

(2019) 05 UK CK 0010

In the Uttarakhand High Court

Case No : Special Appeal No. 1039 Of 2018, Delay Condonation Application No. 19912 Of 2018

Anita Rauthan

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 01-05-2019

Acts Referred:

Citation : (2019) 05 UK CK 0010

Hon'ble Judges : Ramesh Ranganathan, CJ;N.S. Dhanik, J

Bench : Division Bench

Advocate : S.S. Yadav, S.S. Chaudhary

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Delay of 05 days in filing this appeal is not opposed by Mr. S.S. Chaudhary, learned Brief Holder for the State Government, and the delay is, therefore, condoned.

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 1067 of 2018 dated 26.10.2018. The said writ petition formed a part of a batch of writ petitions, in Writ Petition (S/S) No. 1406 of 2018 and batch, all of which were dismissed by the learned Single Judge by order dated 26.10.2018. The learned Single Judge, however, observed that a few petitioners were entitled for transfer on the ground of spouse policy, others on the ground of serious illness; some of the petitioners had been transferred from one hill district to another hill district, and their cases should be considered sympathetically; and, in case any of the petitioners make a representation before the competent authority in this regard, it would be open for the competent authority to consider the same, and take a decision on the said representation sympathetically, in accordance with law, promptly. Aggrieved thereby, the present appeal.

3. Mr. S.S. Yadav, learned counsel for the appellant-writ petitioner, would submit that, while the learned Single Judge had no doubt observed that request for transfer, on the ground that the spouse of an employee is working somewhere else, should be considered sympathetically, the learned Single Judge has not referred to any particular provision either under the 2013 Rules or under the 2017 Act, in terms of which the authorities were required to examine such a representation; and it would suffice if this Court were to indicate the provision in terms of which the appellant-writ petitioner's request, for transfer on spouse grounds, should be considered.

4. On the other hand, Mr. S.S. Chaudhary, learned Brief Holder appearing on behalf of the State Government, would submit that, against the order passed by the learned Single Judge in Writ Petition (S/S) No. 1406 of 2018 and batch, Special Appeals were preferred, one of which was Special Appeal No. 935 of 2018 which was dismissed by a Division Bench of this Court by its order dated 04.12.2018.

5. A copy of the order passed by a Division Bench of this Court, in Special Appeal No. 935 of 2018 dated 04.12.2018, has been placed before us, wherein the Division Bench had observed, following the law laid down by the Supreme Court, in *Union of India Vs. S.L. Abbas* : (1993) 4 SCC 357 and *Bank of India Vs. Jagjit Mehta* (1992) 1 SCC 306, that guidelines relating to transfer conferred no right on an employee, and could not form the basis for interdicting or quashing an order of transfer; and an order of transfer can be challenged only if it is MALAFIDE or where it is made in violation of statutory provisions. After taking note of the fact that no statutory provisions had been violated, nor was it the petitioner's case that the order of transfer was vitiated by malice, the Division Bench had refused to enforce the earlier office memorandum dated 21.11.2016 permitting transfer of an employee outside the district even without a cadre change. The Division Bench further observed that setting aside the subsequent order dated 25.04.2018, whereby the earlier office memorandum dated 21.11.2016 was cancelled, would result in revival of the earlier office memorandum dated 21.11.2016, whereby employees were permitted to be transferred outside the district in violation of the cadre rules, which stipulates that transfers should be effected only within a block in each district. The Division Bench had observed that, since the petitioner therein was in the cadre of Syalde Block, he could only have been transferred from one primary school to another within the said block, and not beyond.

6. The appellant-writ petitioner herein was appointed as a Teacher in Jakholi Block of Rudraprayag District. Since her unit of appointment is within the said Block, ordinarily, her transfer can only be from one school to another within the said Block. She was, however, transferred, in terms of the guidelines dated 21.11.2016, to Dehradun on the ground that her husband was working thereat.

7. Following the order of the Division Bench of this Court in Special Appeal No. 935 of 2018 dated 04.12.2018, and in terms thereof, this appeal is also

dismissed.

8. However, in terms of the order of the Division Bench in the aforesaid Special Appeal, we also make it clear that the order now passed by us shall not disable the appellant-writ petitioner from making a representation to the authorities concerned, and for the authorities to pass an order thereupon in accordance with law.

9. No costs.