
(2013) 09 AHC CK 0175

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48739 of 2013

Reena Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 9 ADJ 190 : (2013) 101 ALR 527 : (2014) 2 AWC 1089 :
(2013) 4 UPLBEC 3161

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : Anil Tiwari and Abhishek Kumar, for the Appellant; A.K. Yadav and P.D. Tripathi, for the Respondent

Judgement

V.K. Shukla, J.—Petitioners, who are 37 in number, have approached this Court with a request to issue writ, order or direction in the nature of mandamus to relieve the petitioners pursuant to the transfer order dated 11th July, 2013 and thereafter direct the respondents to permit the petitioners to join at their respective place of posting. Brief background of the case is that each one of the petitioner have been initially appointed as Assistant Teacher and thereafter had been accorded promotion in consonance with the provisions as contained under U.P. Basic Education (Teachers) Service Rules, 1981. Petitioners submit that each one of them has been performing and discharging duties in their respective posting and thereafter petitioners claim that they have applied for inter district transfer from district Kaushambi to district Allahabad in the prescribed format. Petitioners submit that their request in question has been accepted as in the list, which has been so finalized, name of petitioners have been duly mentioned therein. Petitioners have stated that they were expecting that they would be relieved but they have not at all been relieved on the premises that batch-mates of petitioners, who are working in Allahabad, are yet to be promoted on the cadre of Head-Master of Junior Basic Schools/Assistant Teacher of Senior Basic Schools and proceeding pertaining to their promotion is still ongoing, therefore, as the petitioners could not be relieved and could not be ensured their joining in

district Allahabad. Petitioners at this juncture are before this Court with the prayer, as has already been quoted above.

2. Shri Anil Tiwari, learned counsel for the petitioners, submitted with vehemence that Rule 21 of U.P. Basic Education (Teachers) Service Rules, 1981 deals with transfer and same contemplates inter district transfer only on the request/consent of teacher concerned with the approval of the Board and, in view of this, it has been contended that such a condition, as has been sought to be introduced, after their claim has been considered, is an unjustifiable exercise of authority and is not at all subscribed by the rules. Further submission has been made that Rule 21 was amended by the 13th Amendment dated 5th December, 2011 wherein it was provided that a teacher, who had been accorded promotion to the higher cadre, can be transferred to other district only when teacher working in that district of the same batch had already been granted promotion to the corresponding district and the said rules in question has been amended by means of 15th Amendment dated 21st August, 2012 and therein the original Rule 21, which was amended by 13th Amendment, was restored and, in view of this, it has been sought to be contended that once in the said rules the only condition precedent is approval of the Board, then such a condition could not have been imposed and, accordingly, imposition of such condition is bad and steps should be undertaken for ensuring joining of petitioners in the district Allahabad.

3. Countering the said submission learned Standing Counsel as well as Shri A.K. Yadav, Advocate, Shri P.D. Tripathi and Shri B.K. Tiwari, Advocate contended that transfer is an incident of service and transfer order can be effectuated only with the approval of Board and once the Board has proceeded to fix the guidelines clearly mentioning therein that the transfer order shall only be effectuated only in the contingency when the batch-mates in the district, wherein transfer order has been intended, have already been accorded promotion and once accepted position is that in the district, wherein petitioners have been transferred, their batch-mates have not at all been accorded promotion and are not at all on the same footing, then no relief or reprieve can be given to petitioners, as has been prayed for, and writ petition is liable to be dismissed.

4. After respective arguments have been advanced the factual situation as is emerging in the present case is that State of U.P. proceeded to amend the Rule 21 by means of U.P. Basic Education Teachers Service (13th Amendment) Rules, 1981, wherein provision for inter-district transfer has been provided for in magnified form by substituting Rule 21 of U.P. Basic Education (Teachers Services) Rules 1981. Rule 21 as amended by Thirteenth Amendment is being extracted below:

Rule 21 - Procedure for Transfer.--Any teacher who is working as Assistant Teacher/Head-Master in Schools governed by the Board on October, 31, 2011 may submit his/her option/application once in his/her service period for transfer from one district to another district on the proforma laid down by the Board in

the manner prescribed by it, which shall be effective till his/her transfer is executed.

(i) On and from the commencement of the Uttar Pradesh Basic Education (Teachers Service) (Thirteenth Amendment) Rules 2011, Head-Masters/teachers who are willing to seek inter-district transfer shall have to submit their options/applications till December, 31, 2011. The options/applications for transfer received by the Board shall be listed in accordance with opted district wise by the Board in order of their date of substantive appointment.

(ii) The inter-district transfer of teachers shall be considered in the following order of preference:

(a) Female teacher who applies for transfer on marriage basis.

(b) Female teacher who applies for transfer in a district other than her home district.

(c) Female teacher who applies for transfer in her home district.

(d) Male teacher who applies for transfer in a district other than his home district.

(e) Male teacher who applies for transfer in his home district.

(iii) For transfer of teacher working in schools governed by the Board three options of the districts in order of preference shall be obtained on one application Form laid down Board.

(iv) Teacher willing for transfer, if working as head master in primary schools and assistant teacher in upper primary schools after promotion their transfer shall be considered in the applied/opted district, only when the teachers appointed in the same year have got promotion. The transfer of head teacher of upper primary schools shall not be permitted.

(v) The female teacher willing for transfer according to the order of preference prescribed in clause (ii) above shall be transferred, on the basis of first option given by them, in applied/opted district in order of their seniority. After that they shall be transferred on the basis of their second option, and remaining female teachers shall be transferred on the basis of their third option. Thereafter transfer of male teachers shall be considered on the basis of their seniority, in the district on the vacant posts available against sanctioned posts in respective district.

(vi) No option shall be accepted after 31.12.2011 the date prescribed for submission of application/option by the teacher for inter-district transfer. It shall be the last opportunity for the teachers to submit their application/options for inter-district transfer. The teachers who have not submitted their option till the stipulated date, the right to give option thereof shall stand expired.

(vii) In accordance with the above procedure, the teachers by whom the option

for their transfer have been submitted, this rule shall stand infructuous for them after the execution of their transfer on the aforesaid basis.

(viii) The facility of this rule shall not be admissible to the teachers appointed after dated 31.10.2011.

5. Thereafter, further amendment has been introduced on 31st August, 2012 by means of 15th Amendment and therein once again amendment has been introduced in Rule 21 in following terms;

Rule 21 - Procedure for Transfer.--There shall be no transfer of any teacher from the rural local area to an urban local area or vice versa or from one urban local area to another of the same district or from local area of one district to that of another district except on the request or with the consent of the teacher himself and in either case approval of the Board shall be necessary.

6. A bare perusal of the rules quoted above would go to show that there is an authority of transfer conferred in the authorities concerned on the request of teacher concerned or on his/her consent after there is due concurrence taken by the Board. By means of 15th Amendment, so introduced, original rule which was replaced by 13th Amendment has been restored.

7. Thereafter for making inter district transfer, the Board, proceeded to frame guidelines in its meeting dated 22.4.2013 fixing therein criteria that was to be adhered in the matter of inter district transfer and Secretary, Basic Shiksha Parishad on 27.5.2013, circulated the same to each and every District Basic Education Officer. Relevant extract of the same is being extracted below;

8. Bare perusal of the guidelines would go to show that same is self explanatory covering each and every contingency and clearly specifying that transfer is not a right, as teachers working form part of the cadre which is of district level and further it has been clarified that transfer order would be effected wherein their batch-mates are working on equivalent post and no teacher can claim inter district transfer as a matter of right.

9. Each one of the petitioners had applied for consideration of their claim for according inter district transfer and the said claim in question has been accepted and at the point of time when the said claim in question has been considered it was not at all absolute acceptance and to the contrary in respect of the inter district transfer Secretary, Basic Shiksha Parishad U.P. at Allahabad had already circulated a circular clearly mentioning therein at item No. 6 that all those incumbents, who are seeking transfer in the district concerned, they would be accorded transfer only in the contingency if their batch-mates in the concerned district are also working, accordingly. The final list, which has been so published, did contain the name of petitioners but at the foot of the same a categorical note had been appended at page 135 of the paper book that each and every District Basic Education Officer before proceeding to ensure joining of incumbent concerned, should see and ensure that the batch-mates of the aforementioned

incumbents have already been accorded promotion in the district concerned.

10. The authority to effectuate the inter district transfer is there but the said transfer order has to be given effect to after there is due concurrence from the Board. The Board has proceeded to issue a circular dated 27.5.2013 covering the field of inter district transfer and therein a categorical mention has been made that request of teachers to be transferred in a particular district of his/her choice would be accepted only when in the corresponding district his/her respective batch-mates are working against the same post, as held by the incumbents. Here in the present case, accepted position is that in the district Allahabad promotional exercise has not been undertaken and the batch-mates of petitioners are still working on a lower post and, in view of this, as per condition No. 6 of the circular issued by the Board petitioners cannot be transferred and as per Note Gha appended in the list dated 31st July, 2013 joining of petitioners cannot be ensured. Transfer is an incidence of service, but under U.P. Basic Education Teachers (Service) Rules, 1981, it is a privilege conferred upon a teacher but it is not an absolute privilege rather it is hedged with certain conditions and once it has been made clear that one can be transferred only in the said district where his/her batch-mates are similarly situated, then transfer cannot be claimed as a matter of right. Here in the present case batch-mates of petitioners at Allahabad till date have not been accorded promotion, as such, petitioners cannot claim as a matter of right to be accorded transfer.

11. Much emphasis has been laid by the petitioners that once the Legislature in its wisdom has deliberately amended the Rule 21 of U.P. Basic Education (Teachers) Service Rules, 1981 and thereafter has restored back Rule 21 in its original form, then such a condition could not have been imposed by means of circular dated 27.5.2013, as deliberately said conditions have been deleted and, in view of this, issuance of circular dated 27.5.2013 is nothing but transgression and oversleeping of jurisdiction.

12. The transfer order in question as per Rule 21 of 1981 Rules has to be made with the concurrence/approval of the Board and the Board has taken a policy decision on 27.5.2013 not to effectuate any transfer to the corresponding district wherein batch-mates of the transferred incumbents have not at all been accorded same status and once the Board, who inheres the authority to accord transfer, has chosen to take a resolve on the said score, then it cannot be said that said circular in any way violate the rules in question. Where a power is conferred or duty is imposed by statute or otherwise, and there is nothing expressly inhibiting the exercise of authority or performance of duty by any limitations or restrictions, such power cannot be arbitrarily or indiscriminately exercised, as power is always coupled with duty. Once authority has been reposed in the Board to effectuate inter-district transfer, and in the said direction, keeping all relevant factors in mind, germane for effectuating inter-district transfer, policy decision has been taken on 27.5.2013 which is inclusive of the policy to save the seniority of their batch-mates in corresponding district,

wherein they intend to be transferred, same is not effected, and in such a situation such exercise of transfer cannot be effectuated, wherein their batch-mates are not similarly situated. It is a well intended policy to save the seniority of their batch-mates in the corresponding district, wherein transfer has been intended for. There is no lack of authority in framing such a policy, as an authority who is empowered to do something has absolute authority to exercise incidental and ancillary authority too, so that the intendment of conferring such authority is fulfilled, in free, fair and transparent manner. The Board in transfer, has the authority to frame the guidelines qua the way and manner it has to conduct itself in the matter of effectuating transfer. On account of reintroduction of Rule 21, the authority of the Board to frame guidelines for effectuating inter district transfer is not at all diluted or restricted, as has been sought to be suggested. Guidelines have been framed to maintain transparency and rule out arbitrariness, so that one knows the contingency when an incumbent can be transferred and the parameters of exercise of authority. One of the function of Board is to control the imparting of basic education, to exercise supervision and control over the basic schools, and to take all such steps necessary for discharge of any power. Once under the rules, authority to accord approval, rests with the Board, then it has all authority to frame guidelines to conduct itself. Guidelines in question, in no way violate the Rules. Writ petition have no substance the same is dismissed, accordingly.