

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. (S/S) 387 of 2016

Smt. Indu Gaur

.....Petitioner

Versus

State of Uttarakhand & others

..... Respondents

Hon'ble Sudhanshu Dhulia, J. (Oral)

1. Mr. J.P. Joshi, Senior Advocate assisted by Mr. Sushil Vashishta, Advocate for the petitioner.
2. Mr. N.P. Sah, learned Standing Counsel for the State/respondents.
3. The petitioner is a Headmistress in a Government Upper Primary School, Mawakot Block Dugadda, District Pauri Garhwal. She has been transferred from Government Upper Primary School, Mawakot to Government Upper Primary School, Jamri, Block Kot, District Pauri Garhwal vide order dated 06.07.2015. The petitioner had earlier approached this Court by filing a writ petition before this Court being WPSS No.1378 of 2015 which was dismissed by the learned Single Judge of this Court vide order dated 20.07.2015. Aggrieved, the petitioner filed a Special Appeal before the Division Bench of this Court being SPA No.381 of 2015 in which the order of the learned Single Judge of this Court was modified to the extent that since there was an alternative remedy under Rule 26 of the Uttarakhand Teacher (School Education) posting on First Appointment, Promotion and Transfer Rules, 2013 (from hereinafter referred to as "the

Rules, 2013”) available to the petitioner, she was given liberty to file representation before the Additional Director (Primary Education) Garhwal Mandal, Pauri/respondent no. 3.

4. Now the petitioner’s representation which was in consequence to the order of the Division Bench of this Court has also been rejected by the Additional Director (Primary Education) Garhwal Mandal, Pauri/respondent no.3 vide order dated 09.02.2016, the petitioner has again come up before this Court bringing a challenge to the order dated 09.02.2016. The order dated 09.02.2016 has been perused. It is a well considered order by which the representation of the petitioner has been rejected on the ground that the petitioner allegedly has “Acute Arthritis” (it has been inadvertently mentioned as “Acute Arthritis” though the medical certificate shows that the petitioner has “Chronic Arthritis”). However, this is not a serious ailment under the Rules, 2013.

5. Learned Senior counsel for the petitioner on the other hand contends that the representation of the petitioner has been rejected on a wrong appreciation of Rules inasmuch as Rules of 2013 stood amended in the year 2014 where “Chronic Arthritis” has been mentioned as a serious ailment. The amended Rules have also been perused. Indeed, “Chronic Arthritis” is included as a serious ailment which would exempt the compulsory transfer but only in cases of “Chronic Arthritis” with deformity. The petitioner does not have any deformity along with the Arthritis. Moreover, the petitioner has also overstayed at Government Upper Primary School, Mawakot Block Dugadda, District Pauri Garhwal. Transfer

is an exigency of service and it is an admitted fact that the post of the petitioner is a transferable post.

6. The learned Standing counsel for the State has also brought to the notice of this Court that petitioner has not complied with the order dated 06.07.2015. Therefore, respondent authority be directed to pass appropriate orders to that extent as well, the State Counsel requests. This Court, however, refrains to pass any such order on this aspect but the Education authorities shall take note of this fact and in case, the petitioner does not join her duties, appropriate action may also be taken against the petitioner in accordance with law.

7. The Registrar General of this Court is hereby directed to communicate this order to the Additional Director (Primary Education) Garhwal Mandal, Pauri/respondent no.3 promptly for onward compliance.

8. In view of the above, the writ petition stands dismissed. No order as to costs.

(Sudhanshu Dhulia, J.)

29.02.2016

Ankit