

**Court No. - 6**

**Case :-** WRIT - A No. - 460 of 2021

**Petitioner :-** Syeda Rukhsar Mariyam Rizvi

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

**Counsel for Petitioner :-** Navin Kumar Sharma

**Counsel for Respondent :-** C.S.C., Arun Kumar

**Hon'ble Ajay Bhanot, J.**

Heard Sri Navin Kumar Sharma, learned counsel for the petitioner, Sri Arun Kumar, learned counsel for the respondents no. 2 and 3 and learned Standing Counsel for the State respondents.

Petitioner is aggrieved by the rejection of the application for inter district transfer by the impugned order dated 27.12.2020. The petitioner is working as Assistant Teacher in district Allahabad. Her husband is working as an Assistant Engineer in U.P. Power Corporation at Lucknow. The son of the petitioner suffers from autism. The disability of the son of the petitioner who is aged 5 1/2 years is assessed at 80%.

Sri Navin Kumar Sharma, learned counsel for the petitioner assails the order dated 27.12.2020 on various grounds. It is contended that the order is non speaking one and reflects non application of mind on a sensitive issue. It cannot be ascertained whether the case of the petitioner was considered in accordance with the government order dated 02.12.2019 and the law laid down by this Court in Kumkum Vs State of U.P. and 3 others (Writ-A No. 8075 of 2018).

Sri Arun Kumar, learned counsel for the respondents no. 2 and 3 as well as learned Standing Counsel could not dispute the fact that from a perusal of the order it cannot be ascertained that as to whether the case of the petitioner was considered consistently with the service Rules and the government orders holding the field.

Heard learned counsel for the parties.

Under the government order dated 02.12.2019 children of a teacher suffering from disability is a valid consideration or ground for inter district transfer. 10 marks are awarded for such category. Further the law laid down in Kumkum Vs

State of U.P. and 3 others (supra) which considers the relevant statutory Rules is extracted hereunder:-

"Learned counsel for the petitioner submits that the service condition of petitioner are governed by the U.P. Basic Education (Teachers) (Posting Rule-2008). Clause 8(2)(d) of the Rule is relied upon which reads as under:-

"(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."

It is stated that the object and the provision clearly intends to protect the interest of a lady so that she is allowed be posted at a place where her husband is working. In the Rule, there is no provision which restricts such transfer in case the petitioner has availed of the transfer prior in point of time. The condition contained in the Government Order that such transfer would be considered only if it has not been availed in the past would ordinarily be followed but once the very object contained in the rule is shown to be frustrated, the Government Order would have to bend so as to secure the objective contained in the Rule itself. The decision of the respondents, therefore, not to consider petitioner's application for transfer cannot be sustained for the reasons recorded therein.

Rejection of petitioner's application therefore is set aside.

A direction is issued to the respondent No.2 to consider the petitioner's claim for transfer in terms of Rule-8(2)(d) of the Rules.

Such consideration shall be made by the authority concerned within a period of two months from the date of presentation of certified copy of this order."

The Court notices the fact that the posting Rules are silent on grant of any concerned to the medical disabilities suffered by children.

Disability of children coming within the purview of the Rights of Persons with Disabilities Act, 2016 is a valid consideration for transfer and the same was regarded as such by the government order dated 02.12.2019. The said provision in the government order dated 02.12.2019 is a beneficent provision which is consistent with the provisions of the Rights of Persons with Disabilities Act, 2016 and the role of the government as a model employer. There is no reason to deny the benefit of such criteria in future years also.

From the transfer order it cannot be determined whether the same was passed after consideration of relevant issues.

I find that the transfer order is non speaking. It cannot be determined if the order is consistent with the requirements of the government order dated 02.12.2019 and the law laid down in Kumkum (supra). The petitioner is entitled for a sympathetic consideration of her case for inter district transfer by the respondents considering the disability suffered by her minor son of five years. Consequently, the authorities are directed to consider the case of the petitioner afresh sympathetically in accordance with law and consistently with the observations made in the body of this order.

The order dated 27.12.2020 is quashed.

The respondent no. 2, Secretary, U.P. Basic Education Board, Prayagraj shall complete the entire exercise within a period of one month from the date of production of a computer generated copy of this order, downloaded from the website of High Court, Allahabad along with fresh copy of the representation and supporting documents, if any.

The computer generated copy of such order be self attested by the petitioner (party concerned) along with a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked. The authority/official shall verify the authenticity of such computerised copy of the order from the official website of High Court, Allahabad and shall make a declaration of such verification in writing.

With the aforesaid direction the writ petition is allowed to the extent indicated above.

**Order Date :- 2.2.2021**

Pravin