

AFR

**Court No. - 7**

**Case :-** WRIT - A No. - 6662 of 2023

**Petitioner :-** Deepti Singh

**Respondent :-** State Of U.P. Represented By Its Addl. Chief Secy. Basic Shiksha Lko And 6 Others

**Counsel for Petitioner :-** Ashish Kumar,Rajat Aren,Rishi Srivastava

**Counsel for Respondent :-** C.S.C.,Abhinav Singh,Kumar Ayush,Ran Vijay Singh,Savitra Vardhan Singh

**Hon'ble Abdul Moin,J.**

1. Supplementary affidavit filed today in Court by Sri Ran Vijay Singh, learned counsel for the respondent no. 3 be kept on record.

2. Heard Sri Rajat Aren, Advocate and Sri Rishi Srivastava, learned counsels for the petitioner, learned Standing counsel appearing on behalf of the respondents no. 1, 2 & 5, Sri Ran Vijay Singh, learned counsel for the respondents no. 3, Sri Kumar Ayush, learned counsel for the respondent no. 4, Sri Abhinav Singh, learned counsel for the respondent no. 6 and Sri Savitra Vardhan Singh, learned counsel for the respondent no. 7.

3. Instant writ petition has been filed praying for the following main reliefs:-

*(i) To issue a writ, order or direction in the nature of Certiorari calling for the records of the case and to quash order dated 27.07.2023 passed by the respondent no. 6, Annexure No. 25 (District Basic Education Officer, Unnao) being violative of G.O dated 29.06.2023 issued by the respondent no. 1 (Not available in Public domain) as well as circular dated 29.06.2023 and circular dated 01.07.2023 issued by Respondent No. 3 and also being violative of the Provisions of Section 13 of the U.P. Basic Education Act, 1972.*

*(ii) To issue a writ, order or direction in the nature of Mandamus commanding the Respondents (Specially Respondent No. 3 & 6) to allow the petitioner to Re-join in the office of Respondent no. 6 (District Basic Education Officer, Unnao) in pursuance of the Relieving order dated 04.07.2023 passed by Respondent No. 4 (District Basic Education Officer, Bahraich)*

*(iii) To issue a writ, order or direction in the nature or Mandamus commanding the Respondents (Specially Respondent No. 3, 4 & 6) to regularly pay the salary to the petitioner w.e.f 01.07.2023 without considering any break in service of the petitioner.*

*(vi) To issue a suitable writ, order or direction in the nature of Certiorari to quash the consequential order no. 28732-35 dated 03.10.2023 passed by the Respondent No. 3 (Annexure No. S.A 4 to the supplementary affidavit) as being arbitrary and contrary to Sub clause (4) of the Clause 12, G.O. dated 29.06.2023 issued by Respondent No. 1 as well as Clause (8) of Circular dated 16.06.2023 & Circular dated 29.06.2023 issued by Respondent No. 3 and also being violative of the Provisions of Section 13 of the Uttar Pradesh Basic Education Act, 1972.*

*(vii) To issue a writ, order or direction in the nature of Mandamus commanding Respondent No. 3, 4, 5 & 6 to give effect to/implement Merit List dated 26.06.2023 (in so far as it relates to the petitioner at Ser. No. 3458), consequential joining by the petitioner dated 06.07.2023 and take all necessary Consequential actions for Inter District Transfer of the petitioner From District- Bahraich to District- Unnao."*

4. The case set forth by the learned counsel for the petitioner is that the petitioner while working as an Assistant Teacher at Bahraich applied for her inter district transfer from District- Bahraich to District- Unnao. Despite the petitioner having been found eligible for being transferred and despite her joining at Unnao subsequently, through an order dated 27.07.2023, a copy of which is annexure 25 to the writ petition, the transfer of the petitioner has not been found to be in accordance with law and therefore, the petitioner has been required to join at her initial place of posting i.e Bahraich. Later, through an order dated 03.10.2023, a copy of which has been filed as Annexure SA 4 to the supplementary affidavit, the respondent no. 3 after considering the provisions of the Government order dated 02.06.2023 governing the inter district transfer as well as the clarification dated 16.06.2023 has found that the petitioner has erroneously been transferred from District- Bahraich to District- Unnao and consequently, her transfer has been cancelled.

5. The contention of learned counsel for the petitioner is that a Government order dated 02.06.2023, a copy of which is annexure 11 governs the cases for inter district transfer of Assistant Teachers. The petitioner claims that her case is covered by Sub clause (4) of Clause 12 of the aforesaid Government order which provides that those teachers whose spouse are in Government service i.e a service under the Union of India/ Indian Army/ Indian Air force/ Indian Navy/ Central Para Military Forces and State Government and working under the Uttar Pradesh Basic Shiksha Parishad on a regular basis would be accorded 10 weightage points for transfer. The said Government order has been clarified through the clarification dated 16.06.2023, a copy of which is annexure 13 to the writ petition, which, so far as it relevant to the facts of the instant case, provides that the Government service would be considered to be one where the services of the employee are governed by the rules framed under Article 309 of the Constitution of India.

6. In pursuance of the aforesaid Government order and circular, the petitioner claims to have applied for her transfer from District- Bahraich to District- Unnao which

found favour with the respondents and the petitioner was relieved for her joining at Unnao vide order dated 04.07.2023 and also submitted her joining at Unnao on 06.07.2023 and continued working when through the orders impugned, her transfer has not been found to be in accordance with the Government orders dated 02.06.2023 & 16.06.2023 and consequently, her transfer has been cancelled and hence the petition.

7. Learned counsel for the petitioner has argued that the husband of the petitioner is working as a Senior Assistant in the Lucknow University. He had been appointed on compassionate grounds vide order dated 15.10.2003, a copy of which has been filed as annexure 6 to the writ petition. It is contended that the Lucknow University has adopted the Uttar Pradesh Government Servants Dying-in- Harness Rules, 1974 (hereinafter referred to as "Rules, 1974") for the purpose of making compassionate appointments as would be apparent from a perusal of Minutes of the Executive Council dated 11.12.2021, a copy of which is part of annexure 27 to the writ petition. Reliance has also been placed on the office order dated 15.03.2021 which is also part of annexure 27 to the writ petition (Page 201) to contend that there are no service rules governing the appointment of non teaching staff in the Lucknow University and consequently, the Lucknow University has adopted the rules of the State Government which are applicable for Group C posts.

8. Placing reliance on the aforesaid orders and minutes as well as the appointment of the husband of the petitioner having been made on compassionate grounds under the Rules, 1974 the contention is that when as per the proviso to Article 309 of the Constitution of India, the rules regulating the recruitment and the conditions of service of the petitioner's husband have been issued by His Excellency The Governor consequently, the husband of the petitioner would be covered by the Government order dated 02.06.2023 as clarified vide circular dated 16.06.2023 more particularly keeping in view Clause 8 of the aforesaid circular. It is contended that the petitioner would be entitled for weightage of 10 points upon her husband being an employee of the Lucknow University and thus the respondents have wrongly rejected the claim of the petitioner for her inter district transfer by not granting the weightage of 10 marks and thus the order impugned merits to be set aside.

9. Sri Rajat Aren, learned counsel for the petitioner fairly states that but for the weightage of 10 marks to which the petitioner is eligible, in case the 10 marks are not awarded to her, she would not be eligible for her transfer from District- Bahraich to District- Unnao.

10. On the other hand, the learned counsels appearing on behalf of the contesting respondents argue that when the petitioner had applied for her inter district transfer from District- Bahraich to District- Unnao she had filled in the form wherein she had indicated her husband as being a Government servant. Considering this, she had been awarded 10 marks for weightage and she had been transferred from District- Bahraich to District- Unnao. The petitioner also submitted her joining at Unnao and also started working. Subsequently, the respondents realized that the husband of the petitioner is simply a Senior Assistant working in the Lucknow University and thus the petitioner would not be entitled for weightage of 10 marks considering the provisions of Government order dated 02.06.2023 read with the clarification dated 16.06.2023. Thus, the respondents passed the order whereby the transfer of the petitioner from District- Bahraich to District- Unnao was rejected followed by the order impugned dated 03.10.2023. It is thus contended there is no illegality and infirmity with the orders impugned.

11. Sri Ran Vijay Singh, learned counsel appearing on behalf of the respondent no. 3 has also argued that Sub clause (4) of Clause 12 of the Government order dated 02.06.2023 would be applicable where the spouse is working under the State Government. This also stands clarified vide clarification dated 16.06.2023. He contends that the proviso to Article 309 of Constitution of India would be applicable where the service rules have been framed by His Excellency the Governor and the person concerned has been appointed and is working and is governed by the said rules. In so far as the case of the petitioner's husband is concerned who is working as Senior Assistant in Lucknow University it is the Rules of the State Government which have been adopted by the Lucknow University and thus mere "adoption" of the said rules would not take an employee working in an autonomous body like the Lucknow University to be within the ambit of being a Government servant.

12. Heard the learned counsel appearing on behalf of the contesting parties and perused the records.

13. From the arguments as raised by the learned counsels appearing on behalf of the contesting parties and perusal of records it emerges that while the petitioner was working as an Assistant Teacher at Bahraich, she had applied for her inter district transfer to District- Unnao. The application for transfer had been allowed by the respondents and the petitioner joined at Unnao but subsequently through an order dated 27.08.2023, the transfer of the petitioner was not found to be in accordance with law and the relevant Government order and, therefore, the petitioner was required to join back at her initial place of posting i.e Bahraich. Later, through an order dated 03.10.2023, the respondent no. 3 after considering the provisions of the Government order dated 02.06.2023 and the clarification dated 16.06.2023 has found that the petitioner has erroneously been transferred from District- Bahraich to District- Unnao and consequently, her transfer order has been cancelled.

14. The reasons as emerge from a perusal of the order impugned would indicate that the weightage of 10 marks to which the petitioner found herself entitled to in the capacity of her husband being a "Government servant" has not been accepted and admittedly in case the weightage of 10 marks is taken away, the petitioner would not be entitled for her transfer to District- Unnao.

15. Whether the petitioner is entitled for a weightage of 10 marks by considering her husband to be an employee of the State Government as had been indicated by the petitioner in her application for transfer is to be considered.

16. In order to consider as to whether the petitioner was entitled for the weightage of 10 marks, the provisions of the Government order dated 02.06.2023 along with the clarification would have to be seen.

17. For the sake of convenience, the relevant clause of the Government order dated 02.06.2023 more particularly Clause 12 of the said Government order is reproduced below:-

अन्तर्जनपदीय स्थानान्तरण प्रक्रिया में वरीयता हेतु देय भारांक

क्रमांक	मनक	अधिकतम अंक
1	सेवा के प्रत्येक पूर्ण वर्ष के लिए 01 अंक	15
2	दिव्यांग अध्यापक/अध्यापिका (स्वयं/पति या पत्नी/अविवाहित पुत्र/पुत्री)	10
3	असाध्य या गम्भीर रोग से ग्रसित अध्यापक/अध्यापिका (स्वयं/पति या पत्नी/अविवाहित पुत्र/पुत्री)	20
4	शिक्षक/शिक्षिका जिनके पति या पत्नी सरकारी सेवा (भारत सरकार/भारतीय थल सेना/भारतीय वायु सेना/भारतीय नौ सेना/केन्द्रीय अर्ध सैनिक बल एवं उत्तर प्रदेश सरकार व उ०प्र०, बेसिक शिक्षा परिषद के अधीन) में नियमित रूप से कार्यरत हो।	10
5	एकल अभिभावक (पुत्र/पुत्रियों का अकेले पालन करने वाले शिक्षक/शिक्षिका)	10
6	महिला अध्यापिका	10
7	राष्ट्रीय पुरस्कार प्राप्त अध्यापक/अध्यापिका	5
8	राज्य पुरस्कार प्राप्त अध्यापक/अध्यापिका	3

18. This Government order has been followed by clarification dated 16.06.2023 which has also been referred to in the order impugned dated 03.10.2023 while cancelling the transfer of the petitioner. For the sake of convenience, the relevant Clause of the clarification dated 16.06.2023, so far as it pertains to the petitioner, is reproduced below:-

*8. सरकारी सेवा का लाभ ऐसे शिक्षक/शिक्षिका जिनके पति या पत्नी भारत सरकार/भारतीय थल सेना/भारतीय वायु सेना/भारतीय नौ सेना/केन्द्रीय अर्ध सैनिक बल एवं उत्तर प्रदेश सरकार व उ०प्र०, बेसिक शिक्षा परिषद के अधीन नियमित कार्यरत सरकारी सेवक होंगे, को ही देय होगा। भारत के संविधान के अनुच्छेद 309 के परन्तुक के अधीन जिन कार्मिकों का सेवा विनियमन होता है, वे सरकारी सेवा की श्रेणी में मान जायेंगे। सरकारी सेवा में अद्यतन कार्यरत होने का प्रमाण पत्र जो सक्षम नियुक्ति प्राधिकारी द्वारा निर्गत किया गया हो, ही मान्य होगा।*

19. Perusal of Clause 12 of the Government order dated 02.06.2023 would indicate that those teachers whose spouse is working in the Central Government/Indian Army/ Indian Air force/ Indian Navy/ Central Para Military Forces and State Government and working under the Uttar Pradesh Basic Shiksha Parishad would be entitled for 10 marks.

20. In terms of the clarification dated 16.06.2023 those teachers whose spouse is

working in the Central Government/Indian Army/ Indian Air force/ Indian Navy/ Central Para Military Forces and State Government and working under the Uttar Pradesh Basic Shiksha Parishad are entitled for the weightage. It has also been provided that those employees whose service is regulated under the proviso to Article 309 of the Constitution of India would also fall within the ambit of Government service meaning thereby that those personnel whose services are regulated under the proviso of Article 309 of the Constitution of India, their service would be considered as Government service.

21. In order to understand this clarification, Article 309 of the Constitution of India would have to be considered, which for the sake of convenience is reproduced below:-

*"309. Recruitment and conditions of service of persons serving the Union or a State Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:*

*Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."*

22. A perusal of the proviso to Article 309 of the Constitution of India would indicate that the acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State, provided that it is competent for His Excellency the President in the case of service and posts in connection with the affairs of the Union and for the Governor of a State in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts. Thus, it is the acts of the legislature which are to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State provided that it shall be competent for His Excellency the Governor to make rules regulating the rules and conditions of service of persons appointed to such services and posts.

23. Thus, the services, as are indicated in Article 309 pertain to public services and

posts in connection with the affairs of the Union or of any State.

24. At this stage, it would also be relevant to refer to the provisions of Article 310 of the Constitution of India which reads as under:-

***"310. Tenure of office of persons serving the Union or a State***

*(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State*

*(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period, that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post."*

25. From a perusal of Article 310 of the Constitution of India it emerges that every person who is a member of a civil service of the Union or holds any civil post under the State holds office during the pleasure of His Excellency the President or the Governor of the State.

26. Likewise, Article 311 of the Constitution of India so far as it is relevant to the facts of the instant case provides that no person who is a member of a civil service of a State or holds a civil post under the State shall be dismissed or removed by an authority subordinate to that by which he was appointed. The other provisions of Article 311 of the Constitution of India may not detain the Court.

27. Here it would also be relevant to refer to the provisions of Article 320 of the Constitution of India which read as follows:-

***"Article-320. Functions of Public Service Commissions.***

- a. It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.*
- b. It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.*
- c. The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—*



- a. *on all matters relating to methods of recruitment to civil services and for civil posts;*
- b. *on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;*
- c. *on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;*
- d. *on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;*
- e. *on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,*

*and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them:*

*Provided that the President as respects the all- India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.*

- d. *Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.*
- e. *All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid."*

28. From a perusal of Article 320 of the Constitution of India it emerges that so far as the facts of the instant case are concerned, the functions of the public service commissions have been indicated of which few are for the purpose of assisting the State in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualification are required and that the State Public Service Commission shall be consulted on all matters relating to method of

recruitment to civil services and for civil posts; the principles to be followed in making appointments to civil services and posts; on disciplinary matters affecting a person serving under the Government of a State in a civil capacity etc.

29. From a perusal of Articles 309, 310, 311 & 320 of the Constitution of India it emerges that so far as the facts of the instant case are concerned the phrase "persons serving under the Government of India or the Government of State" appears to have reference to such persons in respect of whom the administrative control is vested in the respective executive Government functioning in the name of President or the Governor. The said person would hold office during the pleasure of the Governor of the State. The rules for his recruitment would be made in consultation with the State Public Service Commission including the rules for making appointment to his post and in making promotion and transfer from one service to the other. However, all these aspects are lacking in the appointment of the husband of the petitioner inasmuch as admittedly, the petitioner's husband is an employee of the Lucknow University an autonomous body, the rules of the State Government have been 'adopted' by the Lucknow University, the appointment of the petitioner's husband has not been made in consultation with the State Public Service Commission nor there are principles framed by the State Public Service Commission for making his appointment and in making his promotion and transfer and neither is any administrative control vested with the regard to the functioning of the petitioner's husband in His Excellency the Governor. Thus, the mere fact that the appointment of the petitioner's husband on compassionate ground has been made by following the Rules, 1974 which have been 'adopted' by the Lucknow University and that the service rules for non teaching staff are those which have been 'adopted' by the Lucknow University pertaining to the State Government which are applicable for Group C post would not render the petitioner's husband as either being a Government servant or being in Government service.

30. In this regard, it would be apt to refer to the Constitution Bench judgment of **Pradyat Kumar Bose Vs Hon'ble the Chief Justice of Calcutta High Court** reported in **AIR 1956 SC 285** wherein it has been held as under:-

*"The phrase "persons serving under the Government of India or the Government of a State" seems to have reference to such persons in respect of whom the administrative control is*

*vested in the respective executive Governments functioning in the name of the President or of the Governor or of a Rajpramukh."*

31. It is not the case and obviously it cannot be the case of the petitioner that the Rules of the Lucknow University have been framed by His Excellency the Governor rather the Lucknow University, instead of framing its own rules, which it has ample power to do, has simply "adopted" the rules of the State Government and thus mere adoption of rules, as already indicated above would not make the petitioner's husband a Government servant or render him as being in Government service. Also, the petitioner's husband cannot be said to be a person serving under the Government of the State of U.P and for whom the administrative control is vested in the State Government. Thus, the arguments of the learned counsel for the petitioner are patently fallacious and merit to be rejected and are accordingly, rejected.

32. The fallacy of the argument of learned counsel for the petitioner can also be understood from a simple example that in case a private company was to adopt the service rules of the Government in all its sphere of working whether the employee of the private company would become a Government servant or would be considered to be in Government service entitled for the benefit of the Government order dated 02.06.2023 read with the clarification dated 16.06.2023? The answer is obviously No !

33. In this regard, it would also be pertinent to mention that in a matter pertaining to the employees of the autonomous bodies who were claiming as a matter of right the same service benefits at par with the Government employees merely because the autonomous bodies 'adopted' the Government service rules, the Hon'ble Supreme Court in the case of **State of Maharashtra and anr Vs. Bhagwan and Ors** reported in **(2022) 4 SCC 193** has held as under:-

*"26. As per the law laid down by this Court in a catena of decisions, the employees of the autonomous bodies cannot claim, as a matter of right, the same service benefits on par with the Government employees. Merely because such autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council there may be a representative of the Government and/or merely because such institution is funded by the State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees. This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and service conditions. The State Government and the Autonomous Board/Body cannot be put on par."*

33. From a perusal of the aforesaid judgment also it emerges that merely because

the autonomous bodies have 'adopted' the government service rules, the same would not confer any right of the employees of the autonomous bodies to claim the same benefits as are admissible to government employees inasmuch as they would not fall within the ambit of being government employees or in government service.

33. Accordingly, keeping in view the aforesaid discussion, no merit is found in the writ petition. The writ petition is accordingly dismissed.

34. The Court records the assistance provided by Ms. Megha Sachan, Law Clerk of this Court.

**Order Date :- 20.11.2023**

Pachhere/-