

(2019) 07 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7838 Of 2019

Dr. Ashok Kumar Gupta

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Citation : (2019) 07 RAJ CK 0017

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Sanjay Sharma, Prakhar Gupta, VB Sharma

Final Decision : Dismissed

Judgement

Under challenge in this petition is the order dated 5th March, 2019 (as amended by corrigendum dated 6.3.2019) passed by the Special Secretary,

Higher Education and Commissioner, College Education Government of Rajasthan, whereby the petitioner posted as Professor in ABST subject has

been transferred from Government Commerce College, Kota to Government Girls College, Pali. Aggrieved of the order dated 5th March 2019 and

relieving order dated 6th March, 2019, the petitioner appealed before the Rajasthan Civil Services Appellate Tribunal. By the impugned order dated

16th April, 2019, the Tribunal dismissed the appeal. Hence this petition.

A transfer is an incidence of service. It can be made in administrative exigency or in public interest and the discretion of an employer in transferring

an employee is quite wide. The Apex Court in the case of State of Punjab and Ors. Versus Joginder Singh Dhatt (AIR 1993 SC 2486) has reiterated

the discretion of the employer to decide when and where it seeks to post its employee to avail the maximum benefit from her services to achieve the

object of the employer. No doubt, the discretion vested in an employer to transfer its employee is not absolutely at large and as held by the Apex Court

in the case of *Shilpi Bose & Ors. Versus State of Bihar & Ors.* (AIR 1991 SC 532) an order of transfer can be interfered with within the narrow

grounds where "it is established to entail contravention of a statutory rule or is vitiated by malafides, which can also be deducible from frequent

transfers or from an egregious inexplicable deviation without just cause from a pronounced transfer policy. That being the legal position, it would be

appropriate to detail the grounds on which the petitioner unsuccessfully challenged his order of transfer dated 5 th March, 2019 before the Tribunal

and has now re-stated his challenge before this Court.

Mr. Prakhar Gupta for Dr. VB Sharma, AAG, appearing for the respondents at the outset submits that most grounds agitated in this petition are

identical to those agitated in S.B. Civil Writ Petition No. 7837/2019 titled *Narayan Lal Gupta Versus State of Rajasthan* and a connected matter

(SBCWP No.7837/2019). The only ground additionally agitated in the present petitions is that the petitioner is a Ph.D. guide under whom 5 students at

the Govt. College, Ajmer are pursuing their Ph.D and that his wife, also in government service, is posted at Kota for reason of which as per

Government policy he should be continued to be posted at Kota. Mr.Prakhar Gupta submitted that, however that the facts pleaded cannot have

relevance to impugning the petitioner's transfer order as he has been posted in Kota for the past 8 years. It has been submitted that in the

circumstance the posting of the petitioner's wife at Kota cannot be a reason for him to perpetually be posted at the same station despite a

compelling reason in public interest / administrative exigency for his transfer to Government Girls College, Pali on a vacant post where against the 4

sanctioned posts of Professors (ABST) only one is posted and 3 posts are vacant. Mr. Prakhar Gupta submitted that this petition be accordingly

decided in the light of the order passed in the case of S.B. Civil Writ Petition No. 7837/2019 titled *Narayan Lal Gupta Versus State of Rajasthan* and

the connected matter on the issue of no malafide or breach of statutory rules being made out and that the mere posting of the petitioner's wife at

Kota by itself was not being a shackle on the discretion to transfer him in public interest/ administrative exigency. Mr. Prakhar Gupta further

submitted that a transfer policy is even otherwise a mere guidance and not iron clad. He submitted where good reason obtains for a deviation, as it

does in the instant case, it cannot furnish a ground for interference by the Court in the exercise of its equitable extraordinary discretionary jurisdiction.

Mr. Sanjay Sharma, counsel for the petitioner is not in a position to dispute that the grounds of malafide/ breach of statutory rule agitated in this

petition are covered to the petitioner's detriment by the order of this Court in the case of S.B. Civil Writ Petition No. 7837/2019 titled Narayan Lal

Gupta Versus State of Rajasthan and the connected matter where similar facts were pleaded.

In view of the submissions made by counsel for the parties, this writ petition is also dismissed as no ground of mala fide/ breach of statutory rule or

egregious unjustifiable deviation from the transfer policy is made out. A transfer policy is only a guidance. It is not iron clad. No doubt the

petitioner's wife is posted at Kota. But that fact by itself cannot be a foreclosure of the respondent State's discretion to consider the fact that

the petitioner was posted at Kota for eight years and the administrative exigency of 3 out of 4 vacant posts of Professor (ABST) at the College in Pali

as also the public interest of providing students at Government Girls College, Pali with an additional Professor on one of the three vacant post in the

subject of ABST. Further there is nothing on record to hold that a guide with registered Ph. D. students cannot be transferred despite having held a

post for about 8 years. The petition is thus liable to be dismissed. It is so.

However, a matter of concern remains for the Court. That is with regard to excess postings viz-a-viz sanctioned posts both in the Commissionerate of

College Education and Governments Colleges such as Shahpura, Kaladera and Chomu - or wherever else - in the State of Rajasthan. No specific

denial to this allegation in the petition in this regard has been made in the reply to the writ petition or even in the written submissions. Education is the

bedrock of a rational and progressive society. It is thus the obligation of the State Government to ensure that in the course of providing education,

including higher education as in the instant case, great care, and caution is brought to bear. It is absolutely imperative that postings of the Professors at

a college / on deputation to the Commissionerate of College education or elsewhere are limited to posts in the respective subject sanctioned in various

Colleges and number of sanctioned posts with the Commissionerate of College Education or elsewhere. Excess postings of professors in the Commissionerate or Government Colleges or elsewhere geographically more conveniently located while sanctioned posts in various colleges in outlying areas remain vacant cannot at all be countenanced. That would constitute huge detriment to public interest. In this view of the matter, I would direct the Commissioner, College Education to ensure within three weeks from the date of receipt of a certified copy of this order that all postings in excess of sanctioned posts wherever it might be - either in the Commissionerate of college Education or in Government Colleges or elsewhere - cease and surplus professors, associate professors or assistant professors be posted to various colleges against vacant sanctioned posts. An affidavit of compliance with regard to the aforesaid direction be filed before the Court by the Commissioner, College Education immediately after three weeks, as provided above.

In the circumstances, even while the petition has been dismissed, it is directed that it be listed before this Court on 16th August, 2019 for ensuring compliance with the directions aforesaid issued.