



for the sake of brevity and convenience, facts of WPSS No. 1381 of 2022 alone are being considered.

3. This writ petition has been filed by Dr. Deepak Kumar, seeking the following relief: -

- (i) Issue a writ or order in the nature of certiorari quashing the impugned transfer order dated 10.07.2022 issued by respondent no. 4 (Contained as Annexure No. 11) at serial no. 19 whereby the petitioner has been transferred from DIET Udham Singh Nagar to DIET Didihat, District Pithoragarh being passed without any jurisdiction.
- (ii) Issue a writ or order in the nature of mandamus directing the respondent to permit the petitioner to continue his services at his present place of posting.

4. According to petitioner, he was initially appointed as Assistant Teacher (L.T. Grade) in Department of Secondary Education in the year 1999 and was subsequently promoted as Lecturer in the year 2006. According to him, upon his promotion, petitioner was transferred to DIET, Udham Singh Nagar in 2006 and since then he is serving there to the satisfaction of all concerned. By means of impugned order dated 10.07.2022, petitioner has been transferred to DIET Didihat in District Pithoragarh.

5. Learned counsel for the petitioner contended that persons posted as Senior Lecturer in DIET cannot be transferred from one DIET to another by Director, Secondary Education and only the Director, Academic, Research & Training would be competent for transferring them. It is further contended that categorisation of different DIETs in terms of Section 9 of the Transfer Act has not been done so far and in the absence of such categorisation, petitioner could not have been transferred, that too when no option was invited from him.

6. Per contra, Mr. P.C. Bisht, learned State Counsel contended that even though petitioner was posted in DIET for quite some time, however, the fact remains that he is member of Lecturer Cadre of Government Inter College and his Appointing and Transferring Authority is Additional Director, Headquarters / Director, Secondary Education. He further contended that Director, Secondary Education is Head of the Department in respect of petitioner, as he was appointed by promotion to the Cadre of Lecturer, Government Inter College and since he still continues to be member of the same cadre, therefore, Director, Secondary Education would be competent to transfer the petitioner.

7. In support of this contention, learned State Counsel has placed reliance upon a 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, one does not become member of separate cadre created for DIET.

8. Regarding second submission made on behalf of the petitioner that the work of identification of DIETs as 'Sugam' and 'Durgam' has not been done before transferring him, learned State Counsel has produced in Court one Office Memo dated 29.04.2022, issued by Director General, Secondary Education, which is taken on record.

9. 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 petitioners is also unsustainable. This Court

finds substance in the contention made by learned State Counsel

10. 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. In the absence of any of the aforesaid two grounds, interference with a transfer order would be unwarranted.

11. Having regard to the issues highlighted by petitioners in these writ petitions, this Court is not inclined to interfere with the impugned transfer order. Since petitioners have raised the issue of non-uploading of categorisation of DIETs in the web portal and also of not inviting options, which can be gone into by the Departmental Authority, therefore, this Court thinks that ends of justice would be met, if petitioners are permitted to make representation to Director, Secondary Education.

12. Accordingly, writ petitions are disposed of with liberty to petitioners to make representation(s) on or before 29.07.2022 to Director, Secondary Education. It shall be open to petitioners to submit representation(s) through e-mail, with soft copy of this order. If petitioners make such representation(s) 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 petitioners shall be maintained.

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