
(2019) 10 RAJ CK 0013

In the Rajasthan High Court

Case No : Spacial Application Writ No. 1298 Of 2019

Anita Sharma

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 03-10-2019

Acts Referred:

Rajasthan Educational Subordinate Service Rules, 1971 — Rule 6D

Citation : (2019) 10 RAJ CK 0013

Hon'ble Judges : Sangeet Lodha, J;Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : R.S. Saluja, Parvez

Final Decision : Dismissed

Judgement

1. This intra court appeal is directed against order dated 4.9.19 passed by the learned Single Judge of this court, dismissing the writ petition preferred by the appellant against the orders dated 10.6.19 and 20.8.19 issued by District Education Officer (Headquarter), Secondary Education, Sriganganagar. By order dated 10.6.19, the appellant was subjected to change in set up and vide order dated 20.8.19 the representation made by her, has been rejected.

2. The appellant holding the post of Teacher Gr.III posted at Government Upper Primary School (GUPS), Kedar Basti, Sriganganagar, was subjected to procedure under Rule 6D of Rajasthan Educational Subordinate Service Rules, 1971 (for short "the Rules"), vide order dated 10.6.19 issued by the District Education Officer (Headquarter), Secondary Education, Sriganganagar and posted at Government Senior Secondary School, 2RB, Padampur.

3. Aggrieved by the order, the appellant preferred Writ Petition No.8269/19, which was decided alongwith yet another writ petition Gena Ram Choudhary vs. State of Rajasthan & Ors.: SBCWP No.8085/19, by the learned Single Judge of this court vide order dated 21.6.19, whereby the order dated 10.6.19 was quashed and the respondents were directed to decide the representation made

by the appellant and pass a fresh order. The representation made was rejected by order dated 5.7.19, however, the writ petition preferred by the appellant aggrieved thereby, was allowed by the learned Single Judge of this court vide order dated 23.7.19 on account of the order dated 5.7.19 being a non speaking order and the respondents were directed to decide the representation by passing order afresh.

4. Pursuant to the directions issued as aforesaid, after due consideration, the representation made by the appellant was rejected by the District Education Officer (Headquarter), Sriganaganagar vide order dated 20.8.19, observing that the transfer/posting of the appellant is in accordance with the various circulars issued by the State Government. The issue raised by the appellant with regard to the seniority was not decided as the District Education Officer was not competent to decide the same.

5. The writ petition preferred by the appellant assailing the legality of order dated 10.6.19 and 20.8.19 has been dismissed by the learned Single Judge with the observations as under:

" A perusal of the representation made by the petitioner (Annex.8) reveals that the petitioner relied on the observations made in the case of Gena Ram Choudhary (supra) and stipulation in circular dated 12.06.2018 regarding teachers, who have been posted at Secondary or Primary schools in urban areas be provided option and claimed that she was entitled to benefit of the said stipulation. The petitioner also, as noticed herein-before, raised issues about her seniority and prayed for being either retained at the present school or being posted at a particular school.

The representation made, as noticed herein-before, was apparently general in nature and it was assumed that once by order dated 21.06.2019, the order dated 10.06.2019 was quashed, the respondents could not have transferred the petitioner, which assumption apparently, has no basis.

Further the reliance placed on the stipulation in circular dated 12.06.2018 was based on the incomplete reading of the said circular, as petitioner was being transferred from Primary to Secondary set- up and was not being retained within the same set-up, as such, the said stipulation had no application to the case of the petitioner.

So far as the grievance raised qua the seniority of the petitioner is concerned, the grievance committee which dealt with the representation, did not have the jurisdiction to deal with the said grievance and therefore, the same was rightly dealt with by indicating that the jurisdiction lies with the other authorities."

6. Learned counsel appearing for the appellant contended that while passing the order dated 20.8.19, the submissions of the appellant in regard to post lying vacant in GUPS, Kedar Basti have been totally overlooked and the reference of rules and circular have been made without discussing the same. Learned counsel

submitted that the appellant had already been brought to GUPS, Kedar Basti, which is in urban area of Sriganganagar and thus, she could not have been subjected to change of set-up/absorption by invoking provisions of Rule 6D of the Rules, however, this aspect of the matter, has not been appreciated by the learned Single Judge in correct perspective while passing the order impugned. Learned counsel submitted that as a matter of fact, provisions of Rule 6D of the Rules, are not attracted in the matter inasmuch as, it was not a case of appellant becoming surplus.

7. We have considered the submissions of learned counsel for the appellant and perused the material on record.

8. Indisputably, the appellant had already been brought to GUPS, Kedar Basti, which is in urban area, but there is nothing on record suggesting that the appellant stood absorbed in the Department of Education on her being posted in urban areas. As per Rule 6D of the Rules, the vacancies of the Teacher Gr.III to the extent of 75% in the Department of Education are filled in by transfer of teachers working in Panchayat Samities from amongst the teacher available in Panchayat Samities strictly on the basis of seniority. Accordingly, as per seniority, the appellant was also subjected to change of set-up in terms of Rule 6D of the Rules. Thus, the contention sought to be raised by the appellant that the provisions of Rule 6D are not attracted in the matter, is devoid of any merit.

9. Coming to the stipulation made in the circular issued by the State Government, relied upon by the counsel for the appellant, a teacher who is included in the select list issued under Rule 6D of the Rules, who had already been transferred to urban area, was given option either to continue on existing posting or to participate in the counseling camp. It is not disputed before this court by the learned counsel that the appellant had participated in the counseling and thus, the posting of the appellant after the counseling cannot be said to be in violation of the circular dated 13.6.18 issued by the Department of Education. It is not disputed before us by the learned counsel that the District Education Officer is not competent to decide the issue of seniority and thus, the rejection of the representation made by the appellant in this regard cannot be faulted with.

10. The appellant cannot claim posting at a particular place of her choice as a matter of right and thus, the order impugned passed by the learned Single Judge declining to interfere with the order dated 10.6.19 and 20.8.19 issued by the District Education Officer (Headquarter), as aforesaid, does not warrant any interference by this court in exercise of intra court appeal jurisdiction.

11. In the result, the intra court appeal is dismissed in limine.