
(2019) 10 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 3587 Of 2019, CM No. 7433 Of 2019

Anita Sharma

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 11-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 10 J&K CK 0017

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Rajesh Thappa, H.A.Siddiqui

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. The challenge in this petition is to Order No. DHSJ/ES-4/9670 dated 26.09.2019 passed by respondent No.2, whereby the petitioner has been transferred from Urban Health Centre (UHC) Janipur to A.H.Chowki Chora.

2. Learned counsel for the petitioner contends that vide Order No.DHSJ/ES-4/3682 dated 26.06.2018, the petitioner was transferred and posted at Urban Health Centre (UHC), Janipur and has not completed her tenure of two years in terms of the Transfer Policy notified vide Government Order No.861-GAD of 2010 dated 28.07.2010. It is further contended that by virtue of impugned transfer order, the petitioner has been transferred prematurely from Urban Health Centre (UHC) Janipur to A.H.Chowki Chora. It is averred that petitioner's transfer, made prematurely, is against the Transfer Policy notified vide Government Order No.861-GAD of 2010 dated 28.07.2010, which, inter alia, provides for minimum tenure of two years of Government servant at one place of posting, but, in the present case the petitioner has been transferred just after 15 months; that the impugned order qua the petitioner has been passed without any prior approval of the Minister Incharge which is mandatory requirement as stipulated in the

Government Order No.861-GAD of 2010 dated 28.07.2010 and, moreover, there are no special circumstances, which warrants premature transfer of the petitioner. It is also contended that the impugned order qua the petitioner is on the face of it is contrary to the transfer policy formulated by the Government and is also bad on the ground that no proper compliance of procedure provided under transfer policy for premature transfer has been followed by the respondents.

3. Petitioner questions order impugned on the ground that she has been transferred in violation of transfer policy as she has been transferred prematurely.

4. I have carefully bestowed my attention to the writ record so as to ascertain whether the petitioner has been transferred prematurely or not.

5. According to the learned counsel for petitioner, the impugned transfer order is violative of the transfer policy and the guidelines. So far as the plea of petitioner with regard to transfer policy is concerned, the same is not sustainable for the reason that the transfer policy promulgated by the Government is an executive order having no statutory flavour, as such, cannot be enforced by way of writ of mandamus. Policy decisions of the Government are in the shape of executive instructions and Government in peculiar facts and circumstances is well within its competence to modify or debate in the interest of administration unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer. The Courts normally cannot interfere with such orders as a matter of routine.

6. The order impugned in the present case, as is discernible from its bare perusal, is general order effecting transfers of about eight persons, as such, cannot be called to be arbitrary. It is for the employer to decide where services of a particular employee can be better utilized. Thus, the Courts cannot substitute their opinion in this regard.

7. As already discussed above, the impugned transfer order is not a lone transfer order of petitioner. In fact, by the said order as many as transfer of eight persons has been made. Thus, the impugned transfer order is an order of chain. Any interference by this Court vis-à-vis transfer of any transferee would disturb the entire chain and as a consequence of which, would affect functioning of the department adversely. It has been repeatedly held by the Courts that transfer policy does not create an enforceable right in favour of a Government employee. It merely incorporates guidelines required to be considered while effecting transfer of a Government employee.

8. A Division Bench of this Court in *Anil Kumar Prabhakar vs State*, 2014 (3) JKJ 346 (HC) has said that the transfer policy is in the nature of non-statutory administrative instructions and does not create any enforceable right.

9. In *State of U.P. vs Gobardhan Lal*, (2004) 11 SCC 402, it has been held that transfer is the prerogative of the authorities concerned and Courts should not normally interfere therewith. It would be relevant to reproduce paragraphs 7 and

8 hereunder:-

"7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. 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 contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

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."

10. In *Union of India vs S. L. Abbas*, AIR 1993 SC 2444, it has been held as under:

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides 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, the husband and the wife must be posted

at the same place. The said guideline, however, does not confer upon the government employee a legally enforceable right."

11. Further, in a series of judicial pronouncements, it has been held that transfer is an incident of service and the scope of judicial review of transfer order under Article 226 is very limited. What is held by the Supreme Court in *State of Haryana vs Kashmir Singh*, (2010) 13 SCC 306 is reproduced hereunder:

"14. In our opinion, the High Court has taken a totally impractical view of the matter. If the view of the High Court is to prevail, great difficulties will be created for the State administration since it will not be able to transfer/deploy its police force from one place where there may be relative peace to another district or region/range in the State where there may be disturbed law and order situation and hence requirement of more police. Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Justice Holmes of the US Supreme Court pointed out, there must be some free-play of the joints provided to the executive authorities."

12. As regards the contention of petitioner that she has been transferred prematurely, it can be safely held that transfer order cannot be termed as premature, because even under the transfer policy the Government is empowered to pass a premature transfer order depending upon the exigency of service. The Government, being employer, is the master to transfer its employees as per the administrative exigency and depending upon the need of service of efficient employees required at

a particular place. Such discretion of the Government cannot be interfered with without any proper and substantial reasons.

13. It is well settled in law that executive instructions and government orders are subject to Statutory Rules and the Legislature, who framed the Rules, cannot delegate its power to the authorized officer or executive and the executive can issue Government orders only within the bounds of the Rules. The Full Bench of this Court in *Syed Hilal Ahmad & ors vs. State of J&K & ors* reported in SLJ 2015 (I) 01, has held that Government servant has no enforceable right to insist that he/she shall be permitted to serve for definite/ specific period in a particular station or a post.

14. Apart from the above, it is very sad state of affairs that petitioner, like persons are trying to elude the responsibilities that is cast upon them the moment they join the government service. It cannot be said that it is not known to everyone that today's youth, particularly, in J&K State, which has limited resources, are facing alarming unemployment and they are ready to serve and work not only in any part of the Country, but, outside the Country as well. Such unemployed youth leave their families here and work 1000 kilometers away from their families, whether their families are in distress or ease. Then how can

petitioner, like persons/employees, be permitted to make lame excuses of not working or serving the State and its people even at a distance of, say, 40 or 50 kilometers. In the present case, petitioner is not ready and willing to work within the District much less outside the District. Such practice should be deprecated with iron hand.

15. That being the situation and in view of the above discussion, I do not find any merit in the petition and the same is, accordingly, dismissed along with connected CM(s).