

Court No. - 36

Case :- WRIT - A No. - 5361 of 2021

Petitioner :- Shobha Devi

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

Counsel for Petitioner :- Navin Kumar Sharma

Counsel for Respondent :- C.S.C., Shashi Kant Verma

Hon'ble Mahesh Chandra Tripathi, J.

Heard Sri Navin Kumar Sharma, learned counsel for the petitioner, Shri Sanjay Kumar Singh, learned Additional Chief Standing Counsel for State respondent nos.1 and 3 and Sri Shashi Kant Verma, learned counsel for the respondents no. 2 and 4.

The petitioner is aggrieved assailing the validity of the impugned order dated 31.12.2020, whereby her application for inter district transfer has been rejected. Further request is made to issue direction to the respondents to consider her candidature for inter-district transfer from District Sonebhadra to District Chitrakoot.

Sri Navin Kumar Sharma, learned counsel for the petitioner submits that the petitioner is working as Assistant Teacher in Primary School Bharasahi, Block Chatra, District Sonebhadra. Her husband is also working as Pharmacist in Primary Health Centre, Khoh, Karvi, District Chitrakoot. The son of the petitioner suffers from heart disease by birth and his valves are also not working properly. He has also undergone heart surgery and relevant certificate dated 09.1.2020 has also been appended as Annexure No.5 to the writ petition. The petitioner submitted her on-line application on 11.1.2020 for inter-district transfer. By the impugned order dated 31.12.2020 the petitioner's application for inter-district transfer has been rejected. The petitioner is assailing the impugned order dated 31.12.2020 on three grounds, firstly that the son of the petitioner is suffering from serious heart disease by birth; secondly the petitioner herself is also physically disabled and her husband is working at District Chitrakoot. The impugned order is non-speaking one and reflects non-application of mind. It cannot be ascertained whether the case of the petitioner was considered in accordance with the Government order dated 02.12.2019. In support of his submission, he has placed reliance on the judgment of this Court in Writ A No.878 of 2020 (**Divya Goswami and others vs. State of UP and others**) decided on 03.11.2020 as well as the judgement dated 2.2.2021 passed in Writ A No.460 of 2021 (**Syeda Rukhsar Mariyam Rizvi vs. State of UP and 3 others**).

Per contra, Shri Sanjay Kumar Singh, learned Additional Chief Standing Counsel as well as Shri Shashi Kant Verma, Advocate for respondent nos.2 and 4 submit that the Government order dated 15.12.2020 holds the field. In case the Court is remitting the matter back to the competent authority to look into and examine the situation then definitely the petitioner's case is to be decided in the light of the Government order dated 15.12.2020.

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 and 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."

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.

The Court finds that the transfer order is non-speaking. It cannot be determined, if the order is consistent with the requirements of the said 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 by birth.

In the facts and circumstances, the Court is of the considered opinion that the impugned order is unsustainable and the same is quashed.

Consequently, the writ petition is allowed and the respondent no.1, Secretary, U.P. Basic Education Board, Prayagraj is directed to consider the claim of the petitioner sympathetically taking into the situation and other two reasons, as indicated above, strictly in accordance with law within a period of four weeks 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.

Order Date :- 8.7.2021

RKP