

Court No. - 20

Case :- WRIT - A No. - 8612 of 2023

Petitioner :- Ajay Kumar Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Medical And Health Services Lko. And 2 Others

Counsel for Petitioner :- Arvind Kumar Pandey, Alok Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard Mr. Alok Kumar Pandey, learned counsel for petitioner and learned State Counsel for opposite parties.
2. Petition has been filed challenging order dated 30.06.2023 transferring petitioner from District Hospital Deoria to District Siddharth Nagar. Also under challenge are orders dated 12.07.2023 and 19.10.2023 whereby petitioner's representation against his transfer has been rejected.
3. Unfortunately, this is the third round of litigation with regard to such a trivial issue as transfer of petitioner. Earlier against transfer order dated 30.06.2023, petitioner had filed WRIT - A No. - 4905 of 2023 which was disposed of vide order dated 12.07.2023 directing petitioner to join at the transferred place of posting while directing authority concerned to consider and decide petitioner's representation against his transfer.
4. In pursuance of the directions, orders dated 12.07.2023 and 24.08.2023 were passed rejecting petitioner's representation leading to filing of WRIT - A No. - 6672 of 2023 which was allowed by means of judgment and order dated 15.09.2023, which has attained finality. The authority concerned was again directed to decide petitioner's representation afresh and at the same time continuance or otherwise of petitioner on the transferred post was directed to abide by fresh decision taken by authority concerned. It is in pursuance thereof that fresh

impugned order dated 19.10.2023 has been passed, again rejecting petitioner's representation.

5. Learned State Counsel on the basis of counter affidavit has refuted submissions advanced by learned counsel for petitioner with submission that transfer is an incidence of service as has already been indicated in the order impugned and in fact petitioner's transfer was necessitated owing to the fact that the District Hospital Deoria has been declared an autonomous State Medical College due to which petitioner being a Government employee was required to be transferred from the said place and fresh posting order was given to him in pursuance of letters dated 03.05.2021 and 17.10.2022 issued by the State Government during review of working personnel with regard to posts created in the said Medical College. It is submitted that in pursuance thereof, petitioner was repatriated to the Director General, Medical and Health, Lucknow which was his parent department. It has been further submitted that District Siddharth Nagar being an aspirational District, no post can be kept vacant and due to aforesaid circumstances, deviation from Government Order dated 07.06.2023 was made which is perfectly just and reasonable.

6. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident that earlier in both the petitions, petitioner had taken specific ground of violation of Government Order dated 07.06.2023 inasmuch as transfer of only those persons coming under Class III was contemplated who had completed three years of posting in a particular place whereas petitioner had completed only two years in particular place of posting in District Deoria. Further grounds with regard to cancer treatment of petitioner's mother in the said District along with

education of his daughter had also been taken.

7. In judgment and order dated 15.09.2023, which has attained finality, petition was allowed primarily on the ground that although Government Order dated 07.06.2023 is in nature of transfer policy and may be useful as guidelines but once the Government itself has framed guidelines for adherence with regard to transfer and posting, it was incumbent upon authority concerned to indicate cogent reasons for deviation from aforesaid Government Orders. The order impugned in the said petition was thereafter quashed since it did not indicate any such reasons for deviation.

8. A perusal of impugned order dated 19.10.2023 reveals that petitioner's representation has been rejected again only on ground that he failed to submit any documentary evidence of treatment with regard to petitioner's mother and education of his daughter in District Deoria. The order also indicates that his transfer has been necessitated in view of fact that District Siddharth Nagar is an aspirational District where all the posts are required to be filled. The impugned order does not at all advert to deviation being made by opposite parties of Government Orders dated 07.06.2023 and 13.05.2022 particularly with regard to the aspect that petitioner having not completed three years of service in the particular posting was required to be exempted from the annual transfers.

9. Even considering the fact that the District Hospital has subsequently been converted into an autonomous Medical College, it was always open to opposite parties to have directed adjustment of petitioner in district Deoria itself in view of aforesaid two Government Orders. The impugned order has not at all adverted to aforesaid fact despite repeated directions of this Court.

10. This Court is in respectful agreement with reasoning indicated in judgment and order dated 15.09.2023 to the effect that although the Government Orders pertaining to transfer policy are a mere guideline but at the same time it is equally applicable upon Government and its authorities as well and therefore it is incumbent upon them to indicate cogent reasons for deviation from aforesaid transfer policy notified through a Government Order. Such reasons having not been indicated either in transfer order or even in order rejecting petitioner's representation, renders the same vitiated.

11. Accordingly, impugned transfer order dated 30.06.2023 so far as it relates to petitioner and the consequent rejection order dated 19.10.23 are hereby quashed by issuance of writ in nature of Certiorari granting liberty to opposite parties to consider posting of petitioner in District Deoria in case there is some vacancy available. Such orders regarding posting of petitioner in District Deoria shall be issued within a period of two weeks from the date a certified copy of this order is produced before the authority concerned. Learned counsel for petitioner has submitted that there is a vacancy still existing in district Deoria due to superannuation of one Mohd. Nasir who was also posted as Laboratory Assistant as the petitioner. It is needless to observe that the opposite parties would be entitled to transfer petitioner in the routine or annual transfers upon completion of three years in place of posting in District Deoria.

12. Consequently, the petition succeeds and is allowed. There shall be no order as to costs.

Order Date :- 14.12.2023

kvg/-