

Court No. - 6

Case :- WRIT - A No. - 4254 of 2025

Petitioner :- Anurag Shukla And 7 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Akshita Goel, Tarun Agrawal

Counsel for Respondent :- Archana Singh, C.S.C.

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Tarun Agrawal, learned counsel for petitioners and Ms. Archana Singh, learned counsel appearing on behalf of U.P. Basic Education Board.
2. The petitioners before this Court are 8 in number. They were appointed as Assistant Teacher in Primary School Governed By U.P. Basic Education Board in the year 2020 to 2021 and they are Specially Abled.
3. Petitioners are aggrieved that in pursuance of Transfer Policy 2023-24, they were not able to apply, since there have not completed service of 5 years till relevant date.
4. It is not under dispute that relevant provision of transfer policy i.e. clause 1 and 15, were subject matter of challenge before the Division Bench of this Court in **Kul Bhushan Mishra and Ors. Vs. State of U.P. and Ors., 2023:AHC:127211-DB**. The clauses were interpreted in the light of Rule 8 of U.P. Basic Education (Teachers) (Posting) Rules, 2008 and finally said writ petition was disposed of in following terms. The relevant paragraph 29 of it is reproduced hereinafter :-

" 29. In view of the deliberations and discussion held above, we dispose off the writ petition on following terms:-

(i) Challenge laid to Clause 1 and 15 of the Government Order dated 2.6.2023 as well as challenge to Circular dated 8.6.2023 fails and are rejected.

(ii) In light of the statement made by the Board that online applications for inter-district transfer would be entertained shortly, and claim of eligible Assistant Teachers would be dealt with, it is provided that the Board shall open the online portal for mutual transfer, at the earliest possible, preferably within six weeks and claim of eligible teachers shall be dealt with, as per law.

(iii) Condition contained in the policy requiring, in normal circumstances, minimum length of service of five years in the cadre for male teacher and two years service for female teachers before seeking transfer is upheld. Challenge to such policy fails, accordingly.

(iv) Parties to bear their own costs. "

5. Learned counsel for petitioners submits that they along with other similarly situated teachers being specially abled, have approached a Single Bench of High Court Allahabad at Lucknow and number of Writ Petitions were disposed of by an order dated 08.12.2023 leading with **Puja Kumari Singh and others Vs. State of U.P. Thru. Secy Deptt. Basic Education and Others, 2023 SCC OnLine All 2665** and conclusion thereof is reproduced hereinafter :-

"F. Conclusion

44. For all the aforesaid reasons, this Court **disposes of** the present bunch of writ petitions with the following directions:—

(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 v. 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.

(vi) In the facts of the present case, there shall be no order as to cost. ""

6. In the aforesaid circumstances, petitioners have approached the concerned

respondent, however, their representations were rejected by an order dated 30.07.2024, mainly on a ground that since the transfer for Educational Session 2023-24 was already concluded, on basis of online applications on 30.06.2023 and now no offline application could be considered. The aforesaid order dated 03.07.2024 is under challenge in present writ petition.

7. Learned counsel for petitioners submits that purport of the order passed in **Puja Kumari Singh and others (supra)** was not considered in its correct perspective in impugned order. No consideration was made that petitioners are specially abled persons as well as that in peculiar circumstances, some concession may be granted to them. So far as bar of 5 year, concerned respondent has also not followed that their cases may fall under 'Special Circumstances' as mentioned in Rule 2(d) of Rules of 2008. Learned counsel for petitioner also refers following observation made by co-ordinate Bench at Lucknow in paragraph No.42 of **Puja Kumari Singh and others (supra)**. For reference the same is reproduced hereinafter :-

"42. As far as the case of differently abled petitioners are concerned, the judgment passed in Net Ram Yadav v. State of Rajasthan, AIR OnLine 2022 SC 1407, has been quoted for the entitlement of transfer of differently abled petitioners. Although, this Court finds that the said judgment was related to a challenge by a handicapped teacher who challenged his transfer to his home district at the cost of down gradation in his seniority, wherein the Apex Court referring to the United Nations Convention on the Rights of Persons with Disability (UNCRPD) which has been ratified by India, observed that the Articles of the UNCRPD are based on certain general principles, the most important of which is respect for the inherent dignity and individual autonomy of persons with disability and observed as follows:—

"The marginalization of the disabled/handicapped is a human rights issue, which has been the subject matter of deliberations and discussion all over the world. There is increasing global concern to ensure that the disabled are not sidelined on account of their disability.""

8. Learned counsel for U.P. Basic Education Board refers judgment passed by Division Bench in **Kul Bhushan Mishra(supra)** that all above arguments have already been rejected by Division Bench, however, she fairly submits that judgment passed by co-ordinate Bench at Lucknow was not challenged, therefore, the respondent Board is under legal obligation to follow the direction made therein. She further submits that without challenging the Rule 2(d) of U.P. Basic Education (Teachers) (Posting) Rules, 2008, petitioners may not able to get benefit since the exception was granted only to female teachers and no exception is carved out for petitioners i.e. specially abled persons. For reference the said Rule 2(d) is reproduced hereinafter :-

"(2)(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. "

9. In rejoinder, learned counsel for petitioner refers paragraph No. 17 and 25 of **Kul Bhushan Mishra and others (supra)**, that under exceptional circumstances, case of petitioners could be considered and exceptional circumstances are not limited to female candidates. For reference the same are reproduced hereinafter :-

" 17. So far as Clause 1 of the Government Order dated 2.6.2023 is concerned, it requires that before applying for transfer under Rule 21, a female teacher must complete two years service in the district while for male teacher such period is specified as five years. The decision to insist upon minimum term of two years for female teachers and five years for male teachers has been subject matter of consideration by this Court in different writ petitions. So far as the decision in respect of a male Assistant Teacher appointed in a Primary School run by Basic Education Board is concerned, this Court in Writ Petition No. 4950 of 2018 (Anuruddha Kumar Tripathi Vs. State of U.P. and 5 others) observed as under in para 19:-

"19. In light of the aforesaid discussions, it is held that transfer of a male assistant teacher from one district to another, in a basic school, can ordinarily be made only after completion of 05 year initial posting in backward area in accordance with Rule 8(2)(d) of the Rules of 2008 as well as the policy framed for the purpose. However, in extraordinary or exceptional circumstances an application for transfer can be considered by the Basic Shiksha Parishad even before expiry of such term. The question whether in a given case extraordinary circumstances exists or not has to be examined by the Basic Shiksha Parishad."

The above observation appears to have been made relying upon the language used in Rule 8(2)(d) of the Rules of 2008, which contains the expression 'In normal circumstances' and therefore clearly excludes exceptional circumstances, to be determined by the Board.

25. In view of our discussions held above, we find no illegality or infirmity in the policy of the State to restrict entertainment of application for transfer in normal circumstances, unless the teacher has completed specified length of service in the cadre. Even otherwise, this Court has already clarified that in exceptional circumstance minimum period can be waived provided the Board is satisfied with regard to existence of exceptional circumstance for transfer. Old age of grandparents, etc., which is the cause pleaded for transfer, would not constitute exceptional circumstance for transfer. These considerations otherwise are required to be examined by the Board at the first instance. "

10. Heard counsel for parties and perused the record.

11. It is not under much dispute that petitioners are specially abled persons who were appointed as Assistant Teacher at their respective schools as well as according to transfer policy of 2023-24, in view of its clause (1), they were not able to apply for Inter-District Transfer, since they have not completed 5 year tenure at one place.

12. It is also not under dispute that now transfer policy is not under force, since on basis of online applications, all transfers have already been made and at this stage, petitioners cannot allowed to file any offline application, therefore, the

Court is of the view that there is no reason to interfere with impugned order, so far as above conclusion is concerned.

13. The impugned order was passed in pursuance of a specific direction passed by Co-ordinate Bench at Lucknow and for reference the direction at paragraph 44 (V) being relevant and is again mentioned hereinafter :-

"(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."

14. The above direction was very specific. The claim of petitioners, being specially abled, ought to have been considered specifically for the purpose of any new transfer policy, however, without making such observation or keeping a scope for consideration in subsequent transfer policy, claim of petitioners and other similarly situated persons were rejected on ground that now no offline application could be considered, without touching the merit of case, whether petitioners are entitled to apply in subsequent transfer policy despite they have not completed 5 year of service.

15. It appears that Board has not considered the judgment passed by co-ordinate Bench at Lucknow in its correct perspective and has bypassed its direction. At this stage, it is further reiterated that said judgment was not challenged by the Board, therefore, they are under legal obligation to follow it.

16. So far as argument of learned counsel for Board that petitioners are required to challenge Rule 8 (2)(d) of Rules 2008 is concerned, it may not be a correct position of law, since not only the Division Bench but Co-ordinate Bench after considering the law and rival submissions has observed that claim of petitioner could be considered even the Division Bench has taken note of exceptional circumstances, also and the Division Bench was of view that exception could be made out in exceptional circumstances and bar of 5 years could be relaxed, since they are specially abled persons and despite it they have participated in the competition and have crossed all difficulties and now they are in the profession of teaching.

17. In the aforesaid circumstances, Court is of the view that impugned order has not considered, vital aspects of present case as well as direction passed by co-ordinate Bench at Lucknow, therefore, this writ petition is **disposed of** with an observation/direction that as and when new policy is framed, grievance of

petitioners that they may be permitted to apply for Inter-District Transfer putting them under exceptional circumstances that i.e. to relax the bar of 5 years. The Court hopes that this time concerned respondent-Board will consider grievance of petitioners in a sympathetic manner and will not reject it, only on technical grounds.

18. The Board is under legal obligation to consider the directions and observations passed by Division Bench of this Court as well as Co-ordinate Bench at Lucknow and of the present order.

Order Date :- 7.4.2025

P. Pandey