

(2018) 12 RAJ CK 0295

In the Rajasthan High Court

Case No : Special Appeal Writ No. 1580 Of 2018 In Civil Writ Petition No. 18032 Of 2018

Amar Singh

APPELLANT

Vs

Balmeet Singh And Ors

RESPONDENT

Date of Decision : 12-12-2018

Acts Referred:

Rajasthan Panchayati Raj (Transferred Activities) Rules, 2011 — Rule 8, 8(ii)
Constitution Of India, 1950 — Article 226

Citation : (2018) 12 RAJ CK 0295

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : Akhil Simlote, Anand Sharma

Final Decision : Dismissed

Judgement

This appeal has been filed by appellant-Amar Singh, the Executive Engineer, Water Resources Development and Soil Conservation, Panchayat Samiti, Rawatsaar assailing the order of the learned Single Judge dated 12.11.2018.

The learned Single Judge has by the aforesaid order allowed the writ petition filed by the respondent-Balmeet Singh and set aside the order of his transfer dated 31.7.2018.

Facts of the case are that respondent-Balmeet Singh was promoted from the post of Assistant Engineer to that of Dy. Director, Agricultural (Engineer) by order dated 11.4.2018. He was thereafter posted from the post of Executive Engineer, Water Resource Department and Soil Conservation, Panchayat Samiti Suratgarh, District Sriganganar to Executive Engineer, Water Resource Department and Soil Conservation, Panchayat Samiti Rawatsar, District Hanumangarh by order dated 1.5.2018. However, subsequently by order dated 31.7.2018, he was transferred from Panchayat Samiti Rawatsar to Churu. It is this order, which the respondent-writ petitioner challenged before the learned Single Judge. Learned Single Judge relying on Rule 8(ii) of the Rajasthan Panchayati Raj (Transferred Activities)

Rules, 2011 has held that the transfer of the respondent-writ petitioner from one District to another cannot be done without satisfying the prerequisite condition of obtaining prior consent from the Panchayati Raj Department. The learned counsel appearing for the State submitted before the learned Single Judge that a general Circular was issued by the Government dated 6.6.2018 granting relaxation for even inter-District transfer of employees of Panchayati Raj Department without seeking any specific consent of such department.

The learned Single Judge has however in the impugned judgement has rejected the argument of the State and held that in view of statutory condition contained in Rule 8, the transfer could not be made without the consent as required under Rule 8 and no Circular can override the Rules.

We are inclined to concur with the view taken by the learned Single Judge. We are cognizant of the fact that the scope of interference in the matter of transfer by this Court is extremely limited. The Supreme Court in umpteen number of cases has held that an order of transfer of a government servant can be interfered with by the Court in exercise of its power under Article 226 of the Constitution of India only if the transfer order has been made in violation of any statutory Rules or for the reason of proven malafides. Rule 8 of the Rules of 2011 has categorically provides as under:

"8. Transfer:- Transfer of such transferred employees shall be made under the transfer policy and directions issued by the State Government from time to time, by:-

(i) the Administration and Establishment Committee of the Panchyat Samiti concerned within the same Panchayat Samiti.

(ii) the District Establishment Committee of the Zila Parishad concerned from one Panchayat Samiti to another Panchayat Samiti within the same District.

(iii) the department Concerned from one district to another district with the consent of the Panchayat Raj Department."

Rule 8 pertains to the employees of the Panchayati Raj Department. It specifically provides that if an employee is sought to be transferred within the same Panchayat Samiti, it could be made by (i) the Administration and Establishment Committee of the Panchyat Samiti concerned within the same Panchayat Samiti, (ii) from one Panchayat Samiti to another Panchayat Samiti within the same District, it could be made by the District Establishment Committee of the Zila Parishad concerned and (iii) from one district to another district with the consent of the Panchayat Raj Department. This being the statutory position, no Circular of the Government could have diluted that condition. We therefore do not find any infirmity in the approach taken by the learned Single Judge in dismissing the writ petition, particularly when the transfer of the writ petitioner in the present case was affected within three months.

Learned counsel for the appellant has argued that no employee can claim to remain posted at a particular place as a matter of right. The respondent had liability of transfer anywhere in the State of Rajasthan and if the impugned order of transfer was passed in breach of Rule 8, it should also attach to the earlier order of transfer dated 1.5.2018 whereby the respondent was posted at Executive Engineer, Water Resource Department and Soil Conservation, Panchayat Samiti Rawatsar, District Hanumangarh by order dated 1.5.2018.

Learned counsel for the appellant at this stage submitted that he is unwell and suffering from kidney disease and half of his body sustained paralytic attack as such his representation was considered and the order impugned was passed, which is as per rules.

We cannot annul the earlier order of transfer dated 1.5.2018 on the assumption of it being suffering from some illegality. Such a transfer order has not been stayed in appropriate proceedings before the Court and therefore this issue could not be determined as a question of fact.

Considering that appellant is suffering from kidney disease and half of his body sustained paralytic attack, it would be open to him to approach the competent authority/employee. It is for them to consider the hardship of the appellant.

With that observation, the appeal is dismissed.