
(2018) 06 UK CK 0046

In the Uttarakhand High Court

Case No : Writ Petition No. 1632 (S/S) of 2018

Brijesh Upadhyay

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 18-06-2018

Acts Referred:

Transfer Act, 2017 — Section 22 (4), 27, 2, 3, 27

Citation : (2018) 06 UK CK 0046

Hon'ble Judges : SHARAD KUMAR SHARMA, J

Bench : Single Bench

Advocate : Suresh Chandra Bhatt, C.S. Kargeti, T.S. Bisht, Paresh Tripathi, N.P. Shah, Anjali Bhargava

Final Decision : Disposed Off

Judgement

Sl. No.,W.P.,Presently Posted,"Services Rendered

SUGAM","Services Rendered

DURGAM

1.,1632/18,"Lecturer (Chemistry)

G.I.C. Village

Sukharo Kotdwar

Block Dugadda Distt.

Pauri","Rules 2013/14 10

years 7 month 25

days Act of 2017,

Impugned Order 27

years 1 month 19

days", "Rules 2013/14 17

years; 01 month, 12

days Act of 2017, 00

years; 00 month; 00

days

institution effected on account of the implementation of the Transfer Policy in the year 2008, although it stood superseded in 2013 and 2014. The",,,,,

petitioner's case and grievance is that even as per the Transfer Rules 2013 framed under Article 309, the respondents have already undertaken",,,,,

the exercise of categorization of institutions into Durgam; Sugam and Ati Durgam, as per criterions provided under Rule 4, by virtue of which all the",,,,,

schools were categorized. Accordingly, the points as determined to be allocated in the manner as given in Appendix-A framed under Rule 7, 9(1); 10;,,,,

11 and 12, it was undergone and on completion of said exercise the period of service rendered by the petitioner was already determined, the case of",,,,,

the petitioner is that the respondents prior to preparing of the impugned transfer list have not been considered and taken note of the categorization and",,,,,

marks allotted for Durgam; Sugam etc. before framing the list by respondent under the Act of 2017. The contention of the petitioner is that the",,,,,

settlement or benefit already done under the prevalent rules at the relevant time cannot be nullified by subsequent legislative action which in the instant",,,,,

case is by enforcement of the Transfer Act, 2017.",,,,,

11. The respondents have resorted to the impugned action by preparing the transfer list dated 24.05.2018 (Annexure-2 to the writ petition) by virtue of",,,,,

which the services and as per Transfer Act, 2017, the profiles contained therein were determined. The petitioner's submission is that the",,,,,

respondents prior to preparing the impugned transfer list dated 24.05.2018 (Annexure-2 to the writ petition) were bound to consider the categorization",,,,,

assignment of gunank which was done by them as per statutory Rules of 2013 and the said exercise since has determined the status of petitioner for",,,,,

performance of an administrative act, it ought to have been considered for an identical action being taken with the enforcement of the new law, by",,,,,

way of Transfer Act, 2017. The submission is that by enforcing of Transfer Act, 2017, adopting and classifying the institutions in Durgam; Ati Durgam",,,,,

exercise of statutory rules of 2013/14 framed under Article 309 may be protected and be made applicable and considered while categorizing the,,,,

petitioner's institution and allocation of marks under the Act of 2017, and his placement be based on the consideration of old categorization too." ,,,,

14. In the representation for example thus submitted by the petitioner he has prayed for that the service rendered by him from April, 1991 to" ,,,,

14.05.2008 in the Government Inter College, Kalzikhal, Pauri Garhwal, which happens to be a Category-D Institution should be taken into" ,,,,

consideration for the purposes of transferring him to a remote area under the Transfer Act of 2017. ,,,,

15. This Court feels that calling for a counter affidavit and keeping the writ petition pending would not serve the purpose of justice and considers that it, ,,,,

would be in the interest of justice that because the petitioner is facing a probable transfer based on the Transfer List dated 24.05.2018 impugned in the, ,,,,

writ petition by virtue of which he has been included in list of proposed transfers from wherein his name appeared in the list. The petitioner, at this" ,,,,

stage, has confined his relief that in view of the provision contained under Section 22 (4) of the Transfer Act contemplates, namely, statutory" ,,,,

representation, the representation which has been submitted by him on 26.05.2018 may be directed to be disposed of by the Director, School" ,,,,

Education, which is pending before him." ,,,,

16. In this case since the issue is pertaining to consideration of the period of services rendered earlier, and since the said action is not being" ,,,,

safeguarded, it would be an issue which goes to the very root of the controversy as to whether at all the services rendered by the petitioner in the" ,,,,

Durgam area under the Rules of 2013 could be excluded or considered under 2017 Act or not. For the said purpose since there is a statutory remedy, ,,,,

available to them under Section 22(4), it will always be open to invoke the said remedy before the competent Authority, but, here the situation which" ,,,,

has ultimately arrived at could also be protected after taking into consideration sub section (2) of Section 27 of the Act, which provides with the" ,,,,

removal of the difficulty clause. ,,,,

17. Looking to the relief sought at this stage since being innocuous in nature and couple with the fact that the tenure of service rendered by an, ,,,,

employee in the remote area always place an important role for considering the

transfer of an employee from Sugam to Durgam Area or vice versa,,,,,
under the Transfer Act, 2017, it would be in all fitness of things that the respondent no.3, be directed to dispose of the representation of the petitioner" ,,,,
on merits within four weeks from today and if necessary after providing an opportunity of hearing to the petitioner. At this juncture, it is made clear" ,,,,
that same would not be rejected on the ground of limitation for its filing as provided under Section 22(4) of the Transfer Act, 2017." ,,,,
18. Hence, the present Writ Petition is disposed of with the direction to the Authority as constituted under sub section (2) of Section 27 along with the" ,,,,
superior Authority as provided under sub section (2) of Section 22 to consider the representation of the petitioner, which he may file afresh within a" ,,,,
period of ten days from today. The said representation would be considered by the Authority superior to the Authority passing the impugned order by ,,,,
the reasoned order within a period of one month from today. ,,,,
19. Subject to the above observations, the writ petition is disposed of." ,,,,
Â ,,,,
20. However, it is made clear that this Court has not expressed any opinion on merit in this case. The Director, School Education has to take his" ,,,,
independent decision. ,,,,
However, there would be no order as to costs." ,,,,