

Court No. - 20

Case :- WRIT - A No. - 7979 of 2023

Petitioner :- Dr. Narendra Pratap Mathuria

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

Counsel for Petitioner :- Rohitash Kumar Singh, Kapil Dev Srivastava

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 1st August, 2023 as well as transfer order dated 28th June, 2023. By means of impugned order, petitioner's representation for couple posting has been rejected.
3. It has been submitted that earlier by means of order dated 28th June, 2023, petitioner had been transferred from district Meerut to district Barabanki which was challenged in writ petition No. 4936 of 2023 which was disposed of vide order dated 13th July, 2023 directing opposite parties to consider grievance of petitioner.
4. It has been submitted that petitioner who is holding the post of Medical Officer in the Employees State Insurance Dispensary had sought benefit of paragraph 5 of the government order dated 7th June, 2023 for spousal posting in view of the fact that petitioner's wife is posted in district Meerut.
5. By means of impugned order, petitioner's representation in pursuance of directions issued by this Court has been rejected primarily on the ground that petitioner did not inform the authorities concerned that he wished for spousal posting prior to commencement of the transfer session. The second ground taken is that since petitioner has already joined at his place of transfer, there is no occasion to recall or interfere with the earlier transfer order.
6. Learned State Counsel has refuted submissions advanced by learned counsel for petitioner with submission that transfer is an incidence of service and even as per the government order dated 7th June, 2023, petitioner has spent more than three years in the district itself due to which the transfer order has been correctly passed in terms of the transfer policy.
7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it appears that transfer order was challenged by petitioner earlier and direction was issued to the opposite parties for taking a decision with regard to his grievance, in pursuance of which the impugned order has been passed.
8. A perusal of impugned order will make it evident that petitioner's representation has been rejected primarily on two grounds; firstly, on the ground that prior to commencement of transfer session, petitioner failed to

inform the authorities concerned that he wished for spousal posting in terms of paragraph 5 of the government order dated 7th June, 2023 and secondly, that he has already joined in the place of transfer, there is no occasion to re-visit the same.

9. In the considered opinion of this Court, once the petitioner had given a representation seeking relief in terms of paragraph 5 of the government order dated 7th June, 2023, it was incumbent upon the authority concerned to have addressed the grievance so raised by petitioner particularly since there is no prohibition in spousal posting. On the contrary paragraph 5 of the government order dated 7th June, 2023 clearly permits such spousal posting as far as possible. Although the aforesaid government order dated 7th June, 2023 is only in the nature of guideline but nonetheless it is equally binding on the State Government that therefore there should be some cogent reason for deviating from the conditions indicated therein. The impugned order does not indicate any ground for rejecting petitioner's representation and without indicating as to how spousal posting of petitioner would not be possible. The mere fact that petitioner failed to indicate his preference for spousal posting prior to commencement of transfer session is not good ground in view of paragraph 5 of the government order. Similarly the second ground is also not in consonance with the conditions indicated in the government order.

10. In view of aforesaid, the impugned order dated 1st August, 2023 is quashed by issuance a writ in the nature of Certiorari granting liberty to opposite parties to decide petitioner's representation afresh in the light of paragraph 5 of the government order dated 7th June, 2023. Reasoned and speaking order shall be passed within a period of four weeks from the date a certified copy of this order is produced before opposite party No.2 i.e. Director, Employees State Insurance Scheme, Labour Medical Services, U.P., Kanpur.

11. Resultantly, the petition succeeds and is allowed at the admission stage itself. Parties to bear their own cost.

Order Date :- 13.10.2023

kvg/-