
(2003) 08 AHC CK 0009
In the Allahabad High Court
Case No : C.M.W.P. No. 42147 of 2000

Smt. Shashi Kanti Dixit

APPELLANT

Vs

Director of Education

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 21
Uttar Pradesh Basic Education Act, 1972 — Section 19(1), 9(3)

Citation : (2003) 6 AWC 5698

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : S.C. Dwivedi, for the Appellant; S.C, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.-

1. Heard counsel for the parties and perused the records.
2. This petition has been filed challenging the validity and correctness of impugned order of transfer dated 31.7.2000, passed by District Basic Education Officer, Unnao.
3. The contention of the Petitioner is that impugned order of transfer is in contravention of Rule 21 of U.P. Basic Education (Teachers) Service Rules, 1981. The Rule 21 of said rules is as under:

"Rule 21. Procedure for transfer.-There shall be no transfer of any teacher from rural local area to an urban local area or vice versa from one urban local area to any of the same district or from local area of one district to that of any district except on the request of or with the consent of the teacher himself and in either case with the approval of the Board."
4. The facts of the case are that the Petitioner was working as assistant teacher in Bal Primary Pathshala, Gangaghat, Unnao. By the order of transfer dated

31.7.2000 the Petitioner has been transferred from Bal Primary Pathshala, Gangaghat, Unnao to Sarausi Primary Pathshala, Kajaura Bani, alleged to be situating in rural area. The Petitioner has annexed a certificate issued by the Executive Officer, Nagar Palika Parishad, Unnao, stating that Bal Primary Pathshala, Gangaghat, Unnao, is situate within the limit of Nagar Palika Parishad, Unnao, i.e., in urban area, whereas Sarausi Primary Pathshala, Kajauri Bani where the Petitioner has been transferred is alleged to situate in rural area.

5. It is contended that impugned order of transfer dated 31.7.2000 has been passed against the provisions of Rule 21 of the Act as neither any consent has been taken from the Petitioner nor prior approval has been obtained from the Board for transferring the Petitioner from urban local area to rural local area which amounts to reduction in the pay scale of the Petitioner also. It is stated that impugned order of transfer has been passed in view of circular dated 17.5.2000 issued by the Board on the basis of approval given by the Samiti. It is further contended that under the provisions of Section 21 of the Act the power to accord approval for transfer of a teacher from one rural local area to one urban area or vice versa from one urban local area to any of the same district except on the request of or with the consent of teacher himself and in either case with the approval of the Board, cannot be made except in the circumstances provided therein.

6. Lastly, it was contended that the impugned order of transfer is also in violation of circular issued from time to time and circular dated 19.6.2000 which provides that all the transfers will be completed before 25th June and orders will be implemented upto 25th July and that order impugned in this petition dated 31.7.2000 has been against the policy of the Board itself. Further that the Petitioner is suffering from Filariasis L. foot and is under treatment in G.S.V.M. Medical College, Kanpur. Thus, order of transfer was causing hardship to the Petitioner and for this reason also it is improper and illegal to transfer the Petitioner from her present place of posting.

7. No counter-affidavit has been filed in this case. The standing counsel further submits that since Rule 21 of Basic Education (Teachers) Service Rules, 1981, only required to be interpreted. He has placed reliance upon Smt. Manorama Painuli Vs. Basic Shiksha Parishad U.P. , Allahabad and others, . The single Judge of this Court in the aforesaid case has held that transfer is an incident of service and no specific provisions is required for providing power to transfer. Interpreting Rule 21 the Court held that it imposes only a bar in respect of particular aspect of transfer and unless general power of transfer is in existence such a bar in respect of one aspect of such transfer becomes meaningless and statutory provisions should not be so interpreted.

8. In that case also the Government had taken a policy for transfer of some teachers by adjusting them in other institution in the district by the Government order dated 10.11.1997 after considering the fact that in the institution near the cities in this State there are teachers more than the standard prescribed and as a

result in the institutions as far off places there are teachers less in number than the prescribed standard and the same affects the education in those institution.

9. In the instant case also from the Government policy and from perusal of transfer order it appears that impugned order was passed in the course of implementation of said policy. The provisions of Basic Shiksha Adhiniyam provide specific powers to the Government to transfer/adjust teachers in order to balance strength of teachers in rural and urban areas for efficient administration of educational institutions. Section 9 of the aforesaid Act provides for transfer of employees. Relevant Section 9 (3) is as under:

9. (3) Notwithstanding anything in Sub-section (1) any person referred to therein, who becomes an employee of the Board shall be liable to be transferred from the school or from the local area in which he was employed immediately before the appointed day to any other school or institution belonging to Board or, as the case may be, to any other local area at the same remuneration and on the same other terms and conditions of service as governed by him immediately before such transfer (until such tenure, remuneration and other terms and conditions are altered by the rules referred to in Sub-section (1):

Provided that no teacher of a basic school (which before the appointed day belonged to a local body) shall be transferred to a basic school belonging to any other local body except with his consent.

10. In *Smt.Asha Kumari Misra v. Zila Basic Shiksha Adhikari, Kanpur and others* 1993 (2) UPLBEC 1120 , it has been held that if a transfer order is passed even in violation of executive instructions or statutory rules, the Court is not bound as a matter of Rule to quash such transfer orders. The Court relied upon *Mrs. Shilpi Bose and others Vs. State of Bihar and others*,

11. Section 9A of the Act provides control of teachers and properties of Basic Schools. Similarly Sections 10 and 10A of the Act provides for preparing scheme for the development, expansion and improvement of basic schools in the rural areas of the district and to establish, administer, control, manage basic schools in the municipal area and to take all such necessary steps as may be considered necessary to ensure punctuality and attendance of teacher and other employees of basic schools.

12. The aforesaid section provides that employee of any school or institution belonging to the Board can be transferred to any other local area. His consent is required only when he is transferred to any other local area. His consent is required only when he is transferred to a basic school belonging to any other local body except of the institution of the local body under which he is working on or before the appointed date.

13. In *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, and *Smt. Asha Kumari Mishra v. Zila Basic Shiksha Adhikari, Kanpur and others* 1993 (2) UPLBEC 1120, held that if transfer order is passed even in violation of executive

instructions or statutory rules, the Court is not bound as a matter of Rule to quash such transfer orders.

14. The Petitioner has not denied that she was transferred to the institution run by the same local authority/board. The U.P. Basic Education (Teachers) Service Rules, 1981, have been framed and Section 19 (1) of the U.P. Basic Education Act, 1972. The Act and the Rules have to be read together for achievement and object of the Act. The consent of the teacher/employee in the rules, therefore, for transfer to institution of other Board or local body and not in respect of institutions where the employee is employed. Thus, the argument of the counsel for the Petitioner that transfer order is against the Rule 21 is misconceived.

15. More than about 3 years have elapsed since filing of the writ petition and the Petitioner had been working under the interim order of this Court. Her treatment would also over and in any case she has to go to Lucknow for her treatment wherever she is posted. Personal difficulties cannot be a ground for not complying with the order of transfer.

16. For these reasons, facts and circumstances of the case and law, enumerated above the writ petition is dismissed. It is however, provided that the Government may again pass fresh order of transfer in accordance with law. No order as to costs.