

(2019) 11 UK CK 0029

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 514 Of 2019

Dr. Neha Mamgain

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Citation : (2019) 11 UK CK 0029

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Yogesh Pacholiya, S.S. Chaudhary, Suyash Pant

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Yogesh Pacholiya, learned Advocate for the petitioner, Mr. S.S. Chaudhary, learned Brief Holder for the State of Uttarakhand and Mr. Suyash Pant, learned Standing Counsel for the University, and, with their consent, the writ petition is disposed of at the stage of admission.

2. The petitioner was appointed as an Assistant Professor (Gynecology) in the respondent University, and was posted at Haridwar by order dated 29.05.2018. She joined duty on 12.06.2018. A little more than a year thereafter, the petitioner was transferred, by proceedings dated 15.10.2019, to Dehradun. She was relieved from duty at Haridwar on 16.10.2019 and was directed to join duty at the main campus of the University at Harrawala, Dehradun on the same day.

3. The fourth respondent, who was working as an Assistant Professor (Gynecology) at Dehradun, was transferred, and posted in place of the petitioner at Haridwar by the very same proceedings dated 15.10.2019. However subsequently, by the impugned order dated 23.10.2019, the earlier order dated 15.10.2019 was amended and the transfer order of the fourth respondent from Dehradun to Haridwar was cancelled. The petitioner was, however, directed to

remain attached at the main campus until further orders. Aggrieved thereby, the present writ petition.

4. Mr. Yogesh Pacholia, learned counsel for the petitioner, would submit that the impugned transfer order is arbitrary, illegal and in violation of Articles 14 and 16 of the Constitution of India; it is also vitiated by malafides since the said order was passed only to benefit the fourth respondent; two persons cannot be directed to work in the single post of Assistant Professor (Gynecology) at Dehradun; and the impugned order, therefore, necessitate being set aside.

5. On the other hand Mr. Suyash Pant, learned Standing Counsel for the second respondent-University, would submit that it is only because the petitioner is pregnant that indulgence was shown in continuing her at Dehradun despite the transfer order dated 15.10.2019 being cancelled by the impugned order dated 23.10.2019; transfers made in the exigencies of administration would, ordinarily, not be interdicted by Courts; except for vague and bald allegations, the petitioner has not been able to establish malafides; and, therefore, no interference is called for.

6. Transfers, made in exigencies of the administration, are not ordinarily interdicted by Courts. Save in cases where such a transfer is contrary to statutory provisions or the rules in force or are vitiated by malafides, exercise of power to transfer an employee, from one place to another, lies within the exclusively domain of the employer and are, ordinarily, matters where Courts would not interfere.

7. The petitioner was appointed as an Assistant Professor (Gynecology) on 29.05.2018, and was posted at Haridwar. She joined duty at Haridwar on 12.06.2018. A little more than one year thereafter, she was transferred to Dehradun by order dated 15.10.2019, and within a week thereafter the said order dated 15.10.2019 was cancelled by the order dated 23.10.2019.

8. While the place where its employees should work is for the employer to determine, it is well settled that two persons cannot be directed to work in a single post which, in the present case, is the post of Assistant Professor (Gynecology) at Dehradun. The second respondent was required, therefore, to either retain the petitioner or the fourth respondent in the post of Assistant Professor (Gynecology) at Dehradun and not both. To the extent, the second respondent had permitted both the petitioner and the fourth respondent to work in the single post of Assistant Professor (Gynecology) at Dehradun, the impugned order is illegal and must be set aside. The respondents shall examine the matter afresh, and take a considered decision on whether to retain the petitioner or the fourth respondent in the post of Assistant Professor (Gynecology) at Dehradun, and not both.

9. We are not impressed with the submission of Mr. Yogesh Pacholia, learned counsel for the petitioner, that the impugned order of transfer is vitiated by malice. Allegations of malice are easier made than established. The onus of

establishing malafides lies heavily on the person who alleges malice. (E.P. Royappa vs. Vs. State of Tamilnadu :AIR 1974 SC 555). Even otherwise, it is only if the person, against whom malice is alleged, is arrayed as a respondent in the writ petition can such a plea of malice be examined, and no finding of malafides can be recorded behind the back of the person against whom malice is alleged (State of Bihar Vs. P.P. Sharma : AIR 1991 SC 1260).

10. While we see no reason to interfere with the exercise of power by the second respondent-University to transfer its employees from one place to another, the exercise undertaken to effect such transfers cannot result in two persons occupying the same post. The impugned order is set aside to the extent indicated hereinabove. The second respondent shall, at the earliest and in any event within ten days from today, take a decision on whether to retain the petitioner or the fourth respondent at Dehradun, and not both. Till appropriate orders are passed in this regard, within the time frame stipulated hereinabove, status quo as on today shall be maintained.

11. The writ petition stands disposed of accordingly. No costs.