

Court No. - 36

Case :- WRIT - A No. - 9256 of 2021

Petitioner :- Devendra Kumar Sharma

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

Counsel for Petitioner :- Santosh Kumar Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

1. Heard Shri Santosh Kumar Shukla, learned counsel for the petitioner and learned Standing Counsel for the State.

2. Originally, the present petition was filed to challenge the transfer order dated 13.07.2021 whereby the petitioner, who was then working as Assistant Teacher (Mathematics) at Government Inter College, Nandgram, Ghaziabad, was transferred intra-district, to Government Inter College, Tyodi, Ghaziabad.

3. Perusal of the aforesaid order reveals, it provided for a solitary transfer of the petitioner. There was no other or corresponding transfer contemplated or disclosed therein. Upon the petition being entertained, vide order dated 20.09.2021, it was provided, the petitioner may not be relieved unless he has already been relieved. As a fact, the petitioner came to be relieved.

4. On 03.09.2021, another transfer order came to be passed whereby the petitioner was transferred, this time inter-district, from Government Inter College, Tyodi, Ghaziabad to Government Inter College Anooppur, Dibai, Hapur. Accordingly, the petitioner sought amendment to the writ petition. It was allowed. Order dated 03.09.2021 (annexed to the C.M. Amendment Application No. 2 of 2021), also speaks of a single transfer - of the petitioner, from Government Inter

College, Tyodi, Ghaziabad to Government Inter College Anoopur, Dibai, Hapur.

5. The counter affidavit reveals, the transfer of the petitioner was not occasioned by any request of the petitioner. Rather, the initial transfer was made under the 4% Minister's quota contemplated under Clause 10 of the Government Order dated 18.04.2018, as made applicable to the academic session 2021-22. That discretion was exercised solely to accommodate one Smt. Pooja Tyagi at Government Inter College, Nandgram, Ghaziabad. She was earlier working as an Assistant Teacher at Government Higher Secondary School, Salempur Gurjar, Gautam Budh Nagar. Then, the second transfer order was occasioned on part acceptance of the objection of the petitioner being found true i.e., there did not exist any vacant post of Assistant Teacher (Mathematics) at Government Inter College, Tyodi, Ghaziabad. No other reason has been disclosed.

6. As to legality of the action/transfer order, perusal of the Government Order dated 18.04.2018 reveals, it provides for mechanism to transfer teachers on their own request, only. It does not contain a general policy statement to enable transfer of teachers, on administrative considerations or generally. Even to transfer teachers on their own request, applications could be made to seek transfer to a post mentioned in the list of vacant posts only (available at various institutions at different districts), as notified and uploaded on the related website in terms of Clause 4(4) of the Government Order dated 18.04.2018. By virtue of Clause 4(5) of that Government Order, the desirous could apply for transfer only against such notified vacant posts, and no other. No disclosure has been made in the counter affidavit as to the then existing vacancy position at different institutions at different districts, against which the said

Smt. Pooja Tyagi may have applied, to be transferred.

7. Suffice to note, undisputedly, the post of Assistant Teacher (Mathematics) at Government Inter College, Nandgram, Ghaziabad was never vacant. The petitioner was serving at that institution from before. He had not applied for transfer. Second feature of that transfer policy is – inter-se preference to be given in consideration to be made on all transfer applications. In that four categories of applicants were specified in Clauses 3 (i), (ii), (iii) and (iv) of the Government Order dated 18.04.2018. They were entitled to preferential consideration.

8. *Prima facie*, Smt. Pooja Tyagi does not appear to qualify for preferential consideration under any of those categories. While she had claimed death of both her parents and had further claimed ill-health of her mother-in-law, those facts/circumstances were not included under any of the above noted clauses to grant preference to consider her transfer application, irrespective of her seniority position. At the same time, it may be recorded, that issue would remain relevant and material for consideration of the claim set up by Smt. Pooja Tyagi. Inasmuch as the petitioner is not aggrieved by the transfer sought by Smt. Pooja Tyagi from Government Higher Secondary School, Salempur Gurjar, Gautam Budh Nagar, no binding observation is being made with respect to that.

9. For the present purpose, Clause 5 of the Government Order dated 18.04.2018 allowed for exercise of choice of five institution/s to which an applicant may seek transfer to. In view of the Clause 4(4) of that Government Order providing for notification of vacant posts at different institutions, in different districts read with the further stipulation of "*pradarshit riktiyon*" contained in Clause 4(5) thereof, such choice could have been exercised by an applicant and acted upon by the

respondents only with respect to such notified vacant post/s only and not against any post/s that was/were occupied or filled up or which may not have been notified as a vacant post.

10. Looked in that light, Clause 10 of the Government Order dated 18.04.2018 reads as below:

"जनहित में संवर्ग के 04 प्रतिशत की सीमा तक माननीय विभागीय मंत्री जी द्वारा किसी शिक्षक/शिक्षिका को अनुरोध के आवेदनों पर स्थानान्तरित किये जाने के आदेश दिये जा सकेंगे।"

11. In view of the above, the discretion given to the administrative authority under the above noted Clause 10 of the Government Order is not an exception to the general policy but an aid to the same. That discretion could be exercised to transfer Smt. Pooja Tyagi to a notified vacant post in preference over other applicants, though she may not have been entitled to any preferential consideration under any of the four categories of Clause 3 of the Government Order dated 18.04.2018 and though she may have stood lower in seniority and therefore preference, for consideration of transfer, first.

12. In absence of any clause under the government policy allowing for transfer to be made generally, the discretion of the administrative authority to give preference to Smt. Pooja Tyagi, could not be exercised to dislodge the petitioner from the post on which he was working satisfactorily. No complaint or objection exists as to the working of the petitioner as Assistant Teacher (Mathematics) at Government Inter College, Nandgram, Ghaziabad. The petitioner never applied or consented to be transferred out from that institution. Therefore, the action taken to transfer the petitioner to accommodate Smt. Pooja Tyagi, is unauthorised and impermissible in law.

13. To allow the respondents to transfer a teacher serving

satisfactorily on a post only to accommodate a person seeking transfer on that post would be to permit uncontrolled arbitrariness and whimsical action to the administrative authorities. That itself is sufficient to annul the transfer of the petitioner. Second, that action if permitted would amount to a penalty imposed on the teacher dislodged from his settled place of posting, for no fault; without sanction of law and without initiating any disciplinary proceeding. Third, apparently, the respondents are themselves of that view, in as much as they did not seek to transfer the Assistant Teacher (Mathematics) at Government Inter College, Tyodi, Ghaziabad, to accommodate the petitioner. Rather they have transferred the petitioner to such post that was lying vacant at Government Inter College Anoopur, Diba, Hapur. Yet, that very principle was violated while displacing the petitioner from Government Inter College, Nandgram, Ghaziabad, in the first place. That is the extent of whimsical exercise if not abuse of discretion.

14. Consequently, the transfer orders dated 13.07.2021 and 03.09.2021 in so far as they seek to transfer out the petitioner from the Government Inter College, Nandgram, Ghaziabad are wholly conflicted to law. They are wholly unsustainable. Accordingly, the transfer orders dated 13.07.2021 and 03.09.2021 transferring the petitioner from Government Inter College, Nandgram, Ghaziabad, to Government Inter College, Tyodi, Ghaziabad and from Government Inter College, Tyodi, Ghaziabad to Government Inter College Anoopur, Diba, Hapur are quashed.

15. The petitioner be allowed to re-join the Government Inter College, Nandgram, Ghaziabad forthwith, without prejudice to the rights of Smt. Pooja Tyagi to transfer under the Government Order dated 18.04.2018. That request may be reconsidered

afresh, in accordance with law, considering the observations made above. That exercise be completed within a one month from today, against prior notice to her in that regard. Meanwhile, she may continue to render service at Government Inter College, Nandgram, Ghaziabad, along with the petitioner.

16. Since the petitioner has been wholly wronged, for no fault, and has been forced to litigate, he is also found entitled to costs that are assessed at Rs. 10,000/- per month, for the period when the petitioner could not work at Government Inter College, Nandgram, Ghaziabad. Let costs be paid out by the first respondent within one month from today.

17. The petition stands **allowed** with costs as above.

Order Date :- 11.11.2022

Prakhar