
(1984) 08 AHC CK 0069
In the Allahabad High Court
Case No : Writ Petition No. 3839 of 1984

Smt. Jai Bala Naithani	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 23-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Subordinate Educational (Trained Graduates Grade) Service Rules, 1983
— Rule 4, 4(4)

Citation : (1984) AWC 294 Supp

Hon'ble Judges : K.N. Goyal, J;D.N. Jha, J

Bench : Division Bench

Advocate : Pratima Devi and R.K. Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

D.N. Jha, J.—Smt. Jai Bala Naithani has filed this petition under Article 226 of the Constitution feeling aggrieved by the order of transfer dated 16-6-1984 contained in Annexure-1 passed by opposite party No. 2 Additional Director of Education (Madhyamik) Uttar Pradesh, Allahabad.

2. In view of the fact that several petitions have been filed and the matter involved in the said writ petitions is likely to be raked up time and again we had directed that the Additional Director (Education) (Madhyamik) Uttar Pradesh may assist the court by his presence and produce the relevant records for pursuance of our order dated 7-8-84 the Additional Director appeared with record and therefore the filing of the counter affidavit in the instant case has been dispensed with.

3. The controversy in the present writ petition lies in a very narrow ambit. It has been contended before us that in view of U.P. Subordinate Educational (Trained Graduates Grade) Service Rules, 1983 (hereinafter referred to as the Rules) the Petitioner in pursuance of Sub-rule (4) of Rule 4 was sought to exercise her option in respect of the regional cadre which was intended to be constituted for

men and women branches. Sub-rule (4) of Rule 4 reads as under:

Initially the regional cadres will be constituted out of the-existing Uttar Pradesh trained Graduates cadre. The incumbents of the existing L.T. Grade Will be required to give their option within a month of the notification of these rules in regard to the new regional cadre to which they opt. The option once exercised shall be final. In case it is not possible to place the incumbent initially in the opted cadre, he/she will be treated on deputation in other cadre without any additional benefit till such time as he/she gets his/her opted cadre.

It, may be observed that these Rules came into force from the date of publication of the Rules in the official gazette. It has been admitted before us by the Additional Director (Education) that although the teachers serving in L.T. Grade have exercised their option but No. final list of persons relating to each regional cadre has yet been prepared. In the instant case the Petitioner had exercised her option for Lucknow Region and she had been working in the Government Girls Higher Secondary School Shahmina Road, Lucknow. She has now been transferred to Government Girls Intermediate College Barabanki vide transfer order dated 16-6-84. It has been admitted before us that Barabanki lies within Faizabad Division. The learned Counsel for the respondents argued that opposite party No. 3 Smt. Gargi Sharma who was formerly working as Assistant Teacher, Government Girls Intermediate College Barabanki, had also exercised option for Lucknow Region and had been transferred to Lucknow as she was an "Art" teacher and there was No. drawing teacher available at the said institution at Lucknow. It was further urged before us that the Petitioner had not specialised in the subject of drawing and therefore since the teaching, in the institution was being hampered, Smt. Gargi Sharma, opposite party No. 3, Was transferred to Lucknow. The learned Counsel further pointed out that the Husband of Smt. Gargi Sharma was also posted in government service at Lucknow and therefore she had better claim than the petitioner. Be that as it may, for the purposes of the present dispute raised before us we could not like to make any observation on that score. It further transpires on the basis of the statement made before us by the learned Standing Counsel on the basis of record that Smt. Gargi Sharma had joined at Lucknow on 9th August, 1984 in pursuance of the transfer order. It may be mentioned that this Court by its order dated 10-8-84 had stayed the transfer order passed in respect of the petitioner. The order passed by this Court therefore in fact was in-operative but it would not be material so far as the question for decision in the instant case is concerned.

4. We have given our anxious consideration to the entire facts and circumstances narrated above and we are of the view that the inter-regional transfer cannot be made till such time that the department has not finalised the list of various teachers allotted to each region. It was admitted before us that except inviting the option from the teachers in order to constitute a regional cadre for men and women No. further steps have yet been taken. We cannot lose sight of the fact that although it was provided for the teachers to exercise their option within one

month with respect to a particular region in which an individual teacher wanted to serve but surprisingly for over a year the department had been sitting tight and has done nothing to move ahead in order to give a final shape and constitute regional cadres. The department therefore ought to finalise the constitution of regional cadres for men and women branches of teachers. We would like to observe that the department should not have exercised their power to transfer the teachers till they had acted in accordance with Rule 4 in finalising the regional cadres as, transfer being made contrary to the options exercised by various teachers was likely to result in creating unnecessary complications. We cannot lose sight of the fact that a lot of exercise has to be done in order to constitute a regional cadre for men and women such as taking into consideration of seniority of persons who have exercised their option with respect to a particular region, number of posts existing in a particular region, subject wise availability of posts and subject wise specialisation of various teachers, but that should not hamper the constitution of the regional cadre, and till such time the department has not been able to finalise the regional cadres with respect to men and women they should not arbitrarily exercise their power of transfer contrary to the option exercised by individuals. In the instant case the order of transfer of the Petitioner is not in keeping with the provisions of Rule 4 and therefore cannot be sustained. It is however always open to transfer a person within the region for which one has exercised his option. If some other region is to be allotted then that can only be done after the regional cadres have been finalised. In the light of the observations made above the impugned order of transfer dated 16-6-1984 cannot be sustained and is hereby quashed. It would be open to the department to transfer the Petitioner within the region of option exercised by the petitioner. Petition allowed.