

Neutral Citation No. - 2023:AHC-LKO:72508-DB

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 841 of 2023

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

Respondent :- Muneer Ahmad And Another

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Rahul Roshan Dubey

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

- (1) Having regard to the averments made in the affidavit filed in support of the application seeking condonation of delay, we are satisfied that the delay in filing the intra-Court appeal has sufficiently been explained.
- (2) Accordingly, the application is **allowed** and delay in filing the special appeal is hereby condoned.

Order on Memo of the Appeal

- (3) Heard learned Standing Counsel appearing for the appellants/respondents and Sri Rahul Roshan Dubey, learned Counsel appearing for the respondent/petitioner and perused the material available on record.
- (4) This intra-court appeal filed under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 is directed against the interlocutory order passed by the Writ Court on 23.08.2023 in Writ A No.6111 of 2023, *Muneer Ahmed v. State of U.P. and others*. By means of this order, the Writ Court has stayed the order dated 30.06.2023, whereby the respondent/petitioner working on the post of Head Clerk had been transferred from the Office of Chief Medical Officer, Sultanpur to MIK, Women Hospital, Balrampur and the order dated 17.07.2023 issued by the Director (Administration), Medical & Health, Lucknow whereby the respondent No.2 (here in this appeal) had been

transferred in place of respondent No.1/petitioner, until further orders of the Court.

- (5) We are informed that pursuant to the order dated 30.06.2023 passed by the Director (Administration), Medical & Health, Lucknow, U.P., respondent no.1 has joined at the transferred place of posting. On the date of passing of the interim order, counter affidavit had already been filed by the State indicating this position.
- (6) It is also informed that as per guidelines contained in Para 12 of the Transfer Policy, he may be exempted from transfer as he was holding the post of District President of U.P. Federation of Ministerial Services Association. However, in the counter affidavit filed by the State before the Writ Court, it has been stated that if an employee is elected for the post of President/Secretary of the association, he is entitled for exemption from transfer for two years from the date of election. Here, in this case, the document produced by the respondent No.1/petitioner demonstrates that he was not an elected President; rather, he was nominated as a President and the District Association had taken an unanimous decision that until a regularly President is elected, the respondent No.1/Petitioner will discharge the obligation of President.
- (7) More over, some factual disputes as to the very currency of term of the earlier President have also been brought to our notice in the light of bye-laws.
- (8) Learned counsel for the respondent no.1 prays for and is granted two weeks' time to file rejoinder affidavit before the Writ Court.
- (9) In the circumstances of the case, it would be appropriate for the Writ Court to decide the matter finally as early as possible and

joining of the respondent no.1 at the transferred place of posting shall abide by the outcome of the writ petition.

(10) The Special Appeal is accordingly *disposed of*.

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[Om Prakash Shukla, J.] {Attau Rahman Masoodi, J.]

Order Date :- 3.11.2023

Shahnaz