

Court No. - 20

Case :- WRIT - A No. - 8223 of 2023

Petitioner :- Smt. Nazini Bano

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

Counsel for Petitioner :- Sheshnath Bhardwaj Advoc,Deepak Dwivedi

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
2. Petition has been filed challenging order dated 09.10.2023 as well as consequential order dated 11.10.2023 and relieving order dated 13.10.2023 whereby petitioner has been transferred in public interest on a Class IV post from Police Intelligence Headquarters, Lucknow to Commissionerate, Lucknow.
3. It has been submitted that in terms of Rule 21(3) of U.P. Police Group D Employees Service Rules, 2009 as amended by the First Amendment of 2014, a person appointed to a post in a particular District or Establishment is not to be transferred to any other Establishment in normal course and it is only in special circumstance, such as administrative ground or self-request that a Group D employee can be transferred by competent Police Establishment Board.
4. It has been submitted that impugned orders have been passed in violation of aforesaid Rules. He has also placed reliance on judgment and order dated 08.01.2016 rendered by a coordinate Bench of this Court in Ravindra Nath Ram v. State of U.P. and others [WRIT - A No. - 3800 of 2015].
5. Aforesaid judgment and order reads as follows:-

Heard.

The petitioner is a Class IV employee in the Economic Offences Wing, Department of U.P. Police. He has been transferred vide order 24.4.2015 from Lucknow to Azamgarh.

Rule 21(3) of the relevant rules known as U.P. Police Group D Employees Service Rules 2009 was amended by the 1st amendment, 2014, which reads as under:

"21(3). A person appointed to a post for a particular district or P.A.C. Battalion or unit shall not be transferred to any other establishment in normal case. Under special circumstances i.e. administrative ground or self request, a group 'D' employee may be transferred by competent police Establishment Board."

Under the said amended rule transfer of a Class IV employee of the police department is permissible only on administrative ground or on his own request, and not in normal course. This issue came up before this court in Writ Petition No.6525(SS) of 2015 and it was held as under:

".....Under the said Rule, transfer of a Class IV employee is permissible only on administrative ground or on his own request. Administrative ground, as is normally understood, is a case where there are complaints against the functioning of an employee which are required to be inquired. His continuance at the said place may prejudice such inquiry or may not be in administrative interest keeping in mind the sensitive nature of duties.

.....

The petitioner is presently posted at Lucknow and his family is living in an official accommodation. He is a low-paid employee and his children are studying in school at Lucknow. In these circumstances, his transfer in mid-academic session causes extreme hardship to him. Even otherwise, the order of transfer, impugned herein, cannot be said to be in accordance with Rule 21(3) of the Rules. Transfer in public interest is normally done keeping in mind administrative need and exigencies in a routine manner as per the prevalent transfer policy, normally within the transfer season and it is from transfer on administrative ground or on request. The words "public interest" have been specifically omitted from being used by the rule making authority in Rule 21(3), therefore, the intention of the rule making authority is very clear that transfer of Group D employees of the Police shall be made only on administrative ground or on his request."

The petitioner herein has been transferred in public interest, i.e. in normal course, which is different from transfer on administrative ground or own request. The Rule 21(3) does not permit such transfer in normal course in public interest. Transfer of a Group D employee such as the petitioner can only be made only under special circumstances, i.e. on administrative ground or self request by the competent Police Establishment Board. No such special circumstance has been mentioned in the transfer order nor has any such circumstance been mentioned in the counter affidavit. Therefore, the impugned transfer order (Annexure-1 to the writ petition) can not be sustained. Same is accordingly quashed. Consequences to follow as per law.

As the learned counsel for the petitioner submits that the petitioner did not join at the transferred place, it is provided that the petitioner shall move an application for treating the said period i.e. from the date of passing of the order of transfer till the date of joining back at Lucknow as on leave and the said application shall be considered by the competent authority keeping in mind that the transfer order was illegally passed. The petitioner shall be allowed to join back at Lucknow within one week.

With the aforesaid observations/directions this writ petition is disposed of. "

6. It is not denied that aforesaid judgment has attained finality and is therefore fully applicable in facts and circumstances of the case.

7. In view of aforesaid, impugned orders dated 09.10.2023, 11.10.2023 and 13.10.2023 are hereby quashed by issuance of a writ in nature of Certiorari.

8. Resultantly, the petition succeeds and is **allowed** at the admission stage itself. There shall be no order as to costs.

Order Date :- 19.10.2023

kvg/-