

(2018) 06 UK CK 0089

In the Uttarakhand High Court

Case No : Writ Petition No. 1669 (S/S) of 2018

Ashfaq Ahmed

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 20-06-2018

Acts Referred:

Transfer Act, 2017 — Section 7, 12, 17, 22(4)

Citation : (2018) 06 UK CK 0089

Hon'ble Judges : SHARAD KUMAR SHARMA, J

Bench : Single Bench

Advocate : Anjali Benjwal Bahuguna, T.S. Bisht

Final Decision : Disposed Off

Judgement

Sharad Kumar Sharma, J.

The petitioner is posted as Veterinary Pharmacist.

2. By virtue of the impugned order of transfer dated 10.06.2018 (Annexure-3 to the writ petition) where his name finds place at Serial No.13, the

petitioner's services has been transferred from Government Veterinary Hospital, Kandakhal, Pauri Garhwal to Government Veterinary Hospital,

Lakshar, Haridwar, under the compulsory transfer policy of Section 17 of the Transfer Act, in public interest.

3. The argument of learned counsel for the petitioner is that he has served in a Durgam area for a period of more than 18 years. His personal

difficulty which he has expressed before this Court in writ petition is that he has his ailing mother to be taken care of and by transferring him to

Lakshar, District Haridwar, which admittedly happens to be a Sugam Area, he would be deprived of performing his onerous duty towards his mother,

who lives at Kandakhal, in District Pauri Garhwal.

4. Another argument which has been extended by the learned counsel for the petitioner is that under the Transfer Act, 2017, in accordance with the provisions contained under Section 12 of the Act, the petitioner has given option of 10 places of his preferences, wherein, he could be transferred.

Petitioner in para 4 of the writ petition has pleaded that he had given option for transfer from Durgam to Sugam in prescribed format with 10 opted places.

5. The grievance of the petitioner is that one of the options which was given by the petitioner was Dugadda, which is also Sugam area, but instead of transferring him to the opted place he has been sent to Lakshar, which is not the place petitioner had opted for, whereas, on the other hand, petitioner

has been serving at Kandakhal, District Pauri, for a period more than the stipulated period of four years as contemplated under Section 7 (Kha) of the

Act. Hence he ought to have been transferred and the petitioner had expected to be placed there. Having not done so, the petitioner has approached

this Court for the following reliefs:-

â??(i) Issue a writ, order or direction in the nature of certiorari quashing the transfer order dated 10.06.2018 (annexure no.3), by which the

respondents have transferred the petitioner from Govt. Veterinary Hospital, Kandakhal Pauri Garhwal to Govt. Veterinary Hospital Lakshar,

Haridwar.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to consider the case of petitioner as per the options of Transfer

given by the petitioner as per the provision given in the Uttarakhand Public Servant yearly Transfer Act, 2017.

(iii) Issue any order or direction which this Honâ??ble Court may deem fit and proper in the circumstances of the case.â??

6. Though the second relief is to the effect that a direction may be issued to the respondents to consider the case of the petitioner as per the options

given by him. But for seeking a writ of mandamus by way of direction for consideration, there had to be a prior representation or a demand raised to

the authorities, who under law are duty bound to do an act, which they have failed to perform despite being called by person to do the Act, which has

not yet been filed by the petitioner, there is no record or pleading that petitioner

filing the writ petition, the petitioners had approached the authorities more particular when filing of representation is contemplated under the Act as provided under Section 22(4) of the Transfer Act.

7. The petitioner's contention is that at this stage after passing of the order dated 10.06.2008 impugned in the writ petition, he would be precluded

to file a statutory representation under Section 22 (4) of the Transfer Act, because of the lapse of period provided therein.

8. By overcoming the said stipulation of period for filing the representation, this Court disposes of this writ petition granting the liberty to the petitioner

to prefer a representation within 10 days from receipt of certified copy of this order. In case, if he files a representation within 10 days thereafter, the

same would be treated to have been filed within the time and the same would be decided within a period of one month thereafter. The transfer of the

petitioner impugned in the writ petition would be dependant upon the decision thus taken on the representation.

9. Subject to the above observations, writ petition stands disposed of.

10. However, there would be no order as to costs.