
(2013) 03 RAJ CK 0070
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9484 of 2012

Dr. Anila Jain

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-03-2013

Acts Referred:

Citation : (2013) 2 CDR 1038

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Advocate : Virendra Dangi and Mr. Kuldeep Verma, for the Appellant; Reashm Bhargava, for the Respondent

Final Decision : Disposed Off

Judgement

M.N. Bhandari, J.—By this petition, a challenge is made to the order of transfer whereby petitioner has been transferred from Kaladera to Sawaimadhopur. Learned counsel for petitioner submits that order of transfer suffers from malafide as she has been posted to accommodate private respondent. The accommodation of private respondent is coming out from the fact that petitioner's posting is against surplus post at Sawaimadhopur thus petitioner would be in addition to the sanctioned strength for Sawaimadhopur hence cannot be said to be in public interest and otherwise proves malafide of the respondents. It is also stated that private respondent has been posted at Kaladera in violation of Rajasthan Voluntary Rural Education Service Rules, 2010 (in short "Rules of 2010"). An employee to be appointed under the Rules of 2010 cannot be posted against post meant for direct recruits. The respondents have ignored the aforesaid also while passing the impugned order. Accordingly, for all the reasons given above, order of transfer deserves to be set aside.

2. Learned counsel for respondents, on the other hand, submits that order of transfer has been passed purely in the interest of administration and in exigency of service. The allegation of malafide is made without substantiating the same. The private respondent has been appointed under the Rules of 2010 and given

posting where one can be posted only in rural area. It is not by way of accommodation, accordingly the very basis to challenge the order of transfer is not made out.

3. So far as alleged violation of Rules of 2010 is concerned, it is not made out for the reason that any person appointed under the Rules of 2010 can be posted in rural area. Kaladera where private respondent has been posted is rural area thus posting of the respondent is in consonance with the Rules of 2010 and not in violation of it. Rules of 2010 does not bar posting against a post which was earlier filed by direct recruitee. The bifurcation of the post for promotees/direct recruitees or appointees under the Rules of 2010 is not separately identified for posting thus it is erroneous to say that private respondent has been posted against the post meant for direct recruitees.

4. So far as last argument is concerned, the petitioner was posted at Sawaimadhopur against vacant post. The person was transferred however continuing due to interim order of the Tribunal. Looking to the aforesaid and as the petitioner has not been posted against surplus post, no case is made out to cause interference in the impugned order of transfer. It is moreso when petitioner has already joined at Sawaimadhopur.

5. I have considered the rival submissions made and perused the record.

6. The order of transfer has been challenged mainly on the ground of malafide. It is precisely on the ground of accommodation of private respondent No. 5. The first question is as to whether material exists to show accommodation of respondent No. 5 at the place where the petitioner was working. I do not find that material exists to show malafide in posting of respondent No. 5 as he has been appointed under the Rules of 2010 thus posted in rural area. As a consequence of that the petitioner has been posted at Sawaimadhopur.

7. So far as violation of Rules of 2010 is concerned, I do not find aforesaid. The private respondent has been posted in rural area in reference of Rules of 2010. It is stated that the posting is against the post meant for direct recruitees. I do not find any substance even in the aforesaid argument because particular place is not identified for a promotee or direct recruitee. As per Rules of 2010, posting has been given in the rural area thus even second argument of the learned counsel for petitioner cannot be accepted.

8. So far as third argument is concerned, I find that petitioner was posted in Sawaimadhopur vice of person who was transferred to other place. The person so transferred approached Tribunal and stay exists in his favour thus continuing there. Merely for that reason, it cannot be termed to be a case where petitioner has been posted against surplus post.

9. In view of the discussion made above, I do not find any merit in all the arguments raised by learned counsel for petitioner to challenge the order of transfer.

10. At this stage, learned counsel for petitioner submits that salary of the intervening period has not been extended to the petitioner. I find that petitioner has already joined at Sawaimadhopur then remains no reason not to pay regular salary to her after joining. Accordingly, a direction is given to the respondents to pay salary to the petitioner after she joined the post at Sawaimadhopur. With the aforesaid, writ petition stands disposed of. The stay application so as second stay application also stand disposed of.