
(2018) 07 J&K CK 0047

In the Jammu And Kashmir High Court

Case No : Letter Petent Appeal No..60 Of 2018 & Mp No.01 Of 2018 With
Caveat No.3019 Of 2018

Balwant Singh @APPELLANT@Hash State Of Jammu & Kashmir And Ors.

Date of Decision : 12-07-2018

Acts Referred:

Constitution of India, 1950 — Article 14
Jammu and Kashmir Civil Services (Classification, Control and Appeal), Rules, 1956 —
Rule 27

Citation : (2018) 07 J&K CK 0047

Hon'ble Judges : Dhiraj Singh Thakur, J;Sanjay Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This Letters Patent Appeal is directed the judgment/order dated 29.05.2018 passed by the learned Single Judge in SWP No.1058/2018 & MP

No.01/2018 dismissing the writ petition filed by the appellant herein (writ petitioner before Writ Court).

2. In the memo of appeal, it has been stated that the appellant who has been working as Tehsil Supply Officer was transferred on 14.02.2018 from

Marmat to Paddar.Â The said order later on was kept in abeyance.Â Private respondent No.4 was suspended on complaints basis on 19.02.2018.Â

The appellant was again transferred to Kishtwar on 20.02.2018. Appellant joined his new place of posting at Kishtwar.Â Again to accommodate the

private respondent who was suspended on complaints, appellant has been transferred from Kishtwar to Nagseni and posted private respondent at the

place of appellant by mala fide exercise of power and in complete violation of Transfer Policy in an illegal and arbitrary manner.Â The frequent

transfer of the appellant is mala fide, illegal and arbitrary exercise of powers by respondent No.2 and is not in the interest of administration but to

adjust the private respondent. The appellant filed the writ petition against order No. DFCS&CAJ of 2018 dated 25.05.2018, which has been dismissed

vide impugned judgment/order herein, as such the instant LPA.Â Â

3. Appellant is aggrieved of the impugned judgment and challenges the same inter alia amongst others on the following grounds:-

Â a.Â That the appellant had been first transferred on 14.02.2018 from Marmat to Padder. The said order had been kept in abeyance.Â Respondent

No.4 had been placed under suspension on 19.02.2018, on the basis of a complaint.Â Appellant was again transferred to Kishtwar on 20.02.2018. In

order to accommodate respondent No.4, by colourable exercise of power of transfer, appellant had been ordered to be transferred, yet, again under

the impugned order before the Writ Court dated 25.05.2018 to Nagseni.Â It was thus a case, before the Honâ??ble Writ Court, that, the order of

transfer of the appellant, had been issued by arbitrary use of power of transfer to accommodate respondent No.4.Â Once the Honâ??ble Writ Court

had recorded or had reached satisfaction, that, respondent No.2 should not have ordinarily posted respondent No.4 as Incharge TSO Kishtwar, the

Honâ??ble Writ Court in law, could not have refused appellant his right to approach the Writ Court with grievance against his transfer order as the

same was vitiated by arbitrariness which is anathema to the concept of equality and fair play.

b. That once the Honâ??ble Writ Court had also in impugned order, practically directed, that the Honâ??ble Court did not approve the posting of

respondent No.4 as incharge TSO Kishtwar, it had practically accepted that once the posting of respondent No.4 as incharge TSO Kishtwar was not

approved, the posting of appellant as TSO Kishtwar could not have been allowed to be affected under the same very order, under which respondent

No.4 had been posted as TSO Kishtwar and action which was not been approved by the Honâ??ble Writ Court. While the Honâ??ble Writ Court

had itself made the order of transfer justiciable, even if, related to posting of respondent No.4, there could be no selective approach, inasmuch as,

refusing interference to same order so far as appellant was concerned on the ground of justiciability.Â

c. That while appellant was substantively holding the post of Tehsil Supply Officer, he was shown as Incharge Tehsil Supply Officer.Â The

Honâble Writ Court had directed almost an enquiry, as to how the same had happened in the impugned order.Â Appellant as he had shown and

as had been accepted by the Honâble Writ Court that impugned order of transfer dated 25.05.2018 was vitiated by mala fides at law, inasmuch as

it being arbitrary had been accepted by the Honâble Writ Court and thus appellant's right of equality and fair play have been infringed as was

guaranteed to him under Article 14, refusing interference and dismissing the writ petition at the threshold was against the interest of justice.Â Â Â

d. That the Honâble Writ Court wrongly recorded in the impugned order that appellant had not on his own joined at Padder.Â The finding is

contrary to record and was never a case of the appellant. Instead the appellant had pleaded at the hearing that while he had reported for joining but

was not allowed as the order had been kept under abeyance.Â On this ground as well the impugned order is liable to be quashed.Â Â

4. Heard learned counsel for appellant as well as respondent No.4, who is on caveat.Â Caveat No.3019/2018 stands discharged.

5. On perusal of the file, it transpires that the appellant was holding the post of TSO on substantive basis having been promoted vide order No. 296-

DFCS&CAJ of 2017 dated 27.10.2017 issued by respondent No. 2. The appellant was posted in Marmat and was transferred and posted as TSO

Paddar on 14.02.2018. The aforesaid order was, however, kept in abeyance by the respondent No. 2 vide order No. 40-DFCS&CAJ of 2018 dated

19.02.2018 and the appellantÂ was posted as TSO Kishtwar instead of Paddar as was earlier directed vide order issued on 14.02.2018. In

compliance to the aforesaid order, the appellant had also joined his services at Kishtwar on 22.02.2018. While the petitioner was performing his duties

as TSO, Kishtwar, impugned order came to be passed by the respondent No. 2, whereby the appellantÂ was shifted from Kishtwar and posted as

Incharge TSO Nagseni and in his place, respondent No. 4 was posted.Â

6. Feeling aggrieved, the appellant had filed the petition challenging the order impugned therein, inter alia, on the ground that it has been passed to

accommodate the respondent No. 4, who while working as Incharge TSO Kishtwar had been suspended for misconduct and was later on reinstated.

It was also urged that the impugned order of transfer was not in the interest of administration. The order impugned was also assailed on the ground

that the petitioner has been subjected to frequent transfers and the last one being impugned in the petition has been issued arbitrarily and in colorable exercise of powers. The order impugned was assailed by the appellant before writ court on the ground that it suffers from lack of application of mind, inasmuch as the order impugned refers to the petitioner as Incharge TSO, whereas he was substantively promoted as TSO vide order dated 22.08.2017.

7. Writ Court dismissed the petition. Relevant extract of the impugned order/judgment passed by learned Single Judge is reproduced as under:-

6. Be that as it may, the respondent No. 2 vide order impugned has transferred the petitioner as Incharge TSO, Nagseni and posted Saroop Chand as Incharge TSO, Kishtwar. As rightly contended by the learned counsel for the petitioner, the posting of respondent No. 4, upon his reinstatement from suspension as Incharge TSO, Kishtwar smacks of ulterior considerations. Respondent No. 4 was placed under suspension while he was working as TSO Kishtwar. The Vigilance Organization as reported in the newspaper appended with the petition, also registered a case of embezzlement against respondent No. 4 and others as claimed by the petitioner. If that is so, the respondent No. 2 should not have ordinarily posted respondent No. 4 as Incharge TSO Kishtwar. Having said so, the petitioner too cannot have his grievance as he has no vested right to serve as TSO Kishtwar. The petitioner has been transferred and posted as TSO Nagseni without affecting his status. Respondent No. 2 is, however, required to examine as to how the petitioner, who is a confirmed TSO came to be referred as Incharge TSO in the impugned order. He may also be required to make necessary correction in the order aforesaid. While this Court does not find any infirmity in the order of transfer of the petitioner from Kishtwar to Nagseni, but does not approve the posting of respondent No. 4 as Incharge TSO Kishtwar as well.

7. Mr. Sudershan Sharma, learned counsel for the respondent No. 4, who was on Caveat, justified his posting as Incharge TSO Kishtwar on the ground that he was suspended from the aforesaid post and as such, on reinstatement was required to be posted there.

8. Be that as it may, since this Court does not find any illegality in the order impugned, therefore, the writ petition is dismissed. The respondent No. 1,

however, shall be obliged to look into the matter in the light of observations made hereinabove and decide as to whether in the facts and

circumstances, it was appropriate for respondent No.2 to post respondent No. 4 as Incharge TSO Kishtwar. Decision in this regard is, however, left to

be taken by respondent No. 1.â??

8. Rule 27 of the J&K Civil Services (Classification, Control and Appeal), Rules, 1956, provides that a person is liable to be transferred to any place in

the State on the post, cadre or service to which he belongs. No employee has a vested right to remain posted at a particular place and for a

particular period. It is for the employer to determine, where the services of a particular employee can be best utilized in the interest of

administration. Government with a view to regulate the discretion in the matter of issuing transfer orders has been issuing guidelines in the shape of

Government orders from time to time. Government order No. 861-GAD of 2010 dated 28.07.201 is in the shape of guidelines and administrative

instructions and does not have any statutory flavor. Law of judicial intervention in transfer or posting is clear. Even if there is a transfer policy, the

same cannot be enforced as a statute. It is subject to exigencies of services. Instant transfer policy itself states that it is a guideline to be followed and

various stipulations therein would be subject to exigencies of service.â??

9. In *Mrs. Shilpi Bose And Others vs State of Bihar and others* reported in AIR 1991 SC 532, the Honâ??ble Supreme Court has held as under:-

â??4. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the

transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post

has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the

competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts

ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to

interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration

which would not be conducive to public interest. The High Court over looked

these aspects in interfering with the transfer Orders.Â

5. We accordingly allow the appeal, set aside the Order of the High Court and dismiss the petition filed by the respondents. The appellants should be

posted to the places to which they had been transferred under the Orders impugned before the High Court. There will be no Order as to costs.Â??Â

10. InÂ Abni Kanta Ray v. State of Orissa and Ors. reported in 1995 Supp.(4) SCC 169, the court held as under:Â

â??It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or

vitiating by mala fides or infraction of any professed norm or principle governing the transfer.â??

11. The appellant has failed to pin point that transfer order has been passed with mala-fide or infraction of any professed norm or principle governing

the transfer.Â Â

12. In view of above discussion, this appeal is dismissed.Â