

Neutral Citation No. - 2025:AHC:6841-DB

Reserved

In Chamber

Case :- SPECIAL APPEAL No. - 998 of 2024

Appellant :- Manoj Kumar And Another

Respondent :- State Of Up And 11 Others

Counsel for Appellant :- Brij Kumar Saroj, Kharag Singh, Surendra Kumar Chaubey

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

Hon'ble Vivek Kumar Birla, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

(Per: Dr Yogendra Kumar Srivastava, J)

1. Heard Sri Surendra Kumar Chaubey, learned counsel for the appellants, Shri Tej Bhanu Pandey, learned Standing Counsel for the State respondent Nos. 1 and 2 and Ms. Archana Singh, learned counsel who has put in appearance on behalf of the respondent Nos. 3 to 12.

2. The present intra-court appeal is directed against the judgment and order dated 09.01.2024, passed by a learned Single Judge, in Writ-A No.17178 of 2023 [Vivek Kumar Srivastava and 6 Others Vs. State of U.P. and 11 Others], whereby the aforesaid writ petition was decided along with a batch of writ petitions [leading petition being the Writ-A No.15163 of 2023 [Shraddha Yadav and 6 Others Vs. State of U.P. and 10 Others], in terms of which, the writ petitions were dismissed.

3. The appellants herein were petitioner Nos. 4 and 7 in Writ-A No.17178 of 2023.

4. The instant appeal is listed along with Special Appeal No.969 of 2024 [Naveen Kamal Srivastava And 2 Others Vs. State Of U.P. Through Secretary, Department Of Basic Education, Government Of U.P. And 3 Others]; however, since the appeals have been argued independently, the same are being decided by separate orders.

5. Ms. Archana Singh, learned counsel appearing for the respondent Nos. 3 to 12 has pointed out that several writ petitions seeking similar reliefs were dismissed, and against one of such orders, Special Appeal No.61 of 2024 [Smt. Radha Vs. State of U.P. And 4 Others], was filed, and the same was dismissed by a co-ordinate Bench, by means of an order dated 16.02.2024. The aforesaid order is being reproduced below:

“1. Following orders were passed on 06.02.2024:-

"1. Appellant was transferred in terms of the Inter District Transfer Policy from Mirzapur to Lucknow. She was however not allowed joining on the ground that though she was promoted to the post of Head Mistress at Mirzapur but persons senior to the appellant were still working as Assistant Teacher at Lucknow. The cadre of Assistant Teacher is otherwise a district level cadre. The authorities accordingly have refused to allow joining to the appellant at Lucknow and have also cancelled her transfer.

2. A representation was made by the appellant stating that she is willing to give up her claim of promotion and she would accept her transfer to Lucknow on the post of Assistant Teacher in a primary institution. It is submitted that this aspect of the matter has not been bestowed any consideration and therefore, the order of the authority rejecting petitioner's representation is unsustainable.

3. Learned counsel representing the respondents seeks a week's time to obtain instructions in the matter.

4. Put up on 16.02.2024, as fresh."

2. Ms. Archana Singh, appearing for the Basic Shiksha Board, states that in the past also such claims have been put forward by the teachers, who gave preference to their posting at the place of their liking by giving up their previous promotion on the post of Headmistress. Such claims were rejected by the Board. It is also submitted that during the academic session it would not be in the

academic interest to consider any personal for transfer. It is also urged that the claim of the appellant, if allowed, may result in large number of other persons coming up with similar pursuits, which would adversely affect the functioning of these institutions. Learned counsel then states that as and when posts are available on the post of Headmistress at Lucknow and the claim of seniority would not be breached, the claim of appellant for promotion be accorded consideration in terms of the policy.

3. We find substance in the objection of the respondents, inasmuch as transfer cannot be insisted upon by a teacher as a matter of right. Consideration regarding smooth functioning of the educational institutions would be of paramount importance. It is otherwise not disputed that persons senior to the appellant since are continuing at Lucknow as Assistant Teacher, her claim of transfer as Headmistress would create unnecessary heart burn. Giving up claim of promotion also creates complications as very often such claims are revived. It may otherwise lead to more similar claims being raised by other teachers. It is otherwise undisputed that the cadre of teacher/headmistress under the Rules is a district cadre post and transfer, outside the district, can only be allowed in terms of the policy.

4. In that view of the matter, we find no good ground to interfere in the matter and, consequently, the present appeal is consigned to records. It goes without saying that as and when fresh transfer policy is floated by the department, it shall be open to the appellant to apply and her claim would be examined in accordance with the policy.”

6. It has been further pointed out that subsequently one of the petitioners in the leading writ petition in the batch of writ petitions decided in terms of the judgment under appeal, preferred a special appeal, being Special Appeal Defective No. 159 of 2024 [Shradha Yadav Vs. State of U.P. through Secretary, Department of Basic Shiksha], which too was dismissed by means of an order dated 28.02.2024, following the order passed in the appeal of Smt. Radha (supra). The aforesaid order dated 28.02.2024 passed in the special appeal is as follows:

“(Ref: Civil Misc. Delay Condonation Application)”

1. Heard.

2. Delay in filing the present appeal is explained to the satisfaction of the Court. Delay is, accordingly, condoned. Office is directed to allot a regular number to the present appeal.

3. Application stands allowed.

Ref: Appeal

4. Heard learned counsel for the petitioner and learned counsel for the respondents

5. It is pointed out that similar controversy, as is raised in this petition, has been adjudicated by this Court in Special Appeal No.61 of 2024 (Smt. Radha vs. State of U.P. and others) vide following order passed on 16.2.2024:-

"1. Following orders were passed on 06.02.2024:-

"1. Appellant was transferred in terms of the Inter District Transfer Policy from Mirzapur to Lucknow. She was however not allowed joining on the ground that though she was promoted to the post of Head Mistress at Mirzapur but persons senior to the appellant were still working as Assistant Teacher at Lucknow. The cadre of Assistant Teacher is otherwise a district level cadre. The authorities accordingly have refused to allow joining to the appellant at Lucknow and have also cancelled her transfer.

2. A representation was made by the appellant stating that she is willing to give up her claim of promotion and she would accept her transfer to Lucknow on the post of Assistant Teacher in a primary institution. It is submitted that this aspect of the matter has not been bestowed any consideration and therefore, the order of the authority rejecting petitioner's representation is unsustainable.

3. Learned counsel representing the respondents seeks a week's time to obtain instructions in the matter.

4. Put up on 16.02.2024, as fresh."

2. Ms. Archana Singh, appearing for the Basic Shiksha Board, states that in the past also such claims have been put forward by the teachers, who gave preference to their posting at the place of their liking by giving up their previous promotion on the post of Headmistress. Such claims were rejected by the Board. It is also submitted that during the academic session it would not be in the academic interest to consider any personal for transfer. It is also urged that the claim of the appellant, if allowed, may result in large number of other persons coming up with similar pursuits, which would adversely affect the functioning of these institutions. Learned counsel then states that as and when posts are available on the post of Headmistress at Lucknow and the claim of seniority would not be breached, the claim of appellant for promotion be accorded consideration in terms of the policy.

3. We find substance in the objection of the respondents, inasmuch as transfer cannot be insisted upon by a teacher as a matter of right. Consideration regarding smooth functioning of the educational institutions would be of paramount importance. It is otherwise not disputed that persons senior to the appellant since are continuing at Lucknow as Assistant Teacher, her claim of transfer as Headmistress would create unnecessary heart burn.

Giving up claim of promotion also creates complications as very often such claims are revived. It may otherwise lead to more similar claims being raised by other teachers. It is otherwise undisputed that the cadre of teacher/headmistress under the Rules is a district cadre post and transfer, outside the district, can only be allowed in terms of the policy.

4. In that view of the matter, we find no good ground to interfere in the matter and, consequently, the present appeal is consigned to records. It goes without saying that as and when fresh transfer policy is floated by the department, it shall be open to the appellant to apply and her claim would be examined in accordance with the policy."

6. For the reasons recorded in the order dated 16.2.2024 and the controversy being identical, this writ petition is also disposed of on same terms."

7. Against the judgment in the Special Appeal in the case of **Smt. Radha** (supra), a special leave petition being **Special Leave to Appeal (C) No(s).10912 of 2024 [Radha Vs. State of U.P. & Others]** was preferred, which stood dismissed by an order dated 13.05.2024.

8. It is accordingly submitted by the learned counsel appearing for the respondent Nos. 3 to 12 that the controversy involved in the present case stands concluded and the instant special appeal may also be dismissed in terms of the order dated 28.02.2024 passed in **Special Appeal Defective No.159 of 2024 [Shradha Yadav Vs. State of U.P. Through Secretary, Department of Basic Shiksha]**, which had been instituted against the same judgment that is subject matter of challenge in the present special appeal.

9. Counsel appearing for the appellant has not disputed the aforesaid factual position.

10. Having regard to the aforesaid, we are of the view that the controversy involved in the present case, being fully covered, in terms of the judgment dated 28.02.2024 passed in **Special Appeal**

Defective No.159 of 2024 [Shradha Yadav Vs. State of U.P. Through Secretary, Department of Basic Shiksha], the present special appeal is also liable to be dismissed in the same terms.

11. The appeal stands, accordingly, **dismissed**.

Order Date :- 16.01.2025

Arun K. Singh

[Dr. Y.K. Srivastava, J.] [V.K. Birla, J.]