

**Court No. - 4**

**Case :-** WRIT - A No. - 5029 of 2024

**Petitioner :-** Dr. Preeti Chand Negi

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Higher Education Anubhag And 3 Others

**Counsel for Petitioner :-** Anuj Kudesia, Vikas Kumar Agrawal, Waseeq Uddin Ahmed

**Counsel for Respondent :-** C.S.C.

**Hon'ble Rajesh Singh Chauhan, J.**

**(Order on C.M. Application No. IA/04/2024)**

1. In the present petition though the date has been fixed for 16.08.2024 but permission was granted yesterday i.e. on 06.08.2024 to file the application for listing and on such application the case has been taken up today.
2. Since the matter is being taken up today, accordingly, the listing application is **disposed of**.

**(Order on writ petition)**

3. Heard.
4. Rejoinder affidavit and supplementary affidavit filed by the learned counsel for the petitioner, the same are taken on record.
5. This Court has passed the order dated 10.07.2024 which reads as under:-

*"1. Heard Sri H.G.S. Parihar, learned Senior Advocate assisted by Sri Anuj Kudesia and Sri Waseeq Uddin Ahmed, learned counsel for the petitioner and Sri Ashwani Kumar Singh, learned Standing Counsel for the State.*

*2. This Court has passed the order dated 8.7.2024, which reads as under:-*

*"Heard Sri H.G.S. Parihar, learned Senior Advocate assisted by Sri Anuj Kudesia, learned counsel for the petitioner and Sri Ashwani Kumar Singh, learned Standing Counsel for he State.*

*By means of this petition, the petitioner has assailed the transfer order dated 25.06.2024 passed by the Department of Higher Education transferring as many as 88 Lecturers from place to another place.*

*Sri Parihar, learned Senior Counsel has stated that the present petitioner after conducting the training course of NCC Officer in the NCC Officer Training Academy is presently serving on the rank of Lieutenant. For*

*transferring such the officer/official a prior approval from the Commandant is necessary but in the present case without getting prior approval from the Commandant she has been transferred. He has further submitted that the Commanding Officer i.e. Colonel has given favorable recommendation in favour of the petitioner to the Government vide letter dated 26.06.2024 and 01.07.2024. (Annexure nos.6 and 7)*

*Learned Standing Counsel prays for and is granted two days' time to seek written instructions in the matter.*

*List this case on 10.07.2024 as fresh.*

*This matter may be taken up immediately after fresh."*

*3. Learned counsel for the petitioner has filed supplementary affidavit. The same is taken on record.*

*4. Learned Standing Counsel has submitted that he has received instructions and as per instructions the petitioner has been transferred in public interest though there is no specific instructions as to whether the prior approval of Commandant has been taken or not. He may file a counter affidavit if some reasonable time is given to him.*

*5. The attention has been drawn by Sri Parihar towards Annexure No. S.A.-1, which is a copy of the letter dated 03.1.1986 issued by Director (Personnel) in the Office of Director General NCC, Ministry of Defence. Para 2 thereof reads as under:-*

*"This aspect came up for discussion in the 8th Joint State Representatives & Directors Conference held in New Delhi on 08 Oct 85 which was attended by representatives of all State Govt/UTAs and it was unanimously agreed by all present that the posting of NCC-Part-time Officers from one institution to another would be carried out only after consulting the NCC Directorate concerned."*

*6. Further attention has been drawn towards Annexure No. S.A. 2 to the supplementary affidavit, which is a copy of the Government Order No. 4105 (1)/15-12-8623 (11)/86 dated 6.3.1987 wherein it has been categorically indicated that the direction being issued vide dated 3.1.1986 would be followed in its letter and spirit. Besides, attention has been drawn towards Annexure No. 6 to the writ petition, which is a letter dated 26.6.2024 preferred by Colonel of 20 U.P. Girls Battalion NCC, Lucknow addressing to Principal Secretary of the Department indicating that the petitioner is imparting the training to the NCC cadets, therefore, if she is transferred, it would affect the functioning of the training.*

*7. Sri Parihar has further submitted that since impugned transfer order has been passed in violation of aforesaid letter dated 3.1.1986 and Government Order dated 6.3.1987, as there is no reference of the aforesaid orders in the impugned order of transfer dated 25.6.2024.*

*8. Matter requires consideration.*

*9. Let the counter affidavit be filed within two weeks.*

*10. List on 29.7.2024 within top 10 cases.*

11. *Till the next date of listing, the operation and implementation of transfer order dated 25.6.2024 (Annexure No.1 to the writ petition) so far as it relates to the petitioner shall remain stayed and if no one has submitted joining in place of the petitioner, she would be permitted to discharge her duties at Lucknow and shall be paid her salary etc. as and when the same falls due. "*

6. By means of the aforesaid order, the interim order was granted for the reason that the petitioner after conducting training course of NCC Officer from NCC Officer Training Academy, is serving presently on the post of Lieutenant in the institution in question and for transferring such Officers/Officials a prior approval from the Commandant is necessary but the said approval has not been taken from the Commandant before transferring the petitioner pursuant to the transfer order.

7. On the first date of admission i.e on 08.07.2024, the specific query on that point was asked from the opposite parties and on 10.07.2024 the interim order has been passed after considering the instructions so provided by the learned Standing Counsel.

8. In the aforesaid order dated 10.07.2024, the Government Order dated 06.03.1987 was perused which categorically provides that the approval from the Commandant would be required. In para 4 of the aforesaid order whatever instructions have been received by the learned Standing Counsel have been indicated and the specific instructions were received to the effect that the petitioner has been transferred in a public interest and on the factum of seeking prior approval time was sought to file counter affidavit.

9. Admittedly in the aforesaid instructions, it has not been indicated that any person has submitted joining on the place of transfer on the place of petitioner on or before 10.07.2024 in as much as had any person submitted his/her joining at the place of petitioner, this information would have been provided to the Court. Therefore, it may be presumed that on or before 10.07.2024 no persons had submitted his/her joining.

10. So far as the factum of seeking prior approval before transferring any Lieutenant from one place to another place is concerned, in the counter affidavit that fact is absolutely silent. However, this much has been indicated that such provision is not binding upon the State Government.

11. The reference of one Government Order dated 06.03.1987 has been given therein, it has been categorically indicated that the guidelines of letter dated 03.01.1986 issued by Director (Personnel) in the Office of Director General NCC, Ministry of

Defence would be followed and para 2 of letter dated 03.01.1986 clearly provides that before consulting NCC Directorate the posting of NCC part-time Officers would not be disturbed.

12. Attention has been drawn towards Annexure No. S.A.1 to the Supplementary Affidavit filed today, which is a letter dated 18.07.2024 passed by Colonel, Deputy Group Commander and Chief Administrative Officer, NCC Group Head Quarter, Lucknow wherein it has been indicated that if the present petitioner is transferred from Lucknow to Prayagraj, the NCC cadets who are taking training would be affected and entire training work would be affected adversely, therefore, the request has been made to cancel the transfer of the petitioner.

13. Sri. R.P.S Chauhan, learned Additional Chief Standing Counsel tried to defend the impugned action of the authorities but could not dispute the earlier Government Order dated 06.03.1987 (supra) wherein it has been categorically indicated that the direction being issued vide letter dated 03.01.1986 (supra) would be followed in letter and spirit and admittedly the guidelines of letter dated 03.01.1986 have been violated.

14. Normally, the transfer order is not interfered by the Constitutional Court but if any transfer order has been passed in violation of the policy which has been directed to be followed in its letter and spirit then the same may be interfered with being against the public policy.

15. Besides, if the learned Standing Counsel was not having any information to the effect that any person has submitted joining on 27.06.2024 (enclosed as Annexure No.C.A.2 to the counter affidavit), that information must have been provided to the learned Standing Counsel on the first date of admission i.e. 08.07.2024 or on 10.07.2024 but no such information was provided to the State Counsel therefore, that information has not been provided to this Court. Not only above, the Colonel, 20 U.P. NCC Girls Battalion, Lucknow has preferred a letter dated 26.06.2024 (enclosed as Annexure No. 6 to the petition) and letter dated 18.07.2027 (enclosed as Annexure No. S.A.1 to the supplementary affidavit) to the effect that if the petitioner is transferred it would affect the girls cadet who are undergoing training under the supervision of the petitioner, therefore even in the interest of the girls cadet the transfer of the petitioner would be unwarranted.

16. Accordingly, the writ petition is **allowed**. The impugned transfer order dated 25.06.2024 which relates to the petitioner and relieving order dated 27.06.2024 passed by the opposite

party no.3 are hereby ***quashed***. The opposite parties are directed to allow the petitioner to work at Rajkiya Mahavidhyalaya, Mahona, Lucknow on the post of Assistant Professor (Botany) cum Associate NCC Officer of 20 U.P. NCC Girls Battalion, Lucknow and she shall be paid salary and allowance as and when the same falls due.

17. There shall be no order as to costs.

**[Rajesh Singh Chauhan,J.]**

**Order Date :- 7.8.2024**

Preeti.