
(2016) 05 UK CK 0008

In the Uttarakhand High Court

Case No : Writ Petition (SB) No. 370 of 2015

Dr. Nebedita Priyadarshani & others

APPELLANT

Vs

State of Uttarakhand & others

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2016) LIC 2545

Hon'ble Judges : K.M. Joseph, C.J. and V.K. Bist, J.

Bench : Division Bench

Advocate : Mr. S.S. Yadav, Advocate, for the Appellant; Mr. Pradeep Joshi, Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, C.J. (Oral) - The issues raised in these two writ petitions being common, we dispose of the same by this common judgment.

2. The petitioners are working in the Higher Education Department of the State. Their complaint, in short, is as follows:

They have worked for long period in the remote areas of the State. They sought transfer. It was not considered. They filed representations. This Court directed the representations to be disposed of. The representations were disposed of holding that they will be considered for transfer in the next transfer session as per the guidelines. It is pointed out that transfer of employees is a matter, which is governed by the guidelines of the year 2008 and, under the said guidelines, continuance of a person at a particular place for a period of 3 to 5 years would entitle him/her to be considered for transfer. Petitioners fulfil the said requirement. It is despite that and on not being considered for transfer that they had to file the representations and, finally, to approach this Court. The representations were disposed of, as already noted. The parties proceeded on the basis that the case of the petitioners will be considered in terms of the 2008

Guidelines. However, another development took place. On 30.07.2015, amendment was effected to the Guidelines of 2008. As per the same, the bar was raised from 3 to 5 years to completion of 10 years as the requirement for being considered for transfer. According to the petitioners, these Guidelines are arbitrary and illegal. It is submitted that the 2008 Guidelines continue to apply for all the other services in the Government and only the Higher Education Department has been singled out. It is, inter alia, stated in the writ petition (WPSB No. 370 of 2015) as follows:

"14. That anything like circular/guideline or any other notification in regard to transfer, the Higher Education Department will be applicable in prospective effect; it will not be given the retrospective effect. The case of the petitioner was decided by this Hon''ble High Court on 23.12.2014 and the respondents have taken decision on 11.02.2015, so the stand taken by the respondents to defeat the purpose of the Hon''ble Court's order and purpose of Transfer Policy 2008 and purpose of filing of the writ petition the respondents have not transferred the petitioner behind it political pressure is running and entire Secretariat of Higher Education is operated by politician. Due to interference of the Hon''ble High Court there is ban on the green yard of the politician, they are unable to graze because there is stone of law and antivirus of Hon''ble Court's order which is creating check and control on the dry-hands of the interested groups to make it creamy hand so they are taking this mischievous step which is not sustainable in the eye of law, the secret mission of the respondents on the direction of Head of the Higher Education Ministry is to defeat the purpose of the petitioner/teacher who is approaching to the Hon''ble High Court.

15. That the prescribed guidelines for transfer in this regard the respondent No. 2 Director has not made a proposal and the approval has not been taken from the Hon''ble Chief Minister of Uttarakhand, so it cannot be given effect, it is malice by some interested groups of Secretariat of Higher Education to frustrate the purpose of Assistant professors/Associate Professors those are approaching to the Hon''ble High Court of Uttarakhand at Nainital for their long stay in the light of Transfer Policy 2008. Except in the Higher Education rest all the departments are following the Transfer Policy 2008, it is amount to discrimination under Article 14 of the Constitution of India, but the mischievous groups of Higher Education those have fulfilled their sweet-will due to approaching before the Hon''ble High Court by the litigant no one illegally hurdled so that the order of the Hon''ble High Court can be fruitless and it results also. In the letter dated 30/31.07.2015 sent by the respondent no. 1 to the respondent no. 4 and issued by the respondent no. 3 which is without adopting due process of law. In this letter, the respondents have not taken an approval from the Hon''ble Chief Minister and tried to defeat the purpose of Transfer Policy 2008. As per this letter dated 30/31.07.2015 the petitioner is completing 10 years'' service, even then his name has not been figured in the transfer list."

3. It is, therefore, the case of the petitioners that, when, in particular, the case of

the petitioners was focused, their representations were considered and disposed of and action was promised in terms of the 2008 Guidelines, by the supervision of the guidelines issued in 2015, which constitute an amendment to the 2008 Guidelines, the rights of the petitioners to be considered for being transferred under the 2008 Guidelines cannot be jettisoned when the High Court had intervened and, on the direction of the High Court, the representations were considered and the assurance was held out that the case of the petitioners for transfer will be considered, apparently, in the light of the 2008 Guidelines and the issuance of the 2015 amendment, which is arbitrary and illegal, cannot take away the right of the petitioners.

4. The other side of the picture is sought to be projected by the State, which has filed a counter affidavit in the following manner (WPSB No. 370 of 2015):

"9. That in reply of para 1 of the writ petition, it is submitted that the Transfer Policy 2008 issued by the Personnel Department of the State Govt. provides in its para 10(2) that if any department, owing to peculiarities of the department, requires any change in the said policy 2008, such changes will require the approval of Chief Secretary and Chief Minister of the State Govt. It is submitted in this connection that at the time of formulating guiding principles dated 30th July, 2015 there were 1794 posts in the higher education department against which 698 regular teacher and 407 contract teachers are working and 689 posts were lying vacant. Moreover there were a large no. of teachers in the department who were working at one place continuously for many years. It is submitted that within the scope provided in Transfer Policy, 2008 and after taking the approval of the competent authority, the guiding principles dated 30th July, 2015 were formulated by the Higher Education Department in view of the said peculiarities related to the shortage of teachers and a huge no. of teachers working at one place for many years.

14. That denying the contents of para 9 of the writ petition, it is submitted that the allegations made against the respondent no. 3 and other officials of Directorate and Secretariat are baseless. Further it is also submitted that within the scope provided in Transfer Policy, 2008 and after taking the approval of the competent authority, the guiding principles dated 30th July, 2015 were formulated by the Higher Education Department in view of the peculiarities related to the shortage of teachers and a huge no. of teachers working at one place for many years.

17. That the contents of para 12 of the writ petition are vehemently denied and it is submitted that the allegations made against the respondent no. 3 and other officials of Secretariat and Directorate are baseless and have been made with malafide intentions. It is submitted in this connection that Dr. Deepak Kumar Pandey i.e. petitioner no. 4 has been transferred to Govt. Degree College, Bazpur vide order dated 31 Dec., 2015.

18. That denying the contents of para 13 of the writ petition, it is submitted that

a bare perusal of the said guiding principles dated 30 July, 2015 reveals that the same were sent to all concerns including principals of all govt. colleges.

19. That the contents of para 14 of the writ petition are vehemently denied and it is stated that the allegations made against the Higher Education Minister are baseless and have been made with mala fide intentions."

5. No rejoinder affidavit has been filed in regard to the same.

6. Following the amendment effected to the 2008 Guidelines, all those petitioners, who had completed 10 years, have been transferred. Therefore, we are confining to the case of those petitioners, who have not been transferred because they have not completed 10 years, as required under the amendment to the 2008 Guidelines.

7. Transfer is an exigency of service and is a condition of service. It is, undoubtedly, true that, in a hilly State like the State of Uttarakhand, where the State, for the most part, lies in its hills, public services are required to be maintained in those areas as much as they are required in the plain areas. The vacancy position has already been noted by us in the counter affidavit. It is true that the 2008 Guidelines are of general application; but, as contended by the State, when peculiarities of a department call for differential treatment, with the approval of the competent authority, it is open to the State, even under the 2008 Guidelines, to devise other principles. In the Higher Education Department, obviously, there is a dearth of vacancies. It is true that, under the 2008 Guidelines, on completion of 3 to 5 years, a person could aspire for being transferred; but the fact of the matter appears to be that there are large number of teachers, who have completed 10 or more number of years. It is in the light of this fact that, apparently, it became necessary to incorporate the condition that, in place of 3 to 5 years, a person should complete 10 years in order to seek transfer. The vacancy position in the hills require raising of the bar from 3 to 5 years to 10 years. In this process, public interest was secured, inasmuch as, the vacancies continue to be manned by persons, who would have been in a position to secure transfer to the plain areas on completion of a period of 3 to 5 years. Thus, by raising the bar from 3 to 5 years to 10 years, the State would be in a position to secure the services of teachers in the Higher Education Department in the hill areas, as, otherwise, it may not be possible to supply the vacancies in those areas. That is, certainly, a matter, which is in public interest. While we do understand and appreciate the problems being faced by any employee working in a hill area, a balance must be struck between the interest of the individuals and that of public. Therefore, if there are persons, who have completed 10 years or more and if they are, alone, rendered eligible to be considered in the light of the vacancy position in the hill areas, we cannot certainly dub it as either arbitrary or illegal. In the 2008 Policy, itself, there is provision for special treatment on the basis of the approval of the competent authority. In the Higher Education Department, there appears to have been a special situation. Therefore, we cannot dub the principles of 2015 amendment, which, essentially, apply only to

the Higher Education Department, as being illegal or discriminatory or arbitrary. There is a rationale for the same and it is intended to secure public interest. As already noticed, even under the 2008 Guidelines, the parties had a right to be considered. There is no statutory right involved. Therefore, we cannot uphold the challenge to the Guidelines of 2015 amending the 2008 Guidelines.

8. In the light of this, we must proceed to consider one other aspect, namely, the securing of the order of this Court and, pursuant to the same or even de hors the same, the representations being disposed of prior to the promulgation of the 2015 Guidelines. It is true that, pursuant to the direction of this Court, representations were considered and disposed of in the light of the 2008 Guidelines holding out that the case of the petitioners will be considered; but, as already noticed, in 2015, new principles were brought into force in respect of the Higher Education Department. We have noticed the circumstances. The public interest cannot be overlooked. It cannot be treated as arbitrary as such. In such circumstances, we would think that it is not open to the petitioners to contend that, since the representations were earlier decided, petitioners would have a legal right to be considered under the 2008 Guidelines or that it would be arbitrary to impose 2015 amendment on them. By the time the representations were considered and rejected, the 2015 Guidelines had come into force. We have already noticed that the 2015 Amendment was intended to secure public interest. Therefore, we see no reason to accept the said contention. Admittedly, petitioners, who have not been transferred, have not completed 10 years. Those, who have already completed 10 years, have been transferred. Therefore, we see no reason to grant relief as such to the petitioners.

9. Petitioners have a case that some others have been singled out for favourable treatment. The learned Standing Counsel would point out that there are five circumstances culled out in the 2015 Guidelines. They read as follows:

- (i) Teachers working for 10 years or more at a place on cut off date i.e. 31st May, 2015;
- (ii) Teachers seeking transfer from one inaccessible place to another;
- (iii) Female teachers of more than 55 years of age;
- (iv) Teachers covered under spouse clause; and
- (v) Teachers covered under medical clause.

10. Thus, the exceptions are, apparently, intended to provide for special categories, as, for instance, medical grounds or a female employee, who has crossed 55 years of age. So, the Government has, apparently, enunciated a policy, in which it has allowed for special situations, which call for differential treatment. We cannot dub the same as amounting to a conferment of discriminatory treatment. If there is any case, where, de hors these circumstances, even the Guidelines of 2015 have been violated, it is open to the petitioners to point it out to the Government.

11. Resultantly, the discussion would lead us to the conclusion that the petitioners (those who have already not been transferred) have not been able to make out a case for interference. The writ petitions will stand dismissed without any order as to costs.