
(2019) 04 UK CK 0166
In the Uttarakhand High Court
Case No : Special Appeal No. 361 Of 2019

Renu Rana

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 29-04-2019

Acts Referred:

Uttarakhand Annual Transfer For Public Servants Transfer Act, 2017 — Section 6, 10, 10(b), 14

Citation : (2019) 04 UK CK 0166

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : B.D. Pandey, B.S. Parihar

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 819 of 2019 dated 08.04.2019.

2. The appellant herein filed the said writ petition seeking a writ of certiorari to quash the order dated 23.03.2019 (which Sri B.D. Pandey, learned counsel for the appellant-writ petitioner states, was erroneously typed and the date of the order should have been 23.02.2019); and a writ of mandamus commanding and directing respondent nos. 3 & 4 to pass an order afresh, on the petitioner's representation as per law, after affording her an opportunity of hearing.

3. Facts, to the limited extent necessary, are that the appellant-writ petitioner was posted in the Government Primary School, Goth, Janupur, District Tehri Garhwal, which is 'D' category Durgam. She has been working there for the past eight years. She submitted her application, in terms of Section 6 of the Uttarakhand Annual Transfer for Public Servants Transfer Act, 2017 (for short 'the 2017 Act'), furnishing her choice of ten different places of posting. On the ground that she was transferred from the Government Primary School, Goth, Jaunpur to

the Government Primary School, Dhalwala, Narendra Nagar, (both located in the same district of Tehri Garhwal), she invoked the jurisdiction of this Court by filing Writ Petition (S/S) No. 2245 of 2018. A learned Single Judge of this Court disposed of the writ petition, by his order dated 14.11.2018, directing the appellant-writ petitioner to move a representation to the District Education Officer (Elementary Education), District Tehri Garhwal, and the latter was directed to decide the appellant-writ petitioner's representation and to pass an appropriate order in accordance with law, as expeditiously as possible, preferably within a period of three weeks from the date of production of a certified copy of the order. The earlier interim order dated 17.07.2018, interdicting the transfer order, was vacated. The learned Single Judge, however, observed that till a decision is taken by the District Education Officer (Elementary Education), District Tehri Garhwal, status quo as on that date should be maintained.

4. As the learned Single Judge had directed status quo to be maintained till the representation was disposed of, the petitioner, conveniently, did not even choose to make a representation from 14.11.2018 when the order was passed till the impugned order was passed by the District Education Officer (Elementary Education), District Tehri Garhwal on 23.02.2019. In his order dated 23.02.2019, the District Education Officer held that the place to which she was transferred, was at Serial No. 4 of the ten places which she had exercise her option; and the transfer order was just and valid. Aggrieved thereby, the petitioner invoked the jurisdiction of this Court.

5. In the order under appeal, the learned Single Judge observed that the District Education Officer (Elementary Education), Tehri Garhwal had rejected the appellant-writ petitioner's representation holding that she had been transferred from a Durgam to Sugam school, which was indicated as the school of 4th preference in the option given by the petitioner; transfer is an incidence of service, and no Government employee could claim transfer to a place of his choice, as a matter of right; in the absence of any allegation of mala fides or violation of Rules, there was no scope for interference with the order of transfer; and he did not find any infirmity in the decision taken by the District Education Officer (Elementary Education), District Tehri Garhwal. Aggrieved thereby, the present appeal.

6. Sri B.D. Pandey, learned counsel for the appellant-writ petitioner, would submit that the impugned order dated 23.02.2019 was passed even before the petitioner could submit her representation; Section 6 of the 2017 Act requires compulsory transfer from remote areas to accessible areas to be considered before request transfers are considered; no reasons have been assigned as to why the respondents did not transfer the petitioner to any one of the three places which she had indicated as her first three choices, and had transferred her to a school of her fourth choice; and, since the appellant-writ petitioner had submitted her representation to the authorities which has not been considered by them, they be directed to consider her representation in accordance with law.

7. Sri B.S. Parihar, learned Standing Counsel for the State of Uttarakhand, would submit that the appellant-writ petitioner, conveniently, chose not to submit a representation till she received a copy of the impugned order dated 23.02.2019; she submitted her representation for the first time by post only on 01.03.2019; transfer is an incidence of service; and since the appellant-writ petitioner was transferred, to one of the places of her choice, no interference is called for.

8. Section 6 of the 2017 Act deals with three kinds of annual transfers and, thereunder, the kinds of annual transfers are (a) compulsory transfer from accessible area to remote area; (b) compulsory transfer from remote area to accessible area; and (c) transfer on the basis of request. Transfer from a remote area to an accessible area is governed by Section 10 and, in terms of Clause (a) thereof, employees posted for three years or more at the place of their present posting shall be compulsorily transferred to accessible areas. Section 10(b) stipulates that, if any employee is working for less than three years at his/her present place of posting but has served in remote area during the whole service period for more than 10 years, he / she shall be compulsorily transferred from a remote area to an accessible area.

9. In terms of Section 14, applications for transfer shall be invited, along with an option for a maximum of ten desired places on the basis of request from the employees, by displaying the available and anticipated vacancies on the notice-board of the concerned offices.

10. The appellant-writ petitioner was called upon to exercise her option, in terms of Section 14 of the Act, since she had already served for more than eight years in the subject school, which is located in a remote area. The appellant-writ petitioner exercised her option to ten places, wherein the place to which she was transferred to, was listed at Serial No. 4.

11. There is no provision in the Rules which stipulates that the appellant-writ petitioner should be given posting at the place of her choice. It only enables her to exercise her option for ten places and the authorities are required, ordinarily, to post her to one of those ten places. Admittedly, the present school was one of the ten places to which the appellant-writ petitioner had opted for, and it was at Serial No. 4 of the ten options exercised by her. Yet she chose to question the order of transfer dated 25th June, 2018 and, in the light of the interim order passed by this Court in Writ Petition (S/S) No. 2245 of 2018 dated 17.07.2018, she has continued to work in the present place of posting ever since.

12. The petitioner has, conveniently, chosen not to submit her representation despite the order passed in Writ Petition (S/S) No. 2245 of 2018 dated 14.11.2018, evidently, because status quo was directed to be maintained till a decision was taken by the District Education Officer (Elementary Education), District Tehri Garhwal. It is only if a representation is submitted to the authorities, would the authorities be in a position to consider such a representation; and, since status quo was directed to be maintained, the

appellant-writ petitioner, conveniently, chose not to even make a representation to the authorities concerned, with a view to avoid any decision being taken, and thereby enable her to continue in the present station. The District Education Officer (Elementary Education) waited for more than three months after the order of this Court dated 14.11.2018, for a representation to be submitted by the petitioner; and it is only because no such representation was submitted by her for more than three months, did he eventually pass an order on 23.02.2019 rejecting her request for transfer to another place or for retention at the same place.

13. The contention of the appellant-writ petitioner, that her representation dated 01.03.2019 should be considered, is evidently to drag on proceedings, and avoid joining at the transferred station.

14. While a feeble attempt is made by Sri B.D. Pandey, learned counsel for the appellant-writ petitioner, to contend that the appellant-writ petitioner is willing to work at the same place of posting, it must be borne in mind that transfer is an incidence of service and is made in administrative exigencies. Consequently, no employee can claim, as of right, that he /she should be continued in the existing place of posting or be transferred only to the place of her / his choice. The question of again directing the respondents to consider the appellant-writ petitioner's representation, more so when the impugned order was passed on 23.02.2019 rejecting her request for retention at the same place / transfer to another place, does not arise.

15. The submission of Sri B.D. Pandey, learned counsel for the appellant-writ petitioner, that the appellant-writ petitioner ought to have been given an opportunity of hearing is misplaced. An order of transfer is not an order of punishment, which requires an opportunity of being heard to be given before such an order is passed.

16. As it is evident that the appellant-writ petitioner has taken advantage of the order of this Court in Writ Petition (S/S) No. 2245 of 2018 dated 14.11.2018, directing status quo to be maintained till the District Education Officer takes a decision, and has avoided submitting a representation only to avoid a decision being taken and enabling her thereby to continue in her present place of posting, this disguised attempt on her part to avoid transfer, from the school in which she was posted to the school to which she has been transferred, is an abuse of the process of the Court.

17. The appeal is, therefore, dismissed with exemplary costs which we quantify at Rs. 10,000/-. The said amount shall be paid by the appellant-writ petitioner, to the State Legal Services Authority, Uttarakhand, Nainital, within four weeks from today.