

(2020) 01 RAJ CK 0089

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14638, 14980, 14656, 15096, 15133, 15137, 15244, 1527, 15353, 15400, 15417, 15684, 15723, 15746, 16133, 16439, 15099, 616316 Of 2019

Chandra Kanta And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 20-01-2020

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 89(8A)

Rajasthan Panchayati Raj Rules, 1996 — Rule 289, 289(2), 289(3)

Citation : (2020) 01 RAJ CK 0089

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : HS Sidhu, Devendra Singh Gaur, Pawan Singh, JS Bhaleria, Tanwar Singh Rathore, Vikas Bijarniya, Raghuraj Sharma, Sanjay Mathur, Vineet Dave, LS Jodha, KR Saharan, Manish Tak

Final Decision : Disposed Of

Judgement

1. The present bunch of writ petitions involve challenge to different orders (dated 26.9.2019, 28.9.2019 and 29.9.2019) issued by the State Government, transferring the petitioners.
2. For the purpose of deciding the question raised, facts pertaining to SBCWP No.14638/2019 : Chandra Kanta Vs. State of Rajasthan & Ors. are being taken into consideration.
3. By way of the order dated 26.9.2019, issued by the State Government, petitioner Chandra Kanta has been transferred from Panchayat Samiti Sardulshahar, Sri Gangangar, however, without indicating place of joining. The order simply provides- "to any other Panchayat Samiti of the District".
4. Not only the order concerning petitioner, but all the transfers effected by the impugned order(s) do not reflect as to where a particular employee is being

transferred.

5. The petitioners have called such transfer orders in question, claiming them to be contrary to provisions contained in Section 89(8A) of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act of 1994' or 'the Act'). Section 89(8A) reads thus:

"[8-A] Notwithstanding anything contained in sub-sec. (8), the State Government may transfer any member of the service (from any place of posting to any other place of posting whether within the same Panchayat Samiti or) from one Panchayat Samiti to another Panchayat Samiti, whether within the same district or outside it, from one Zila Parishad to another Zila Parishad, or from a Panchayat Samiti to a Zila Parishad or from a Zila Parishad to a Panchayat Samiti and may also stay the operation of, or cancel, any order of transfer made under sub-sec.(8), or the rules made thereunder."

6. Mr. HS Sidhu, learned counsel leading the arguments in the present group of cases, submitted that a simple reading of the provisions aforesaid leaves no room for ambiguity that the State Government can transfer a member of service from any place of posting to any other place of posting, whether within same Panchayat Samiti or from one Panchayat Samiti to another. Inviting Court's attention towards expression used, he argued that State may transfer an employee, however, such transfer, cannot be made without providing place of posting and more so, the same cannot be left at the discretion of Chief Executive Officer of the Zila Parishad. Chief Executive Officer cannot provide place of posting to an employee, was the sheet anchor of petitioners' challenge.

7. It was further argued that the order under challenge fails to clear the test of reasonableness and administrative exigency, inasmuch as if the State Government itself is not clear on which place a particular employee is required to be posted, it cannot satisfy that there existed administrative exigency to transfer these employees.

8. It was argued that Chief Executive Officer is not at all competent to transfer an employee and the order(s) impugned have an effect of giving such power in the hands of Chief Executive Officer to transfer employee from one Panchayat Samiti to another Panchayat Samiti.

9. It was emphatically argued that since the provisions of the Act do not envisage giving away the power to transfer in the hands of Chief Executive Officer, the respondent- State is not justified in delegating the power of posting to the Chief Executive Officer.

10. Appearing on behalf of the respondents, Mr. Manish Tak, learned counsel at the outset raised a preliminary objection that petitioners are having an alternative and efficacious remedy before the Rajasthan Civil Services Appellate Tribunal and thus, the writ petitions preferred directly before this Court are not maintainable.

11. Relying upon the judgment of Hon'ble the Supreme Court in the case of Shilpi Bose & Ors. Vs. State of Bihar reported in AIR 1991 SC 532, it was argued that transfer is an incidence of service and if the same has been made in administrative exigency, no interference can be made by the Court in its extra ordinary writ jurisdiction.

12. Responding to petitioners' argument advanced in light of the provisions contained in Section 89(8A) of the Act and inviting Court's attention towards Rule 289 of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as 'the Rules of 1996' or 'the Rules'), he submitted that the State has power to issue orders regarding transfer and also to direct Chief Executive Officer/Vikas Adhikari, as the case may be, to carry out the orders of the State Government.

13. With the help of sub-rule (3) of Rule 289, learned counsel contended that in light of Rule 289(3), the State Government is free to direct the Chief Executive Officer of concerned Zila Parishad to carry out the orders of the State Government.

14. Heard.

15. So far as argument of alternative remedy raised by learned counsel for the respondents is concerned, since the orders impugned are fundamentally void and without jurisdiction, this Court is inclined to interfere in the matter, more particularly, because the notices have already been issued by this Court and interim orders have been passed in petitioners' favour. Relegating the petitioners to avail remedy before the appellate Tribunal would be denying them justice.

16. Judgment of Hon'ble the Supreme Court delivered in the case of Shilpi Bose (supra), does not help the cause of respondents, given the fact that the orders impugned are per-se contrary to statutory provisions and without jurisdiction.

17. Adverting to merits of the case, this Court feels that the orders impugned, providing transfer of the concerned employees from one Panchayat Samiti to any other Panchayat Samiti of the District, without mentioning the place of posting is not only incomplete, but also illegal and contrary to the mandatory provisions contained in sub-section (8A) of Section 89 of the Act of 1994.

18. Provision contained in Section 89(8A) of the Act clothes the State Government with power to transfer any member of service from one place of posting to any other place of posting; from one Panchayat Samiti to another Panchayat Samiti, whether within the same district or outside such District.

19. A careful reading of the provisions aforesaid clearly reveals that in case the State Government exercises its power to transfer, it has to mention the place from where an employee is being uprooted, while also, clearly prescribing the place where he is to be planted.

20. Use of expression "from any place of posting to any other place of posting", so also "one Panchayat Samiti to another Panchayat Samiti", is considered

opinion of this Court shows the legislative intention that while transferring an employee from one place to another, the State will be simultaneously required to provide place of posting also.

21. The orders impugned are incomplete. They do not conform to provisions contained in sub-section (8A) of Section 89 of the Act for want of assigning place of posting. Impugned orders have left it upon the Chief Executive Officer to assign Panchayat Samiti or Gram Panchayat, where the Gram Sevak has to go. They cannot be called transfer orders 'stricto sensu'

22. In considered opinion of this Court, impugned orders are not only loose ended - they traverse beyond the contours of sub-section (8A) of Section 89 of the Act.

23. That apart, the transfer orders in the manner passed do not fulfill the basic tenet governing transfer, namely, administrative exigency. It is difficult nay impossible to comprehend how does uprooting employees in such large numbers by a single order in absence of a policy or guideline can serve public good, when the place of posting is not given.

24. The orders impugned have led to delegating the power of transfer in the hands of Chief Executive Officers, who otherwise are not competent to transfer the employee. It is only the State Government which can transfer an employee from one Panchayat Samiti to another, as has been catalogued in sub-section (8A) of Section 89 of the Act.

25. The State's stand that the subsequent order passed by the Chief Executive Officer is only a consequential order in compliance of the order of the State Government, as per Rule 289 of the Rules of 1996 and that the same is permissible according to sub-rule (3) of Rule 289 is untenable. The orders under challenge, as a matter of fact, amount to transfer being made by the Chief Executive Officer, who is not authorized to transfer any member of service governed by the Panchayati Raj Act and the Rules framed thereunder. For the purpose of ready reference, Rule 289 of the Rules of 1996 read thus:

"289. Transfer within the district.- (1) The name of the employee desiring transfer or desired to be transferred within the district shall be communicated to the Administration and Establishment Committee of Zila Parishad concerned by the Panchayat Samiti.

(2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or Zila Parishad concerned on the recommendation of the Administration and Establishment Committee of Zila Parishad concerned.

(3) State Government may issue orders regarding transfers from time to time. In case Administration and Establishment Committee of Zila Parishad concerned/ Standing Committee of Panchayat Samiti does not agree, Chief Executive Officer/ Vikas Adhikari as the case may be, shall carry out orders of the State Government.

(4) On transfer of the employee, his confidential roll and service record will be transmitted, without avoidable delay, to the Panchayat Samiti/Zila Parishad to whom his services have been transferred."

26. Sub-rule (3) cannot be read in isolation and divorced of sub-rule (1). A comprehensive reading of Rule 289 shows that same is meant for those cases, in which an employee desirous of transfer within the district approaches the concerned Panchayat Samiti, with an order of the State Government and in case the concerned Panchayat Samiti or Gram Panchayat does not carry out the direction of the State Government, the concerned Chief Executive Officer can pass such order of transfer. Such direction or order cannot be issued when there is no request of transfer by the employee or in cases which are not covered by Rule 289.

27. State cannot defend its order under the cloak of Rule 289(3), as the same has no application in the present cases.

28. This view is fortified by a Coordinate Bench decision dated 7.9.2017 rendered in the case of Murari Lal Vs. State of Raj. & Ors (SBCWP No.3595/2017). Para no.5 whereof is being reproduced here under:

"5. A bare perusal of Section 89(8)(ii) of the Act makes it abundantly clear that in case an employee is proposed to be transferred from one Panchayat Samiti to another by the Zila Parishad concerned on the recommendations of Administration & Establishment Committee of Zila Parishad concerned consultation with the Pradhans of Panchayat Samitis from and to which such transfer is proposed to be made is mandatory. That apart, by virtue of Section 289(2), the Chief Executive Officer of the Zila Parishad concerned is not competent to issue the transfer order in absence of any recommendations made in this regard by the Administration & Establishment Committee of Zila Parishad concerned. In this view of the matter, viewed from any angle, the order impugned issued by the Chief Executive Officer, Zila Parishad straight away transferring the petitioner from one Panchayat Samiti to another Panchayat Samiti without compliance of the provisions of Section 89(8)(ii) of the Act and Rule 289(2) of the Rules is ex facie without jurisdiction."

29. Upshot of above discussion is: all these writ petitions are allowed; the impugned orders (dated 26.9.2019; 28.9.2019 and 29.9.2019) qua each of the petitioners are hereby quashed.

30. Needless to observe that quashment of these orders will not preclude the State from transferring these petitioners, in case it is felt that administrative exigency warrants petitioners to be transferred. State, if so desired, can pass fresh transfer orders qua these petitioners, however, while clearly giving out place of posting; instead of leaving the petitioners at the discretion/mercy of Chief Executive Officers.

31. The stay applications also stand disposed of accordingly.