

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p>WPSS No.1401 of 2022  <u><b>Hon'ble Manoj Kumar Tiwari, J.</b></u></p> <p>Mr. B.D. Upadhyaya, Senior Advocate, assisted by Mr. Sunil Upadhyaya, Advocate for the petitioner.</p> <p>Mr. P.C. Bisht, Additional C.S.C., Mr. N.P. Sah, Standing Counsel and Mr. V.S. Rawat, Brief Holder for the State of Uttarakhand.</p> <p>Heard learned counsel for the parties.</p> <p>Petitioner is serving as Lecturer in District Institute of Education and Training (DIET), Dehradun. She has been transferred to District Institute of Education and Training (DIET), Chhadigaon, Pauri. In this writ petition, petitioner has challenged her transfer order.</p> <p>Learned Senior Counsel for the petitioner contends that persons posted as Senior Lecturer in different DIET cannot be transferred from one DIET to another by Director, Secondary Education and only Director, Academic, Research &amp; Training would be Competent Authority for the purpose. It is further contended that categorisation of different DIET in terms of Section 9 of the Transfer Act has not been done nor it has been displayed in web portal of the Department, therefore, in the absence</p>

of such categorisation, petitioner could not have been transferred, that too when no option was invited from the petitioner.

Per contra, Mr. P.C. Bisht, learned State Counsel contended that even though petitioner is posted in different DIETs for quite some time, however, the fact remains that she is member of Cadre of Lecturer in Government Inter Colleges and her Appointing and Transferring Authority is Additional Director/Director, Secondary Education, Headquarters. He further contended that Director, Secondary Education would be the Head of the Department in respect of petitioner, as she was appointed in the Cadre of Lecturer of Government Inter College and since she still continues to be member of the same cadre, therefore, Director, Secondary Education would continue to be Head of the Department in respect of petitioner. In support of this contention, learned State Counsel has placed reliance upon judgment dated 16.06.2022 rendered by this Court in WPSS No. 1476 of 2019, wherein it has been held that merely by transfer/posting as Teacher in DIET, petitioner has not become member of separate cadre created for DIETs.

Regarding second submission made on behalf of the petitioner that the work of identification of DIET has not been done before transferring the

petitioner, learned State Counsel has produced in Court Office Memo dated 29.04.2022, issued by Director General, Secondary Education, which is taken on record. Perusal of the said document reveals that different DIETs have been categorised as 'Sugam' and 'Durgam'. Based on the said document, learned State Counsel contends that the second submission made on behalf of the petitioner is also unsustainable.

Learned Senior Counsel for the petitioner further contended that petitioner's husband is paralytic, due to which, he is unable to move and there is no one else in the family to look after petitioner's ailing husband. He further points out that petitioner's mother-in-law is also ailing, who is 84 years of age. Thus, he contends that petitioner deserves to be exempted from compulsory transfer.

It is well settled that transfer is an incidence of service and transfer order should not be interfered with ordinarily by the Court, unless the order has been passed in violation of the service rules or it is infected with malice.

Having regard to the issues highlighted by petitioner in the writ petition, this Court is not inclined to interfere with the impugned transfer order. Since petitioner has raised the issue of non-

uploading of categorisation of school in the web portal and also not inviting options, which can be gone into by the Departmental Authority, therefore, this Court thinks that ends of justice would be met, if petitioner is permitted to make representation to Director, Secondary Education.

Accordingly, the writ petition is disposed of with liberty to petitioner to make representation on or before 29.07.2022 to Director, Secondary Education. It shall be open to petitioner to submit representation through e-mail, with soft copy of this order. If petitioner makes such representation within stipulated time, Director, Secondary Education shall take decision thereupon on or before 20.08.2022.

Till 20.08.2022 or till decision on petitioner's representation, whichever is earlier, status quo, qua posting of petitioner shall be maintained.

**(Manoj Kumar Tiwari, J.)**

25.07.2022

*Arpan*