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**(2020) 03 RAJ CK 0137**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 16490, 16494 Of 2019

Ashok Kumar Pareek And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

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**Date of Decision :** 18-03-2020

**Acts Referred:**

Rajasthan Land Revenue (Land Records) Rules, 1957 — Rule 173

**Citation :** (2020) 03 RAJ CK 0137

**Hon'ble Judges :** Arun Bhansali, J

**Bench :** Single Bench

**Advocate :** Hamir Singh Sidhu, Rekha Borana

**Final Decision :** Allowed

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## **Judgement**

These writ petitions have been filed by the petitioners aggrieved against the transfer orders dated 23.09.2019 passed by the respondent No.3.

It is, inter-alia, indicated in the writ petitions that the petitioners are holding the post of Inspector Land Records and their services are governed by the provisions of the Rajasthan Land Revenue (Land Records) Rules, 1957 (the Rules),

which inter-alia provides under Rule 173, the power to the State Government to direct transfer of the petitioners.

By the order impugned dated 23.09.2019, issued by the Divisional Commissioner, Ajmer, the petitioners, who were working at Tehsil Asind, District Bhilwara, were ordered to be transferred to District Ajmer. The order, inter-alia, indicated that

the same was passed pursuant to the order dated 13.09.2019 issued by the Registrar, Board of Revenue. The order further indicated that transfer was made pursuant to the D.O. No.1064 dated 13.09.2019 issued by the Revenue Minister.

During the pendency of the writ petitions, under the directions of the Court, the respondents have produced the communications dated 13.09.2019 issued by the

Revenue Minister as Annex.-A/1, the communication addressed by the Joint Secretary to the Registrar, Board of Revenue and from Registrar, Board of Revenue to the Divisional Commissioner.

It is submitted by learned counsel for the petitioners that the power to transfer an Inspector Land Records lies with the Divisional Commissioner under the directions of the State Government under Rule 173 of the Rules. Submissions have

been made that the State Government has not given any direction to transfer the petitioners and that the petitioners have been transferred at the instance of the Minister, who has no authority to give such direction and therefore, the order

impugned is bad.

Further submissions have been made that the order has been made without any administrative exigency, which aspect is apparent from the order of transfer and on that count also, the order impugned is bad and deserves to be quashed and set-

aside.

It is emphasized that the post from-where the petitioners have been transferred, has been kept vacant and none has been transferred at the place of the petitioners, which clearly reflects lack of any administrative exigency. It was prayed that

the order impugned deserves to be quashed and set-aside.

Reliance was placed on Yogesh Kumar & Anr. v. State of Rajasthan & Ors. : 1990(2) RLR 454, Brij Lal Bagoria v. State of Rajasthan :1990(1) RLW 579, Satya Narayan v. State of Rajasthan & Ors. : WLR 1992(S) Raj. 317, & Chander

Kanta v. State of Rajasthan & Ors. : S.B. Civil Writ Petition No.11022/2015, decided on 24.11.2015.

Learned counsel for the respondents submitted that there is no illegality if a transfer is effected at the instance of the Minister, who is incharge of the concerned department and only on account of the suggestion of the concerned Minister, if a

transfer is affected ipso facto it cannot be termed as a malafide action.

Further submissions have been made that the petitioners themselves made a representation consenting to their transfer to District Ajmer and sought posting at Tehsil Vijay Nagar and merely because they were not accorded posting at a

particular place, the petitioners have questioned the validity of the order impugned.

Further submissions have been made that under the directions of the State

Government, the Divisional Commissioner is the competent authority under Rule 173 of the Rules to transfer within the Division and that a direction-cum-proposal dated

13.09.2019 was issued by the State Government to the Registrar, Board of Revenue containing a list of 274 Inspector Land Records and it was directed to inquire about them and pass transfer orders and thereafter, the orders have been issued, which are well within the jurisdiction.

Further submissions have been made that the order of transfer cannot be interfered with unless the same is in violation of statutory provisions and is mala fide and in absence thereof, order impugned does not call for any interference.

Reliance was placed on Bhagirath Mal v. State of Rajasthan : (1990) 2 RLR 561, Union of India & Ors. v. S.L. Abbas : 1993(4) SCC 357, Bhagwan Das Mittal v. State of Rajasthan & Ors.: (2007) 3 RLW 1713 & The State of Assam v. Shri

Dilip Kumar Sarma & Ors. : (2011) 6 GauLR 526.

I have considered the submission made by learned counsel for the parties and have perused the material available on record.

The provisions of Rule 173, which deal with the transfer of Inspector Land Records, inter-alia, provide that the Collector may transfer within the District, the Divisional Commissioner within the Division and the Board of Revenue within the State. The proviso to the Rule empowers the State Government to direct the Collector, Divisional Commissioner or the Board of Revenue, as the case may be, for transfer of an Inspector Land Records.

In view of the express provisions, as the transfer has been made within the same Division, the Divisional Commissioner has the authority to transfer the petitioners.

However, the matter does not end there. The order dated 23.09.2019, by which the petitioners have been transferred by the Divisional Commissioner, reads as under :-

A bare look at the above would reveal that the Divisional Commissioner has passed the order pursuant to the D.O. letter dated 13.09.2019 from the Minister and the communication from the Registrar, Board of Revenue.

As noticed herein-before, the referred communications and directions have been produced by the respondents on record. The D.O. comments of the Minister, which contains as many as 274 recommendations including that of petitioners, read

as under :-

A perusal of the above recommendations (Annex.-A/1) produced by the



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The above communication reveals that the Registrar has simply forwarded the communication from the Minister alongwith the letter of the Joint Secretary to the Divisional Commissioner, which ultimately led to passing of the impugned order

dated 13.09.2019, which refers to all the communications.

A perusal of the above sequence of events, clearly reflects that initiation of transfer proposal of as many as 274 Inspectors Land Record has been at the level of the Revenue Minister. As to what was the basis / material etc. before the

Minister, based on which the proposals have been sent, is not known as a cryptic direction has been issued requiring the transfers and to inform the Minister accordingly. The Principal Secretary has simply dittoed the direction and so also the

Joint Secretary and within the same day dated 13.09.2019, communication from the Minister to the Principal Secretary, to the Joint Secretary, to the Registrar - Board of Revenue, to the Divisional Commissioner have been issued.

The above sequence clearly indicates a top down approach, whereby the directions for affecting the transfers have been given at the level of the Minister and the same have gone down from him to the Secretary to the Joint Secretary

to the

Board of Revenue, to the Divisional Commissioner.

This Court in the case of Chander Kanta (supra), dealing with a similar situation pertaining to the Panchayati Raj Department, while referring to the Rules of business, came to the conclusion that the hierarchy as indicated in the Rules of

business, whereby the approach has to be bottom up and not the top downwards found that the action was wholly without jurisdiction and the proposal of the Minister cannot partake of the order of the Government, which is the requirement for

transfer in law. The relevant part of the judgment reads as under :-

Admittedly, the post of Gram Sevak falls within the Non Gazetted Staff and, therefore, even otherwise there was no requirement of even placing the said aspect before the Minister as claimed by the respondents. Besides the above even if

the same was to be placed before the Minister, the hierarchy as indicated hereinbefore cannot be made to work from top downwards i.e. from Minister to the Secretary to the Additional Commissioner which would be against the established

practise and wholly contrary to the settled position wherein the approval etc. is to be granted by a higher officer and in the present case on passing of the order by the Minister, the Secretary and the Additional Commissioner are merely

required to follow the same, which cannot be the procedure.

In view of the above, the order/proposal Annex.R-2 can only be said to be wholly without jurisdiction, the said proposal cannot partake the character of order of the Government and consequently passing of the order Annex. P-7 by the

respondents transferring the petitioner from one Panchayat Samiti to other also cannot be sustained.

Besides above, it is well settled that the desire and/or direction of the Minister concerned cannot be termed as direction and/or decision of the State Government and, therefore also for lack of pre-requisite for exercise of jurisdiction under

Section 89 (8-A) of the Act the action impugned cannot be sustained.

The submissions made by learned counsel for the respondents relying on the judgments in the case of Bharirath Mal (supra), S.L. Abbas (supra) & Bhagwan Das Mittal (supra) to indicate that the Minister can seek a transfer being a public

man and on account of he being the supreme authority of the department on the administrative side as well, may have some relevance, in case the said direction

was a one off event, however, as already noticed, the Minister has sought transfer of 274 Inspectors Land Records and not only this has even indicated the specific place of postings and the districts where they were to be transferred, which clearly reflects that the Minister has not merely desired or recommended transfer but the decision making with regard to the transfer has taken place at the top and the concerned authorities of the State have simply followed the dictates without further application of mind. The institutionalization of the practise, which is clearly against law, cannot be permitted.

The plea raised that the Joint Secretary has required the Board of Revenue to examine the status of the employees, any interim order or the place of posting, would involve the decision making on part of the Board of Revenue is baseless, inasmuch as, the same is only a clerical exercise so as to ensure accuracy in following the dictates and not that the decision was taken by the authorities to effect the transfer.

In so far as the fact that the petitioners had sought posting at a particular place and on account of denial the challenge has been laid, a perusal of the material indicates that after the order was passed on 13.09.2019 and it became apparent that

the petitioners were to be transferred to district Ajmer from district Bhilwara, attempt was made to retrieve, whatever best can be made of the situation, on account of the directions of the Minister, which action of the petitioners cannot create

any estoppel in questioning the validity of the order passed.

In view of the above discussion, the action of the respondents in passing the orders impugned dated 23.09.2019, whereby the petitioners have been transferred by simply following the dictates of the Minister cannot be sustained.

Consequently, the writ petitions are allowed, the orders dated 23.09.2019 are quashed and set-aside. In case, the place from-where the petitioners have been transferred have already been filled up during the pendency of the writ petitions, the

respondents would be free to accord posting to the petitioners at an appropriate place in accordance with law.