

(2018) 06 UK CK 0047

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1602 of 2018

Smt. Pushp Lata Shah

APPELLANT

Vs

Director Elementary Education Government of Uttarakhand &
Others

RESPONDENT

Date of Decision : 18-06-2018

Acts Referred:

Citation : (2018) 06 UK CK 0047

Hon'ble Judges : SHARAD KUMAR SHARMA, J

Bench : Single Bench

Advocate : Harendra Belwal, N.P. Shah, Devesh Ghildiyal

Final Decision : Dismissed

Judgement

SHARAD KUMAR SHARMA, J. (ORAL)

Under the Transfer Act of 2017, the State has framed the rules called as Uttarakhand Shikshak (Vidhyalayi Shiksha) Pratham Niyukti, Padonnati

evam Sthanantaran par Padsthapan Niyamawali, 2013. In accordance with the rules 16 (2) of the Rules it reads as under:

â??Isok lanHkZ esa LFkkukUrj.k 16(2) ,sls vkosnu vius laoxZ esa de ls de ikap oâ??kZ dh Isok ds iw.kZ djus okys

fâ??k{kdksa }kjk fn;stk ldsaxs] ijUrq Isok laoxZ ifjorZu dh NwV inksUufr ds inksa ;Fkk iz/kkuk/;kid izkFkfed fo|ky;]

lgk;d v/;kid iwoZ ek/;fed fo|ky; rFkk iz/kkuk/;kid iwoZ ek/;fed fo|ky; ds in/ kkjdxsa dks vuqeU; ugh gksxAâ??

2. Rule 16 deals with manner and conditions for consideration of application seeking transfer from one cadre to another. It provides that an incumbent

has had to have worked in the cadre for a period of atleast five years before he

could claim for being transferred outside the Division under Rule 16(1) and that too this arrangement is available only once in the entire tenure of service. Rule 16, which contemplates a transfer from one cadre to another, is not a normal process of transfer which is contemplated under the law, but rather it deals with special circumstances under which an employee can pray for a transfer to another cadre under the Rule 16(1). However, the restriction imposed by sub-rule 2 of Rule 16 is that such a request for transfer from cadre A to cadre B cannot be made until and unless the incumbent has rendered atleast five years of service in cadre A. However, there is yet another restriction which has been imposed with for such type of a request under Rule 16(1) for transferring from one cadre to another cadre is that irrespective of the fact that a candidate having satisfied the conditions of Clause 2 of Rule 16 such a transfer on request cannot be made against those posts which are available to be filled in by way of promotion.

3. There is a purpose behind sub-rule 2 of Rule 16 that once an employee makes a request of change of cadre by transfer which has been made available once, under the Rules to him, in the entire tenure of service, it is a special adjustment which has been granted to him as an arrangement and that is why such type of transfer is regulated by sub-rule 2 of Rule 16. That transfer on request being made under sub-rule 1, since it may probably have an adverse impact on the promotional avenues of the persons working in the other cadre, the transfer under Rule 16(1) cannot be made against the post available for promotion.

4. In the instant case, the petitioner claims that on 02.01.2017 he was transferred from Government Junior Basic School Khola, Devprayag to Raipur/Doiwala considering his family problem. Therein he joined his post and started working. The aforesaid fact that the petitioner was permitted to join at the vacant post at Raipur would also be established by the order of the Additional Director (Elementary Education), Government of Uttarakhand dated 22.07.2017, whereby, it was intimated that the petitioner has joined the vacant post of teacher at the transferred place at Raipur.

5. The fact which is relevant for the instant case is that in Junior Basic Schools, there are various posts, which are lying vacant in Block Vikas Nagar, which is to be filled in by way of promotion from senior most teachers to the post

of Head Master or Head Teachers. These posts happen to be a promotional post. For the purposes of seeking his transfer and relieving the petitioner is said to have submitted a representation, invoking Rule 16 (1) and when the same was pending consideration and not being decided, he filed a Writ Petition praying for that she may be permitted to be relieved in pursuance to the transfer order dated 02.01.2017. This Writ Petition was disposed of by the coordinate Bench of this Court by the judgment dated 14.12.2017 directing the respondent no. 1 i.e. Director (Elementary Education), Government of Uttarakhand to decide the representation of the petitioner.

6. In compliance of the order dated 14.12.2017 passed by this Court, the Director (Elementary Education) by the impugned order dated 7.02.2018 had rejected the representation of the petitioner by observing that the request of relieving made by the petitioner in compliance of the transfer order dated 02.01.2017 and that too in a Writ Petition which was filed at a highly belated stage could not be granted for the reason that such a transfer as sought for would be barred by Rule 16(2) of the Rules framed under the Act and the representation has been consequently rejected by the impugned order under challenge.

7. Another aspect which is relevant further is that the relieving which was sought in the earlier period of litigation by the petitioner shows that rather he was trying to enforce upon the order of transfer dated 02.01.2017 by invoking the writ jurisdiction in December, 2017, when the direction was issued by this Court on 14.12.2017. The order or decision on representation was passed on 06.02.2018, which was served on the petitioner, yet again he has chosen to not to challenge the order within a reasonable time framed, as a matter of fact, order of transfer to another cadre made on 02.01.2017 under Rule 16(1)(2) was being sought to be enforced after lapse of year until he filed the instant Writ Petition only on 14.06.2018. This Court is of the view that the transfer as sought by the petitioner on the basis of the representation which was directed to be decided by this Court by the judgment dated 14.12.2017 takes the shape of a representation under sub-rule (1) of Rule 16 of the rules framed thereunder and, since the relieving now will have an effect of the petitioner being posted at a place which falls to be a promotional post and the same is barred by sub-rule (2) of

Rule 16 his representation was rightly rejected by the Director (Elementary Education).

8. There is another important aspect that if at all the petitioner had any right for being relieved by the order dated 02.01.2017, he ought to have invoked

the writ jurisdiction at an appropriate stage rather than sitting over the issue and soliciting an order of getting a decision on the representation from this

Court.

9. The Honâ??ble Allahabad High Court in a judgment as reported in (1992) 2 UPLBEC 1197 â??Sheo Kumar Patel vs. State of U.P. and

othersâ?? has held that any direction issued by the High Courtâ??s to consider a representation against an order of transfer, and when

representation is decided, on being faced with the transfer order and decision on representation would not constitute to be a direction for deciding a

statutory representation contemplated under law. If any decision is rendered and the claim for transfer is rejected, the Writ Petition is not maintainable

against the order rejecting the representation.

10. As such, I do not find any merit in the matter. Writ Petition is dismissed.

11. However, there would be no order as to cost.