

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 49 of 2024

Appellant :- Murali Dhar And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Education, Lucknow And Others

Counsel for Appellant :- Surya Kumar, Girish Chandra Verma

Counsel for Respondent :- C.S.C., Ran Vijay Singh

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Brij Raj Singh, J.

(C.M.Application No. 1 of 2024)

1. There is a delay of 8 days in filing the instant Special Appeal.
2. Having heard Sri G.C.Verma, learned Counsel for the appellants and Sri Ran Vijay Singh, learned counsel representing the respondent No.3 and Sri V.P.Nag, learned counsel representing the State-respondents and having perused the averments made in the affidavit filed in support of the application seeking condonation of delay, we are satisfied that delay has sufficiently been explained.
3. Accordingly, the application is allowed and the delay in filing the special appeal is hereby condoned.

(Order on memo of Appeal)

ORAL

1. Heard learned counsel for the parties on merit.
2. This intra-court appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules arising out of the judgment/order dated 08.12.2023 rendered in a bunch of writ petitions, leading case being Writ-A No.4726 of 2023 is confined to the grievance of the differently abled persons. All the appellants are differently abled persons and have assailed the judgment/order impugned here in this appeal in so far as it relates to them.
3. This Court having gone through the judgment impugned would hasten to

extract the relevant directions relating to differently abled persons as has been assailed here in this intra-court appeal :

"(i) This Court does not find any illegality or infirmity in the policy of the State to restrict the meaning of Government servant as has been mentioned in Clause 12 (4) of Government Order dated 02.06.2023 and also contained in Clause 10(4) of the order dated 08.06.2023 and explained vide Clause 8 of the order dated 16.06.2023 and consequently, the challenge to the Transfer list dated 26.06.2023 fails.

(ii) It is held that in exercise of judicial review under Article 226 of the Constitution of India, this Court cannot direct the executive/Board to frame a particular policy. In the facts of the case, this Court does not find Clause 12 (4) of Government Order dated 02.06.2023 and also contained in Clause 10 (4) of the order dated 08.06.2023 and explained vide Clause 8 of the order dated 16.06.2023 to be either violating the constitutional parameters or infringing the constitutional values.

(iii) Employees of non-government aided schools, Public sector Banks (Nationalised Bank), Public sector undertakings like NHPC/ LIC/ IOCL/Pashchimanchal Vidyut Vitran Nigam Ltd/ Delhi Metro Rail Corporation Ltd/ Bharat Electronics Ltd, /Municipal Corporation of Delhi/ BSNL/ BHEL/ Madhyanchal Vidyut Vitran Nigam/ Sugar cane Development Board/ Intermediate College/ Madhyamik Shiksha Parishad/ UPPCL/ Bal Vikas Pariyojna etc. cannot be construed to be in Government Service within the meaning of clause 12 (4) of the Government Order dated 02.06.2023.

(iv) As held by the Apex Court in Bank of India Vs Jagjit Singh Mehta (1992) 1 SCC 306, as far as the policy requiring the two spouses to be posted at one place as far as practicable is concerned, there does not exist any inalienable right to claim such a posting. The only thing required is that the Board should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.

(v) As far as the petition of differently abled petitioners or petitioners claiming transfer on grounds of serious ailments are concerned, the matters are remanded to the Board to take appropriate decisions in view of the observation made in this order. In any case, these considerations are required to be examined by the Board at the first instance. Thus, it is directed that these petitioners shall file individual representation detailing their cause to the Board, which shall take a decision in that matter keeping in view the broad principle devised by this Court in the instant judgment as well as in the case of Divya Goswami (supra), including the adversity on

candidates in all these kinds of mid-session transfer."

4. Learned counsel for the appellants has argued that the direction issued by the writ court is firstly of no advantage to the differently abled persons once the Board is directed to consider their representations being itself bound by the policy issued by the Government, vide Government Order dated 02.06.2023 of which the binding effect may not be disputed by the Board and is, thus, inconsequential. It is secondly argued that the very policy framed by the State Government in so far as differently abled persons are concerned, the same is in the teeth of the provisions of the Rights of Persons with Disabilities Act, 2016 read with Rules framed thereunder known as Rights of Persons with Disabilities Rules, 2017 [here-in-after referred to as '**Rules, 2017**']. Rule 8(3)(c) of the Rules, 2017 has specifically been brought to our notice and the same, for ready reference, is extracted here-in-below :

"8. Manner of publication of equal opportunity policy.

(1)

(2)

(3) The equal opportunity policy of a private establishment having twenty or more employees and the Government establishments shall *inter alia*, contain the following, namely:-

(a)

(b)

(c) the manner of selection of persons with disabilities for various posts, post-recruitment and pre-promotion training, **preference in transfer and posting, special leave, preference in allotment of residential accommodation**, if any, and other facilities; "

5. On a plain reading of the Rule extracted above, it is evident that preference to the differently abled persons is the mandate of law not only in the matter of opportunity in employment but in the matter of other administrative actions wherever the services on the post held by the differently abled persons are transferable from one place to another.

6. The argument put-forth by learned counsel for the appellants when looked at from the point of view of its consideration by the writ court, it is gathered that two judgments in specific have been referred to in paragraphs 39 and 42 of the judgment impugned. It is in the light of relevant principles laid down which were referred to in the impugned judgment according to which final directions as extracted above relating to the differently abled persons have been issued by the writ court.

7. It is to be noted that in so far as the question of opportunity of posting is concerned, learned counsel for the appellants has placed before us the U.P. Basic Education Teachers (Posting) Rules, 2008 [briefly, it is stated as '**Rules, 2008**']. Rule 8 of the Rules, 2008, for ready reference, is reproduced here under :

"8. Posting. - (1) (a) Three options for schools shall be asked from the handicapped candidates in order of their merit and after receiving such options the handicapped candidates shall be posted on the basis of options given by them and the vacancies.

(b) Based on the order of their merit, female teachers would be required to submit under their signature option of three schools each from the general and backward block and accordingly, posting would be given in one of these schools.

(c) The posting of male teachers shall be made in accordance with the order of candidates, in the roster prepared under Rule 7.

(2) (a) The newly appointed male teachers shall initially be posted compulsorily in backward areas for a period of at least five years.

(b) Newly appointed female teachers shall also be compulsorily posted in backward areas for a period of at least two years.

(c) Mutual transfers within the district from general block of backward block and vice-versa would be permitted with the condition that the teacher on mutual transfer to a backward block shall have to serve in that block compulsorily for five years. Mutual transfers would be permitted only in case of those teachers who have more than remaining five years' service.

(d) In normal circumstances the applications for inter-district transfers in respect of male and female teachers will not be entertained within five years of their posting. But under special circumstances, applications for inter-district transfers in respect of female teachers would be entertained to the place of residence of their

husband or in law's district.

(e) If by virtue of posting of newly appointed or promoted teachers the primary and upper primary schools of backward blocks get saturated i.e., no post of teacher is vacant in these schools, then handicapped and female teachers on their choice can be adjusted against the vacant posts of general blocks from these saturated blocks.

(f) Mutual transfers of male/female teachers from one backward block to another can be considered.

(3) Teachers transferred from one district to another will be given posting as per the provisions of these rules."

8. On a plain reading of Rule 8 of Rules, 2008, it is evident that the differently abled persons as per Rule 8(1)(a) are provided a preference of making three choices within the district in which they are to be inducted in service. These preferences have also been carved out for women at variance, whereas, general candidates recruited in service have no choice as regards their posting within the district for which they were recruited. Sub-clause 2(d) of Rule 8 places an embargo upon inter-district transfer of the Assistant Teachers prior to expiry of 5 years service which, in exceptional conditions, can be considered by the competent authority having regard to the circumstances of each case. The Rule of '5 years' service in normal course would operate but the exceptional circumstances which have been provided for were to be regulated as per some policy of the State. It is relating to the exceptional circumstances that a policy decision dated 02.06.2023 came to be issued for accommodating the extraordinary situations.

9. On a close scrutiny of the Government Order dated 02.06.2023, particularly Clause 12, it is gathered that the differently abled persons have preferentially been accorded weightage with the grant of 10 additional marks to determine their merit for the purpose of any such accommodation. Thus, it cannot be said that preference which ought to be granted to the differently abled persons, in view of the statutory provisions or Rules framed thereunder, has been left unconsidered or unattended. In so far as para 2(1) of the Government Order dated 02.06.2023 is concerned, the same classifies two categories, male and female, whose applications under extraordinary circumstances can be considered

only after having put in 2 years and 5 years services respectively in the district in which they were appointed. The cadre of Assistant Teachers appointed under the statutory rules is the district level cadre and inter-district transfers are made on the basis of merit which is determined in accordance with Clause 12 of the Government Order dated 02.06.2023 with the consequence of bottom seniority as on the date of transfer. Such transfers are as per the availability of posts. It is in the light of all these provisions that the posting of teachers is to be considered and implemented.

10. The direction issued by the writ court in clause V of Para - 44, impugned herein, once clarified in the manner here-in-above, leaves no manner of doubt for the Board to consider any such application as per directions issued by the Court, Rules and the Government Orders applicable in this behalf. To say that the impugned direction is illegal or contrary to the statutory Rules, in our humble consideration, the argument put forth is unconvincing and cannot be accepted.

11. In view of above, challenge to the impugned directions, insofar as it relates to differently abled persons are concerned, thus, fails and the special appeal is accordingly **dismissed**.

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[Brij Raj Singh, J.] [Attau Rahman Masoodi, J.]

Order Date :- 29.1.2024

Sanjay