

Neutral Citation No. - 2023:AHC:127211-DB

Court No. - 74

Case :- WRIT - A No. - 10209 of 2023

Petitioner :- Kul Bhushan Mishra And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Satyendra Chandra Tripathi

Counsel for Respondent :- C.S.C, Bipin Bihari Pandey

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Ashutosh Srivastava, J.

1. Petitioners in the present writ are Assistant Teacher working in Primary Institution run by the District Basic Education Board. Petitioner No. 1 was appointed by District Basic Education Officer, Kaushambi on 10.3.2019 and is posted in Block Nevada, District Kaushambi. Petitioner No. 2 is appointed as Assistant Teacher in Block Dhanupur, District Prayagraj. Petitioner No. 1 claims to be a resident of District Prayagraj; where petitioner no. 2 is a resident of District Fatehpur. Both the petitioners are desirous of seeking inter-district transfer. They have approached this Court challenging Clause 1 and 15 of the Government Order dated 2.6.2023 as well as the consequential circular issued by the Secretary, Board of Basic Education, dated 8.6.2023. A further prayer is made to command the respondents to entertain their application for inter-district transfer without imposing condition of five years service in the concerned district and to grant approval to their transfer in accordance with Rule 21 of the U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as 'the Rules of 1981').

2. It is not in dispute service conditions of both the petitioners are regulated by the Rules of 1981. Rule 21 provides for transfer, which is extracted hereinafter:-

"21. Procedure for transfer - There shall be no transfer of any teacher from the rural local area to an urban local area or vice versa or from one urban local area to another of the same district or from local area of one district to that of another district except on the request of or with the consent of the teacher himself and in either case approval of the Board shall be necessary."

3. In addition to the Rules of 1981, the respondents have made U.P. Basic Education (Teachers)(Posting) Rules, 2008 (hereinafter

referred to as 'the Rules of 2008'), exercising the powers contained in Section 19(1) of the U.P. Basic Education Act, 1972 (hereinafter referred to as 'the Act of 1972'). Rule 8 of the Rules of 2008 is relevant and is reproduced hereinafter:-

"8. Posting. - (1)(a) Three options for schools shall be asked from the handicapped candidates in order of their merit and after receiving such options the handicapped candidates shall be posted on the basis of options given by them and the vacancies.

(b) Based on the order of their merit, female teachers would be required to submit under their signature option of three schools each from the general and backward block and accordingly, posting would be given in one of these schools.

(c) The posting of male teachers shall be made in accordance with the order of candidates, in the roster prepared under Rule 7.

(2)(a) The newly appointed male teachers shall initially be posted compulsorily in backward areas for a period of at least five years.

(b) Newly appointed female teachers shall also be compulsorily posted in backward areas for a period of at least two years.

(c) Mutual transfers within the district from general block of backward block and vice-versa would be permitted with the condition that the teacher on mutual transfer to a backward block shall have to serve in that block compulsorily for five years. Mutual transfers would be permitted only in case of those teachers who have more than remaining five year's service.

(d) **In normal circumstances** the applications for inter-district transfers in respect of male and female teachers will not be entertained within five years of their posting. But under special circumstances, applications for inter-district transfers in respect of female teachers would be entertained to the place of residence of their husband or in law's district.

(e) If by virtue of posting of newly appointed or promoted teachers the primary and upper primary schools of backward blocks get saturated i.e., no post of teacher is vacant in these schools, then handicapped and female teachers on their choice can be adjusted against the vacant posts of general blocks from these saturated blocks.

(f) Mutual transfers of male/female teachers from one backward block to another can be considered.

(3) Teachers transferred from one district to another will be given posting as per the provisions of these rules."

4. Clause 1 and 15 of the Government Order dated 2.6.2023, challenged in this petition, are reproduced hereinafter:-

“(1) – जनपद में नियमित सेवाविधि शिक्षिका के लिए 02 वर्ष एवं शिक्षक के लिए 05 वर्ष होना अनिवार्य होगा। सेवाविधि की गणना कार्यरत जनपद के दिनांक से की जायेगी।

(15) – शैक्षिक सत्र 2023 – 24 के लिए अन्तर्जनपदीय एवं पारस्परिक स्थानान्तरण की समस्त प्रक्रिया शासनादेश के क्रम में राष्ट्रीय सूचना विज्ञान केन्द्र लखनऊ से विचार विमर्श के उपरान्त समस सारिणी के अनुसार ऑनलाइन किया जायेगा। ऑफलाइन आवेदन पत्र पर किसी भी दशा में विचार नहीं किया जायेगा। ”

5. Circular dated 8.6.2023 is also challenged on the ground that the Board has invited applications for inter-district transfer of Assistant Teachers, but while doing so, the transfers by way of mutual consent have been excluded. It is urged that once applications are being entertained by the Board for transfer of teachers, there is no justification for the authorities not to include teachers who are seeking mutual transfer.

6. Grievance of petitioners are essentially two fold. The first part of their grievance is that while inviting applications for transfer of Assistant Teachers, there is no rationale to exclude teachers seeking transfers on mutual consent. Secondly, it is urged that the restriction of five years service by a male teacher before applying for transfer is arbitrary and discriminatory. It is also urged that Rules of 2008 do not regulate transfer of teachers and as no such restriction is contained in Rule 21 of the Rules of 1981, as such, the restriction imposed of five years service is unwarranted and arbitrary.

7. Petitioners rely upon the National Education Policy, 2020 to submit that the policy contemplates decent and pleasant conditions of service at schools and, therefore, request for mutual transfers be considered liberally, without imposing any restriction of minimum length of service in the district concerned. Reliance has also been placed upon the judgment of the Supreme Court in S.K. Nausad Rahaman and others Vs. Union of India and others, AIR 2022 SC 1494 and the Supreme Court in State of Assam Vs. Ranga Muhammad, AIR 1967 SC 903 to submit that Rules of 2008 will have no applicability in the matter of transfer.

8. Ms. Archana Singh, appearing for the Basic Education Board

also places reliance upon the judgment of the Supreme Court in S.K. Nausad Rahaman (supra), particularly paragraphs 25 to 29 thereof, in order to submit that petitioners cannot claim entitlement to transfer as a matter of right. She further submits that the online portal for transfer has so far not been extended to mutual transfer on account of certain technical glitch and that the process would be initiated shortly. She further submits that as and when petitioners apply for such transfer their cases shall be considered as per the policy.

9. We have heard Sri Satyendra Chandra Tripathi for the petitioners, Ms. Archana Singh for District Basic Education Board and learned Standing Counsel for the State.

10. Admittedly both the petitioners are Assistant Teacher. Their service conditions including transfer is governed by the Rules of 1981. Rule 21, extracted above, provides for the procedure for transfer of teacher from rural local area to urban local area or vice-versa or from one local area to another of the same district or local area of one district to that of another district except on the request of, or with the consent of, teacher himself and in either case approval of the Board shall be necessary. Methodology to be followed for transfer of Assistant Teacher appears to have been formulated by the Board, which is consistent with Para 5.3 of the National Education Policy 2020 specifically providing that transfers of teachers will be conducted through online computerized system that ensures transparency. Clause 5.3 of the Policy is reproduced hereinafter:-

“5.3. The harmful practice of excessive teacher transfers will be halted, so that students have continuity in their role models and educational environments. Transfers will occur in very special circumstances, as suitably laid down in a structured manner by State/UT governments. Furthermore, transfers will be conducted through an online computerized system that ensures transparency.”

11. So far as the petitioners grievance with regard to mutual transfer not being allowed is concerned, we find from the perusal of the Government Order dated 2.6.2023 that it lays down the policy

for inter-district transfer of teachers working in the institutions run by the Basic Education Board as also for mutual transfer. Petitioners grievance is that the Board while inviting applications on the online portal has restricted the applications only for inter-district transfer and has kept aside applications for mutual transfer.

12. On behalf of the respondents it is admitted that as of now applications are invited only for inter-district transfers. A categorical statement, however, is made that the process is not initiated for mutual transfer since there are some technical glitch and that the process will be initiated shortly. The statement made by Ms. Archana Singh, therefore, adequately protects the petitioners so far as their grievance on the first count is concerned.

13. It is the second part of the argument relating to requirement of five year working for making application for transfer which requires consideration. Rule 21 has already been reproduced above which provides the procedure for transfer.

14. Part II of the Rules of 1981 specifies the cadre and strength of Assistant Teacher. Rule 4(1) contemplates separate cadre of service under the Rules of 1981 for each local area. Sub-rule (2) stipulates that cadre of teaching staff shall be determined by Board, from time to time, with the previous approval of the State Government. Two kinds of local area are contemplated in the Rules of 1981, namely 'rural local area' and 'urban local area'. This distinction was primarily drawn as initial jurisdiction over rural local area was exercised by Zila Panchayat while for urban local area it was either the Nagar Nigam, Nagar Panchayat, Town Area or notified area, which exercised its jurisdiction. Authority exercising its jurisdiction over such cadre has undergone a change but the two separate cadre subsists in the district. Rule 21 permits transfer from the rural area to an urban local area or vice-versa or from urban local area to another of the same district or from local area of one district to that of another district to be made only on the request or with the

consent of teacher himself and in either case approval of the Board is necessary. It is, therefore, apparent that transfer of a teacher from one cadre to another would be permissible either on his consent or on the request of the teacher. In both the exigencies, however, approval of the Board is necessary. Transfer from one cadre to another otherwise is not contemplated.

15. Rules of 1981 do not lay down the criteria for grant of approval by the Board to the request of transfer. In order to ensure that transfers are made in a fair and uniform manner, it is always open for the competent authority to lay down the criteria for grant of approval to such transfers. The criteria for transfer apparently has been formulated by the State vide Government Order dated 2.6.2023 for the Academic Session 2023-24. Petitioners are aggrieved by Clause 1 and 15 of the Government Order. Clause 1 states that female teacher must complete two years while male teacher must complete five years before her/his transfer would be considered. Clause 15 of the Government Order, under challenge, specifies that the transfer process would be undertaken in consultation with NIC in an online format. In no circumstance an offline application would be considered.

16. So far as the resort to the online process for effecting the transfer is concerned, we find that the direction in that regard is in conformity with Clause 5.3 of the National Education Policy, 2020 which requires transfers to be conducted through an online computerized system that ensures transparency. Even otherwise, we do not find any error in the Government Order dated 2.6.2023; whereby the process is to be undertaken in consultation with NIC Lucknow on the basis of an online process. The process undertaken online, prima facie, eliminates the possibility of any pick and choose and is expected to be transparent. The process undertaken online otherwise does not contravene any provision of statute nor goes contrary to any constitutional scheme. We, therefore, find no error in Clause 15 of the Government Order dated 2.6.2023 requiring the

process to be undertaken online and thereby decline the entertainment of application in the offline format. The challenge laid to Clause 15 of the Government Order with regard to Transfer Policy, therefore, fails.

17. So far as Clause 1 of the Government Order dated 2.6.2023 is concerned, it requires that before applying for transfer under Rule 21, a female teacher must complete two years service in the district while for male teacher such period is specified as five years. The decision to insist upon minimum term of two years for female teachers and five years for male teachers has been subject matter of consideration by this Court in different writ petitions. So far as the decision in respect of a male Assistant Teacher appointed in a Primary School run by Basic Education Board is concerned, this Court in Writ Petition No. 4950 of 2018 (Anuruddha Kumar Tripathi Vs. State of U.P. and 5 others) observed as under in para 19:-

“19. In light of the aforesaid discussions, it is held that transfer of a male assistant teacher from one district to another, in a basic school, can ordinarily be made only after completion of 05 year initial posting in backward area in accordance with Rule 8(2)(d) of the Rules of 2008 as well as the policy framed for the purpose. However, in extraordinary or exceptional circumstances an application for transfer can be considered by the Basic Shiksha Parishad even before expiry of such term. The question whether in a given case extraordinary circumstances exists or not has to be examined by the Basic Shiksha Parishad.”

The above observation appears to have been made relying upon the language used in Rule 8(2)(d) of the Rules of 2008, which contains the expression ‘In normal circumstances’ and therefore clearly excludes exceptional circumstances, to be determined by the Board.

18. Reliance is also placed upon the judgment of this Court in Kamini Singh Vs. State of U.P. and others, Writ Petition No. 8532 of 2018, wherein vires of sub-rule (d) of sub-rule (2) of Rule 8 of the Rules of 2008 had been challenged on the ground that classification of teachers based on their gender is impermissible. The Division

Bench repelled the contention in following terms:-

"From a simple reading of the aforesaid Rules, it is apparent that the post of assistant teacher is a district cadre post and the appointing authority is the District Basic Education Officer. Upon selection, posting of a teacher is to be made as per the provisions of Rules 2008. In other words inter-district transfer is an exception to the general rule pertaining to placement and posting of teachers in blocks within the district is compulsory."

After noticing various judgments of the Apex Court on the issue, the Division Bench observed further as under:-

"The authorities relied upon by the learned counsel for the petitioner is of no assistance. The main part of Rule 8(2)(d) does not discriminate on gender, any teacher can seek transfer outside the district after five years of service, which is applicable to both male and female teachers uniformly, exception has been carved out by the impugned rule in respect of married female teacher to seek transfer after marriage. The rule requiring compulsory posting is to achieve the purpose and policy of providing teachers in schools located in remote areas of the district which ultimately serves the interest of the students and, in particular, teacher less schools. The functioning of schools would come to stand still if request of frequent transfer outside district is entertained, hence, the rules compulsorily requires posting of a teacher for five years before applying for inter-district transfer. The rule uniformly applies to male/female teachers, except married female teacher. The choice of district upon marriage gets altered, therefore, the married female teacher is permitted by the impugned rule to seek inter-district transfer in the changed circumstances due to her marital status.

When a law is challenged as denying equal protection; the question for determination by the Court is not whether it has resulted in inequality, but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation or inequality of treatment or inequality of burden does not perse amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that is it does not rest on any rational basis having regard to the object which the rule making authority has in view. When, therefore, a law is challenged as offending against the guarantee in Article 14, the first duty of the Court is to examine the purpose and policy of the Act/Rule, to be ascertained from an examination of its title, preamble and provisions and then to discover whether the classification made by the law has a reasonable relation to the object which the legislature/rule making authority seeks to obtain. (Vide: Suraj Mall v. Biswanath⁷, Kedar Nath Bajoria v. State of West Bengal⁸, P.B. Roy vs- Union of India⁹,)

For the reasons stated herein above, the challenge raised to the vires of sub-clause (d) of sub-rule (2) of Rule 8 of Rules 2008 fails. The writ petition being devoid of merit is, accordingly, dismissed."

19. The argument advanced on behalf of the petitioners that Rules of 2008 would not be applicable in the matter of transfer does not

impress us. Petitioner's argument, in this regard, is essentially based on the observation made by the Supreme Court in Para 9 of the judgment in State of Assam (supra), which is reproduced hereinafter:-

"9. In its ordinary dictionary meaning the word 'to post' may denote either (a) to station some one at a place, or (b) to assign someone to a post, i.e., a position or a job, especially one to which a person is appointed. See Webster's New World Dictionary (1962). The dispute in this case has arisen because the State Government applies the first of the two meanings and the High Court the second. In Art. 233 the word 'posting' clearly bears the second meaning. This word occurs in association with the words 'appointment' and 'promotion' and takes its colour from them. These words indicate the stage when a person first gets a position or job and 'posting' by association means the assignment of an appointee or promotee to a position in the cadre of District Judges. That a special meaning may be given to a word because of the collocation of words in which it figures, is a well-recognised canon of construction. Maxwell ("On Interpretation of Statutes", 11th Edn., p. 321 and the following pages) gives numerous examples of the application of this principle, from which one may be given here. The words 'places of public resort' assume a very different meaning when coupled with 'roads and streets' from that which the same words would have if they were coupled with 'houses'. In the same way the word 'posting' cannot be understood in the sense of 'transfer' when the idea of appointment and promotion is involved in the combination. In fact this meaning is quite out of place because 'transfer' operates at a stage beyond appointment and promotion. If 'posting' was intended to mean 'transfer' the draftsman would have hardly chosen to place it between "appointment" and "promotion" and could have easily used the word 'transfer' itself. It follows, therefore, that under Art. 233, the Governor is only concerned with the appointment, promotion and posting to the cadre of District Judges but not with the transfer of District Judges already appointed or promoted and posted to the cadre. The latter is obviously a matter of control of District Judges which is vested in the High Court. This meaning of the word 'posting' is made all the more clear when one reads the provisions of Arts. 234 and 235. By the first of these articles the question of appointment is considered separately but by the second of these articles posting and promotion of persons belonging to the judicial service of the State and holding any post inferior to the post of a District Judge is also vested in the High Court. The word 'post' used twice in the article clearly means the position or job and not the station or place and 'posting' must obviously mean the assignment to a position or job and not placing in-charge of a station or Court. The association of words in Art. 235 is much clearer but as the word 'posting' in the earlier article deals with the same subject-matter, it was most

certainly used in the same sense and this conclusion is thus quite apparent.”

20. The above observation came to be made in the context of power of transfer to be exercised over district judges in a State. The Supreme Court found that the authority to make transfers was with the High Court and that the State Government was not the competent authority to exercise such power. Highest weight was directed to be given to the opinion of the High Court. Discussion was thus drawn between the expression ‘posting’ and ‘transfer’. The factual scenario in the present case is, however, quite distinct. The service conditions of the petitioners are governed by the Rules of 1981. However, specific Rules of 2008 have been framed in the context of posting of teachers in different local area. Rules of 2008 contemplate list of schools to be prepared for posting of teachers in different institutions. Rule 8 stipulates the manner to be followed for posting of teachers in different institutions. It provides that inter-district transfer would be allowed in normal circumstances to the newly appointed teachers only after completing two years service in case of female teachers and five years service in case of male teachers. Rules of 2008 also provides for the posting of newly promoted teachers. Though the Rules of 2008 are christened as posting rules, but it intends to effectively deal not only with initial posting of teachers but also specifies that such teachers posted in the institution would be entitled to transfer, including mutual transfer, after initial service in the block for five years. Rule 8(1)(d) is specific in that regard. Vires of Rule 8(1)(d) has already been upheld by this Court.

21. Rule 8(1)(d) neither violates any provision of the Act of 1972, nor goes contrary to the Rules of 1981. The posting rules of 2008 in fact lays down the criteria for posting of teachers in different institutions and while doing so, restricts the eligibility for seeking transfer in normal circumstances as two years for female teachers and five years for male teachers. The condition requiring the male teacher to work for five years and female teacher for two years is

essentially a matter of policy and unless it is shown to be violative of any Act, Rule or Regulation, we would not be justified in interfering with such policy as it is otherwise not shown to be arbitrary.

22. Assistant Teachers in Basic Education Institutions run by Basic Education Board teach students both in rural local area and urban local area. These teachers are appointed on the basis of a competitive process of recruitment and their posting is also made considering their merit as well as the option exercised by them regarding their place of posting. The roster is also followed for such purposes.

23. The allocation of particular cadre and place of posting to a teacher is thus on the basis of his merit and the option exercised. There is a specific purpose of not entertaining applications for transfer for few years as the teachers are expected to initially work in the specific cadre allocated to them or else the teachers from the very day of their appointment would start maneuvering their transfer to their desired place. The teachers otherwise have an important task to perform and the anxiety on their part must be to impart proper teaching to the students. By restricting their eligibility to seek transfer in normal circumstances for few years the State/Board apparently intends to discourage teachers from hankering for their desired posting soon after their appointment. The requirement for the teachers to serve cadre for a few years before they are allowed to seek transfer thus cannot be said to be arbitrary nor the policy can be questioned on any valid ground.

24. Transfer in the cadre is ordinarily not contemplated for an Assistant Teacher. The transfer from one cadre to another is conditional in terms of Rule 21 and requires approval of the Board. Transfer, therefore, is not stipulated to be claimed as a matter of right in these institutions. The State/Board would thus be justified in laying down a uniform criteria/process for entertaining applications for transfer.

25. In view of our discussions held above, we find no illegality or infirmity in the policy of the State to restrict entertainment of application for transfer in normal circumstances, unless the teacher has completed specified length of service in the cadre. Even otherwise, this Court has already clarified that in exceptional circumstance minimum period can be waived provided the Board is satisfied with regard to existence of exceptional circumstance for transfer. Old age of grand-parents, etc., which is the cause pleaded for transfer, would not constitute exceptional circumstance for transfer. These considerations otherwise are required to be examined by the Board at the first instance.

26. We are not inclined to discard the applicability of Rules of 2008 merely on the nomenclature of it as posting rules as we have already held that the requirement, in normal circumstances, of minimum length of service before seeking transfer does not contravene any provisions of the Rules of 1981 or any provision or Act. Mere nomenclature of Rules as being posting rules is otherwise not decisive.

27. We may gainfully refer to the judgment of the Supreme Court in S.K. Nausad (*supra*), wherein the Supreme Court has observed as under in paragraphs 25 to 29:-

"25. Second, executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim a transfer or posting. Individual convenience of persons who are employed in the service is subject to the overarching needs of the administration.

26. Third, policies which stipulate that the posting of spouses should be preferably, and to the extent practicable, at the same station are subject to the requirement of the administration. In this context, J.S. Verma, J. (as the learned Chief Justice then was) speaking for a three-Judge Bench of this Court in *Bank of India v. Jagjit Singh Mehta* [*Bank of India v. Jagjit Singh Mehta*, (1992) 1 SCC 306 : 1992 SCC (L&S) 268] held : (SCC pp. 308-09, para 5)

"5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their

employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India Service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. ... No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

27. The above principle was cited with approval in *Union of India v. S.L. Abbas* [*Union of India v. S.L. Abbas*, (1993) 4 SCC 357 : 1994 SCC (L&S) 230] wherein the Court held that transfer is an incident of service : (SCC p. 359, para 7)

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."

28. Fourth, norms applicable to the recruitment and conditions of service of officers belonging to the civil services can be stipulated in:

(i) A law enacted by the competent legislature;

(ii) Rules made under the proviso to Article 309 of the Constitution; and

(iii) Executive instructions issued under Article 73 of the Constitution, in the case of civil services under the Union and Article 162, in the case of civil services under the States.

29. Fifth, where there is a conflict between executive instructions and Rules framed under Article 309, the rules must prevail. In the event of a conflict between the Rules framed under Article 309 and a law made by the appropriate legislature, the law prevails. Where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules. [Union of India v. Somasundaram Viswanath, (1989) 1 SCC 175, para 6 : 1989 SCC (L&S) 150]”

28. Paragraphs 43, 51, 52 and 53 of the judgment in S.K. Nausad Rahaman (supra), relied upon by the petitioners, recognize the principle that in exercise of judicial review the Court cannot direct the executive to frame a particular policy. Yet, the legitimacy of a policy can be assessed on the touchstone of constitutional parameters. The constitutional values are also taken into consideration while designing its policy. In the facts of the case we do not find the policy to be either violating the constitutional parameters or infringing the constitutional values. Petitioners, therefore, cannot draw any substance from the observation contained in paragraphs 43, 51, 52, 53 of the judgment in S.K. Nausad Rahaman (supra).

29. In view of the deliberations and discussion held above, we dispose off the writ petition on following terms:-

(i) Challenge laid to Clause 1 and 15 of the Government Order dated 2.6.2023 as well as challenge to Circular dated 8.6.2023 fails and are rejected.

(ii) In light of the statement made by the Board that online applications for inter-district transfer would be entertained shortly, and claim of eligible Assistant Teachers would be dealt with, it is provided that the Board shall open the online portal for mutual transfer, at the earliest possible, preferably within six weeks and

claim of eligible teachers shall be dealt with, as per law.

(iii) Condition contained in the policy requiring, in normal circumstances, minimum length of service of five years in the cadre for male teacher and two years service for female teachers before seeking transfer is upheld. Challenge to such policy fails, accordingly.

(iv) Parties to bear their own costs.

Order Date:- 16.6.2023
Ranjeet Sahu

(Ashutosh Srivastava, J.)

(Ashwani Kumar Mishra, J.)