
(2014) 07 J&K CK 0009
In the Jammu And Kashmir High Court
Case No : LPASW No. 91/2014

Anil Kumar Prabhakar

APPELLANT

Vs

State of JandK

RESPONDENT

Date of Decision : 08-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 3 JKJ 346

Hon'ble Judges : M.M. Kumar, C.J;Tashi Rabstan, J

Bench : Division Bench

Advocate : S.K. Shukla, Advocate for the Appellant; Pranav Kohli, Advocate for the Respondent

Judgement

Tashi Rabstan, J.—Through the medium of this Letters Patent Appeal, writ petitioner-appellant has assailed the judgment of the learned

Single Judge dated 15.05.2014 passed in SWP No. 662/2014, titled as Anil Kumar Prabhakar v. State of J&K and others, whereby writ petition

of the writ petitioner-appellant has been dismissed having been found without merit. The brief resume of the case is that the writ petitioner-

appellant and Respondent No. 4 on their promotion as Incharge Assistant Engineers (Civil) were adjusted in PHE Division Udhampur (Sub-

Division, Ramnagar and PHE Sub-Division Doda West) by respondent No. 2 vide Order No. PHEJ/GE/33/E of 2014 dated 04.03.2014. On the

same date, Respondent No. 2 issued a corrigendum vide Order No. PHEJ/GE/35/E of 2014 dated 04.03.2014 whereby place of posting of

Respondent No. 4 was changed from PHE Division Doda (Sub-Division Doda West) to PHE Division Udhampur (Sub-Division Ramnagar)

where the writ petitioner-appellant had been posted earlier. So far as the writ

petitioner-appellant is concerned, he was posted in PHE Direction Office, Jammu.

2. It was this corrigendum, writ petitioner-appellant had challenged before the learned Single Judge through the medium of SWP No. 662/2014

inter alia on two grounds:-

(a) That the corrigendum impugned though purported to have been issued on 04.03.2014 was actually issued on 05.03.2014, but, was ante-dated

to avoid the complications due to imposition of Model Code of Conduct issued by the Government in lieu Parliament Election 2014, and that

corrigendum impugned was arbitrary and, therefore, violates Articles 14 and 16 of the Constitution;

(b) That the corrigendum impugned was issued in violation of transfer policy issued by the Government for regulating transfer and posting of the

gazetted and non-gazetted employees of the State.

3. Both these issues were considered by the learned Single Judge and the argument raised by learned counsel for the writ petitioner-appellant was

rejected and consequently writ petition was dismissed vide judgment dated 15.05.2014.

4. The argument raised by learned counsel for the writ petitioner-appellant that corrigendum impugned was antedated and was found not

substantiated by any material on record, and the plea of the writ petitioner-appellant that order impugned was arbitrary was also rejected by

learned Single Judge by holding that the corrigendum impugned was an order of transfer/adjustment simplicitor and the employer has wide

discretion to decide as to where a particular employee is best suited. Similarly, the plea of the writ petitioner-appellant that the corrigendum

impugned was in violation of the transfer policy was also rejected by learned Single Judge by holding that the transfer policy being in nature of

administration instructions was not justifiable, as such, the writ petitioner-appellant could not claim any right on the basis of such policy which was

not statutory in nature.

5. The writ petitioner-appellant has challenged the judgment of the learned Single judge on the same grounds. It was argued that the learned Single

Judge did not appreciate the pleas taken by the writ petitioner-appellant to sustain his challenge to the corrigendum impugned.

6. Learned counsel for the writ petitioner-appellant also while referring Government Policy has argued that in view of the delegation of power,

Chief Engineer was not competent to modify its own order without seeking prior approval of the next higher authority.

7. We have gone through the order impugned. The same plea was not taken before the writ Court nor has the writ Court any such occasion to

deal with the aforesaid plea. Therefore, we are not inclined to consider this plea in appeal at this stage.

8. We have gone through the judgment of learned Single judge and the record of the writ petition. We do not find any infirmity in the judgment

impugned. The view taken by learned Single judge was the only possible view that would have been taken in the matter. Learned Single judge was

right in coming to the conclusion that the writ petitioner-appellant has not been able to substantiate his allegation that the corrigendum impugned

was ante-dated and passed on mala fides. Learned Single judge was correct in his view that the corrigendum impugned being order of

adjustment/transfer simplicitor was issued in the interest of administration and therefore could not be called as arbitrary order. It is equally settled

that transfer policy is in the nature of non-statutory administrative instructions and, therefore, does not create any enforceable right. There is no

other material placed before us which would persuade us to take a view contrary to the one that has been taken by the learned Single Judge.

Viewed thus, there is no material to interfere with the judgment of the learned Single Judge. Therefore, the appeal does not merit admission.

Accordingly, the judgment of learned Single Judge dated 15.05.2014 is upheld and appeal is dismissed along with connected CMA(s).