

(2009) 12 AHC CK 0302

Allahabad High Court

Case No: None

Smt. Vandana

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Dec. 5, 2009

Acts Referred:

- Constitution of India, 1950 - Article 15(3)
- Uttar Pradesh Basic Education Act, 1972 - Section 19

Citation: (2010) 2 AWC 1716

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Judgement

A.P. Sahi, J.

Heard Sri R.K. Srivastava, learned Counsel for the petitioner and Sri Ghanshyam Maurya, learned Counsel for the respondent, Basic Shiksha Parishad.

2. The prayer made in this writ petition is for quashing of the order dated 26.10.2009, Annexure-15 to the writ petition whereby the request of transfer of the petitioner has been refused by the Secretary, Basic Shiksha Parishad. A further relief has been claimed for declaring Rule 8 of U.P. Basic Education Teachers Posting Rules, 2008 as ultra vires the provisions of Article 15(3) of the Constitution of India.

3. As a consequential relief it has also been prayed that the petitioner should be posted in the district of Maharajganj keeping in view the fact that petitioner is now married and living with her husband.

4. The facts in detail are that the petitioner was according to her merit list appointed as a teacher under the U.P. Basic Education Services Rules, 1981 in the district of Jalaun. The petitioner at the time of her employment was unmarried and she accordingly joined the institution. The petitioner was married on 14.11.2008 to one Sri Vinay Shanker who is stated to be a businessman and resident of district

Maharajganj. The petitioner after her marriage moved a request for her transfer to the district of Maharajganj which was not being considered as a result whereof she filed Writ Petition No. 46172 of 2009 which was disposed of on 1st September, 2009 directing the Secretary, Basic Shiksha Parishad to pass an appropriate order. The said request upon rejection has led to the filing to the present writ petition for the reliefs as claimed hereinabove.

5. Sri Srivastava, has contended that the rules relating to posting and transfer under which the petitioner has been denied her request are ultra vires the provisions of Article 15(3) of the Constitution of India as it is discriminatory and operative against women in general.

6. The second argument of Sri Srivastava is that transfer is not prohibited inasmuch as the rules itself contemplate transfer and the petitioner can be posted in any backward area which is the limitation prescribed under Rule 8 referred to hereinabove. For this he submits that the petitioner can be transferred to a backward area of district Maharajganj itself and in case that is done it would not violate the rules at all. He urges that there is no bar to transfer within five years and the bar is only in respect of functioning of the selected candidate in a backward area.

7. The third argument of Sri Srivastava is that the transfer order can be passed and there is no such injunction in view of Rule 21 of the U.P. Basic Education Teachers Services Rules, 1981 which still empowers the Board to direct transfers as claimed by the petitioner.

8. Sri Maurya, learned Counsel for the Board, on the other hand contends that Rule, 2008 clearly prohibits the transfer of one teacher from one place to another in view of the limitations prescribed therein for atleast five years. The petitioner having been selected and appointed in the year 2009 after passing her B.T.C. examination would be squarely governed by the said rules and, therefore, her claim cannot be accepted. The Secretary has passed the order in accordance with the rules and it cannot be said that any violation is perceptible occurred so as to justify interference with the impugned order. He further submits that there is no discrimination as the petitioner belongs to a particular class of teachers who are appointed in accordance with their merit and merely because the petitioner is a female candidate, she cannot contend that the action is arbitrary so as to declare the rules ultra vires the provisions of Article 15(3) of the Constitution of India.

9. Having heard learned Counsel for the parties, the rules have been framed by the State Government in exercise of powers u/s 19 of the Basic Education Act. 1972. The said rules were framed in order to accommodate the candidates in accordance with law and selection as per the merit list prepared under the provisions of the Act and the Rules framed therein. The said provision has been made to ensure that the teachers who are so appointed and posted shall compulsorily function in backward

areas. It is for the said reason that the rules indicate that the candidates so selected and appointed have to remain in a backward area for atleast five years.

10. In such view of the matter, it cannot be said that the rules are either arbitrary or discriminatory. The petitioner comes up with a plea that being a female candidate, the same is hit by Article 15(3) of the Constitution of India.

11. From the facts that have emerged in this case, it is evident that petitioner was unmarried and had opted to undergo training in the district of Jalaun where she had obtained her merit and also completed her training. The petitioner, therefore, once having accepted, she cannot be permitted to raise the plea that the action is otherwise arbitrary and discriminatory merely because the petitioner is a female category candidate.

12. The aforesaid submission of Sri Srivastava to the effect that the provisions are ultra vires, the Constitution of India does not hold water and is accordingly rejected.

13. So far as the question of applicability of the rules is concerned, it is more than evident that the said rules were framed in order to ensure the presence of the teachers in the backward areas where education has taken a back seat and for the aforesaid purpose presence of teachers atleast five years in backward areas has been made compulsory.

14. The aforesaid provision, therefore, does not in any way come into conflict with Rule 21 of 1981 Rules. In the absence of any such conflict, it cannot be said that the rules are either ultra vires the provisions of the Act or the Rules are inoperative. The Secretary, therefore, cannot be said to be unjustified in rejecting the request of the petitioner on that ground.

15. The third submission of Sri Srivastava to the effect that the petitioner deserves to be considered keeping in view the fact that there is no bar of transfer from one backward area to another backward area is a matter of policy. The Secretary, Basic Education Board cannot frame a policy which is within the realm and powers of the State Government.

16. In such view of the matter, once the rules have been framed by the State Government u/s 19 of the Basic Education Act, 1972, the Secretary under the impugned order could not have travelled beyond the same. Such sympathetic consideration or formulation of a policy that the teacher can be transferred from one backward area to another backward area would be within the jurisdiction of the State Government.

17. Accordingly, the petitioner may approach the respondent No. 1 who may sympathetically consider the claim of the petitioner and pass appropriate orders within a period of three months from the date of production of certified copy of the order.

18. With the aforesaid observation, the writ petition stands disposed of.