

(1992) 08 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43041 of 1992

Smt. Asha Kumari Misra

APPELLANT

Vs

Zila Basic Shiksha Adhikari and Others

RESPONDENT

Date of Decision : 31-08-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 21

Uttar Pradesh Basic Education Act, 1972 — Section 9

Citation : (1992) 4 AWC 144 Supp : (1993) 2 UPLBEC 1120

Hon'ble Judges : N.L. Ganguly, J; Anshuman Singh, J

Bench : Division Bench

Advocate : Shudir Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

1. The Petitioner was appointed as Assistant Teacher on 18-9-1968 and was subsequently promoted as Head Mistress. At present she is working on the post of the Head Mistress in Primary School, Nara Mau Bangar since 17-7-1989, By order dated 15th July, 1992 the Petitioner has been transferred from Primary School, Nara Mau Bangar to Primary School, Bithoor second by the Zila Basic Shiksha Adhikari, Kanpur Nagar. It has been avered that the Primary School, Nara Mau Bangar falls within the jurisdiction of the Kanpur Nagar, whereas the school i.e. Primary School, Bithoor second, where the Petitioner has been transferred falls within the jurisdiction of district Kanpur Dehat. The Petitioner has challenged the aforesaid order dated 15th July, 1992 (Annexure-7 to the writ petition).

2. We have heard Sri S.C. Budhwar, learned Counsel appearing for the Petitioner at considerable length.

3. learned Counsel for the Petitioner contended that the impugned order of transfer passed by the Respondent No. 1 is in violation of section 9 of the U.P. Basic Education Act, 1972, and Rule 21 of U.P. Basic Education Teachers Service

Rules 1981. He contended that proviso to section 9 contemplates that no teacher shall be transferred to Basic School belonging to any other local body except with his consent and he contended that according to Rule 21 a teacher from Rural Area to Urban area can be transferred only on his request or with the consent of the teacher himself and in either case with the approval of the Board. Counsel for the Petitioner placed reliance on a decision of the Supreme Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, . In support of his contention that if transfer order is made in violation of any mandatory statutory rule, then the same is invalid and this Court should exercise its discretion under Article 226 of the Constitution of India in order to decide the controversy, we would like to refer to the observation of the Supreme Court in extenso mentioned in paragraph 4 of the said judgment which reads as under :

In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the Competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the Higher Authorities in the department. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

4. From the law laid down by the Supreme Court quoted above, we are of the opinion that if a transfer order is passed even in violation of Executive instructions or statutory rules, this Court is not bound as a matter of Rule to quash such transfer orders. We would also like to refer to the following observations of the Supreme Court in the aforesaid judgments :

If the Court continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to the public interest.

5. Apart from the legal position, on facts too, we are of the opinion that the impugned order of transfer will not cause any inconvenience or irreparable loss, inasmuch as, the Petitioner has been transferred from Kanpur Nagar to Kanpur Dehat.

6. We have given our thoughtful consideration to the submissions made by the counsel for the Petitioner and the materials and are of the opinion that it is not a fit case for interference under Article 226 of the constitution of India, The petition is accordingly rejected. As the Petitioner can file representation before the Higher Authorities and can plead before them that the impugned order of

transfer has been passed in violation of mandatory and Statutory Rules and if the Higher Authorities are convinced of the fact the impugned order of transfer can be set aside by the Higher Authorities. In case any representation is filed by the Petitioner within a period of ten days along with the certified copy of the order of this Court before the Higher Authorities, the same should be disposed of within a period of six weeks from the date of its presentation.