

**In Chamber**

**Case :-** SPECIAL APPEAL No. - 969 of 2024

**Appellant :-** Naveen Kamal Srivastava And 2 Others

**Respondent :-** State Of U.P. Through Secretary, Department Of Basic Education, Government Of U.P. And 3 Others

**Counsel for Appellant :-** Siddharth Khare, Sr. Advocate

**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 Shri Ashok Khare, learned Senior Counsel assisted by Shri Siddharth Khare, learned counsel appearing for the Appellants, Ms. Archana Singh, learned counsel who has put in appearance on behalf of Respondent Nos. 3 and 4 as well as Sri Tej Bhanu Pandey, learned Standing Counsel for the State-Respondent Nos. 1 and 2 .

2. The instant appeal is listed alongwith Special Appeal No.998 of 2024 (Manoj Kumar and another Vs. State of UP and others); however, since the appeals have been argued independently, the same are being decided by separate orders.

3. The present intra-court appeal is directed against the judgment and order dated 05.01.2024, passed by a learned Single Judge, in Writ-A No.20779 of 2023 [Naveen Kamal Srivastava And 2 Others Vs. State Of U.P. and Others], praying

for modification of the judgment and order and to allow the writ petition in *toto* with a further prayer for a direction that the petitioner-appellants would be entitled to avail all benefits flowing from sanction orders dated 26.06.2023 sanctioning their transfers.

4. The records of the case before us indicates that the writ petition had been filed praying for quashing of notices dated 23.09.2023 issued by the District Basic Education Officer, Jhansi, and the subsequent orders dated 29.11.2023 directing relieving of all the petitioners-appellants from District Jhansi with direction to report back to the original district Chitrakoot. The petitioners had also sought quashing of the Circular Letter dated 28.06.2023 issued by the Secretary, Board of Basic Education, U.P. Prayagraj, and a further direction to the respondents not to interfere in their functioning as teachers in District Jhansi and to pay their regular salary including arrears from July 2023.

5. The writ petition was finally disposed of with certain observations/directions in terms of an order dated 05.01.2024, which is being reproduced below:

**“Order on Amendment Application No. 02 of 2023.**

Heard Shri Ashok Khare, learned senior counsel assisted by Shri Siddharth Khare, learned counsel for petitioner and Ms. Archana Singh, learned counsel for respondent nos. 3 and 4.

The amendment application is allowed.

**Order on Writ Petition.**

Learned senior counsel fairly submits that on the issue of clause 5 of a circular issued by the Secretary Basic Shiksha Parishad in pursuance of the transfer policy 2023-2024, this Court has reserved a judgement.

Learned senior counsel further submits that in peculiar circumstances of the present case that in pursuance of transfer orders passed by the respondents, petitioners were relieved from district Chitrakoot, and submitted their joining before the Basic Shiksha Adhikari, Jhansi, respectively on 03.07.2023, 07.07.2023 and later on they were allotted their respective institutions and they have joined their also on 14.09.2023, 15.09.2023 respectively.

Learned senior counsel further submits that subsequently by the independent impugned order dated 29.11.2023 petitioners' transfer order was set aside which was brought on record by way of an amendment application and challenged, and they were directed to report to their original district Chitrakoot.

Learned senior counsel submits that at mid session of the present educational year, impugned orders will adversely affect studies of students and prayed that it may be set aside and at least kept in abeyance till end of present academic session so that they may file a fresh application for their interstate transfer if situation so warrant.

Ms. Archana Singh, learned counsel for respondents has opposed the aforesaid prayer, however, she has not disputed that normally no transfer is allowed in mid session.

In the aforesaid circumstances, without going into the merits of the case in regard to the effect of clause 5 of a circular issued by the Board, I find merit in argument of learned senior counsel for the petitioners that it would be adverse to the interest of students to allow petitioners to relieve from their transferred place in mid session in this regard reliance placed of clause 18 of the transfer policy dated 02.06.2023 is also taken note of.

Therefore, the impugned orders dated 29.11.2023 are kept in abeyance till end of present educational session and the petitioners will be at liberty to file a fresh application in terms of prevailing transfer policy for next academic session if so advice.

This writ petition is disposed of with aforesaid observation/directions.”

6. The principal ground which is sought to be taken in support of the appeal is that by submitting that the orders passed by the District Basic Education Officer, in terms of which the petitioners were relieved for rejoining their original place of posting at District Chitrakoot, having been challenged by

amending the writ petition, there existed no justification for the aforesaid controversy not to be adjudicated on merits by the learned Single Judge while deciding the writ petition. The orders passed by the District Basic Education Officer relieving the petitioners are being sought to be challenged by asserting that the said orders are based upon a Circular dated 28.06.2023 issued by the Secretary, Board of Education, and therefore there was no justification for passing the said orders on the basis of conditions which were not part of the order passed by the State Government.

7. Learned counsel appearing for the State respondents and also the counsel appearing for the Board of Education have pointed out that Clause 5 of the Circular dated 28.06.2023 issued by the Secretary, U.P. Basic Education Board which forms the basis of the orders which were impugned in the writ petition, were subject matter of challenge in a batch of writ petitions, leading being Writ – A No. - 15163 of 2023 [Shraddha Yadav and 6 Others Vs. State of U.P. and 10 Others], which had been heard at length, and the Court had reserved its judgment.

8. It is pointed out that before the writ court, the learned Senior Counsel after making a fair submission in this regard had submitted that in the mid-session of the current academic session the impugned orders would adversely affect the studies of the students and accordingly made a prayer that the impugned orders by means of which the petitioners' transfer orders had been set aside, and they were directed to join their original place of posting, be set aside or at least be kept in abeyance till the end of the current academic session.

9. In the aforesaid circumstances, the learned Single Judge without going into the merits of the case in regard to the effect of Clause-5 of the Circular issued by the Basic Education Board held that there was merit in the argument of the petitioners and it would be adverse to the interest of the students to allow the petitioners' transfer from their present place of posting in the mid session. In this regard, Clause-18 of the transfer policy dated 02.06.2023 was also taken note of. Accordingly, the writ petition was disposed of with a direction that the impugned orders dated 29.11.2023 be kept in abeyance till the end of the current academic session and the petitioners were set at liberty to file fresh applications in terms of the prevailing transfer policy for the next academic session, if so advised.

10. Counsel for the appellant has sought to advert to certain grounds taken in the memo of appeal to contend that the transfer policy of the teachers for the year 2023-2024 was determined as per the Government Order dated 02.06.2023, and the orders dated 29.11.2023 issued by the District Basic Education Officer, Jhansi, which were based on a Circular Letter dated 28.06.2023, cannot be legally supported. It was sought to be argued that there was no justification for passing of the orders impugned on the basis of conditions which were not part of the Government Order dated 02.06.2023.

11. Counsel appearing for the State respondents as also the counsel for the respondent Nos. 3 and 4 have controverted the aforesaid submissions by pointing out that the aforesaid grounds which are sought to be canvassed on behalf of the appellants were neither raised nor pressed before the learned Single Judge

and as such the appellants cannot support the appeal by raising the said grounds at this stage.

12. It is pointed out that a bare reading of the order under appeal would indicate that the learned counsel appearing for the petitioners before the writ court had fairly submitted that on the issue of validity of Clause-5 of the circular issued by the Secretary, Basic Shiksha Parishad, the Court had already reserved its judgment. It was in the said backdrop that the counsel appearing before the learned Single Judge had made a submission that the impugned orders dated 29.11.2023, in terms of which the transfer orders of the petitioners had been cancelled would adversely affect the studies of the students, and a prayer was made that the said orders may be set aside or at least kept in abeyance till the end of the current academic session. It is submitted that the grounds which are now sought to be urged in the present appeal, have been duly examined in the batch of writ petitions, leading petition being Writ – A No. - 15163 of 2023 [Shraddha Yadav And 6 Others Vs. State of U.P. And 10 Others], which were subsequently decided in terms of the judgment dated 09.01.2024, and similar contentions which were raised were repelled.

13. The question as to whether the points allegedly raised but not dealt with in the judgment impugned can be pressed in support of an appeal thereagainst, was adverted to in the decision of **Mohd. Akram Ansari Vs. Chief Election Officer and others**<sup>1</sup>, and it was held that there is a presumption in law that a Judge deals with all the points which have been pressed

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1 (2008) 2 SCC 95

before him and that a party who has grievance must approach the same court which passed the judgment and to urge that other points were pressed but not dealt with. The relevant observations made in the judgment, in this regard, are as follows:-

“14. In this connection we would like to say that there is a presumption in law that a Judge deals with all the points which have been pressed before him. It often happens that in a petition or appeal several points are taken in the memorandum of the petition or appeal, but at the time of arguments only some of these points are pressed. Naturally a Judge will deal only with the points which are pressed before him in the arguments and it will be presumed that the appellant gave up the other points, otherwise he would have dealt with them also. If a point is not mentioned in the judgment of a Court, the presumption is that that point was never pressed before the learned Judge and it was given up. However, that is a rebuttable presumption. In case the petitioner contends that he had pressed that point also (which has not been dealt with in the impugned judgment), it is open to him to file an application before the same learned Judge (or Bench) which delivered the impugned judgment, and if he satisfies the Judge (or Bench) that the other points were in fact pressed, but were not dealt with in the impugned judgment, it is open to the concerned Court to pass appropriate orders, including an order of review. However, it is not ordinarily open to the party to file an appeal and seek to argue a point which even if taken in the petition or memorandum filed before the Court below, has not been dealt with in the judgment of the Court below. The party who has this grievance must approach the same Court which passed the judgment, and urge that the other points were pressed but not dealt with.

15. Since no other point except the point of office of profit has been dealt with in the impugned judgment of the High Court, the presumption is that no other point was pressed before the High Court, even though the point may have been contained in the election petition. Hence we do not allow these points to be raised here.”

14. Taking similar view in a case where several points were raised in the application but arguments were confined to, and therefore decision was given by the Tribunal on only one point, the Supreme Court in the case of **Union of India and others Vs.**

**N.V. Phaneendran**<sup>2</sup>, held that the appellants were not entitled to seek opportunity to agitate the remaining questions before the Tribunal. It was observed as follows:-

“4. It is next contended that though several contentions have been raised on merits, the Tribunal had only dealt with on this issue and, therefore, an opportunity may be given to the respondent to agitate those questions by remitting the matter to the Tribunal. We find it difficult to accept this contention. It is true that though several points appear to have been raised, but before the Tribunal the only contention argued for the respondent was as extracted in paragraph 4 of the order of the Tribunal. It says:

"The only point that was urged before us by the learned counsel appearing for the applicant is that the Divisional Railway Manager not being the appointing authority is not competent to impose a punishment of removal from service on the applicant who is a Travelling Ticker Examiner in the pay scale of Rs.425-640."

Since the controversy was only limited to this point before the Tribunal, we do not find any justification to remit the matter.”

**15.** In the present case, the grounds which are sought to be urged in support of the appeal, may have been stated in the writ petition, but the judgment impugned does not indicate that any such ground was pressed. It is not the case of the appellants that the aforesaid grounds which are now sought to be taken in the appeal were argued before the learned Single Judge and the same have not been accorded consideration.

**16.** It is commonly observed that in the memorandum of petition or appeal, several points may be taken but at the time of arguments only some of those points may be pressed. In such a situation the court concerned would deal only with the points which are argued and there would be a presumption that the party concerned gave up the challenges based on the other points. There is general presumption in law that a Judge deals

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2 (1995) 6 SCC 45



with all the points which have been argued before him, and in case the party seeks to contend that he had pressed certain points which have not been considered, it would be open to him to file an application before the same learned Judge which delivered the judgment, and seek an order of review. It would ordinarily be not open to the party concerned to argue a point in appeal, which even if taken in the petition before the court below, was neither argued nor pressed before the court of first instance.

17. In an *intra* Court appeal, the appellate court would not normally reassess the material and seek to reach a conclusion different from the one reached by the court of first instance, if the one reached by that court was reasonably possible on the material available. This would be more so in a case where the grounds which are sought to be urged were never pressed before the court of first instance.

18. The judgment of the learned Single Judge clearly records that the learned counsel appearing for the petitioners had submitted that Clause-5 of the circular dated 28.06.2023 issued by the Secretary, U.P. Basic Education Board, which forms basis of the orders which were impugned in the writ petition, was subject matter of challenge in a batch of writ petitions, wherein the Court had reserved its judgment. It was in the said background that the learned counsel submitted before the writ Court that in the midst of the current academic session, the impugned orders would adversely affect the studies of the students and accordingly prayed that the same may be set aside or at least kept in abeyance till the end of the academic session.

Finding merit in the aforesaid argument that it would be adverse to the interest of the students to allow the petitioners to be relieved from their transferred place in the mid-session, the learned Single Judge disposed of the writ petition with a direction that the impugned order dated 29.11.2023 be kept in abeyance till the end of the current academic session. The judgment under appeal does not indicate that any other ground was urged before the learned Single Judge, and therefore we are of the view that it would not be open to the appellants to press any other ground which had not been argued before the learned Single Judge.

19. Even otherwise, the grounds which are now sought to be urged in support of the present appeal have been duly considered in the batch of writ petitions with leading petition being **Writ-A No.15163 of 2023 (Shraddha Yadav and others Vs. State of UP and others)** which were decided in terms of judgment dated 09.01.2024 and similar contentions which had been raised, were repelled. The observations made in the judgment in the case of **Shraddha Yadav (supra)**, in this regard, are as follows:-

"१३. याचिकाकर्तागण की सेवायें 'नियमावली १९८१' के प्रावधानों के अधीन हैं। जिसके नियम २१ में 'स्थानान्तरण' का प्रावधान है जो सामान्यतः स्थानान्तरण की अनुमति नहीं देता है और स्थानान्तरण, यदि होता है तो वो, परिषद के अनुमोदन के बिना नहीं हो सकता है।

१४. पूर्व में उल्लेखित निर्णयों से यह भी निर्विवादित है कि स्थानान्तरण नीति मात्र एक प्रशासनिक नीति है, जिसकी पृष्ठभूमि में कोई वैधानिक प्रावधान नहीं है। किसी भी कर्मचारी को अपनी पसंद के स्थान पर स्थानान्तरण का दावा करने का कोई मौलिक या निहित अधिकार प्राप्त नहीं होता है।

१५. शिक्षकों व शिक्षिकाओं के वर्ष २०२३-२०२४ की अन्तर्जनपदीय एवं पारस्परिक स्थानान्तरण नीति को उत्तर प्रदेश शासन के शासनादेश दिनांक ०२, जून, २०२३ द्वारा निर्धारित की गई। इसके खण्ड १६, १७ व १८ पूर्व में उल्लेखित किये जा चुके हैं, के अनुसार परिषद को इस स्थानान्तरण नीति के ' तकनीकी चरण एवं प्रक्रिया के निर्धारण का दायित्व सौंपा गया और उसी क्रम में,

और स्थानान्तरण नीति के क्रम में अग्रतर कार्यवाही हेतु सचिव, उ.प्र. बेसिक शिक्षा परिषद ने परिपत्र दिनांक १६.०६.२०२३ व २८.०६.२०२३ को निर्गत किया, जिसके अनुसार ऑनलाइन आवेदन के सत्यापन व परीक्षण की प्रक्रिया को निर्धारित किया। इन परिपत्रों के माध्यम से एकल अभिभावक, दिव्यांगता, असाध्य या गंभीर रोग, सरकारी सेवा का लाभ, निलम्बन की स्थिति आदि के विषय में प्रावधान बनाये गये। इसी क्रम में परिपत्र दिनांक २८.०६.२०२३ द्वारा अन्तर्जनपदीय स्थानान्तरण प्रक्रिया के अन्तर्गत स्थानान्तरित शिक्षक एवं शिक्षिका (१६,१६४ शिक्षक एवं शिक्षिका) को कार्यमुक्त किये जानें की कार्यवाही की, विस्तृत प्रक्रिया को भी निर्धारित किया। इसी परिपत्र के खण्ड (५) को निरस्त करने की प्रार्थना याचिकाकर्तागण ने की है। उक्त खण्ड पुनः निम्न उल्लेखित किया जा रहा है:-

"५. प्रोन्नति पद पर कार्यरत शिक्षक एवं शिक्षिका के स्थानान्तरित जनपद में बैच की पदोन्नति वर्ष/मौलिक नियुक्ति तिथि के आधार पर कार्यमुक्त करने की कार्यवाही की जायेगी।"

१६. स्थानान्तरण नीति के खण्ड १६, १७ व १८ के अन्तर्वस्तु से स्पष्ट है, जो परिषद के उक्त परिपत्रों को, जो उक्त नीति के ' तकनीकी चरण व प्रक्रिया के निर्धारण', इसकी समय सारिणी व कार्यमुक्त कराने के सम्बन्ध में है, निर्गत करने के लिए स्पष्ट रूप से परिषद के सचिव को अधिकृत करते है। अतः उक्त परिपत्रों को निर्गत करने का अधिकार सचिव, उ.प्र. बेसिक शिक्षा परिषद को पूर्ण रूप से था। अतः परिपत्र वैधानिक है व विधिक रूप से संधारणीय भी है। यह परिपत्र स्थानान्तरण नीति के क्रम में उसके कार्यवाहन के लिए है, न कि उसकी प्रकृति के विरोध में निर्गत किये गये है। स्पष्टता व संदर्भ के लिए स्थानान्तरण नीति के खण्ड १६, १७ व १८ पुनः निम्न उल्लेखित किये जा रहे है:-

“(१६) अन्तर्जनपदीय एवं पारस्परिक स्थानान्तरण के लिए निर्गत शासनादेश के अनुसार उ०प्र० बेसिक शिक्षा परिषद द्वारा अन्तर्जनपदीय एवं पारस्परिक स्थानान्तरण के तकनीकी चरण एवं प्रक्रिया का निर्धारण किया जायेगा तथा शासनादेश के क्रम में अग्रतर कार्यवाही की जायेगी।

(१७) अन्तर्जनपदीय स्थानान्तरण हेतु समय-सारिणी सचिव, बेसिक शिक्षा परिषद द्वारा अपने स्तर से पृथक से निर्गत की जायेगी।

(१८) अन्तर्जनपदीय एवं पारस्परिक स्थानान्तरण के उपरान्त शिक्षक/शिक्षिका को कार्यमुक्त करने तथा कार्यभार ग्रहण करने की कार्यवाही मध्य शैक्षिक सत्र में नहीं की जायेगी। शिक्षक/शिक्षिका को कार्यमुक्त करने तथा कार्यभार ग्रहण करने की कार्यवाही अवकाश के दौरान ही की जायेगी।"

१७. अब न्यायालय को यह निर्धारित करना है कि परिपत्र दिनांक २८.०६.२०२३ के खण्ड (५) में उल्लेखित 'स्थानान्तरित जनपद में बैच की पदोन्नति वर्ष/मौलिक नियुक्ति तिथि के आधार पर' कार्यमुक्त करने की कार्यवाही का कोई न्यायोचित कारण है अथवा नहीं। यहां यह ध्यान रखना होगा कि याचिकाकर्तागण के संबंध में अंतर्जनपदीय स्थानान्तरण का आदेश पारित हो गया था परन्तु उपरोक्त खण्ड (५) के कारण उनको कार्यमुक्त नहीं किया गया है।

१८. उपरोक्त वर्णित खण्ड (५) के अन्तःवस्तु के मात्र परिशीलन से स्पष्टता प्रतीत नहीं होती है परन्तु परिषद के द्वारा दायर प्रतिउत्तर पत्र व उसके विद्वान अधिवक्ता के कथन से स्पष्टता प्रतीत होती है, कि अगर याचिकाकर्तागण जो पदोन्नति पद पर है स्थानान्तरित जनपद, जहां उनके बैच के शिक्षकों की पदोन्नति नहीं हुयी है, कार्यभार ग्रहण कराया जाता है तो वो अपने संवर्ग में निम्नतम वरिष्ठता पर रहें। फिर भी वो उनके बैच में कार्यरत शिक्षक/शिक्षिका जिनको पदोन्नति नहीं की गई है, से वरिष्ठ हो जायेंगे और उनके पदोन्नति होने के बाद भी याचिकाकर्तागण ही वरिष्ठ रहेंगे। जिससे असमंजसता की स्थिति उत्पन्न हो

जायेगी, चाहे वरिष्ठता सूची मूल जनपद के स्तर पर ही क्यों न हो। यह स्थिति सहकर्मी को साथ कार्य करने के लिए प्रतिकूल होगी। उपरोक्त वर्णित कारण एक नीतियुक्त कारण है जो उपरोक्त खण्ड (५) को वैधानिकता प्रदान करता है। अगर परिषद उक्त खण्ड (५) के अन्तःवस्तु में और स्पष्टता ला पाते तो अच्छा होता। अग्रिम स्थानान्तरण नीति में स्पष्टता का ध्यान रखना चाहिये।

१९. मा० उच्चतम न्यायालय के एक नवीन निर्णय जो **देवेश शर्मा प्रति भारत संघ व अन्य: २०२३ एस.सी.सी. ऑनलाइन एस.सी. ९८५**, के प्रकरण में पारित किया गया है, में पुनः यह प्रतिपादित किया कि:-

“ ७३. हमारे मस्तिष्क में निश्चित रूप से कोई संदेह नहीं है, कि साधारणतः राज्य के नीतिगत निर्णयों में संवैधानिक न्यायालयों द्वारा उसके पुनः निरीक्षण अधिकारो के अंतर्गत हस्तक्षेप नहीं किया जा सकता है। इसी के साथ अगर नीतिगत निर्णय स्वयं में ही विधि के विरुद्ध और वो मनमाना व तर्कहीन हो तो पुनः निरीक्षण के अधिकार का उपयोग करना ही चाहिये।”

२०. मा० उच्चतम न्यायालय द्वारा एक अन्य प्रकरण **सत्यदेव बागुर प्रति राजस्थान शासन व अन्य (२०२२)५ एस.सी.सी. ३२४**, के प्रकरण में पूर्व में पारित **कृष्णन्न कक्कनाथ प्रति केरल राज्य:(१९९७)९ एस.सी.सी. ४९५** व **शेर सिंह प्रति भारत संघ: (१९९५)६ एस.सी.सी. ५१५** के निर्णयों का संदर्भ लेते हुए यह निर्णीत किया कि:-

“१५. यह अतिसामान्य है कि न्यायालय नीतिगत मामलो में हस्तक्षेप करने में मन्द रहेंगे, जब तक कि नीति स्पष्ट रूप से पक्षपाती और मनमानी न स्थापित हो जाये। यह न्यायालय राज्य की नीतिगत निर्णय में हस्तक्षेप नहीं करेगा, जब राज्य यह इंगित कर सके कि नीति के कार्यावहन में युक्तियुक्त अंतर है और वो युक्तियुक्त अंतर, उसके उद्देश्य की प्राप्ति से संबंध रखता है।”

२१. जैसा ऊपर विश्लेषण किया गया है कि खण्ड (५) के अन्तःवस्तु का आधार न्यायोचित एवं न्याय संगत है, जो एक युक्तियुक्त अन्तर है, जिसका संबंध उद्देश्य की प्राप्ति के लिये है कि अगर याचिकाकर्ता गणो को स्थानान्तरित जनपद, जहां उनके बैच के सह शिक्षको की पदोन्नति नहीं हुई है, स्थानान्तरित कर दिया जाये तो वहां अव्यवस्था हो जायेगी और सहकर्मी को साथ काम करने में असहजता होगी। अतः इसको निरस्त करने की प्रार्थना अस्वीकार की जाती है। और यह याचिका बलहीन होने के कारण **निरस्त** की जाती है।”

20. It has been brought to our notice 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."

**21.** 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."*

**22.** 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.

23. Accordingly, even if the grounds which are now sought to be urged on behalf of the appellants are taken into consideration the controversy involved in the present case is 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 UP through Secretary, Department of Basic Shiksha).

24. We are not inclined to take a different view in the matter.

25. The special appeal, therefore, stands **dismissed**.

**Order Date :-** 16.01.2025

Arun K. Singh

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