
(2022) 10 UK CK 0022
In the Uttarakhand High Court
Case No : Special Appeal No. 833 Of 2017

State Of Uttarakhand & Others	Vs	APPELLANT
Nishi Prabha Chaudhary		RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Citation : (2022) 10 UK CK 0022

Hon'ble Judges : Vipin Sanghi, CJ; Manoj Kumar Tiwari, J

Bench : Division Bench

Advocate : Pradeep Joshi, Kurban Ali

Final Decision : Disposed Of

Judgement

Vipin Sanghi, CJ

URGENCY APPLICATION (IA No. 13251 of 2022)

We have heard learned counsels, and we proceed to take up the appeal for hearing today itself. Urgency application stands disposed of.

DELAY CONDONATION APPLICATION (CLMA No. 13249 of 2017)

Counsel for the respondent fairly does not oppose the application seeking condonation of delay of 146 days in filing the present appeal. We, accordingly, condone the delay, and allow the application.

SPECIAL APPEAL NO. 833 OF 2017

1) The present Special Appeal is directed against the order dated 19.04.2017, passed by the learned Single Judge, in Writ Petition (S/S) No. 1920 of 2015.

2) The impugned order is short and reads as follows:

"The petitioner was appointed as Assistant Teacher (Elementary School) and allocated to District Almora on the basis of merit list. The petitioner has opted for District Udham Singh Nagar.

The case of the respondents, in a nutshell, is that the transfer from District Almora to District Udham Singh Nagar would disturb the seniority.

However, the learned counsel appearing for the petitioner submits that his client is ready and willing to be placed at the bottom of the seniority list of the Assistant Teachers (Elementary School), if she is transferred to District Udham Singh Nagar.

Accordingly, the writ petition is disposed of with the direction to the respondents to consider the case of the petitioner for transfer from District Almora to District Udham Singh Nagar, as per her option without disturbing the seniority of Assistant Teachers (Elementary School), already posted in District Udham Singh Nagar subject to availability of vacancy."

3) All that the learned Single Judge has done is to direct the appellants to consider the case of the respondent / writ petitioner for transfer from District Almora to District Udham Singh Nagar, as per her option, without disturbing the seniority of Assistant Teachers (Elementary School), already posted in District Udham Singh Nagar subject to availability of vacancy.

4) We have enquired from the learned counsel for the appellants as to what was the need to challenge the impugned order, since the learned Single Judge has not issued a peremptory direction requiring the appellants to grant transfer to the respondent / writ petitioner from District Almora to District Udham Singh Nagar. All that has been done is to direct the appellants to consider her request, which has to be in accordance with the rules.

5) Learned counsel for the appellants submits that under the Service Rules the said transfer is not permissible. If, according to the appellants, under the rules transfer is not permissible, it is open to the appellants to pass an appropriate order in the light of the prevailing rules at the relevant time. Pertinently, the learned Single Judge has not examined the rule position while passing the impugned order, and has not granted an interpretation to the Service Rules relevant to the subject.

6) We, therefore, dispose of the present appeal and direct the appellants to pass a reasoned order after considering the respondent / writ petitioner's request for transfer from District Almora to District Udham Singh Nagar, in terms of the order dated 19.04.2017 and in accordance with the applicable rules. The decision be communicated to the respondent / writ petitioner within the next six weeks.

7) The appeal stands disposed of in the aforesaid terms.