier.

8. So far as submission regarding infringement of paragraph 5 of government order is concerned, it is also evident that same is not mandatory or prohibitory in nature but is only issued as a directory nature. It is the case of petitioner that father-in-law is 100% handicapped being blind. In the considered opinion of this Court, such a physical handicap would not come in the way of execution of petitioner's duty. Had it been the case of defendant father-in-law being bed ridden, it would have been a different matter for consideration but in the present case, such feature is clearly missing. It is also evident from the impugned order that petitioner has already been posted in their district for past 11 years and for the past two years in a particular hospital. Again at the cost of repetition, it is evident that there is no prohibition in petitioner's transfer.

9. In view of discussion made herein above, this court does not find any exception to the impugned order.

10. Petitioner is granted seven days time to join at the place of posting. In case petitioner joins within the aforesaid time frame, he shall be allowed to do so and salary and other emoluments of petitioner shall not be withheld on that account.

11. The petition stands disposed of.

Order Date :- 16.10.2023

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