

Court No. - 30

- (1) **Case :-** WRIT - A No. - 4726 of 2023
Petitioner :- Puja Kumari Singh And 3 Others
Respondent :- State Of U.P. Thru. Prin. Secy Deptt. Basic Education, U.P. Lucknow And 5 Others
Counsel for Petitioner :- Shreesh Kumar Mishra Atal,Sharad Pathak
Counsel for Respondent :- C.S.C.,Ran Vijay Singh
- Connected with**
- (2) **Case :-** WRIT - A No. - 4722 of 2023
Petitioner :- Poonam Bharti And 11 Others
Respondent :- State Of U.P Thru. Addl. Prin. Secy. Basic Edu. Deptt. Lko. And 3 Others
Counsel for Petitioner :- Manoj Kumar Mishra,Arpit Dwivedi,Vikas Yadav
Counsel for Respondent :- C.S.C.,Ranvijay Singh
- with**
- (3) **Case :-** WRIT - A No. - 4727 of 2023
Petitioner :- Murali Dhar And 117 Others
Respondent :- State Of U.P. Thru. Prin. Secy. Basic Education Lko. And 3 Others
Counsel for Petitioner :- Shrikant Mishra,Ajay Kumar Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh
- with**
- (4) **Case :-** WRIT - A No. - 4739 of 2023
Petitioner :- Deepak Kumar
Respondent :- State Of U.P. Thru. Prin. Secy. Basic Education U.P. Lko. And 2 Others
Counsel for Petitioner :- Romit Seth,Amit Singh Bhadouria
Counsel for Respondent :- C.S.C.,Ran Vijay Singh
- with**

- (5) **Case :-** WRIT - A No. - 4844 of 2023
Petitioner :- Deeksha Agarwal And Another
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Basic Education Lko. And 5 Others
Counsel for Petitioner :- Vijay Sharma,Ajay Sharma
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (6) **Case :-** WRIT - A No. - 4860 of 2023
Petitioner :- Pallavi Singh And 78 Others
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Education Lko. And 97 Others
Counsel for Petitioner :- Durga Prasad Shukla
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (7) **Case :-** WRIT - A No. - 4916 of 2023
Petitioner :- Mrs. Anshu Yadav
Respondent :- State Of U.P. Thru. Secy. Basic Education Lko. And 5 Others
Counsel for Petitioner :- Saurabh Shankar Srivastava
Counsel for Respondent :- C.S.C.,Ran Vijay Singh,Shivam Sharma

with

- (8) **Case :-** WRIT - A No. - 4920 of 2023
Petitioner :- Jeet Kumar Singh
Respondent :- State Of U.P. Thru. The Addl. Chief Secy. Of Basic Education Lucknow And 4 Others
Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C.,Jaibind Singh Rathour,Ran Vijay Singh,Rishabh Tripathi,Shailendra Singh Rajawat

with

- (9) **Case :-** WRIT - A No. - 4950 of 2023
Petitioner :- Neelam Singh And 8 Others
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Basic Edu. Lko. And 11 Others
Counsel for Petitioner :- Bhanu Bajpai,Apoorva Tewari
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (10) **Case :-** WRIT - A No. - 4951 of 2023
Petitioner :- Vandana Gupta And Another
Respondent :- State Of U.P. Thru. Prin. Secy. Basic Edu. Lko.
And 4 Others
Counsel for Petitioner :- Apoorva Tewari,Bhanu Bajpai
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (11) **Case :-** WRIT - A No. - 4961 of 2023
Petitioner :- Seema Verma
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt.
Basis Edu. Lko And 3 Others
Counsel for Petitioner :- Vijay Dixit,Devam Shukla
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (12) **Case :-** WRIT - A No. - 4962 of 2023
Petitioner :- Bindu Lata And 3 Others
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Basic
Edu. Lko. And 6 Others
Counsel for Petitioner :- Apoorva Tewari,Bhanu Bajpai
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (13) **Case :-** WRIT - A No. - 4963 of 2023
Petitioner :- Nidhi Sahu And 3 Others
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Basic
Education Lko. And 6 Others
Counsel for Petitioner :- Apoorva Tewari,Bhanu Bajpai
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (14) **Case :-** WRIT - A No. - 4965 of 2023
Petitioner :- Swaroop Shikha And 3 Others
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Basic
Educ. Lko. And 6 Others
Counsel for Petitioner :- Bhanu Bajpai,Apoorva Tewari
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (15) **Case :-** WRIT - A No. - 4970 of 2023
Petitioner :- Preeti Jaiswal
Respondent :- State Of U.P. Thru. Secy. Deptt. Of Basic Education And 5 Others
Counsel for Petitioner :- Mohd. Azam Khan
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (16) **Case :-** WRIT - A No. - 4986 of 2023
Petitioner :- Shivani Vishnoi And 2 Others
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Basic Education Lko. And 4 Others
Counsel for Petitioner :- Apoorva Tewari,Bhanu Bajpai
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (17) **Case :-** WRIT - A No. - 4998 of 2023
Petitioner :- Yashika Goyal
Respondent :- State Of U.P. Thru. Prin. Secy., Deptt. Of Basic Education, Lucknow And 2 Others
Counsel for Petitioner :- Apoorva Tewari,Bhanu Bajpai
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (18) **Case :-** WRIT - A No. - 5035 of 2023
Petitioner :- Smt.Madhu Lata And Another
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Basic Education, Lucknow And 4 Others
Counsel for Petitioner :- Apoorva Tewari,Bhanu Bajpai
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (19) **Case :-** WRIT - A No. - 5039 of 2023
Petitioner :- Om Prakash Singh
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Basic Education, Lko. And 2 Others
Counsel for Petitioner :- Bhanu Bajpai,Apoorva Tewari
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (20) **Case :-** WRIT - A No. - 5078 of 2023
Petitioner :- Vandana
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Basic Education Lko. And 2 Others
Counsel for Petitioner :- Apoorva Tewari,Bhanu Bajpai
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (21) **Case :-** WRIT - A No. - 5080 of 2023
Petitioner :- Deepa Verma
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Basic Education And 2 Others
Counsel for Petitioner :- Apoorva Tewari,Bhanu Bajpai
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (22) **Case :-** WRIT - A No. - 5090 of 2023
Petitioner :- Balbeer Singh And And 8 Others
Respondent :- State Of U.P. Thru. Prin. Secy. Basic Edu. Lko. And 3 Others
Counsel for Petitioner :- Brijesh Kumar,Rama Shankar
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (23) **Case :-** WRIT - A No. - 5092 of 2023
Petitioner :- Deepti Shukla And Another
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Basic Edu., Lko. And 3 Others
Counsel for Petitioner :- Bhanu Bajpai,Apoorva Tewari
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (24) **Case :-** WRIT - A No. - 5200 of 2023
Petitioner :- Seema Rajput
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Basic Edu. Lko. And 2 Others
Counsel for Petitioner :- Apoorva Tewari,Bhanu Bajpai
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

with

- (25) **Case :-** WRIT - A No. - 5201 of 2023
Petitioner :- Salinee Tiwari
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Basic Edu. Lko. And 2 Others
Counsel for Petitioner :- Apoorva Tewari, Bhanu Bajpai
Counsel for Respondent :- C.S.C., Ran Vijay Singh

with

- (26) **Case :-** WRIT - A No. - 5208 of 2023
Petitioner :- Shagun Chahal
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Basic Education Lko. And 2 Others
Counsel for Petitioner :- Bhanu Bajpai, Apoorva Tewari
Counsel for Respondent :- C.S.C., Ran Vijay Singh

with

- (27) **Case :-** WRIT - A No. - 5209 of 2023
Petitioner :- Arvind Kumar Yadav And Another
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Basic Education And 3 Others
Counsel for Petitioner :- Apoorva Tewari, Bhanu Bajpai
Counsel for Respondent :- C.S.C., Ran Vijay Singh

with

- (28) **Case :-** WRIT - A No. - 5248 of 2023
Petitioner :- Manorma And 28 Others
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Education Lko. And 20 Others
Counsel for Petitioner :- Durga Prasad Shukla, Vivek Mishra
Counsel for Respondent :- C.S.C., Ran Vijay Singh

with

- (29) **Case :-** WRIT - A No. - 5295 of 2023
Petitioner :- Anjana Tiwari
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Basic Edu. Lko. And 3 Others
Counsel for Petitioner :- Bhanu Bajpai
Counsel for Respondent :- C.S.C., Ran Vijay Singh

with

- (30) **Case :-** WRIT - A No. - 5321 of 2023
Petitioner :- Anshupanwar And 8 Others
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Education Lko. And 12 Others
Counsel for Petitioner :- Durga Prasad Shukla, Vivek Mishra
Counsel for Respondent :- C.S.C., Ran Vijay Singh

with

- (31) **Case :-** WRIT - A No. - 5459 of 2023
Petitioner :- Geeta Singh And 7 Others
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Basic Education Civil Secrett. Lko. And 9 Others
Counsel for Petitioner :- Bhanu Bajpai
Counsel for Respondent :- C.S.C., Ran Vijay Singh

with

- (32) **Case :-** WRIT - A No. - 5674 of 2023
Petitioner :- Shalini Mishra
Respondent :- State Of U.P. Thru. Addl. Chief Secy., Basic Shiksha Anubhag-5, Lko. And 3 Others
Counsel for Petitioner :- O.P. Tiwari
Counsel for Respondent :- C.S.C., Prashant Kumar Singh, Ran Vijay Singh

with

- (33) **Case :-** WRIT - A No. - 5804 of 2023
Petitioner :- Prachi Yadav
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Basic Eductaion, Lucknow And 3 Others
Counsel for Petitioner :- Ravindra Pratap Singh
Counsel for Respondent :- C.S.C., Ran Vijay Singh

with

- (34) **Case :-** WRIT - A No. - 5906 of 2023
Petitioner :- Shivani Mishra
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Govt. Sectt. Lko And 4 Others
Counsel for Petitioner :- Ravi Shanker Tewari, Sheo Pal Singh

Counsel for Respondent :- C.S.C.,Abhinav Singh, Ran Vijay Singh

with

(35) Case :- WRIT - A No. - 5947 of 2023

Petitioner :- Piyush Singh And 2 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy, Deptt. Basic Edu. Lko. And 5 Others

Counsel for Petitioner :- Prashant Kumar Singh,Abhisar Dev, Apoorv Dev,Divyarth Singh Chauhan

Counsel for Respondent :- C.S.C.,Ran Vijay Singh,Rishabh Tripathi

with

(36) Case :- WRIT - A No. - 8810 of 2023

Petitioner :- Ashish Dubey

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Basic Education Lko And 5 Others

Counsel for Petitioner :- Divyarth Singh Chauhan,Apoorv Dev, Ashutosh Chaubey,Prashant Kumar Singh

Counsel for Respondent :- C.S.C.,Ran Vijay Singh,Rishabh Tripathi

Hon'ble Om Prakash Shukla, J.

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(1) Heard Shri Sharad Pathak, learned Counsel for the petitioner in leading petition, Shri Asit Chaturvedi, learned Senior Counsel

assisted by Shri Ashwini Kumar, Shri Vivek Mishra, Shri Shrikant Mishra, Shri Vijay Dixit along with Shri Devam Shukla, Shri Ravi Shanker Tewari, Shri Prashant Kumar Singh, learned Counsel for the petitioners in connected writ petitions, Shri Ran Vijay Singh, learned Counsel representing the Board, Ms. Deepshikha, learned Chief Standing Counsel assisted by Shri D.P. Mishra, learned Additional Chief Standing Counsel for the State-respondents.

A. Prelude

- (2) The common facts of these bunch of writ petitions lie in a narrow compass. The petitioners apparently claim to have been selected and posted as Assistant Teacher in Junior Basic Schools in various districts of the State of Uttar Pradesh as per the selection process prescribed under the U.P Basic Education (Teachers) Services Rules, 1981 (hereinafter referred to as “**Rules, 1981**”). This Court may not be detained any further by incorporating unnecessary facts related to the place/district, where these Assistant Teachers are posted. Suffice to say that each of the petitioners in these bunch of writ petitions are desirous of seeking inter-district transfer in view of policy decision taken by the State vide Government order dated 02.06.2023, wherein Clause 12 (4) permits additional 10 quality points for all those teachers, whose spouse are in Government services.

- (3)** Subsequently, the Board of Basic Education vide another order dated 16.06.2023, clarified the scope of the term “Government Service” used in Clause 12(4) of the Government Order dated 02.06.2023, by explaining that as per Clause 8 of the order dated 16.06.2023, only those employees, who are governed by proviso to Article 309 of the Constitution of India, shall be considered to be a part of Government Service to avail the quality point marks as per Clause 12 (4) of the Government Order dated 02.06.2023.
- (4)** Besides the common ground for challenge as mentioned in these petitions, it is also seen that basically the petitioners are seeking relief from this Court in the nature of declaration that the employment status of their respective spouse(s) held in different organisation like public sector banks, public sector enterprises like LIC/NHPC etc. and other statutory Corporations as well as Assistant Teachers under Madhyamik Siksha Parishad, as “Government service”, so that these petitioners can avail and/or be entitled to the additional quality point marks of “10” as mentioned in Clause 12(4) of the Government Order dated 02.06.2023 or Clause 10(4) of the Order dated 08.06.2023.
- (5)** Additionally, Writs (No. 4920 of 2023, 5947 of 2023 etc.) have also been filed claiming weightage of ‘10’ marks for serious

disease and few writs (No. 4727 of 2023, No. 5090 of 2023 etc.) have been filed on the ground that in the Government Order dated 02.06.2023, provisions of the Right of Persons with Disabilities Rules, 2017 (hereinafter referred to as “**Rules, 2017**”) with emphasis on Rule 5(2) (a) and (b) of Chapter II of the Rules, 2017 were not followed. Yet, Writ (No. 5906 of 2023 etc.) has been filed on the ground that the petitioners had been wrongly reverted to her district after transfer as she had taken ‘10’ marks for serious ailments wrongly. Further, some writ (No. 4722 of 2023 etc.) has been filed challenging Clause-1 of Order dated 16.06.2023 as weightage of ‘10’ marks for spouse working in same district would not be awarded to them as provided under Clause 12 (4) of the Government Order dated 02.06.2023.

B. Prevailing Rules and Policy

- (6) It is not in dispute that service conditions of these petitioners are regulated by the Rules, 1981. Rule 21 of Rules, 1981 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.”

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

referred to as “**the Rules, 2008**”), by exercising the powers contained in Section 19(1) of the U.P. Basic Education Act, 1972 (hereinafter referred to as “**the Act of 1972**”). Although, the Rules, 2008 have been named as the ‘posting Rules’, however, they also relate to transfer to certain extent in the sense that posting and transfer have cognate meaning. Rule 8 of the Rules, 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 years’ 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.”

(8) Having traced the rules applicable for transfer of Assistant Teachers, it would be pertinent to mention herein that the State Government vide its Order dated 02.06.2023 initiated the process of inter-district as well as mutual transfer of the teachers working in these schools under the Board of Basic Education by inviting on-line transfer applications. Apparently, Clause 12 of the Government Order dated 02.06.2023 is the centrifugal discussion in this bunch of matters.

(9) Clause 12 of the Government Order dated 02.06.2023 provides for a weightage system for the preparation of priority list to implement inter-district transfer, whereby quality point marks were to be awarded to these Assistant Teachers on fulfilment of certain conditions/criteria as mentioned in the said Clause. The conditions as well as the quality point marks awarded for calculating the weightage were as follows :-

S. No.	Condition/ Criteria	Maximum Points
1.	One quality point for each completed year of service	10
2.	Differently Abled Teacher (Self, Husband or Wife, Unmarried Son/ Daughter)	10
3.	Teacher Suffering from Incurable or critical Disease (Self, Husband or Wife, Unmarried Son Daughter)	20
4.	Teacher whose spouse is working in government service (Central Government/ Indian Navy/ Central Para Military Forces/ UP Government and Board of Basic Education, U.P.) in a regular manner.	10
5.	Single Parents	10
6.	Female Teacher	10
7.	National award-winning teacher	05
8.	State award-winning teacher	03

(10) Further, vide an order dated 08.06.2023, the Board of Basic Education, Prayagraj issued directions to the District Basic Education Officers of various districts to implement the weightage system in furtherance of the aforesaid Government Order dated 02.06.2023, wherein the said order repeated the aforesaid quality point marks vide Clause 10 and also provided for the following time table according to which the transfer process was to be completed :-

S. No.	Event	Date
1.	Timeline to make application for transfer on the portal developed by National informatics Centre	09.06.2023 to 14.06.2023
2.	Procedure for Verification of documents submitted by teachers and locking of data	10.06.2023 to 18.06.2023
3.	Transfer to be made by National Informatics Centre	19.06.2023 to 22.06.2023
4.	Relieving the teacher after conclusion of transfer	27.06.2023 onwards

(11) Apparently, all the writ petitioners had filled the application form as per the time limit prescribed in the aforesaid order, giving their preference and also claiming weightage of quality point marks for fulfilling the criteria/conditions as provided in Clause 12 of the Governemnt Ordre dated 02.06.2023. Subsequently, the Board of Basic Education vide another order dated 16.06.2023, clarified the scope of the term “Government service” used in Clause 12(4) of the Government Order dated 02.06.2023, by explaining as per Clause 8 of the order dated 16.06.2023 that only those employees who are governed by proviso to Article 309 of the Constitution of India shall be considered to be a part of Government Service to avail the quality point marks as per Clause 12 (4) of the Government Order dated 02.06.2023.

(12) Subsequently, it seems that the transfer list was published by the Board of Basic Education on 26.06.2023 and although the weightage as per the quality point marks were not mentioned in the said list, but petitioners, based on their own enquiry, were informed that they were not given the benefit of weightage of spouse being in Government Service in a regular manner. Thus, these petitioners have challenged and sought quashing of (i) Clause 12(4) of the Government Order dated 02.06.2023, (ii) Clause 10 (4) of the order dated 08.06.2023, (iii) Clause 8 of

the order dated 16.06.2023 and (iv) transfer list dated 26.06.2023.

C. Factual Matrix

(13) The employment status held by the spouse of the different petitioner(s) in the present bunch of writ petitions can be depicted in the following tabular form :-

S. No.	Writ No(s).	Employment Status of the spouse in different Organization, which has been prayed to be declared/held to be “Government Service” within the meaning of clause 12(4) of G.O dated 02.06.2023.
1.	Writ- A No. 4726 of 2023	Petitioners’ spouse are working in non-government aided schools.
2.	Writ- A No. 4722 of 2023	<p>1. The petitioner nos. 1 and 2 are the husband and wife and are working as Assistant Teacher at Primary School Dhansari, block Jarwal, district Bahraich and Primary School Jamapur, block Jarwal, District Bahraich, respectively</p> <p>2. The petitioner nos. 3 and 4 are the husband and wife and are working as Assistant Teacher at Primary School bharkeda, District pilibhit and in Primary School, sandavikas, maroori, district Pilibhit, respectively.</p> <p>3. The petitioner nos. 5 and 6 are the husband and wife and are working as Assistant Teacher at Senviliyan School, Alakthan, Maroori District Pilibhit and in Primary School, Semar Gotira, lalorikhonda, District Pilibhit, respectively.</p> <p>4. The petitioner nos. 7 and 8 are the husband and wife and are working as Assistant Teacher at High Secondary Bholi School, Block- Jarwal District Bahraich and in Primary School Jolahanpurwa, Block Jarwal, District Bahraich, respectively.</p>

		<p>5. The petitioner nos. 9 and 10 are the husband and wife and are working as Assistant Teacher at Primary School, Khalepurwa, District Bahraich and in Higher Secondary School Dhodhayal, District Bahraich, respectively.</p> <p>6. The petitioner nos. 11 and 12 are the husband and wife and are working as Assistant Teacher at Primary School, Harno Unara, Block Jarwal, District Bahraich and in Pandey Purwa, Hujurpur School, District Bahraich, respectively.</p>
3.	Writ- A No. 4727 of 2023	Petitioner No. 1 to 118, are the differently abled and working as Assistant Teachers.
4.	Writ- A No. 4739 of 2023 7.	Petitioner is aggrieved by the allocation of 10 marks to female teachers and not allocated such marks to male teachers, has challenged the Government Order dated 2.06.2013 so far as it relates to para 12 (6) and the para-10(6) of the guidelines issued by the Secretary Board of Basic Education, Prayagraj dated 08.06.2023.
5.	Writ- A No. 4844 of 2023	<p>1. Spouse of petitioner No.1's is working as Branch Manager in Baroda U.P. Bank at Raibarelilly.</p> <p>2. Spouse of Petitioner No.2 is working as Dy. Branch Manager at Union Bank of India, Unnao.</p>
6.	Writ- A No. 4860 of 2023	<p>1. Spouse of Petitioner No. 2 was working as SWO Clerk in Central Bank of India.</p> <p>2. Spouse of Petitioner No.1, 3 to 79 are working in Nationalised Bank, a Government of India.</p>
7.	Writ- A No. 4916 of 2023	Spouse of Petitioner No.1 is working as a Head Master at the Adarsh Junior High School, under the jurisdiction of the U.P. Basic Education Board.
8.	Writ- A No. 4920 of 2023	Spouse of Petitioner No.1's is working as a Mukhya Sevika in the Bal Vikas Pariyojna Office Payagpur at Bahraich.
9.	Writ- A No. 4950 of 2023	1. Spouse of Petitioner No.1, 2, and 9 are Assistant Teachers as per the U.P. Secondary Education Services Selection Board Act 1982.

		<p>2. Spouse of Petitioner No.3 is an employee of Pashchimanchal Vidyut Vitran Nigam Limited.</p> <p>3. Spouse of Petitioner No.4 and 6 are employees of Delhi Metro Rail Corporation Ltd.</p> <p>4. Spouse of Petitioner No.5 is an employee of Bharat Electronics Ltd.</p> <p>5. Spouse of Petitioner No.7 is the Employee of Municipal Corporation of Delhi.</p> <p>6. Spouse of Petitioner No.8 is employee of BSNL.</p>
10.	Writ- A No. 4951 of 2023	Spouse of Petitioner No.1 and 2 is employees of the Bharat Heavy Electricals Limited.
11.	Writ- A No. 4961 of 2023	Spouse of Petitioner No.1 is an employee of Indian Railway in Central Government.
12.	Writ- A No. 4962 of 2023	<p>1. Spouse of Petitioner No.1 is an executive engineer in Madhyanchal Vidyut Vitran Nigam Ltd.</p> <p>2. Spouse of Petitioner No.2 is working in Aryavart Bank.</p> <p>3. Spouse of Petitioner No. 3 and 4 are Employees of the Lucknow Municipal Corporation.</p>
13.	Writ- A No. 4963 of 2023	<p>1. Spouse of Petitioner No.1 is employee in The Indian Bank Which is a nationalized public Sector Bank at Lucknow.</p> <p>2. Spouse of Petitioner No.2 is employee of BSNL at Raebareli which is a Public sector Company.</p> <p>3. Spouse of Petitioner No.3 is regular employee of the State Bank of India at Raebareli.</p> <p>4. Spouse of Petitioner No.4 is employee of the Bank Of Baroda at Raebareli.</p>
14.	Writ- A No.	1. Spouse of Petitioner No.1 is working in

	4965 of 2023	District Court Shravasti as a stenographer- Grade 1. 2. Spouse of Petitioner No.2 is employee of Bank of India. 3. Spouse of Petitioner No.3 is employee of PNB. 4. Spouse of Petitioner No.4 is a Teacher in Seth Gangaram Jayswal Inter College.
15.	Writ- A No. 4970 of 2023	Spouse of Petitioner No.1 is an employee of Madhyanchal Vidyut Vitran Nigam Ltd. Office of Superintending Engineer Electricity Distribution Board.
16.	Writ- A No. 4986 of 2023	(i) Spouse of Petitioner No.1 is an employee of LIC of India. (ii) Spouse of Petitioner No.2 is an employee of NHPC. (iii) Spouse of Petitioner No.3 is an employee of Indian Oil Corporation of India.
17.	Writ- A No. 4998 of 2023	Spouse of Petitioner is a regular employee of State Bank of India.
18.	Writ- A No. 5035 of 2023	1. Spouse of Petitioner No.1 is employee in Sugarcane Development Board, Pilibhit. 2. Spouse of Petitioner No.2 is working in NTEP as the Senior Treatment Supervisor.
19.	Writ- A No. 5039 of 2023	Spouse of Petitioner is a regular employee of Union Bank of India.
20.	Writ- A No. 5078 of 2023	Spouse of Petitioner is a regular employee of Bharat Sanchar Nagar Ltd..
21.	Writ- A No. 5080 of 2023	Spouse of Petitioner is a regular employee of Bharat Sanchar Nagar Ltd..
22.	Writ- A No. 5090 of 2023	Petitioner No. 1 to 9, are the differently abled and working as Assistant Teachers.
23.	Writ- A No. 5092 of 2023	1. Spouse of Petitioner No.1 is an employee of LIC. 2. Spouse of Petitioner No.1 is an employee of

		Dakshinanchal Vidyut Vitran Nigam Ltd.
24.	Writ- A No. 5200 of 2023	Spouse of Petitioner is an employee of Indian Oil Corporation.
25.	Writ- A No. 5201 of 2023	Spouse of Petitioner is an employee of PNB.
26.	Writ- A No. 5208 of 2023	Spouse of Petitioner is an employee of NHPC.
27	Writ- A No. 5209 of 2023	Spouse of Petitioner No.1 and 2 are Teachers in school under madhyamik shiksha parishad.
28.	Writ- A No. 5248 of 2023	<p>1. Spouse of Petitioner No.3 is working as assistant teacher in firoj gandhi inter mediate college in Bijnor.</p> <p>2. Spouse of Petitioner No.1, 6, 15, 16, and 17 is working in aided junior high schools of different districts of State.</p> <p>3. Spouse of Petitioner no. 1 to 29 is working as assistant teachers.</p>
29.	Writ- A No. 5295 of 2023	<p>1. Spouse of Petitioner No.1 is working in Economics and statics Department.</p> <p>2. Spouse of Petitioner No.2 is working in Education Department.</p> <p>3. Spouse of Petitioner No.3 is working in Education Department.</p> <p>4. Spouse of Petitioner No.4 is working in Delhi fire services.</p> <p>5. Spouse of Petitioner No.5 is working in Education Department.</p> <p>6. Spouse of Petitioner No.6 is working in State Tax Department.</p> <p>7. Spouse of Petitioner No.7 is working in Forest Department.</p> <p>8. Spouse of Petitioner No.8 is working in Education Department.</p> <p>9. Spouse of Petitioner No.9 is working in</p>

		Education Department.
30.	Writ- A No. 5321 of 2023	<ol style="list-style-type: none"> 1. Spouse of Petitioner No. 1 to 4 are working under National Capital Territory of Delhi. 2. Spouse of Petitioner No. 5 and 6 are working under State of Utrakhand. 3. Spouse of Petitioner No. 7 are working under State of Haryana. 4. Spouse of Petitioner No. 8 and 9 are working under State of Jharkhand.
31.	Writ- A No. 5459 of 2023	<ol style="list-style-type: none"> (i) The Spouse of Petitioner No.1, 2 &3 are employee with Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited (ii) The Spouse of Petitioner No.4 is an employee of Uttar Pradesh Power Corporation Limited. (iii) The Spouse of Petitioner No.5 is an Asst. Professor in A Degree College under Directorate of Higher Education, Uttar Pradesh. (iv) The Spouse of Petitioner No.6 is an Asst. Teacher selected and appointed in terms of U.P Secondary Education Service Selection Board, Act, 1982. (v) The Spouse of Petitioner No.7 is an employee of Dakshinanchal Vidyut Vitran Nigam Limited. (vi) The Spouse of Petitioner No.8 is an employee of Union Bank, a Nationalized Bank.
32.	Writ- A No. 5674 of 2023	Ground relates to divorcee lady teacher
33.	Writ- A No. 5804 of 2023	Ground of 2 and 5 years of posting in backward area for female and male respectively
34.	Writ- A No. 5906 of 2023	The Spouse of Petitioner No.1 is working

		in Subhash inter college, Unnao, is un aided Inter College.
35.	Writ- A No. 5947 of 2023	Stated ground of illness
36.	Writ- A No. 8810 of 2023	Stated ground of Serious and Incurable illness

D. Contention of the Parties

(14) Having heard the respective Counsels for the petitioners at length, this Court finds that the grievance of petitioners are essentially centred around the fact that weightage system provided in the Government Order dated 02.06.2023, Board Orders dated 08.06.2023 and 16.06.2023 are violative of Article 14 of the Constitution of India inasmuch as the benefit of weightage for the spouse working in public sector banks, public sector enterprises, Power Corporation, Aided Institutions and other similar organisations, has not been given to them by excluding the employment status of these spouses from the definition of “Government Service” under Clause 12(4) of the Government Order dated 02.06.2023. It has been submitted that the said exclusion is not based on any intelligible differentia, especially in light of the fact that Board of Basic Education is also similarly placed as these organisations, who are under the administration and control of the State or the Central Government. According to the petitioners, an artificial classification by including certain classes of services while

leaving out the rest has been created by the said orders of Board dated 08.06.2023 and 16.06.2023, which are not permitted under law.

(15) It has also been argued that non-disclosure of weightage obtained by the Assistant Teachers are in variance with the past-practice of the Board in disclosing the weightage obtained by the teachers, which in itself is antithetical to the principles of Article 14 of the Constitution of India. Further, it has been submitted that as per earlier Government Order dated 02.12.2019, the benefit of weightage of government service was made available to the employees of public sector banks, public sector enterprises and other statutory corporations as well as teachers under Madhyamik Siksha Parishad and even the weightage given to each teacher was also disclosed during the said previous transfer process.

(16) As far as the differently abled petitioners are concerned, it has been submitted by the learned Counsel for the petitioners that in the Government Order dated 02.06.2023, provisions of the Rules, 2017 with emphasis on Rule 5(2)(a) & (b) of Chapter II of the Rules, 2017 were not followed. He has placed reliance upon the judgment of the Apex Court rendered in **Net Ram Yadav Vs. State of Rajasthan**, AIR Online 2022 SC 1407. Additionally, it has also been argued by some petitioners that their claim for grant of weightage of 10 marks for serious

disease/ailments had not been given to them and yet some other petitioners have argued that weightage of 10 marks for spouse working in same district had not been provided to them under Clause 12(4) of the Government Order dated 02.06.2023.

(17) Moreover, as far as the female candidates/petitioners are concerned, learned Counsel drawing attention Rule 8(2)(d) of the Rules, 2008 has argued that special circumstances existed for application of inter-district transfers in respect of female teachers, can be entertained to the place of residence of their husband or in law's district. It has been argued that although female teachers are given the advantage of applying for transfer after two years as mandated under Rule 8 of the Rules, 2008, however, it ignored the provisions, whereby these female teachers are permitted to be transferred to the place of in law's or husband under special circumstances. Some writ (No. 4739 of 2023 etc.) has been additionally filed challenging paragraph 12 (6) of Government Order dated 02.06.2023, which grants weightage of '10' marks to women teachers and writ (No. 5674 of 2023) has been filed claiming weightage of 10 marks for Divorcee Women.

E. Discussion & finding

(18) This Court has given a rationale thinking to the grievances raised by the petitioners. Before this Court embarks on to

decide the issue agitated in the present bunch of matters, it would be appropriate to understand the scope and limit of this Court relating to matters of Transfer. Recently, the Apex Court in **SK Nausad Rahaman & Ors V/s Union of India & Ors. 2022 SCC OnLine SC 297** as regard the basic fundamentals of the incidence of Transfer has captured the said sentiment at paragraph 24 and 25 in the following words :-

“24. First and foremost, transfer in an All India Service is an incident of service. Whether, and if so where, an employee should be posted are matters which are governed by the exigencies of service. An employee has no fundamental right or, for that matter, a vested right to claim a transfer or posting of their choice.

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.”

(19) The Apex Court in the same very judgment, quoted with approval the Judgment passed by a Three-Judge Bench of the Apex Court in **Bank of India Vs Jagjit Singh Mehta : (1992) 1 SCC 306** relating to the stipulation that the posting of spouses should be preferably, and to the extent practicable at the same station is always subject to the requirement of the administration. The Apex Court in said *Jagjit Singh Mehta's* case at paragraph 5 held as follows :-

“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.**"

(20) Further as regards the extent of interference, the Apex Court in the case of **Union of India v. S.L. Abbas: (1993) 4 SCC 357** held at paragraph-7 in the following words :-

“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.”

(21) Having traced the precepts of service jurisprudence developed for the incidence of Transfer, this Court finds that admittedly all the petitioners are Assistant Teacher and their service conditions including transfer is governed by the Rules of 1981. Rule 21, extracted above, Rules, 1981 opens with the wording; ***“There shall be no transfer of any teachers.....”***, which sufficiently indicate that transfer of these teachers were not contemplated under the Act as the legislature in its wisdom did not envisage transfer of these Teachers. However, in order to make the said provision commensurate to the existing laws and most importantly, it does not fall within the mischief of being declared as ultra vires to our constitution, it also provided for transfer of these Teachers to a limited extent, however the same was always subject to the approval of the Board. The said

contemplation has a reasoning, in as much as it is borne out from the Rules of 1981 that the cadre of these petitioners are of a District Level Cadre and selection and appointment of these teachers are being made after notifying the vacancies at the District Level itself and every eligible person is at liberty to apply in the District of his/her choice. Therefore, it is well established that all these teachers have been selected and appointed in the District where he/she has applied as per their choice only.

(22) Further, Rule 21 of Rules, 1981 although contemplates no transfer of teachers as a general rule, but it also 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 it makes the approval of the Board necessary. Besides Rule 21 of Rules, 1981, there is no provision made in the Rules, 1981 relating to Transfer, which sufficiently indicate that the legislature in its wisdom never intended for Transfer of these Assistant Teachers in normal circumstances, once they are appointed in a particular district. Thus, on the face of it, it can be safely concluded that there exists no substantive enforceable right in favour of these Assistant Teachers in the matter of Transfer.

(23) 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 and the approval of the Board becomes of utmost significance. Apparently, these transfers are not allowed as a general practise, which has a holistic meaning and purpose as has been rightly recently observed by a Division bench of this Court vide Judgment/Order dated 16.06.2023 passed in Writ –A-No. 10209 of 2023 (Kul Bhushan Mishra and Anr. v/s State of U.P & Others) as under :-

(24) Although, the service conditions of the petitioners are governed by the Rules of 1981. However, U.P. Basic Education (Teachers)(Posting) Rules, 2008 have been framed in the context of posting of teachers in different local area. Rule 8 of 2008 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 five years' service. Though the Rules of 2008 are coined as posting rules, but rule 8 (2) (d) of Rules of 2008 inter-alia creates a hurdle for all kinds of normal inter-district transfer in the initial period of five years. Thus, Rule 8 (2) (d) of Rules, 2008 says :-

“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.”

- (25) Thus, whether it is Rule 21 of the U.P Basic Education (Teachers) Services Rules, 1981 or Rule 8 of the U.P. Basic Education (Teachers)(Posting) Rules, 2008, although they relate to regulating of Transfer and posting of Assistant Teachers, however, in both the Rules, Transfer is not contemplated as a matter of general rule and are subject to restrictions, which have been found by this Court to be lawful in several precedents.
- (26) Since Rules of 1981 do not lay down the criteria for grant of approval by the Board to the request of transfer. Therefore, in order to ensure that transfers are made in a fair and uniform manner, the Board lays down the criteria for grant of approval to such transfers as a general policy in view of Rule 21 of the Rule of 1981. As far as the present case is concerned, the policy for transfer apparently has been formulated by the State Government vide Government Order dated 2.6.2023 for the Academic Session 2023-24. In the present bunch of writs, the petitioners are mostly aggrieved by Clause 12 (4) of the said Government Order, which also finds mention in Clause 10 (4)

of the order dated 08.06.2023 and explanation vide Clause 8 of the order dated 16.06.2023.

(27) At this juncture, it would be pertinent to mention herein that the aforesaid Government Order dated 02.06.2023, had been a subject matter of challenge in various writ petitions earlier. In one such petition, Clause 1 and Clause 15 of the said Government Order came to be challenged before this Court vide Writ –A-No. 10209 of 2023 (*Kul Bhushan Mishra and Anr. v/s State of U.P & Others*), wherein a Division Bench of this Court vide an order dated 16.06.2023 had repelled the said challenge by concluding at paragraph 29 of the said judgment as herein below:

“29. In view of the deliberations and discussions 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.”

(28) The Hon'ble Division Bench in the aforesaid Judgment extensively recorded the findings 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 was impermissible. The Division Bench in *Kamini Singh's Case* repelled the said challenge by holding that from a plain reading of Rule 8(2)(d) of the 2008 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.

(29) Although, the facts of Kul Bhushan Mishra's case is not directly related to the present case as the challenge before the Division bench in that matter was related to Clause 1 and 15 of the Government Order dated 2.6.2023 as well as challenge to Circular dated 8.6.2023, however in the present case, as had been observed earlier, a challenge has been laid to Clause 12(4) of the said Government Order, which also finds mention in

clause 10 (4) of the order dated 08.06.2023 and explanation vide Clause 8 of the order dated 16.06.2023. However, this Court finds that the said clause 12(4) had been a subject matter of challenge before this Court in Writ-A-6310 of 2023 (Radhika Mishra Vs State of Uttar Pradesh & Others), wherein a Co-ordinate Bench of this Court, while adjudicating the claim of the petitioners as to whether spouse working in non-government organisation/corporation/teachers in the aided institution run and managed by Private Committee of Management should be given the benefit of “Government Services” as mentioned in Clause 12 (4) of the Government Order dated 02.06.2023, the learned Single Bench vide an order dated 12.10.2023 dismissed the said challenge by concluding at paragraph 10 of the said order as follows:

“10. Whether working of the husband of the petitioner who is working as an Assistant Professor in a private aided degree college can be considered to be under the State Government as is urged by learned counsel for the petitioner may not detain the Court in as much as once a policy has been issued by the State Government, obviously it is the author of the policy who is in the best position to interpret the conditions of the said policy. The intention on the part of the respondents is that the service being rendered of the spouse of a person seeking transfer should be under the State Government. This would also be clear from a perusal of the English version as stands indicated in the form that had been filled in by the petitioner, a copy of which is annexure 5 to the petition, which indicates that teachers whose spouse are working in government service would be eligible for grant of 10 marks. When the working of the

petitioner's husband admittedly is in a private aided degree college, it cannot strictly be said that the said working would be in a government service and consequently once the respondents have interpreted the same and it being a policy decision there cannot be any occasion for this Court to interfere with the said interpretation under Article 226 of the Constitution of India."

(30) On the facts of the said case, the Co-ordinate Bench dismissed the aforesaid writ petition, however what is remarkable that the Single Bench while refusing to grant any relief to the petitioner, also observed that once a policy has been issued by the State Government, obviously it is the author of the said policy, who is in the best position to interpret the conditions of the said policy.

(31) This Court finds that these Assistant Teachers being an employee of the Board of Basic Education, it is the Board, which has to take a final call on the Transfer of the Teachers. These teachers have no vested right to claim a transfer or posting of their choice as Rule 21 provides that any transfer is subject to the approval of the Board. As held by the Apex Court, the Transfer Policy as being executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim a transfer or posting. Thus, the claim of the petitioners that since their spouse are working in Public Sector Banks or Public sector organisation like NHPC/ LIC etc. and are to be construed as Government

service, so as to enable them to be awarded 10 quality points as per Clause 12(4) of the Government Order dated 02.06.2023 is subject to the interpretation by the Board. Once the Board has interpreted that the said quality points could not be given to the petitioners as per the policy decision, this Court cannot substitute its view to the said interpretation.

(32) As held by the Apex Court, individual convenience of persons who are employed in the service, is always subject to the overarching needs of the administration. In any case, the Board being the author of the policy, they are the best to interpret the meaning of the term “Government service” as mentioned in the policy and this Court finds that the Board has issued an explanation to the meaning of the said term as per Clause 8 of the order dated 16.06.2023 by stating that only those employees, who are governed by proviso to Article 309 of the Constitution of India, shall be considered to be a part of Government Service to avail the quality point marks as per Clause 12(4) of the Government Order dated 02.06.2023. This Court does not find any infirmity in the said explanation as it is upto the Board to decide as to who should be given or not given the advantage of the said Transfer Policy.

(33) Besides the aforesaid reasoning of not finding any infirmity in the explanation given to the meaning of “Government Service”

by the Board, this Court finds that employees of the Government form a distinct class and the classification is reasonable having nexus with the object sought to be achieved. The Government employees enjoy a “status” and they are governed by different terms and conditions of the employment, more particularly framed as per the proviso to Article 309 of the Constitution of India. The judgment of the Apex Court in **Roshan Lal Tandon v Union of India** : AIR 1967 SC 1889, is relevant to the context, wherein it was held that the legal position of a Government servant is more one of status than of contract. The relevant extract from the said judgment reads as under :-

“6. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade D and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B', laid down that promotion to Grade 'C' from Grade 'D' was to be based on seniority-cum- suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. **In other**

words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. **But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest.** In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

“So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as

liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status” (Salmond and Williams on Contracts, 2nd Edn. p. 12)”

(34) Thus, Government employees enjoy protection and privileges under the Constitution and other laws, which are not available to those who are not employees of the Central Government or the State Government. Therefore, the submission of the learned Counsel for the petitioners in some cases that the employees of the Public Sector Undertaking and Nationalised Banks are also rendering services for the government, and such organisations are covered by Article 12 of the Constitution of India as “State” or that the employees are public servant as per Section 21 of the Indian Penal Code, is also without any merit. Merely because Public Sector Undertaking and Nationalised Banks are considered as “State” under Article 12 of the Constitution of India for the purpose of entrainment of proceedings under Article 226 of the Constitution of India and for enforcement of fundamental right under the Constitution, it does not follow that

the employees of such Public Sector Undertaking, Nationalised Banks or other institutions which are classified as “State” assume the status of Central Government and State Government employees. It has been held in multiple decisions that employees of Public Sector Undertakings are not at par with government servants. (See **Officers & Supervisors of I.D.P.L. v Chairman & M.D. I.D.P.L.** : AIR 2003 SC 2870). Further, in the celebrated judgment of **A.K. Bindal v Union of India:** (2003) 5 SCC 163, while considering the issue of revision of the pay scales of employees of government companies/PSUs at par with government employees, it was held by the Apex Court that the employees of government companies cannot claim the same legal rights as government employees. The relevant extract from the said judgment reads as under :-

“17. The legal position is that identity of the government company remains distinct from the Government. The government company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the government company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (Pyare Lal Sharma V/s Managing Director (1989) 3 SCC 448). **Since employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the Government. Being employees of**

the companies it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. It appears that prior to issuance of the office memorandum dated 12.4.1993 the Government had been providing the necessary funds for the management of public sector enterprises which had been incurring losses. After the change in economic policy introduced in the early nineties, the Government took a decision that the public sector undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the Government will not provide any funds for the same. Such of the public sector enterprises (government companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the office memorandum dated 19.7.1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings, no revision in pay scale should be allowed. We, therefore, do not find any infirmity, legal or constitutional in the two office memorandums which have been challenged in the writ petitions.”

- (35) The argument of the petitioners that employees of public sector bank and undertakings are to be construed to be in Government service as they are “public servant” is also to be rejected, as there are several precedents, which say that employee of co-operative society, private banks, arbitrators, panchayat assistant, municipal officers, University employees, etc. are public servant within the meaning of Section 21 of the Indian Penal Code, which does not as a corollary mean that these

employees of cooperative society etc. are to be construed in Government service. There is a mark difference between Public Servant/Service and Government Servant/Service.

(36) Further, there is another aspect of the matter that the present bunch of writ petitions also wishes to topple the transfer list of almost 16000 Assistant Teachers, who were transferred to different districts of the State vide Transfer Order dated 26.06.2023. It is the case of the petitioners that they should be accommodated in the said transfer list. Besides the fact that it is too late in the day as the academic session of 2023-2024 is almost mid-way and it was neither viable nor advisable for dislocating and/or effecting any transfer of these teachers, which would adversely affect the students, this Court finds that at least two matters have been dismissed by Division Bench of this Court, solely on the ground that the transfer list has been implemented. It is available from records that the Division bench in the case of :-

(i) Writ-A-12091/2023 (Arvind Kumar & 13 others V/s State of U.P & Ors.) was dismissed by a Division Bench of this court vide order dated 04.08.2023 by observing inter-alia;

“Challenge laid to the transfer policy dated 02.06.2023, particularly clause 12 thereof, need not be entertained by this court. In view of the statement made by the respondents that transfer policy itself has been implemented for the current year. Even otherwise, Writ-A-No. 10209 of 2023 has been decided by this court on 16.06.2023 wherein

various clauses of the transfer policy were challenged.

In that view of the matter, there is no occasion for this court to interfere in the present writ petition, which is accordingly dismissed.”

(ii) Similarly, another Division bench of this court, vide Writ-A-14121/2023 (Vivek Kumar and 2 others V/s State of U.P & Ors.) was dismissed vide order dated 19.10.2023 by observing inter-alia;

“1. The petitioners have assailed the transfer policy dated 02.06.2023. The matter has already been considered and decided by the Division Bench of this Court in the judgement dated 16.06.2023 rendered in Writ-A No. 10209 of 2023, Kul Bhushan Mishra and another vs. State of U.P. and others.

2. Further, in compliance with the orders passed by this Court, the policy has since been implemented. This fact was also noticed by the learned Division Bench of this Court in the judgment dated 04.08.2023 rendered in Writ-A No. 12019 of 2023, Arvind Kumar and others vs. State of U.P. and others.

3. In view of the above, there is no occasion to interfere in this writ petition. The writ petition is, accordingly, dismissed.”

(37) Thus, now the question boils down as to what kind of relief can be given in these petitions. The law is no longer res-integra that administrative guidelines for regulating transfer may at best afford an opportunity to the employee to approach his higher authorities for redressal but cannot have the effect of denying the competent authority the right to transfer an employee, as

much so an order of transfer made in transgression of such guidelines cannot be interfered with as they do not confer a legally enforceable right on an employee. The Apex Court in **State of U.P. and Others vs. Gobardhan Lal** : 2004 (11) SCC 402 observed :-

"8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

(38) Similarly, the Apex court in **Rajendra Singh v. State of U.P.** : 2009 (15) SCC 178 observed that:

"8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see State of U.P. v. Gobardhan Lal, SCC p. 406, para 7).

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some

statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar* this Court held: (SCC p. 661, para 4)

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

(39) Having enumerated the extent of judicial intervention in the matter of Transfer, this Court cannot be oblivious to the fact that on earlier occasion, a similar Transfer policy issued vide Government Order dated 02.12.2019 came to be challenged in a bunch of writ petitions leading amongst them being Writ-A No. 878 of 2020 (*Divya Goswami Vs. State of U.P. and others*). The writ petition was finally decided vide judgment/order dated 03.11.2020, wherein the following observations/directions were issued, which were to be followed by the State before finalizing the list of teachers seeking inter-district transfer: -

- "(I) *No inter district transfer shall be done in the mid of the academic session.*
- (II) *Transfer application should be entertained strictly in the light of the provisions as contained in Rule 8(2)(a) (b) and (d) of the Posting Rules, 2008.*
- (III) *Once a teacher has successfully exercised the option for inter district transfer, no second opportunity shall be afforded to any teacher of any category except in case of female teacher who has already availed benefit of inter district transfer on the ground of parents dependency prior to her marriage. However, in case if the marriage has taken place then she will have only one opportunity to exercise option for inter district transfer either on the ground of parents dependency or spouse residence/ in-laws residence.*
- (IV) *In case of grave medical emergency for any incurable or serious disease that may as of necessity, require immediate medical help and sustained medical treatment, either personally or for the spouse, a second time opportunity to apply for inter district transfer should be afforded to such a teacher even if he/she had exercised such option for inter district transfer for any other reason in the past.*
- (V) *Application of differently abled person should have very sympathetic consideration looking to physical disability but they should also have only one time opportunity to exercise option for inter district transfer. In case of female teachers, such exception would apply, as referable to rule 8(2) (d) of Posting Rules, 2008.*
- (VI) *In case of female teacher's right to seek transfer, relaxation given under Rule 8(2) (d) shall be read with rule 8(2) (b) and relaxation shall, therefore, be subject to rule 8(2) (b).*
- (VII) *Save as observed and directed herein above (Direction Nos. III, IV and V), no*

second opportunity to exercise option for inter district transfer be made available to any candidate of any category whatsoever.

(VIII) The exercise of inter-district transfer since is exception to the general rule of appointment and posting, every application for transfer has to be addressed to by the competent authority keeping in mind the objectives set forth under the Act, 2009 and Posting Rules, 2008 as amended in the year 2010 and must be acceded to citing a special circumstance specific to the case considered."

(40) Further, the order dated 03.11.2020 was modified by the Court vide order dated 03.12.2020 to the extent that the direction No.1 in the order dated 03.11.2020 would not be pressed in the cases of medical emergency thus permitting transfers in mid academic session. The medical emergency cases were required to be dealt with by the Government strictly in accordance with its own guidelines and the prescribed procedure to identify such cases which were to be religiously followed.

(41) This Court does not find any reasons as to why the State should not follow the aforesaid directions in its letter and spirit, while formulating or effecting any transfer policy of Assistant Teachers employed by the Board of Basic Education.

(42) As far as the case of differently abled petitioners are concerned, the judgment passed in **Net Ram Yadav Vs State of Rajasthan** : AIR OnLine 2022 SC 1407, has been quoted for the entitlement of transfer of differently abled petitioners.

Although, this Court finds that the said judgment was related to a challenge by a handicapped teacher who challenged his transfer to his home district at the cost of down gradation in his seniority, wherein the Apex Court referring to the United Nations Convention on the Rights of Persons with Disability (UNCRPD) which has been ratified by India, observed that the Articles of the UNCRPD are based on certain general principles, the most important of which is respect for the inherent dignity and individual autonomy of persons with disability and observed as follows :-

"The marginalization of the disabled/handicapped is a human rights issue, which has been the subject matter of deliberations and discussion all over the world. There is increasing global concern to ensure that the disabled are not sidelined on account of their disability."

(43) However, this Court finds that the present case is not of downgrading any of the petitioners, be it a person belonging to the PwD and the said cited case is distinguishable on facts. However, this Court cannot be oblivious to the observation of the Apex Court in the same judgment, wherein the Apex court observed that the High Court should have been more sensitive and empathetic to the plight of a physically disabled and it erred in law in overlooking the difference between physically disabled persons impaired in their movement and normal able-bodied persons.

F. Conclusion

(44) For all the aforesaid reasons, this Court **disposes of** the present bunch of writ petitions with the following directions :-

- (i) This Court does not find any illegality or infirmity in the policy of the State to restrict the meaning of Government servant as has been mentioned in Clause 12 (4) of Government Order dated 02.06.2023 and also contained in Clause 10(4) of the order dated 08.06.2023 and explained vide Clause 8 of the order dated 16.06.2023 and consequently, the challenge to the Transfer list dated 26.06.2023 fails.
- (ii) It is held that in exercise of judicial review under Article 226 of the Constitution of India, this Court cannot direct the executive/Board to frame a particular policy. In the facts of the case, this Court does not find Clause 12 (4) of Government Order dated 02.06.2023 and also contained in Clause 10 (4) of the order dated 08.06.2023 and explained vide Clause 8 of the order dated 16.06.2023 to be either violating the constitutional parameters or infringing the constitutional values.
- (iii) Employees of non-government aided schools, Public sector Banks (Nationalised Bank), Public sector undertakings like NHPC/ LIC/ IOCL/Pashchimanchal Vidyut Vitran Nigam Ltd/ Delhi Metro Rail Corporation Ltd/ Bharat Electronics Ltd, /Municipal Corporation of Delhi/ BSNL/ BHEL/ Madhyanchal Vidyut Vitran Nigam/ Sugar cane Development Board/ Intermediate College/ Madhyamik Shiksha Parishad/ UPPCL/ Bal Vikas Pariyojna etc. cannot be construed to be in Government Service within the meaning of clause 12 (4) of the Government Order dated 02.06.2023.

- (iv) As held by the Apex Court in **Bank of India Vs Jagjit Singh Mehta** (1992) 1 SCC 306, as far as the policy requiring the two spouses to be posted at one place as far as practicable is concerned, there does not exist any inalienable right to claim such a posting. The only thing required is that the Board 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.
- (v) As far as the petition of differently abled petitioners or petitioners claiming transfer on grounds of serious ailments are concerned, the matters are remanded to the Board to take appropriate decisions in view of the observation made in this order. In any case, these considerations are required to be examined by the Board at the first instance. Thus, it is directed that these petitioners shall file individual representation detailing their cause to the Board, which shall take a decision in that matter keeping in view the broad principle devised by this Court in the instant judgment as well as in the case of Divya Goswami (supra), including the adversity on candidates in all these kinds of mid-session transfer.
- (vi) In the facts of the present case, there shall be no order as to cost.

(Om Prakash Shukla, J.)

Order Date : 8th December, 2023

Ajit/-