

Court No. - 5

Case :- WRIT - A No. - 8765 of 2024

Petitioner :- Piyush Singh

Respondent :- State Of U.P. Thru. Addl.Chief Secy. Deptt.
Basic Edu. Govt. Of U.P. Lko. And 3 Others

Counsel for Petitioner :- Prashant Kumar Singh, Apoorv Dev

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

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner, Shri G.C. Pathak, learned Additional Chief Standing counsel appearing on behalf of respondents No.1 & 2, Shri Ran Vijay Singh, learned counsel appearing for the respondent No.3 and Shri Arun Kumar Singh, Advocate holding brief of Shri Rishabh Tripathi, learned counsel for the respondent No.4.

2. With the consent of learned counsels for the parties, the matter is being finally decided even though no counter affidavit has been filed by the respondents.

3. Under challenge is the order dated 05.08.2024 passed by the respondent No.3, a copy of which is annexure 1 to the petition. By the said order, the claim of the petitioner for inter-district transfer has been rejected.

4. The contention of learned counsel for the petitioner is that earlier the petitioner and several other persons had filed various writ petitions primarily claiming weightage of 20 Marks for serious disease. Certain other writ petition had also been filed contending that the weightage of 10 marks for spouse had not been correctly awarded and that the provisions of the Right of Persons With Disabilities Rules, 2017 had not been followed. In effect, a challenge was raised to the government order which

provides for an inter-district transfer of the teachers on basis of weightage points.

5. The writs were clubbed and were decided by means of a common judgment and order dated 08.12.2023 of which the leading writ petition was **Writ A No.4726 of 2023 in Re: Pooja Kumari Singh and 3 Others Vs. State of U.P. and 5 Others**. The copy of the said judgment is annexure 24 to the writ petition.

6. So far as the claim of the petitioner is concerned, whose writ petition number was Writ A No. 5947 of 2023, which was with regard to differently abled petitioner claiming transfer on ground of serious ailments. This Court had required that the petitioners shall file individual representations detailing their cause to the Board which shall take a decision in the matter keeping in view of the principle devised by this Court.

7. In pursuance thereof, the claim of the petitioner has been rejected by means of the order impugned dated 05.08.2024.

8. The contention of learned counsel for the petitioner is that a perusal of the order impugned would indicate that his representation has been rejected primarily on the grounds that (a) there cannot be any transfer in the mid-academic session, the session having started from 01.04.2024; (b) the application has been moved by the petitioner in an offline mode and not in an online mode and; (c) the disease of the petitioner does not fall within the ambit of being a serious and incurable disease(s).

9. So far as the ground (a) is concerned, the contention is that the judgment of the writ Court is dated 08.12.2023 and in case the respondents continued to sit over the matter and only decided to dispose of the representation of the petitioner in

August, 2024, consequently, they have to thank themselves but by no stretch of imagination, once the respondents themselves have taken a substantial period of time, the delay can be attributed to the petitioner to enable them to state that there cannot be any mid-academic session transfer inasmuch as, nothing precluded the respondents from deciding the representation within a short span of time of the judgment of this Court dated 08.12.2023 and in any view of the matter, prior to commencement of the new session i.e. prior to 01.04.2024.

10. So far as ground (b) is concerned i.e. the application / representation of the petitioner not having been file in online mode, the learned counsel for the petitioner contends that once the writ Court had itself given the liberty to the petitioner to prefer an individual representation, consequently, the respondents were required to decide the representation of the petitioner in accordance with law considering the judgment of the writ Court and they could not have rejected the said representation on the aforesaid ground.

11. So far as ground (c) is concerned, the learned counsel for the petitioner contends that a perusal of the government order, which governs inter-district transfer, dated 02.06.2023, a copy of which is annexure 17 to the petition, though indicates in Clause 12(3) of 20 points to be given to those teachers where their spouse or sons / daughters suffer from serious and incurable disease yet clause 8 & 9 of the said government order indicates the applicability of Government Order dated 27.12.2016 and of a certificate to be issued by the hospital.

12. It is contended that so far as the Government Order dated 27.12.2016 is concerned, as has been indicated in paragraph 8 of the government order dated 02.06.2023, the same only pertains to incurable diseases as per Appendix "Cha" but

nowhere does it indicate about any serious illness. Further, the said government order pertains to medical reimbursement.

13. On the other hand, Shri Ran Vijay Singh, learned counsel appearing for the respondent No.3 and the others learned counsels appearing for the respondents have supported the order impugned. Shri Ran Vijay Singh has invited the attention of the Court towards Clause 9 of the Government Order dated 02.06.2023 to contend that Clause 9 itself stipulates that the certificate pertaining to incurable and serious illness should have issued by the concerned hospital where the treatment is being taken by the employee concerned.

14. Inviting the attention of the Court towards that medical certificate of the petitioner, a copy of which has been filed as annexure 3, it is contended that though the certificate has been issued by the SGPGI, Lucknow but nowhere does it indicate that the petitioner is suffering from an incurable or serious illness and the same has also not been issued by the authority as specified in Clause 9 of the aforesaid government order, consequently, merely because the petitioner is receiving treatment, as specified in the said medical certificate, the same would not entail the petitioner to fall within the ambit of suffering from an incurable and serious disease.

15. However, learned counsels for the respondents do not specifically dispute grounds (a) & (b) as have been urged and argued by learned counsel for the petitioner.

16. Heard learned counsels for the parties and perused the record.

17. From a perusal of the record, it emerges that the petitioner who is a 40% physically disabled employee, as specified in the

disability certificate, a copy of which is annexure 4 to the petition, had approached this Court along with others earlier by filing Writ A No.5947 of 2023 challenging the government order and also claiming weightage of 20 marks for serious and incurable disease. This Court, vide judgment and order dated 08.12.2023, had provided that the petitioner may submit an individual representation detailing his cause to the Board and the decision would be taken in view of the broad principles devised by this Court in the aforesaid judgment.

18. In pursuance thereof, the petitioner claims to have submitted his representation which has been rejected vide order impugned dated 05.08.2024 on the grounds that have already been indicated above namely grounds (a), (b) & (c).

19. So far as the ground (a) is concerned, it would suffice to state that once the judgment of writ Court is dated 08.12.2023 and the next academic session was to start from 01.04.2024, consequently, the respondents themselves should have woken up to the aforesaid fact and should have decided the said representation expeditiously, preferably, prior to the start of new session but simply sitting over the matter and deciding the representation after substantial period of time and after commencement of the new academic session and then rejecting the said representation on the aforesaid ground, cannot be countenanced in the eyes of law as for delay in deciding the representation, the respondents have to thank themselves. Nothing precluded or restrained the respondents from deciding the said representation within a short span of time from the date of order passed by the writ Court and thus, the aforesaid ground which has been taken by the respondents is rejected.

20. So far as ground (b) is concerned i.e. the petitioner having submitted his application offline and not in an online mode, it

would be suffice to state that once the writ Court, vide judgment and order dated 08.12.2023, itself gave the liberty to the petitioner to submit a representation detailing his cause to the Board, consequently, merely because the same may not have been submitted in an online mode, the same cannot be considered to be a valid ground for rejecting the representation of the petitioner. Thus, the said ground is also rejected.

21. So far as the ground (c) is concerned, a perusal of the Government Order dated 02.06.2023 would indicate that clause 12(3) pertains to grant of 20 points in the eventuality of a teacher or his / her spouse or children suffering from a serious or incurable disease. Clause 8 & 9 of the aforesaid government order would indicate that the certificate is to be given by the hospital in which the employee is receiving treatment. The diseases have also been specified as per the Government Order dated 27.12.2016.

22. A perusal of the Government Order dated 27.12.2016 would indicate that the same pertains to the amended Rules, 2016 of Uttar Pradesh Government Servants (Medical Reimbursement) (Second Amendment) Rules, 2016. As per appendix "Cha" various incurable diseases have been indicated. The petitioner claims to be suffering from post traumatic epilepsy. The said disease does not find place in appendix "Cha". Even otherwise, once the Appendix "Cha" is an Appendix to the Rules, 2016 which pertains to medical reimbursement and thus may have no applicability in the matter. Further the said Appendix pertains to incurable diseases (असाध्य) and not serious illness, as per Clause 12(3) of the Government Order dated 02.06.2023. Further Clause 9 of the Government Order dated 02.06.2023 pertains to a certificate to be issued by the Medical Institution in which the employee is receiving treatment. A perusal of the

certificate which has been issued with respect to the petitioner does not indicate that the same has been issued by the competent authority as specified in Clause 9 of the Government Order dated 02.06.2023. This fact should have been brought to the notice of the petitioner so that he would have been in a position to bring a certificate in terms of Clause 9.

23. Keeping in view of the aforesaid discussion, the writ petition is **allowed**. The order impugned dated 05.08.2024, a copy of which is annexure 1 to the petition, passed by the respondent No.3, is **quashed**. The competent authority is required to pass a fresh order on the representation preferred by the petitioner keeping in view the discussion made above. Let an order be passed within a period of four weeks from the date of receipt of certified copy of this order.

Order Date :- 19.11.2024
S. Shivhare